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House clears path for reconciliation tax reform bill; Brady to release text November 1

By a razor-thin margin, House Republicans this week accepted the Senate's version of a fiscal year 2018 budget resolution, clearing the path for the congressional taxwriting committees to introduce tax reform legislation in the coming days that provides for a 10-year net tax cut of up to $1.5 trillion and can move under budget reconciliation protections that will allow it to clear both chambers of Congress by a simple majority vote.

The budget resolution (H. Con. Res. 71) cleared the House on October 26 by a vote of 216-212. It eked out a similarly narrow 51-49 majority in the Senate on October 19. It took effect once it was approved in both chambers and does not require the president's signature.

It initially came as something of a surprise when the House Republicans opted to take the Senate's version of the budget resolution without making any changes or insisting on a conference committee to iron out the differences between that measure and their own budget blueprint which they approved earlier this month. Although the Senate GOP adopted certain (relatively minor) changes desired by the House before they passed their blueprint, there were nonetheless stark differences between the two plans – most notably, the House resolution called for revenue neutral tax reform and included a much broader set of reconciliation instructions that called for spending cuts intended to put the federal government on a path to a balanced budget at the end of the 10-year budget window. (For additional details on the differences between the two blueprints, see *Tax News & Views*, Vol. 18, No. 37, Oct. 20, 2017.)

However, most House Republicans were ultimately willing to swallow the Senate instructions allowing tax reform to increase the deficit by as much as $1.5 trillion over 10 years in order to more quickly move to tax legislation, viewed by Republicans as a must-pass priority before next year's midterm elections. (The day before the House vote, Speaker Paul Ryan, R-Wis., told Reuters that a Republican tax reform bill would lead to "faster economic growth that will exceed this $1.5 trillion.")
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171020_1.html

There was no support for the budget resolution among House Democrats, and Republicans lost 20 votes from their own party, mostly from a group of members who represent districts where taxpayers disproportionately benefit from the current-law state and local tax (SALT) deduction and who are opposed to the current tax reform framework unless there is a compromise to save the incentive, in whole or in part. (See more details below.) Also opposed were some hard-line conservatives, including one retiring member of the taxwriting Ways and Means Committee, Rep. Lynn Jenkins of Kansas, who lamented the failure to include spending cuts to increase fiscal discipline. Another retiring committee member, Rep. Sam Johnson of Texas, was one of five members who did not cast a vote.

Text November 1, Ways and Means mark-up to follow

Immediately after the passage of the budget resolution, Ways and Means Chairman Kevin Brady, R-Texas, announced that his panel's long-awaited tax reform proposal will be introduced on November 1, with a committee mark-up to begin November 6. There are indications from House members and staff that a number of key decisions must still be made before the draft can be rolled out, but Brady, Speaker Ryan, and other House leaders are expected to convene the GOP conference October 30 and 31 to work through the final details and educate members on the bill's substance before its introduction.

Brady told reporters on October 26 that he expects the mark-up to take multiple days but that it will mostly be held within regular working hours. He also said that he anticipates a static revenue estimate from the Congressional Budget Office and the Joint Committee on Taxation before the mark-up or as it begins, and then a dynamic score – reflecting macroeconomic feedback from the proposed reforms – after the bill is passed by Ways and Means.

Filling in the blanks

House Republican taxwriters continued to huddle behind closed doors to finalize the details of their tax reform proposal this week – and remained relatively tight-lipped in public about exactly what will and won't be included in the formal proposal they release on November 1; nonetheless, a few more hints made their way into the public domain.

Mixed signals on 401(k) changes: In the search for ways to pay for proposed tax cuts, one potential revenue offset that reportedly has been under discussion would limit the amount that individuals can contribute to traditional 401(k) plans – in which contributions are made with pre-tax funds, earnings accumulate tax deferred, and tax is imposed only as amounts are withdrawn during retirement – and promote the use of so-called "Roth" style accounts (named for former Finance Committee Chairman William Roth, R-Del.) in which contributions are made with after-tax funds and distributions are paid out tax-free during retirement. Under current law, annual contributions to traditional or Roth 401(k) plans generally are capped at $18,000 ($24,000 for taxpayers over 50).

Limits on pre-tax retirement plan contributions would raise revenue in the near term to help offset the cost of lower rates and other tax priorities.

The White House, however, appeared to reject that approach this week. As rumors swirled in recent days – some suggesting a cap on pre-tax contributions as low as $2,400, others suggesting a cap as high as $9,000 – President Trump took to Twitter October 23 to announce: "There will be NO change to your 401(k). This has always been a great and popular middle class tax break that works, and it stays!"

However, it is uncertain if this is a promise he can keep. Ways and Means Chairman Brady stated at an event sponsored by the *Christian Science Monitor* October 25 that changes to retirement accounts remain on the table as taxwriters look for ways to improve the current system.

"We think we can do better," Brady said. He also cited data suggesting that half of the individuals who contribute to retirement savings accounts contribute $200 or less each month.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, likewise indicated that he is willing to consider changes to retirement plan rules.

"I'm open to looking at anything. I don't have any problem looking at everything," he told reporters October 25. (It's worth noting that witnesses and several Senate taxwriters appeared skeptical of so-called "Rothification" proposals at a recent Finance Committee hearing on individual tax reform. For prior coverage, see *Tax News & Views*, Vol. 18, No. 31, Sep. 15, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170915_2.html

But in his own comments to reporters October 25, the president appeared to take the position that his Twitter comment had cut off the debate.

"I wanted to end that quickly. 401(k)s, to me, are very important, and they're important because that's one of the great benefits to the middle class. I didn't want that to go too far. That's why I ended it very quickly," he said.

Trump modified his stance only slightly when told that Brady intends to pursue the issue.

"…[M]aybe we'll use it as negotiating. But trust me. That's one of the great things. You know, there are certain elements of deals you don't [want to] negotiate with. 401(k)s – and Kevin knows it, and I think Kevin Brady is fantastic, but he knows how important 401(k)s are," the president said.

SALT talks continue: Another provision continuing to cause headaches for taxwriters is the proposal in the unified GOP tax reform framework released September 27 to repeal the individual income tax deduction for state and local taxes. (For prior coverage of the framework, see *Tax News & Views*, Vol. 18, No. 33, Sep. 27, 2017.) While the deduction tends to be used more heavily in higher-taxed "blue" states – California, New York, and New Jersey, for example – a number of House Republicans representing districts in those states have been quite vocal in their opposition to the proposal and some even followed through on their vow to vote against the budget resolution if there was not a clear plan to save the deduction in some form. And now that the budget resolution has passed, Rep. Tom MacArthur, R-N.J., has indicated that over 20 House Republicans are prepared to oppose the GOP tax reform bill if a compromise is not in place before measure reaches the House floor.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170927_1.html

Earlier in the week, New York Republican Rep. Peter King called for individuals and businesses in his state to cease donating to the Republican Party until GOP leaders abandon plans to repeal the deduction.

Ways and Means Chairman Brady stated October 26 that a compromise on the SALT deduction remains possible.

"I'm going to stay at the table, so is the leadership, with our New York and New Jersey lawmakers to try to find a solution where their taxpayers are better off after tax reform," Brady said after a meeting with blue state Republicans.

No details of what that solution might look like have been made public, but options floated have included imposing an income limitation on the deduction so that the benefits are targeted to middle-income taxpayers but not to wealthier individuals.

Corporate rate: Brady confirmed to reporters this week that Ways and Means Republicans are still considering a gradual phase-in for the proposed new target corporate tax rate of 20 percent. Taxwriters, including Tax Policy Subcommittee Chairman Peter Roskam, R-Ill., told reporters last week that the committee is considering implementing the 20 percent rate over three or five years instead of immediately – an approach similar to the one adopted by then-Ways and Means Chairman Dave Camp in the tax reform proposal he introduced in 2014. This would help lower the cost of the tax bill in the initial years of enactment – something Republicans are focused on as some in the party oppose increasing the federal budget deficit – but would almost certainly be less than appealing for corporations anticipating a significant near-term rate drop.

The other end of Pennsylvania Avenue has been more bullish on the corporate rate, with at least one administration official maintaining that a rate below 20 percent remains possible. Office of Management and Budget (OMB) Director Mick Mulvaney told attendees at a conference October 25 that "[t]here is a lot more play I think in the corporate tax than people realize, which is why we are still pushing 15 percent" (the rate that then-presidential candidate Donald Trump proposed on the campaign trail and that his administration included the tax reform principles it released in

April.) He acknowledged, though, that "[t]he House is pushing back and we will probably settle around 20 [percent]. The good news is I think it is very unlikely to go much higher than that."
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170426_1suppA.pdf

Mulvaney also did not seem to share the concern over revenue losses from a corporate rate cut, commenting that "it would only cost us $350 billion a year for the next couple years" to reduce the corporate rate to zero.

Individual rate: On the individual side of the code, House Speaker Paul Ryan confirmed in an October 20 interview on CBS that the forthcoming proposal from Ways and Means Republicans would include a fourth rate bracket for upper-income taxpayers. The framework called for three brackets – 12 percent, 25 percent, and 35 percent – but gave taxwriters the option to include a fourth bracket if it was needed to maintain progressivity in the tax system.

"That's why we're introducing the fourth bracket, so that high-income earners do not see a big rate cut and that those resources go to the middle class," Ryan said. Taxwriters are said to be considering setting the fourth bracket at 39.6 percent – the top rate under current law – for income over $1 million. (The 39.6 percent rate currently applies to individuals earning over $418,400 and joint filers earning over $470,700 a year.)

According to Ryan, President Trump "has been very insistent that we reintroduce what we call the fourth bracket, meaning we don't lower taxes for higher-income individuals." Indeed, President Trump has repeatedly stated this tax reform plan aims to help the middle class, and he indicated in September that he was open to increasing tax rates on wealthier individuals. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 31, Sep. 15, 2017.) But the president appeared to moderate his position in an interview with Fox News that was recorded October 20 and aired October 22.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170915_1.html

"When Paul mentions maybe one more category – which I'd rather not have, it may not happen – but the only reason I would, [and] he's very plain on what I said, is if for any reason I feel the middle class is not being properly taken care of," he said.

OMB Director Mick Mulvaney similarly downplayed the importance of a fourth rate to the administration in public comments on October 25.

"We're agnostic about that. It's not a big piece for us. If the House needs to add it to pass a great tax reform, that's great. If they don't, that's great, too. It's not what's driving this for the effort of the White House," he said.

Brady indicated October 25 that decisions about the proposed top rate – and about the income thresholds for any of the rate brackets – have not been finalized.

Head-of-household status: Also this week, Brady confirmed that the proposal from Ways and Means Republicans would retain the head-of-household filing status, which is primarily used by single parents. The GOP tax reform framework does not address the issue explicitly, but many observers presumed that the head-of-household status would be repealed as part of the tradeoff for expanding the standard deduction to $12,000 for individuals and $24,000 for married couples. (The framework does explicitly call for repealing the personal exemption.)

Limited prospects for bipartisanship

House Speaker Ryan predicted in his interview with Reuters October 25 that a few Democrats might eventually sign on to the GOP tax reform plan but stated that a broad bipartisan bill was unlikely to emerge in the current political environment.

"When you have party leaders that are pretty hard progressive left, it's hard to do something like this," he said.

Across the Capitol, Senate Democratic Leader Charles Schumer of New York said this week that his members will take a hard line against a GOP-only proposal, such as that expected to move through the Ways and Means and the Senate Finance Committees.

"There is a path forward, but only after this tax bill fails," Schumer said in a *Politico Money* podcast released October 25. "The hard right, which cares so much about just reducing taxes, has a stranglehold on the Republican Party right now. And I don't think they'll give it up unless this bill fails."

He went on to say, "If this bill fails, what we saw in health care in a small way, we could see in a bigger way and actually come up with some kind of bipartisan compromise," adding that such a compromise would have to be deficit neutral and preclude any tax breaks for the top 1 percent. Schumer noted that "there are a lot of Democrats who would be willing to reduce the corporate rate."

For his part, Rep. Richard Neal of Massachusetts, the ranking Democrat on the Ways and Means Committee, laid out principles October 25 that he said any tax reform proposal must meet to gain the support of his party. These included provisions targeting tax relief, education incentives, dependent care provisions, and retirement security provisions for middle-class taxpayers; tax credits for employers hiring and training workers; and infrastructure investment. On the business front, Neal focused on enhanced incentives for US manufacturing and research and development, tax relief and simplification for small businesses, and the elimination of "provisions that encourage companies to move American jobs overseas."
URL: https://democrats-waysandmeans.house.gov/media-center/press-releases/neal-announces-middle-class-tax-reform-principles

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Trump to name Kautter as acting IRS commissioner

President Trump announced October 26 that he intends to name Treasury Assistant Secretary for Tax Policy David Kautter to serve as acting commissioner of the Internal Revenue Service after current IRS Commissioner John Koskinen's term ends next month.

In a separate release, Treasury Secretary Steven Mnuchin stated that Kautter "will provide important leadership while we wait to confirm a permanent commissioner." (The president has not yet nominated a permanent replacement to succeed Koskinen.) Kautter will "continue to carry out his assistant secretary duties, including working on tax reform while running the IRS," Mnuchin said.

Koskinen's term as IRS commissioner expires November 12; Kautter's appointment as acting commissioner will become effective November 13. Kautter won Senate confirmation for the tax policy position at the Treasury Department on August 3.

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