Tax

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## Finance Committee OKs exception to PPACA employer mandate

The Senate Finance Committee on January 28 unanimously approved legislation that 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 enacted under the Patient Protection and Affordable Care Act (PPACA).

The Hire More Heroes Act (H.R. 22) cleared the House of Representatives – also by a unanimous vote – on January 6.

The employer mandate 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.

As approved by the Finance Committee and in the House, the Hire More Heroes Act includes no revenue offsets. The Joint Committee on Taxation (JCT) staff has estimated that it would reduce federal revenues by $858 million between 2015 and 2025.
**URL:** https://www.jct.gov/publications.html?func=startdown&id=4686

## Amendments on the floor?

A number of Finance Committee members were prepared to offer amendments at the mark-up such as proposals to exempt additional classes of workers from the full-time employee headcount for purposes of the employer mandate, extend the Work Opportunity Tax Credit through 2015, and retroactively extend an expired tax credit for health insurance costs of certain laid-off workers; but in deference to a request by Chairman Orrin Hatch, R-Utah, to move the legislation through the panel "as cleanly and efficiently as possible," they opted instead to hold their amendments until the bill reaches the Senate floor.

Senate leaders have not yet indicated when they expect a floor vote to take place.

## More bills to come

Hatch has indicated that the Finance Committee will mark up additional legislation to chip away at provisions of the PPACA, including a House-passed bill that would define a "full-time employee" for purposes of the mandate as an employee that works on average 40 hours per week, a proposal to repeal the employer mandate outright, and a bill to repeal the 2.3 percent excise tax on certain medical device manufacturers. The timeline for those mark-ups currently is unclear. Hatch told reporters on January 27 that he intends to take up noncontroversial legislation in the near term and then turn to more difficult issues.

The Obama administration has publicly stated its opposition to legislation that would significantly limit the PPACA's employer mandate or repeal the medical device excise tax.

The White House has taken no official position on the Hire More Heroes Act, however. (Finance Committee ranking member Ron Wyden, D-Ore., noted during his opening statement at the mark-up that H.R. 22 simply "acknowledges current law" that "a veteran enrolled in TRICARE or the VA will never trigger a penalty because that veteran will never receive subsidized coverage on the exchange.")

## Tax reform working groups

In other developments, Hatch shed some additional light on the committee's process for moving tax reform legislation. He told an audience at the Brookings Institution January 23 that he and ranking member Wyden, D-Ore., expect the panel's newly formed bipartisan tax reform working groups to engage in a "very detailed discussion" of the "tensions in the various policy choices" in their specific topic areas and produce "detailed proposals" that address them. Although it is not a requirement, "it would be best if they can produce legislative text," Hatch said.

The working groups – covering international taxation, business taxation, individual taxation, savings and investment, and community development and infrastructure issues – are expected to collaborate with the JCT staff in developing their recommendations, which will be compiled in a report to be presented to Hatch and Wyden by the end of May. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 2, Jan. 16, 2015.)
**URL:** http://newsletters.usdbriefs.com/2015/Tax/TNV/150116_1.html

Hatch noted that the working group topics are “tilted heavily toward business tax reform” in recognition of the fact that President Obama appears to be intent on pursuing a business-only tax reform plan. (Treasury Secretary Jack Lew stated at a recent Finance Committee hearing that he sees “a growing bipartisan consensus in Washington on how to achieve business tax reform, and we have a unique opportunity now to get this done.” For prior coverage, see *Tax News & Views*, Vol. 16, No. 3, Jan. 23, 2015.)
**URL:** http://newsletters.usdbriefs.com/2015/Tax/TNV/150123_2.html

Hatch observed that he “would like [the president] to go further than that,” but added that “if that’s all we can do we certainly will get a lot of ideas from these working groups that hopefully will help us come up with some business tax reform that will help our economy.”

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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## House votes on selected permanent extenders set for February, McCarthy says

The House of Representatives will vote in February on legislation that would permanently extend a number of lapsed tax incentives intended to promote charitable giving and benefit small businesses, Majority Leader Kevin McCarthy, R-Calif., announced January 29.

McCarthy stated in a memorandum to House Republicans that the chamber will vote the week of February 10 on legislation that would “update and make permanent” provisions related to tax-free distributions from IRAs for charitable purposes, qualified contributions of conservation easements, and enhanced deductions for contributions of food inventory.
**URL:** http://newsletters.usdbriefs.com/2015/Tax/TNV/150130_2suppA.pdf

Also scheduled for that week is a vote on legislation to permanently extend the increased expensing limits for small businesses under section 179, the memorandum said.

These and dozens of other temporary tax incentives expired at the end of 2013, were renewed retroactively for one year in last December’s Tax Increase Prevention Act of 2014, and are now expired once again.

### Better luck this year?

The House took up a similar package of permanent charitable giving incentives (H.R. 5806) last December. That measure received 275 ‘aye’ votes on the House floor, but fell short of the two-thirds supermajority necessary for approval under an expedited procedure known as suspension of the rules. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 39, Dec. 12, 2014.) The House did approve these provisions part of a broader package of charitable-giving incentives (H.R. 4719) it considered in July, however. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 27, July 18, 2014.)
**URL:** http://newsletters.usdbriefs.com/2014/Tax/TNV/141212_1.html
**URL:** http://newsletters.usdbriefs.com/2014/Tax/TNV/140718_3.html

A permanent extension of the enhanced section 179 expensing limits (H.R. 4457) cleared the chamber last June. (For prior coverage, see *Tax News & Views*, Vol. 15, No, 23, June 13, 2014.)
**URL:** http://newsletters.usdbriefs.com/2014/Tax/TNV/140613_1.html

Neither of the two House-passed bills was taken up in the Democratic-controlled Senate and both faced veto threats from the White House. (The administration noted that it supported the underlying policies but objected to the fact that the bills were not offset.)

If the upcoming bills are approved without offsets, their prospects for life beyond the House are not necessarily better than they were last year. Although Republicans now control the Senate, they do not have a filibuster-proof majority, and Democrats, citing concerns over cost, could use procedural maneuvers to prevent the measures from advancing in that chamber. Moreover, President Obama remains unlikely to sign unpaid-for extenders legislation that reaches his desk, and Republicans are unlikely to have the necessary two-thirds majority in each chamber to override a veto.

### Expanded section 529 provisions

McCarthy's memorandum also indicates that the House will vote the week of February 23 on legislation (H.R. 529) sponsored by House taxwriters Lynn Jenkins, R-Kan., and Ron Kind, D-Wis., that would expand the current-law rules governing section 529 savings plans for higher education expenses. The measure was introduced January 26 in response to a now-withdrawn White House budget proposal to eliminate the tax-free treatment of earnings on new contributions to section 529 plans. (See related coverage in this issue for additional details on the upcoming White House budget and the section 529 issue.)

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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## Boxer and Paul to introduce repatriation bill tied to highway funding

Sens. Barbara Boxer, D-Calif., and Rand Paul, R-Ky., announced January 29 that they will introduce legislation that would create a temporary holiday for repatriating foreign earnings and earmark any resulting revenue for the Highway Trust Fund.

### Highway funding problem

The Highway Trust Fund's current authorization expires May 31, and the fund will become insolvent soon thereafter unless Congress approves a new authorization and provides an additional source of revenue. (Last year, the Congressional Budget Office estimated that the highway fund would need an additional $89 billion beyond already dedicated revenues to remain solvent through 2020. For prior coverage, see *Tax News & Views*, Vol. 15, No. 24, June 20, 2014.)
**URL:** http://www.cbo.gov/sites/default/files/cbofiles/attachments/45315-TransportationTestimony.pdf
**URL:** http://newsletters.usdbriefs.com/2014/Tax/TNV/140620_1.html

As the May 31 deadline approaches, lawmakers have been debating whether to provide additional revenue by increasing the federal tax on gasoline or through some other means which could include either higher revenues or reductions in spending in other portions of the federal budget.

### Invest in Transportation Act

In a news release, Boxer, the ranking member on the Environment and Public Works Committee (which has jurisdiction over transportation and infrastructure issues) said that her proposal, the Invest in Transportation Act of 2015, would allow companies to repatriate foreign earnings at a tax rate of 6.5 percent, with all related tax revenues transferred to the Highway Trust Fund. The statement notes that estimates of the amount of earnings held offshore by U.S. companies exceed $2 trillion.
**URL:** http://www.boxer.senate.gov/press/release/boxer-paul-to-introduce-bipartisan-invest-in-transportation-act/

The special tax rate would only be available for repatriations that "exceed each company's average repatriations in recent years" and must have been earned in 2015 or earlier. The statement says companies would have up to five years to repatriate the earnings. According to the sponsors, the measure would ensure that a portion of the repatriated funds are used for "increased hiring, wages, and pensions; research and development, environmental improvements; public-private partnerships; capital improvements; and acquisitions." No repatriated funds could be used for "increases in executive compensation, or on increases in shareholder dividends or stock buybacks for three years after the program ends." The statement also notes that "any company that inverts within 10 years of participating in this program would have to repay the tax incentive with interest."

In his own press release, Sen. Paul noted that "we can help fund new construction and repair by lowering the repatriation rate and bringing money held by U.S. companies back home. This would mean no new taxes, but more revenue, and it is a solution that should win support from both political parties."
**URL:** http://www.paul.senate.gov/?p=press_release&id=1285

### Hatch not a fan

For his part, Senate Finance Committee Chairman Orrin Hatch, R-Utah – whose panel has jurisdiction over funding for the highway program – has rejected the notion of moving a stand-alone bill that relies on a temporary repatriation holiday to fund infrastructure needs.

Last summer, when Sen. Paul and then-Senate Majority Leader Harry Reid, D-Nev., were exploring such a proposal, Hatch, who at the time was the Finance Committee's ranking member, released a memorandum from the staff of the Joint Committee on Taxation (JCT) estimating the revenue effects of a stand-alone repatriation bill. The JCT staff estimate, which was based on the 2004 repatriation under section 956 and used an effective tax rate of 5.25 percent, said the provision would raise a combined $19.6 billion in the first two years but then lose revenue over the next eight for a total ten-year revenue loss of almost $96 billion. In a statement released in conjunction with the JCT estimate, Hatch remarked that "[a] tax holiday meant to encourage U.S. companies to repatriate funds from overseas should only be

considered when it makes economic sense, such as part of comprehensive tax reform." (For prior coverage, see *Tax News & Views*, Vol. 15, No. 23, June 13, 2014.)
**URL:** http://www.hatch.senate.gov/public/_cache/files/1b24c4cf-6005-4a4e-bab7-3d9e3820c509/JCT%206-6-14.pdf
**URL:** http://newsletters.usdbriefs.com/2014/Tax/TNV/140613_3.html

Hatch appeared to harken back to the JCT staff report in a January 29 statement issued in response to the impending Boxer-Paul proposal.

"Saying you're going to use something that loses money to pay for anything is just wrong. Therefore, saying you're going to use it to pay for infrastructure is just bad policy, plain and simple. Such proposals to end the lock-out effects of earnings should only be considered in the context of tax reform," the statement said.

— Jon Almeras
Tax Policy Group
Deloitte Tax LLP

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## CBO report paints improving near-term, gloomy long-term fiscal picture

The Congressional Budget Office (CBO) on January 26 released its annual report detailing the nonpartisan agency's 10-year projections of federal revenues and spending. Similar to its recent analyses, CBO sees budget deficits declining over the next few years, but beginning an inexorable ascent later in the decade.
**URL:** http://www.cbo.gov/sites/default/files/cbofiles/attachments/49892-Outlook2015.pdf

### 2018 is the inflection point

According to the report, which projects revenue and spending for the period 2015 through 2025, budget deficits will decline gradually from 2.8 percent of gross domestic product (GDP) last year to a low of 2.5 percent of GDP in 2017. At that point, the deficit would be slightly below its 50-year historical average of 2.7 percent of GDP. CBO also sees economic growth accelerating slightly over the next few years, which will help to bring down the publicly held debt as a share of economy by about 1 percentage point between 2015 and 2018 (i.e., from 74.2 percent to 73.3 percent of GDP).

After 2018, however, CBO projects that budget deficits and the publicly held debt will begin to swell – reaching 4.0 percent and 78.7 percent of GDP, respectively, by 2025 – driven mainly by increased outlays attributable to the growing ranks of Baby Boomers becoming eligible for Social Security and Medicare, rising health care expenses, and growing debt service costs due to higher interest rates.

According to CBO, these outlay increases will outstrip a concurrent gradual rise in individual income tax revenues resulting mainly from so-called "bracket creep" – the tendency of revenues to increase as wage gains outpace the inflation index to which the personal income tax brackets are tied.

Over the course of the 10-year budget window, federal spending is projected to rise from 20.3 percent of GDP this year to 22.3 percent of GDP by 2025 – well above the 50-year historical average of 20.1 percent of GDP. Meanwhile, revenues will also grow, but to a lesser extent – from 17.7 percent of GDP this year to 18.3 percent of GDP by 2025. Over the past 50 years, revenues have averaged 17.4 percent of GDP.

Importantly, pursuant to the Congressional Budget Act of 1974 – the law that established the CBO – the agency is required to make its budget and economic estimates on the basis of "current law," or laws as they are in effect today. As a result, much of the projected near-term improvement in the fiscal picture can be traced to rising revenues that are assumed to occur on account of the package of tax extenders that lapsed at the end of the 2014. If lawmakers were to extend those provisions without offsetting their cost – as they have done several times in the past – revenues would be lower, and budget deficits would be higher than projected.

**Republican and Democrat budget writers divided on solutions**

The 10-year projections of revenues and spending included in the report, known to policymakers as the "baseline," will serve as the benchmark against which the CBO and the Joint Committee on Taxation will measure the budget impact of congressional tax and spending proposals during the first several months of the 114th Congress. (The baseline is typically updated later in the year.)

The baseline also will be the yardstick against which the House and Senate Budget Committees will write their fiscal year 2016 budget plans this spring.

In his fiscal year 2015 budget, then-House Budget Committee Chairman Paul Ryan, R-Wis., called for no new revenue and roughly $5.1 trillion in spending cuts with an eye toward balancing the budget in the final year of the 10-year budget window. That blueprint was adopted by the full House of Representatives last April, but the Senate, which at the time was under Democratic control, did not produce a budget outline of its own.

With Republicans now in full control of Congress, similar policy decisions await the new Budget Committee Chairmen, Rep. Tom Price, R-Ga., and Sen. Mike Enzi, R-Wyo. Both Price and Enzi also sit on their respective chambers' taxwriting committees.

At separate House and Senate Budget Committee hearings this week featuring CBO Director Douglas Elmendorf as the sole witness, Price and Enzi noted that revenue increases should not be the solution to the growing budget deficits projected in the agency's recent report.

"This is at the same time that the amount of revenue that will be coming into the government will be above the historic average. In other words, this is not a revenue problem. It's a spending problem," Price said.

Enzi committed himself to ensuring that Congress adopts a budget resolution by April 15 – a nonbinding deadline laid out in the 1974 Act – and hinted that his blueprint will seek to balance the budget as the House-passed budget did last year.

“This year, I intend to run a Budget Committee dedicated to the proposition that we must confront spending, bring the deficit to an end, and, ultimately, balance the budget,” Enzi said.

For his part, House Budget Committee ranking member Chris Van Hollen, D-Md., made the case that middle class wage stagnation and widening income inequality demand a more progressive tax code.

“[T]he American people are working harder than ever, but they feel like they’re on a treadmill, either falling behind or running in place. . . . So, we need to have a tax code, we need to have an economic strategy that provides for greater shared prosperity,” Van Hollen said.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

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## Ahead of budget release, White House strikes proposal to tax earnings on 529 plans

President Obama’s fiscal year 2016 budget package suffered its first casualty just days before its scheduled release as the White House announced January 27 that it will scuttle a provision that called for repealing the tax-free status of earnings on new contributions to section 529 plans. The president intends to send his budget blueprint to Capitol Hill on February 2.

The provision was one piece of a proposal to eliminate certain current-law tax incentives for higher education – including the deduction for qualified student loan interest for new borrowers – to pay for a permanent and expanded version of the American Opportunity Tax Credit (AOTC) and other education-related spending. The AOTC provision and the proposed repeal of the student loan interest deduction are expected to remain in the budget package. The proposed revamp of tax incentives for higher education is itself part of a broader “middle-class economics” agenda that the president outlined in his January 20 State of the Union message.

(White House Deputy Press Secretary Eric Schultz told reporters January 28 that although the section 529 provision is no longer part of the administration’s budget request, the decision to scrap it was made too late to delete it from the official budget documents the president will submit to Congress.)

### Bipartisan criticism

In the days since the president unveiled his economic agenda, the section 529 provision, which the administration has said would increase federal revenues by about $1 billion over 10 years, came in for criticism from congressional Democrats and Republicans alike. House Speaker John Boehner, R-Ohio, publicly urged Obama to withdraw it and told reporters at a January 27 press briefing that it was “another example of [the president’s] outdated, top-down approach – when our focus ought to be on providing opportunity for all Americans.”

Boehner and House Ways and Means Committee Chairman Paul Ryan, R-Wis., also touted legislation (H.R. 529) introduced on January 26 by two House taxwriters – Republican Lynn Jenkins of Kansas and Democrat Ron Kind of Wisconsin – that would expand the rules for section 529 plans by clarifying that computers are a qualified expense for section 529 account funds, permitting plan holders to re-deposit refunds from colleges without taxes or penalties under certain circumstances, and eliminating certain paperwork requirements for 529 plan administrators when funds are distributed to account holders. (House leaders are planning a floor vote on H.R. 529 later in February. See related coverage in this issue for details.)

Behind the scenes, some high-profile Democrats – House Minority Leader Nancy Pelosi of California, House Budget Committee ranking member Chris Van Hollen of Maryland, and Senate Finance Committee members Charles Schumer of New York, Sherrod Brown of Ohio, Ben Cardin of Maryland, Robert Casey of Pennsylvania, and Debbie Stabenow of Michigan – reportedly urged the White House to eliminate the proposal.

The administration initially pushed back against claims that the proposal would be detrimental to the middle class. White House Council of Economic Advisers Chairman Jason Furman stated in an interview that the current section 529 rules are "very tilted towards the upper end." White House Press Secretary Josh Earnest stated in a January 23 press briefing that "the reforms that the president has proposed for the 529 program are reforms that he would consider only in the context of the other education reforms that he put forward. And when you consider that entire package of reforms, the tax cut that we're looking at for middle-class families is $50 billion."

But in a statement announcing its decision to pull the provision from the budget package, the White House noted that the provision had become "a distraction" and said that it would not "ask Congress to pass the 529 provision so that they can instead focus on delivering a larger package of education tax relief that has bipartisan support."

**The rest of the middle-class agenda**

Congressional Republican leaders this week also took aim at other proposals expected to appear in the administration's budget package that call for tax relief and spending for the middle class that would be offset in part by higher taxes on upper-income individuals. According to a fact sheet distributed by the White House on January 17, the administration's middle-class economics agenda includes proposals to expand access to tax-preferred workplace savings plans; establish a "Second Earner" tax credit of up to $500 for two-earner households, subject to a phase-out limit; increase the maximum Child and Dependent Care Tax Credit from $1,050 to $3,000 for each child under 5 years old; and make permanent the stimulus-era enhancements to the Earned Income Tax Credit (EITC) and Child Tax Credit and expand the EITC for workers without dependent children.
**URL:** http://www.whitehouse.gov/the-press-office/2015/01/17/fact-sheet-simpler-fairer-tax-code-responsibly-invests-middle-class-fami

These would be offset by proposals to increase the top rate on long-term capital gains and qualified dividends for certain upper-income individuals; eliminate stepped-up basis for appreciated assets at death for certain estates; limit tax benefits for high-balance, tax-favored

retirement plans; and impose a fee on large highly leveraged financial institutions. (For details, see *Tax News & Views*, Vol. 16, No. 3, Jan. 23, 2015.)
**URL:** http://newsletters.usdbriefs.com/2015/Tax/TNV/150123_1.html

In a joint interview on *60 Minutes* January 25, House Speaker Boehner and Senate Majority Leader Mitch McConnell, R-Ky., argued that President Obama's current economic policies have led to what McConnell called a "top of the income recovery" that has exacerbated income inequality, and that the new proposals from the White House would do nothing to address that issue.

Responding to a question from interviewer Scott Pelley, Boehner declared that the proposals to increase taxes on upper-income individuals were "dead, real dead" in the Republican-controlled Congress.

"Why would [the president] want to raise taxes on people?" Boehner said.

McConnell rejected a spending proposal that would provide two years of free community college for qualifying students. (This proposal is included among those that would be offset by the proposed upper-income tax increases.)

"[G]iving away free tuition strikes me as something we can't afford," McConnell said.

**Possible areas of agreement**

Boehner did suggest, however, that tax reform might provide an opportunity for the White House and Congress to reach an agreement on the president's proposal to triple the childcare tax credit.

"We're all for helping working class families around America. I think we'll take a look at this when he sends his budget up, something that can be looked at in the overall context of simplifying our tax code and bringing rates down for everyone," he said.

Boehner also indicated that Republicans agree with the White House that tax reform provides an opportunity to address infrastructure spending. (In his State of the Union message, President Obama reiterated a call he made in his 2012 corporate tax reform framework to use certain one-time revenue from business tax reform to make a one-time investment in infrastructure spending.)

"We believe that through tax reform, a couple of other options that are being looked at, we can find the funds to fund a long-term highway bill," Boehner said.

Boehner also suggested that the idea of funding a highway bill through increasing the gasoline tax was politically unrealistic.

"When the Democrats controlled the House, the Senate, and the White House, they couldn't increase the gas tax," he noted.

## Hearings ahead

Congressional taxwriters will officially weigh in on the president's budget proposals at a House Ways and Means Committee hearing scheduled for February 3 and a Senate Finance Committee hearing set for February 5.

Treasury Secretary Jack Lew will be the sole witness at both hearings.

## More budget details to come

Deloitte Tax LLP will release a detailed discussion of significant new revenue provisions in the president's budget proposal later next week.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP