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Trump, Democratic leaders strike short-term deal on debt limit, government funding

The timeline for moving tax reform legislation may have been further clouded this week after President Trump unexpectedly agreed to a proposal offered by Democratic leaders that would suspend the statutory debt limit and extend government funding through December 8, while also making a down payment on federal relief for victims of Hurricane Harvey.

Despite grumbling from many rank-and-file conservatives, the measure cleared the Senate on September 7 by a vote of 80-17 and was approved in the House a day later by a vote of 316-90. The president is expected to quickly sign it into law.

Trading one deadline for another?

Lawmakers returned from their weeks-long August recess on September 5 facing a crush of deadlines on everything from appropriations legislation for fiscal year 2018 to raising (or suspending) the debt limit to reauthorizing the Federal Aviation Administration, the National Flood Insurance Program, and the Children's Health Insurance Program. (Aside from the debt limit, which carries a September 29 deadline according to Treasury guidance released in July, every other issue must be addressed by September 30.) In addition, the devastation in Texas and Louisiana caused by Hurricane Harvey created consensus around the need for authorizing immediate federal assistance.

Congressional Republican leaders, including House Speaker Paul Ryan of Wisconsin and Senate Majority Leader Mitch McConnell of Kentucky, attended a White House meeting with President Trump on September 6 with the goal of reaching agreement on a legislative framework that would make a down payment on Harvey relief, extend fiscal 2018 appropriations for roughly three months (by way of a stop-gap continuing resolution), and take the debt limit off of Congress's plate until after the November 2018 elections.

But Senate Minority Leader Chuck Schumer, D-N.Y., and House Minority Leader Nancy Pelosi, D-Calif., who were also present at that meeting, argued in favor of a framework that would instead extend both fiscal 2018 appropriations and the debt limit through December 15, while also providing an initial installment on Harvey relief – a framework that Trump ultimately accepted.

Greater leverage for Democrats?

Republican leaders, particularly in the House, have had to lean heavily on Democratic votes in recent years to lift the debt limit. So by keeping the debt limit on the table until later this year – or early next year, since the so-called "extraordinary measures" employed by the Treasury Department should forestall the need for subsequent congressional action on the debt limit into 2018 – Democrats may feel they have additional leverage on issues ranging from tax reform to appropriations for the remainder of fiscal 2018 to legislation addressing the status of undocumented immigrants participating in the Deferred Action for Childhood Arrivals (DACA) program (an Obama-era initiative that the Trump administration announced this week would be phased at the end of a six-month period, unless Congress acts legislatively before then).

Schumer and Pelosi alluded to these political dynamics in a joint statement.

"Given Republican difficulty in finding the votes for their plan, we believe this proposal offers a bipartisan path forward to ensure prompt delivery of Harvey aid as well as avoiding a default, while both sides work together to address government funding, [a DACA fix], and health care," they wrote.

Nonetheless, the Republican leaders reportedly were shocked when Trump accepted the Democratic offer. Earlier in the day, prior to the White House meeting, Speaker Ryan has expressed his disdain for such an approach calling it "ridiculous and disgraceful."

Ryan softened his language on September 7, however, noting that the president "wanted to have a bipartisan response" and not a "food fight" on the debt limit at a time when the country is attempting to deal with at least two natural disasters in Hurricanes Harvey and Irma.

And although a significant number of congressional Republicans announced their opposition to the deal – including the leaders of a large conservative House caucus known as the Republican Study Committee – the bill ultimately passed both chambers with bipartisan majorities.

Tax reform impact: Glass half-full or half-empty?

The impact of this short-term fiscal deal on the prospects for tax reform seems – so far at least – to be in the eye of the beholder.

On the optimistic side, some have suggested that Trump – in addition to not wanting to flirt with a debt default or government shutdown at a time of national crisis – also was seeking to clear the near-term legislative deck to make way for tax negotiations.

Trump is "myopically focused on trying to get tax reform," Rep. Mark Meadows, R-N.C., the chairman of the conservative House Freedom Caucus said September 7. "That's why he struck the deal."

Others were more circumspect, though, noting that deadlines postponed are not deadlines avoided.

“This basically kicks the can down the road for three months but does give us time to try to make the case for tax reform,” said Senate Republican Whip John Cornyn, R-Texas, after the deal was announced.

Marc Short, President Trump’s director of legislative affairs, echoed that view.

“It does help to put [tax reform] front and center for all of us, and that’s what we need to be focused on for the next three months because, you’re right, December is going to have a lot on the plate,” Short said September 6.

Other Republicans were left wondering whether the president might continue to reach across the aisle – and what that might mean for conservative policymaking in the future.

“It doesn’t help our leadership to try to hold us Republicans together on anything when they know the president will chop them off at the knees,” said one House Republican. “Trump has got to start caring more about his colleagues over here.”

Tax reform details remain scarce

But even as the president was ostensibly clearing the decks for tax reform by cutting his deal with Pelosi and Schumer, he and the so-called “Big Six” tax reform negotiating team continued to offer few specifics on what a tax code overhaul might look like and sent conflicting signals on when a detailed outline or draft legislative language might be made public.

After publishing a pre-recess consensus statement on tax reform that ruled out a controversial tax on imports but offered few other details, the Big Six (Senate Majority Leader Mitch McConnell, House Speaker Paul Ryan, Senate Finance Chairman Orrin Hatch, R-Utah, House Ways and Means Chairman Kevin Brady, R-Texas, Treasury Secretary Steven Mnuchin, and National Economic Council Director Gary Cohn) met throughout August in an effort to fine-tune an agreement, and anticipation is mounting for a release of a legislative framework with specifics.
URL: https://www.republicanleader.senate.gov/newsroom/press-releases/joint-statement-on-tax-reform

Ahead of a meeting the group had September 5 with President Trump, Mnuchin said “a very detailed plan” would be out this month. The president in a speech September 6 in North Dakota narrowed that window to “the next two weeks”; but he advocated an even more aggressive timeline in a September 8 statement released on Twitter.

“Republicans must start the Tax Reform/Tax Cut legislation ASAP. Don’t wait until the end of September. Needed now more than ever. Hurry!” Trump said.

However, attempting to heed lessons learned from this year’s health care bill failures, congressional leaders have said they need to take their proposal to the Republican members of the taxwriting committees – who, to date, have largely been left in the dark about the ongoing discussions and any decisions being made – socialize it, and take any concerns into account before they will be ready to share something publicly and begin the legislative process in the Ways and Means Committee.

“I’ll leave it up to the taxwriters as to when they’ll release their template,” said Ryan, declining to commit to a September deadline in a discussion hosted by *The New York Times* on September 7.

While members of the Big Six say they have made a lot of progress on developing a legislative blueprint, remarkably little detail has leaked out of the discussions about any major decisions they may have made. Here is a recap of what is – and is not – known about the negotiations so far.

- **Corporate rate:** President Trump is still touting his goal of a 15 percent rate for businesses, but most in Washington believe that will be impossible to attain. The House Republican tax reform blueprint released last summer proposed a 20 percent rate, but even that relied on the elimination of virtually every current tax incentive, and the imposition of the now-defunct border tax, just to approach revenue neutrality. With an estimated cost of $100 billion for each 1-percentage-point drop in the corporate rate – and more if passthroughs are folded in – many expect an eventual proposal to include a rate closer to 23-25 percent. (House Speaker Ryan stated at his *New York Times* event that he envisions a corporate rate in the “the mid-to-low twenties.”)

- **Corporate rate offsets:** House Republican leaders had originally proposed to bankroll a lower corporate rate through a border-adjustment tax that would have eliminated US tax on products, services, and intangibles exported abroad and imposed a 20 percent tax on products, services, and intangibles imported into the US. But that proposal – which was unofficially estimated to raise some $1 trillion – proved divisive among GOP lawmakers and within the business community and has been shelved. Negotiators have yet to propose an alternative means of financing such large rate cuts.
- **Cost recovery and interest expenses:** There is general agreement that tax reform should provide for more generous depreciation rules; however, House Republicans appear to have backed off from their call for 100 percent first-year expensing for tangible and intangible assets. A more favorable depreciation regime could be paired with as-yet unspecified limits on the deduction for net interest expenses, although probably not the outright repeal proposed in the 2016 House GOP tax reform blueprint.
- **Multinational tax issues:** There is general agreement on the need to shift to a territorial system of taxation, meaning domestic multinational businesses would only be taxed on their income connected with the US. Such a change is likely to be coupled with a one-time deemed repatriation tax on previously untaxed earnings held overseas, although the proposed rate remains unclear. With the border-adjustment tax no longer an option to address base erosion concerns that would accompany a shift to a territorial system, negotiators are said to be considering some iteration of a minimum tax on foreign-source income – something that had been advanced in various forms by both former Republican Ways and Means Chairman Dave Camp and President Obama but is opposed by many in the business community. There has been no public discussion of the proposed rate or other design elements, however.
- **Passthroughs:** Ways and Means Committee Chairman Brady has stated that passthrough businesses would see a "dramatically lower rate" under tax reform but the actual target rate remains unclear. (House Republicans have called for a 25 percent rate, while the president prefers 15 percent.) Any new passthroughs regime is expected to include anti-abuse rules intended to prevent wage income from being recharacterized as more lightly taxed business income, but further details on how those rules would operate remain under wraps.
- **Temporary v. permanent provisions:** Republicans are intent on moving tax reform legislation under budget reconciliation protections so that it can win approval in the Senate with a simple majority vote rather than the three-fifths majority ordinarily required for bills to clear procedural hurdles in that chamber. But legislation moved under budget reconciliation is subject to certain revenue constraints – specifically, it cannot increase the federal deficit outside the 10-year budget window. To meet those constraints, negotiators are said to be considering a mix of permanent provisions (including those that would fundamentally change the tax code, such as the shift to a territorial system for taxing multinational businesses) and temporary or phased-out provisions, but additional details have not emerged.

Trump's tax reform roadshow

For his part, President Trump delivered a speech on tax reform September 6 that largely hewed to the broad-brush tax reform principles the White House released in April and steered clear of specific policy details.
URL: https://www.whitehouse.gov/the-press-office/2017/09/06/remarks-president-trump-tax-reform
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170426_1suppA.pdf

Speaking to a crowd in Mandan, N.D., Trump called for:

- A simplified tax code should that is easier for taxpayers to understand and would allow most taxpayers "to file their tax returns on a single page without having to keep receipts, fill out schedules, or track endless paperwork."
- A tax cut for the middle class "through a combination of benefits, such as raising their standard deduction, increasing the child tax credit, and lowering tax rates substantially."
- Boosting American competitiveness by reducing the corporate rate to "around 15 percent," a goal he has repeatedly pushed. He added that reform should "dramatically reduce the tax rate for America's small businesses" but did not specify a rate. Trump also argued that a lower business tax rate would grow the economy and in turn boost wages.
- Switching from the current worldwide tax system to a territorial system that would encourage US multinationals to repatriate earnings currently held overseas. He was optimistic about the amount of revenue this would raise and the support for such a move among both parties in Congress.

In addition to these principles, Trump also reiterated his support for repealing the estate tax as a way to help family businesses.

Message to vulnerable Senate Democrats: This was the second time in as many weeks that Trump delivered a speech on tax reform in a so-called "red" state represented by a Democratic senator facing a competitive re-election race in 2018. North Dakota Democratic Sen. Heidi Heitkamp flew to the event with Trump on Air Force One. (His previous speech, which was also light on specifics, was delivered August 30 in Springfield, Mo., home to Democratic Finance Committee member Claire McCaskill. Trump carried both North Dakota and Missouri in the 2016 presidential election.)
URL: https://www.whitehouse.gov/the-press-office/2017/08/30/remarks-president-trump-tax-reform-springfield-mo

Trump called Heitkamp "a good woman" who he believes will support tax reform. Heitkamp was one of only three Senate Democrats who did not sign on to an August 1 letter to Majority Leader Mitch McConnell urging Republicans not to use the budget reconciliation process to pass tax reform legislation with only Republican support. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 29, Aug. 4, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170804_1suppA.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170804_1.html

Echoing remarks he made in Missouri, Trump promised the North Dakota audience that there will be consequences for those Democrats who do not vote for reform.

"If Democrats don't want to bring back your jobs, cut your taxes, raise your pay, and help America win, voters should deliver a clear message: Do your job to deliver for America, or find a new job," he said.

Heitkamp said in a September 6 news release that she is "open to working with Republicans and Democrats on comprehensive, permanent tax reform that promotes North Dakotans during their working years as well as protects their dignity in their retirement."

Taxwriting committees announce hearings

Also this week, the House and Senate taxwriting panels announced separate hearings on issues related to individual tax reform and Internal Revenue Service operations.

Individual tax reform: The Senate Finance Committee will hold a hearing "to examine ways to streamline the individual tax system to make it work better for American individuals and families."

Witnesses will include Lily Batchelder of New York University (who was once an aide to former Finance Committee Chairman Max Baucus, D-Mont.); Alex Brill of the American Enterprise Institute (AEI) in Washington (who was a one-time aide to former Ways and Means Chairman Bill Thomas, R-Calif.); Ramesh Ponnuru, also of the AEI; and Iona Harrison of Pioneer Realty in Upper Marlboro, Md.

The hearing is set for September 14 at 10:00 a.m.

Resolving taxpayer disputes: Across the Capitol, the House Ways and Means Oversight Committee will hold a hearing on September 13 at 2:00 p.m. to consider on how the Internal Revenue Service "can resolve taxpayer disputes in a timely, efficient, and cost-effective manner."

A witness list was not available at press time.

— Alex Brosseau, Jacob Puhl, and Storme Sixeas
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House OKs limits on civil asset forfeitures

The House of Representatives on September 5 unanimously approved a bipartisan bill intended to limit the IRS's ability to seize property from certain taxpayers suspected of engaging in so-called "structuring" transactions.

The Restraining Excessive Seizure of Property through the Exploitation of Civil Asset Forfeiture Tools Act (H.R. 1548) was introduced by Ways and Means Oversight Subcommittee Chairman Peter Roskam, R-Ill., and co-sponsored by Ways and Means member Joseph Crowley, D-N.Y. It is substantially similar to a measure from Roskam and Crowley that cleared the House last year but was never taken up in the Senate. (For additional details, see *Tax News & Views*, Vol. 17, No. 25, July 8, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160708_3.html

A Senate companion bill to H.R. 1548 has been introduced by Finance Committee members Tim Scott, R-S.C. and Sherrod Brown, D-Ohio. It is unclear when – or whether – Finance Committee Chairman Orrin Hatch, R-Utah, intends to hold a mark-up on the measure or whether Majority Leader Mitch McConnell, R-Ky., might schedule it for floor consideration in that chamber.

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Reichert announces retirement

House Ways and Means Committee member Dave Reichert, R-Wash., announced September 6 that he will not seek re-election to Congress in 2018. Reichert, who was first elected to Congress in 2004, currently chairs the Ways and Means Subcommittee on Trade and is the second-ranking Republican on the panel's Subcommittee on Tax Policy.

Reichert's announcement makes him the sixth Ways and Means Republican who has opted to leave Capitol Hill at the end of the current congressional term. Two members – Reps. Sam Johnson of Texas and Lynn Jenkins of Kansas – are retiring; another three – Reps. Diane Black of Tennessee, Jim Renacci of Ohio, and Kristi Noem of South Dakota – are running for governor of their respective home states.

In a comment reported in *Politico*, Reichert indicated that the wave of pending departures will not deter the committee's efforts to move tax reform legislation in 2017. (See separate coverage in this issue for more tax reform news.)

"[T]he people that are here are still a dedicated part of the team and still committed to getting this thing done," he said.

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