Tax News & Views
Capitol Hill briefing.
June 30, 2017

In this issue:

Senate health care bill stalls 1
Taxwriting chairs, White House weigh in on tax reform developments 4
A note on our publication schedule 6

Senate health care bill stalls

Senate Majority Leader Mitch McConnell, R-Ky., announced June 27 that he would postpone action on legislation he recently unveiled to repeal and replace major portions of the Patient Protection and Affordable Care Act of 2010 (PPACA) until after lawmakers return from the Independence Day recess. The announcement came after it became clear McConnell lacked the votes he would need to pass a procedural motion to bring his Better Care Reconciliation Act of 2017 (BCRA) to the Senate floor and begin debate.

McConnell had originally hoped that the Senate would debate the measure and hold a vote on final passage before lawmakers adjourned for their one-week break on June 30.

Groundhog Day

The BCRA, which McConnell released as a discussion draft on June 22, in many ways follows the contours of the Affordable Care Act repeal-and-replacement package that narrowly cleared the House on May 4. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 16, May 5, 2017.) But the Senate proposal would temper key aspects of the House measure that some moderate Republicans found objectionable. For example, it phases out under the PPACA's Medicaid expansion over three years beginning in 2021 (the House bill would freeze new enrollment in 2020) and proposes a more generous premium tax credit regime to assist those who do not receive coverage through their employer or a

government program such as Medicare or Medicaid. Like the House bill, the Senate draft generally would eliminate the PPACA's insurance coverage mandates as well as most of its taxes on businesses and upper-income individuals on a more-or-less immediate basis. (For details on the Senate draft as released, see *Tax News & Views*, Vol. 18, No. 22, June 23, 2017.)
URL: https://www.budget.senate.gov/bettercare
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170505_1.html
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170623_1.html

Similar GOP dynamic in House and Senate: But the resemblance between the House and Senate bills extends beyond policy and into process. When it was released earlier this year, the House measure came in for criticism from conservative Republicans in that chamber, who thought the it retained too much of the law they wanted to eliminate, and from moderate Republicans, who wanted to provide more generous benefits for older and less affluent individuals. Indeed, Republican opposition to the House bill was so intense that Speaker Paul Ryan, R-Wis., had to cancel a floor vote that had been planned for March 24 because the measure appeared very unlikely to attract enough GOP support to guarantee its passage. And a retooled version of the bill that was brought to the House floor in May won approval by only 4 votes – with 20 Republicans joining a united Democratic bloc in opposition.

After the Senate draft was unveiled, it quickly headed down a similarly tortured path. Within hours of its release, conservative Republican Sens. Ted Cruz of Texas, Ron Johnson of Wisconsin, Mike Lee of Utah, and Rand Paul of Kentucky said in a joint statement that the proposal did not accomplish a true repeal of the PPACA – hardly an encouraging sign for McConnell given that Republicans control only 52 seats in the Senate and can only afford 2 defections if they want to ensure passage. (Senate Democrats are expected to remain in lockstep against the measure.)

The outlook worsened when moderate Republican Sen. Dean Heller of Nevada, a state which expanded Medicaid and created exchanges under the PPACA, formally came out against the bill on June 23.

"This is all about Medicaid expansion. …You have to protect Medicaid expansion states," he said in a news release.

CBO score does little to assuage concerns: The June 26 release of a revenue score from the nonpartisan Congressional Budget Office (CBO) laying out the estimated cost of the Senate bill as well as its projected effects on health insurance coverage and premiums offered little comfort to lawmakers on the fence.
URL: https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/52849-hr1628senate.pdf

According to the CBO's analysis, the BCRA would, on net, trim deficits by $321 billion between 2017 and 2026 (the 10-year budget window) due in large part to the plan's significant reductions in Medicaid spending ($772 billion) and its proposed changes to the Affordable Care Act's subsidies for nongroup health insurance ($408 billion). The report also shows a total 10-year reduction in federal revenues of $701 billion. (A separate revenue estimate focusing on the BCRA's tax provisions was released by the Joint Committee on Taxation staff on June 26.)
URL: https://www.jct.gov/publications.html?func=startdown&id=5003

The CBO report estimates that the legislation would increase the number of uninsured individuals by 22 million by 2026, and that average premiums would rise through 2020 but decline thereafter. Enrollment in Medicaid would be lower throughout the coming decade, with 15 million fewer enrollees by 2026 than projected under current law, the report said. (The CBO projected last month that the House-passed bill would increase the number of uninsured individuals by 24 million by 2026 and reduce the number of Medicaid enrollees by 14 million.)

Following the release of the report, moderate Republican Sen. Susan Collins of Maine, who had been withholding judgment on the bill pending the CBO's analysis, officially put herself in the "no" camp and said she would vote against the motion to proceed. Collins tweeted that she wants to work to fix flaws in the PPACA and that the CBO analysis shows this bill would not do that.

Regrouping for now

As the number of GOP defections mounted, Senate Republican leaders scrambled to garner support for the BCRA. Both President Trump and Vice President Pence separately met with individual Republican senators to gauge their opposition. McConnell's decision to delay floor action prompted President Trump to meet with the entire Senate GOP

Conference at the White House on June 27 to discuss a path forward, and McConnell himself has been holding one-on-one sessions with conservative and moderate colleagues to discuss potential tradeoffs in an effort to secure a majority.

Continuous coverage provision added: One provision officially added to the bill on June 26 would require insurers, starting in calendar year 2019, to impose a six-month waiting period before coverage can take effect for individuals who purchase nongroup health insurance if they have been uninsured for more than 63 days within the past year. The so-called “continuous coverage” provision is intended to encourage individuals who have insurance coverage to keep it, and to discourage individuals from trying to game the system by purchasing insurance coverage only after they become sick. (A similar provision in the House-passed bill would allow insurance companies to impose a surcharge of up to 30 percent on individuals who purchase new nongroup coverage if they failed to maintain insurance coverage during the prior year.)

Keeping a tax or two?: Several moderate GOP senators – including Maine’s Susan Collins – have suggested retaining one or more of the taxes enacted under the PPACA in order to pay for more robust credits and programs to assist lower-income individuals. The most likely candidate, the 3.8 percent net investment income tax imposed on income over $250,000 (200,000 for single filers), would free up some $172 billion in revenue over 10 years.

Such a move could help Republicans blunt Democratic criticisms that the bill provides a large tax cut for the wealthy while reducing aid to those at the lower end of the income spectrum – logic that is not lost on some of Collins’ GOP colleagues, like Sen. Bob Corker of Tennessee.

“It’s not an acceptable proposition to have a bill that increases the burden on lower-income citizens and lessens the burden on wealthy citizens – it’s not appropriate,” Corker said June 29.

For her part, Collins told reporters June 28 that she does “not see a justification for doing away with the 3.8 percent tax on investment income, because that is not something that increases the cost of health care.”

However, several senators, including Finance Committee Chairman Orrin Hatch, R-Utah, have been critical of attempts to retain any PPACA taxes, arguing that the party has campaigned for total repeal and cannot recant now. Conservative Republicans Rand Paul of Kentucky and Pat Toomey of Pennsylvania echoed that sentiment in comments to reporters on June 29.

“I’m for repealing Obamacare, which includes all the taxes in Obamacare,” Paul said.

Additional HSA benefits?: On the incentive side, there has also been discussion of adding a provision that would allow individuals to use contributions to a health savings account (HSA) to pay for insurance premiums – a provision backed by Ted Cruz. HSAs are tax-preferred savings accounts which, when used in conjunction with a high-deductible health insurance plan, allow individuals to pay for qualifying out-of-pocket health care expenses using “tax-free dollars.” Under the current rules, insurance premiums are not considered a qualifying expense.

The underlying Senate draft already includes several enhancements to current-law HSA rules.

Next steps

Senate Republican Whip John Cornyn of Texas told reporters earlier this week that GOP leaders hope to have a revised plan in place by June 30 that both conservatives and moderates can embrace. That new bill would then be scored by the CBO during the Independence Day recess and voted on after the Senate reconvenes the week of July 10.

It was unclear at press time, however, whether Senate leadership would be able to complete work on a new proposal by their self-imposed deadline. If a new deal is not in place, leaders reportedly may send discrete provisions to the CBO to be scored individually during the recess.

— Jacob Puhl
Tax Policy Group
Deloitte Tax LLP

Taxwriting chairs, White House weigh in on tax reform developments

The top taxwriters in the House and Senate this week laid out next steps for tackling tax reform in their respective committees and offered some insights on what should – and should not – be included in a tax code overhaul; meanwhile, a White House official discussed some of the specific policy issues in tax reform that are currently proving troublesome for the Trump administration.

Ways and Means plans tax reform hearings

As Republican taxwriters and congressional leaders continue to huddle with Trump administration officials to craft a joint proposal that they can move through Congress in the fall, House Ways and Means Committee Chairman Kevin Brady of Texas on June 26 told reporters that two hearings on tax reform are in the works for next month.

Brady did not provide specific dates and did not indicate whether the hearings will be held by the Tax Policy Subcommittee, chaired by Rep. Peter Roskam of Illinois, or by the full Ways and Means panel. He said one hearing will address the benefits of tax reform for small businesses, and the other will focus on the need for tax code simplification for individuals and families.

So far this year, the full committee has held two hearings on issues in tax reform: one examining the controversial Republican proposal for a border-adjustment business tax and one that broadly considered the need for reform. These come after several years of Ways and Means hearings and working groups to build momentum and develop proposals for comprehensive tax reform.

No plans to address health care taxes in tax reform: Brady also addressed the Senate's faltering health care overhaul efforts falter this week (see separate coverage in this issue) and insisted that tax reform legislation would not include repeal of the taxes on businesses and upper-income individuals that were enacted as part of the Patient Protection and Affordable Care Act (PPACA).

Dashing the hopes of those who are looking for a fallback plan to eliminate the PPACA tax hikes, Brady said June 26 that if Congress is unable to send a health care reform bill to President Trump this year, the PPACA's taxes will remain in place and will not be addressed in the tax reform plan he is working on with his fellow Republicans in Congress and the White House.

"We have never planned to import that $1 trillion of taxes into the tax reform effort," he said. "Those taxes are a big drag on the economy, and I think, very harmful for local businesses and those who have health care, which is why it's critical that the Senate complete its work."

Freedom Caucus speaks out on border-adjustment tax: In other House developments, Freedom Caucus Chairman Mark Meadows, R-S.C., this week urged that the yet-to-be-drafted budget resolution for fiscal year 2018 should not reflect revenue from the proposed 20 percent border-adjustment tax included in the House GOP tax reform blueprint. The proposal, which has been unofficially estimated to raise some $1.2 trillion dollars to offset the cost of a corporate rate cut, generally would impose a 20 percent tax on goods and services imported into the US and impose no tax on US exports. It has become the most high-profile flashpoint of the blueprint and does not have the support of many congressional Republicans or the White House in its current form. It also has become the focus of an intensive lobbying battle within the business community, with retailers, oil refiners, and other import-dependent industry sectors lining up in opposition and export-heavy businesses among its staunchest supporters.

In comments to reporters on June 27, Meadows indicated the Freedom Caucus "believe[s] that we need to make some decisions on tax reform as part of the budget process because it has such a far-reaching impact on the budget reconciliation instructions." Republicans cannot advance their plan of moving tax reform legislation under fast-track reconciliation protections unless lawmakers first adopt an FY 2018 budget resolution that includes a reconciliation instruction.

The Freedom Caucus – whose roughly three dozen members are among the most conservative House Republicans – has taken no official position on the border-adjustment tax proposal; however, Meadows argued that it is divisive and that the GOP should focus on building a tax reform plan around provisions where there is broad consensus.

"The political reality is that I think at this point, we need to look at what tax reform would include without the border adjustment tax. I think that would be prudent, just from a political standpoint. From a policy standpoint, you could argue both for and against it," he said.

Meadows' comments are part of an ongoing effort by the Freedom Caucus to exert its influence in the tax reform debate. Meadows warned House leaders in early April that Freedom Caucus members wanted a seat at the table on tax reform and wanted the Ways and Means Committee to share draft legislation as part of a "member-driven, inclusive, text-driven debate." More recently, he said the group is developing its own tax reform proposal based on the "principles" that the Trump administration released as a one-page fact sheet on April 26. Although the Freedom Caucus has not yet released a formal proposal, Meadows has called for changes to the Supplemental Nutrition Assistance Program (food stamps) and Temporary Assistance for Needy Families (welfare) as a partial offset for business rate reductions – an idea that Ways and Means Chairman Brady has not embraced.

Hatch promotes tax reform transparency in the Senate

Across the Capitol, Senate Finance Committee Chairman Orrin Hatch, R-Utah, this week tapped several of the committee's Republican members to develop proposals focusing on specific aspects of tax reform, working to debunk the notion that drafting a bill will be "a secretive process."

Sen. Charles Grassley of Iowa – a former Finance Committee chairman – will lead development of a plan for the individual side of the tax code and Sen. John Thune of South Dakota will take on the business side as well as the estate tax. Sens. Bill Cassidy of Louisiana and Dean Heller of Nevada will focus on energy-related provisions, and Sen. Pat Roberts of Kansas will look at issues related to agriculture. Sens. Rob Portman of Ohio and Mike Enzi of Wyoming will continue their recent work on the international tax rules. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 22, June 23, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170623_2.html

"I've been working to involve all of the Republican members of the Senate Finance Committee in this effort," Hatch said June 27 on the Senate floor. "We have a number of great senators on the committee, many of whom have put in years of work on different areas of the tax system. I think it would be foolish to let that experience and expertise go to waste."

Part of the Finance Committee's body of work on tax reform issues includes a series of reports released in 2015 by bipartisan working groups that focused on some of these same issues – although with varying degrees of specificity and consensus. (For coverage of the working groups' reports, see *Tax News & Views*, Vol. 16, No. 23, July 10, 2015.) In his floor speech this week, Hatch said he welcomed participation in this current effort by the committee's Democrats – as well as any senator not on the taxwriting committee – but added that "some of my friends on the other side of the aisle are, by all appearances, bound and determined to block passage of any part of President Trump's agenda, even if, in terms of policy, there is common ground and it's good for Americans."
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150710_1.html

Hatch acknowledged that "House and Senate leaders and taxwriters in recent weeks [have] been discussing tax reform at a high level in an effort to reach some agreement," but he appeared intent on carving out a distinct role for the Senate in the tax reform process. The current behind-the-scenes negotiations "may result in an agreed upon framework," he said, "but this will not be the be-all-end-all of tax reform."

"[A]s chairman of the Senate's taxwriting committee, I am committed to ensuring a robust process in the Senate for developing, considering, and passing any tax reform package. That is how the Senate functions best, and that is what I intend to see happen," he said.

Cohn: Passthrough issues one of the 'toughest' tax reform challenges

At the opposite end of Pennsylvania Avenue, meanwhile, National Economic Council Director Gary Cohn – one of the Trump administration's key players on tax reform – told reporters June 28 that the treatment of passthrough entities remains one of the "toughest" issues facing the White House.

The administration has called for a passthrough tax rate of 15 percent and has promised to issue anti-abuse rules to prevent individuals from recharacterizing wage income as more lightly taxed business income. Exactly what those rules would look like remains unclear, however. Under the House GOP tax reform blueprint, passthroughs would be subject to a tax rate of 25 percent and would pay (or be treated as having paid) reasonable compensation to owner-operators, which would be deductible by the business and subject to tax at graduated rates for families and individuals.

Cohn said the administration has “gotten an enormous amount of feedback in the passthrough space” from stakeholders but still has not “figured out exactly what to do with passthroughs.”

International tax: On international taxation, Cohn indicated that there is consensus among the administration and congressional Republican leaders on the need to adopt a territorial system for taxing foreign-source income of US multinationals, although other – unspecified – issues remain unresolved.

Base broadening and other issues: Cohn also reiterated the administration’s support for tax reform that offsets lower rates by eliminating current-law tax deductions, credits, and incentives.

“We’ve got to broaden the base. I would say nothing is off limits to us,” Cohn said.

Separately, an unnamed White House source indicated in a story reported by Bloomberg June 28 that negotiators continue to debate President Trump’s proposal for a 15 percent corporate tax rate. (The House GOP blueprint would lower the rate to 20 percent.)

Issues around a proposal in the House blueprint to pair immediate expensing of business investments with the elimination of the current-law deduction for net interest expenses also remain unresolved, according to the Bloomberg report. President Trump has not offered a formal position on the proposal but in the past has appeared reluctant to jettison the interest expense deduction.

— Michael DeHoff and Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

A note on our publication schedule

The House and Senate will be out of session the week of July 3 as lawmakers adjourn for their Independence Day recess. Barring unexpected developments on the tax policy front, the next issue of *Tax News & Views* will be published the week of July 10, when the legislative session resumes.

— Jon Traub
Managing Principal, Tax Policy
Deloitte Tax LLP