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House OKs dynamic scoring requirement, takes aim at PPACA employer mandate

In the opening days of the 114th Congress, House Republicans approved a change in the chamber's rules which could help them advance their tax policy agenda by requiring the use of dynamic scoring to measure the budgetary impact of certain revenue and direct spending legislation and cleared two bills intended to chip away at the employer mandate in the Patient Protection and Affordable Care Act (PPACA).

Dynamic scoring

A package of rules for the new Congress (H. Res. 5) that was approved on January 6 includes a provision requiring the Joint Committee on Taxation (JCT) staff and the Congressional Budget Office (CBO) to use dynamic scoring for major legislation. The rule is only binding in the House and does not apply in the Senate.

The static/dynamic divide: Past policy has been to estimate bills using traditional "static" revenue scoring, which measures certain behavioral responses to changes to the tax code and entitlement programs but assumes those policy changes do not influence the overall size of the economy. Critics have argued, however, that this traditional approach does not provide lawmakers with accurate data because it fails to account for the macroeconomic effects of tax and spending proposals.

The JCT and CBO have performed both static and dynamic analysis of some legislative proposals in the past. The JCT staff, for example, provided static and dynamic estimates of the tax reform discussion draft that then-Ways and Means Committee Chairman Dave Camp put forward last February. Although their static estimate found that the plan would be revenue neutral over 10 years, the dynamic estimate provided a range of possible outcomes, finding that enactment of the plan would result in increased economic activity that would boost federal

revenues over 10 years by between $50 billion and $700 billion, depending on which modeling assumptions are used.
URL: http://waysandmeans.house.gov/uploadedfiles/jct_revenue_estimate__jcx_20_14__022614.pdf
URL: http://waysandmeans.house.gov/uploadedfiles/jct_macroeconomic_analysis_jcx_22_14__022614.pdf

How the rule works: The new House rule requires the JCT and the CBO to include, to the extent practicable, the "budgetary effects of changes in economic output, employment, capital stock, and other macroeconomic variables" over a 20-year period in their revenue estimates for "major legislation," defined as measures that require an estimate under section 402 of the Congressional Budget Act of 1974 and the effects of which are 0.25 percent of gross domestic product or greater in a fiscal year. A bill may also be designated as major legislation by the chairman of the House Budget Committee (for direct spending legislation) or the House Ways and Means Committee (for revenue measures).

Party-line split: Republicans, many of whom have argued that dynamic scoring would be particularly useful in measuring the economic impact of tax reform proposals, generally praised the new rule. "The inclusion of this realistic analysis provision in the House rules is an important victory in a larger effort to bring more transparency and accountability to the legislative process on behalf of American families," House Budget Committee Chairman Tom Price, R-Ga., said in a statement.

But Democrats criticized the move as an attempt to unreasonably justify tax cuts. "They are changing House rules to be able to cook the books to implement their long-held, discredited notion that tax cuts pay for themselves," Ways and Means ranking member Sander Levin, D-Mich., said in remarks on the floor of the House. Levin's comments were echoed across the Capitol by Democratic senators such as Finance Committee member Charles Schumer of New York and Independent Bernie Sanders of Vermont, who is the ranking member of the Senate Budget Committee. (Sanders caucuses with Senate Democrats.)

Although a similar rule has not been adopted in the Senate, Finance Committee Chairman Orrin Hatch, R-Utah, has previously indicated that he was open to using dynamic scoring, saying that while it is not a "magic elixir" it would be helpful in evaluating tax bills. (For coverage, see *Tax News & Views*, Vol. 15, No. 35, Nov. 21, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141121_1.html

PPACA provisions

House Republicans this week also renewed efforts to dismantle the PPACA, passing two bills that would modify the way an employer calculates its full-time-employee headcount in determining whether it is subject to the PPACA's employer mandate, which imposes penalties on employers who have more than 50 full-time employees (including full-time equivalents) and do not offer certain types of health insurance coverage under certain circumstances. (The mandate and corresponding penalties originally were scheduled to take effect beginning in 2014, but the White House suspended enforcement of both until 2015 for employers with 100 or more full-time employees and until 2016 for employers with 50-99 full-time employees.)

The Hire More Heroes Act of 2015 (H.R. 22), which was approved January 6 by a vote of 412-0, would permit an employer to exclude employees who are covered under a health care program administered by the Department of Veterans Affairs or the Department of Defense in calculating the number of its full-time employees for purposes of the employer mandate.

The Save American Workers Act (H.R. 30), which was approved by a vote of 252-172 on January 8, would define a full-time employee for purposes of the employer mandate as one who works on average 40 hours per week. Section 4980H, which was added to the Internal Revenue Code under the PPACA, defines a full-time employee as an "employee who is employed on average at least 30 hours of service per week" (a provision known as the "30-hour rule.")

No offsets: Both bills would be effective for months beginning after December 31, 2013. As approved, neither bill includes offsets. Although no official revenue estimate for the just-passed version of the Hire More Heroes Act is currently available, the JCT staff estimated that identical legislation that was considered in the House last year would reduce federal revenues by $748 million over 10 years.

The Congressional Budget Office estimated on January 7 that the Save American Workers Act would increase the deficit by $53.2 billion between 2015 and 2025.
URL: http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr30.pdf

Next steps: The two measures cleared the House more than once in the 113th Congress (most recently as part of an omnibus jobs package that was approved last September) but were never taken up in the Democratic-controlled Senate. That particular obstacle has been removed now that the Senate is under Republican control, but the GOP still does not hold the 60 seats needed to guarantee that both bills will overcome procedural hurdles in that chamber. (Republicans control 54 Senate seats and would need to win over 6 Democrats to ensure a filibuster-proof majority for any sensitive legislation.)

The overwhelming level of bipartisan support in the House for the Hire More Heroes Act suggests that it may be favorably received on the other side of the Capitol. In a floor statement before the House vote, Ways and Means Committee ranking member Sander Levin indicated that while Democrats and Republicans may disagree on proposals to scale back or repeal various elements of the PPACA, they generally are united in their support of veterans: "This bill is called the Heroes Act because the focus of this bill is to make sure that there isn't any disincentive for anybody to hire veterans," he said.

Senate prospects for the Save American Worker Act appear uncertain, however. Maine Republican Sen. Susan Collins introduced a Senate companion bill on January 6 that is co-sponsored by Sen. Joe Donnelly, D-Ind., and reportedly has the support of Sen. Joe Manchin, D-W. Va. But Sen. Patty Murray, D-Wash., the ranking member of the Health, Education, Labor, and Pensions Committee, contended in a January 7 release that the House-passed bill "would not only hurt workers by denying them the health care coverage they depend on, but it would actually encourage companies to game the system by cutting time for the millions of workers who work more than 40 hours."

For its part, the White House warned in a January 7 statement of administration policy (SAP) that President Obama would veto the bill in its current form, arguing that it "would significantly increase the deficit, reduce the number of Americans with employer-based health insurance

coverage, and create incentives for employers to shift their employees to part-time work – causing the problem it intends to solve."
URL: http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr30r_20150107.pdf

The administration has not issued an SAP on the Hire More Heroes Act.

Medical device tax repeal in the wings?: In other developments, House Ways and Means Committee member Erik Paulsen, R-Minn., on January 6 introduced the Protect Medical Innovation Act (H.R. 160), which would repeal the 2.3 percent medical device excise tax enacted as part of the PPACA. Although the text of the bill was not available at press time, Paulsen indicated at a January 7 press briefing that the measure would provide for a refund of taxes paid since the excise tax became effective in 2013.

The bill as introduced was cosponsored by more than half of the members of the House (including 28 Democrats) and is expected to be passed in that chamber in the coming weeks, though a timetable for moving it through the Ways and Means Committee and to the House floor is currently unclear.

Paulsen indicated that the bill does not include revenue offsets and that the issue of pay-fors likely would be hashed out between Ways and Means Committee Chairman Paul Ryan, R-Wis., and Senate Finance Committee Chairman Orrin Hatch. But Hatch, who told reporters January 7 that he intends to introduce a Senate version of the bill, indicated that his measure may not include offsets.

Taxwritng committee developments

Ways and Means Committee Chairman Ryan announced January 6 that the committee will hold its first hearing of the new Congress on "the state of the U.S. economy and policies that can promote job creation and economic growth." The hearing is set January 13. A list of witnesses was not available as of press time.
URL: http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=397895

Behind the scenes, Ryan reached out to Ways and Means Committee Republicans in a December 18 memorandum in which he offered a glimpse of how he intends to manage the panel and build his tax agenda. Specifically, Ryan noted that it is not his "role as Chairman to discourage any elected Member of Congress from introducing legislation," but added that " it is important that we work together to come to a consensus as much as possible." Ryan urged colleagues interested in introducing legislation under the committee's jurisdiction to "reach out in advance to the Majority committee staff and use them as a resource to provide any input you may need on your legislation before you introduce it."
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1suppA.pdf

Ryan added that "as a committee, we have much work ahead of us as we take on our reform agenda. And we will be in the strongest position possible if our members' legislation is consistent with those reform efforts. Here again, the Majority committee staff can serve as a resource to you."

Ways and Means Committee Republicans reportedly will discuss their legislative agenda for the new Congress at a retreat to be held at the end of the month.

The Ways and Means GOP retreat will follow a joint retreat for House and Senate Republicans that is set for January 14-16 in Hershey, Pa.

Nunes unveils business tax reform discussion draft: One item that could come up for discussion as House Republicans consider their tax reform agenda is a discussion draft of a business tax reform proposal by Ways and Means Committee member Devin Nunes, R-Calif. According to a summary provided by Nunes' staff, the American Business Competitiveness Act proposes a top tax rate of 25 percent (phased in over 10 years) for all businesses regardless of whether they are organized as passthroughs or C corporations, 100 percent expensing, the elimination of all other business deductions and credits, and the adoption of a territorial system for taxing income of U.S. multinationals. Although an official revenue estimate is not yet available, the summary states that the proposal "is designed to be budget neutral."
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1suppB.pdf
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1suppC.pdf

Ways and Means Democratic roster set: Across the aisle, Ways and Means ranking member Sander Levin confirmed January 7 that Ways and Means Democrats would not be allowed to fill the vacancy created by former Rep. Allyson Schwartz, who did not run for re-election to Congress last year and instead made a failed bid to become governor of Pennsylvania. Democrats will not lose any additional seats on the panel in the wake of the party's losses in the November midterm elections, Levin added. Ways and Means Committee member Richard Neal, D-Mass., remains the ranking Democrat on the Select Revenue Measures Subcommittee.

A complete roster of the House and Senate taxwriting panels is available from Deloitte Tax LLP.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1suppD.pdf

Finance Committee agenda: Finance Committee Chairman Hatch, whose appointment as leader of the Senate taxwriting panel became official on January 8, has not yet scheduled any hearings or announced specific plans to move a tax reform agenda. But in an op-ed published in the *National Review Online* on January 5, Hatch reiterated the seven principles that he thinks should guide the process in efforts to reform the tax code. According to Hatch, these seven principles include: economic growth, fairness, simplicity, permanence, competiveness, promoting savings and investment, and revenue neutrality.
URL: http://www.finance.senate.gov/newsroom/ranking/release/?id=fd29ae33-71ed-441c-bb5c-2467c424d241

"These seven principles should serve as the guideposts for any and all tax-reform efforts. Any serious idea should link back and be relevant to at least one of these seven principles. The best ideas should embrace all of them," Hatch said.

Hatch's comments follow his release on December 11 of a report prepared by the Finance Committee Republican staff that analyzes policy issues that Hatch said taxwriters must confront in undertaking tax reform. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 39, Dec. 12, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141212_3.html

Hatch is expected to unveil additional details on his approach to tax reform in the coming weeks and months.

Boehner retains speaker's gavel

In nontax news, the House as its first order of business when the new Congress convened on January 6 re-elected Rep. John Boehner, R-Ohio, to serve another term as speaker. Boehner beat back attempts by a bloc of more conservative House Republicans to oust him from his leadership position, securing 216 of the 408 votes cast.

— Jon Almeras, Michael DeHoff, and Victoria Glover
Tax Policy Group
Deloitte Tax LLP