Consensus on long-term funding source for highways remains elusive

Congressional taxwriters this week appeared no closer to consensus on a long-term revenue source for the Highway Trust Fund as the House Ways and Means Select Revenue Measures Subcommittee held a hearing to explore the idea of linking a so-called “deemed repatriation” provision to highway spending and the Senate Finance Committee convened its own hearing to examine how states have used public-private partnerships to finance infrastructure projects.

Spending authority for the Highway Trust Fund has been maintained under a series of short-term extensions, the latest of which is set to expire on July 31. Although there is broad agreement that a six-year highway bill would be optimal for planning and certainty, a long-term fix would require additional trust fund receipts beyond those projected under current law. The Congressional Budget Office recently estimated that lawmakers would need to find an additional $85-90 billion to pay for a six-year bill that maintains current spending levels.


Deemed repatriation

Taxwriters at a Ways and Means Select Revenue Measures Subcommittee hearing on June 24 generally agreed that deemed repatriation – a one-time levy on foreign-source income of domestic multinationals that has not already been taxed in the United States – should be included as a transition rule in an international tax reform plan that includes a territorial regime; but opinions diverged on the idea of pairing repatriation – whether deemed or elective – with infrastructure spending, even if the repatriation is linked to broader reforms of US international tax rules. (Ways and Means Committee Chairman Paul Ryan, R-Wis., has explicitly rejected calls to pay for highway spending through a stand-alone tax on repatriated foreign earnings but has expressed interest in the idea of linking deemed repatriation to other international reforms as part of a long-term highway bill this year.)

Select Revenue Measures Subcommittee Chairman Dave Reichert, R-Wash., emphasized in his opening statement that “repatriation cannot be done as a stand-alone; it must be part of a transition to a more competitive system. …[T]aken outside of the context of a transition, mandatory repatriation would be a tax increase. A tax increase that American companies would be forced to pay unlike their foreign competitors.”

Others in the GOP caucus agreed. Rep. Pat Tiberi, R-Ohio, said that “going to an exemption system is critical” and Rep. Erik Paulsen, R-Minn., likewise emphasized the need to tie deemed repatriation to international reform.

Curtis Dubay of the Heritage Foundation told the subcommittee that repatriation as a stand-alone would be bad policy, and that it had to be used as a transition to a territorial system. He and other witnesses at the hearing noted that the Highway Trust Fund has traditionally followed a “user pays” funding system with gas taxes, which Jane Gravelle of the Congressional Research Service explained that many economists think is good policy.

Paulsen pressed witnesses on whether the current US international tax rules put domestic companies at a competitive disadvantage. Dubay said that they do, citing inversion activity as evidence that foreign residency was considered more valuable because of the tax
consequences. However, he added that US companies are now more likely to just be acquired by foreign companies rather than invert.

**Concerns about repatriation and highways:** Despite the agreement on the need to move to a territorial tax system, some Republicans were cool to the idea of linking repatriation to infrastructure spending. Rep. Todd Young, R-Ind., said he was opposed to a one-time repatriation for this purpose. Rep. Mike Kelly, R-Pa., said he was concerned about using repatriation because it would only provide six years of highway funding.

Democrats had concerns of their own. Many, including subcommittee ranking member Richard Neal, D-Mass., argued that the repatriation holiday enacted under the American Jobs Creation Act of 2004 resulted in job cuts by the companies that participated in the program.

Rep. Linda Sanchez, D-Cal., said repatriation was not a viable solution for needed infrastructure spending.

Taxwriter Lloyd Doggett, D-Texas, who is not a member of the subcommittee but sat in on the hearing, noted that several business groups – including the National Association of Manufacturers, the Business Roundtable, the RATE Coalition, and the Alliance for Competitive Taxation – had all issued statements against using repatriation for highways.

**How to score?:** Reichert asked Joint Committee on Taxation (JCT) Chief of Staff Thomas Barthold about how much revenue a deemed repatriation proposal could be expected to generate. Barthold replied that a revenue estimate would depend significantly on how the proposal was designed, noting issues about rates, the treatment of cash and noncash assets, and the length of the installment period for paying the tax. (In conjunction with the hearing, the JCT released a report discussing present law and selected proposals related to the repatriation of foreign earnings.)

URL: https://www.jct.gov/publications.html?func=startdown&id=4795

Neal asked what percentage of unrepatriated assets are currently being held in cash. Gravelle noted a Credit Suisse report that estimated it might be as high as 50 percent. Barthold said it was probably around 45 percent, but added that questions around issues such as the treatment of working capital, amounts held under foreign-law bank capital requirements, and portfolio holdings would affect how this percentage was calculated.

Rep. Mike Thompson, D-Cal., asked whether it would be considered “double counting” to use deemed repatriation both to pay for international reforms and replenish the Highway Trust Fund. Gravelle replied that it was effectively double counting as scored in a similar proposal included in the tax reform discussion draft that then-Ways and Means Committee Chairman Dave Camp, R-Mich., unveiled in 2014, but Barthold said that the JCT reports estimates on a unified basis. (In the case of highway construction programs, congressional scoring rules assume that current spending levels will continue, so changes to the law that ensure sufficient funds are available to meet those obligations are not counted as additional spending. As a result, under congressional budgeting rules, taxwriters can raise revenue – through enactment of deemed repatriation, for example – that is notionally credited to the Highway Trust Fund but that is also used to reduce other taxes – such as a move to a territorial system. This scoring convention is likely to be a flash-point between the parties if Ways and Means Chairman Ryan
Public-private partnerships

Across the Capitol, the Senate Finance Committee on June 25 continued its own discussion of transportation issues with a hearing focused on ways states have engaged the private sector to help finance infrastructure projects, such as through entering into public-private partnerships and issuing tax-preferred bonds. (In preparation for the hearing, the JCT published a report providing background on certain arrangements designed to draw private capital into transportation infrastructure projects, including their federal tax treatment.)

URL: https://www.jct.gov/publications.html?func=startdown&id=4796

The hearing followed a separate meeting of the committee on June 18, during which members discussed federal transportation finance in general terms. (For prior coverage, see Tax News & Views, Vol. 16, No. 21, June 19, 2015.)

URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150619_1.html

Stable revenue source for Highway Trust Fund critical: Finance Committee Chairman Orrin Hatch, R-Utah, explained in his opening statement that while transportation financing methods such as public-private partnerships and tax-preferred infrastructure bonds are a critical component of infrastructure finance as a whole, they do not diminish the need for lawmakers to identify a stable, long-term revenue source for the Highway Trust Fund.

“At the outset, I want to make sure it is clear that, while they are important, these financing alternatives and ideas are not meant to address the immediate shortfall in the Highway Trust Fund. As long as our federal highway program is based upon reimbursements to states made on a formula basis, there is no workable substitute for federal funding,” Hatch said.

Sen. Mark Warner, D-Va., agreed that innovative financing techniques cannot replace an adequate and dedicated federal funding source for infrastructure.

“Financing is great, but we’ve got to have funding as well,” Warner noted.

Warner is author of the Building and Renewing Infrastructure for Development and Growth in Employment (BRIDGE) Act (S.1589), which would establish a federal infrastructure bank that he said would leverage a $10 billion initial investment by the federal government into $300 billion in infrastructure projects through low-interest loans and loan guarantees.

URL: http://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=16cdfd20-4d06-4afc-936b-7eb67ad992d7

User-pay issues: Former Republican Indiana Gov. Mitch Daniels, now president of Purdue University, testified primarily on Indiana’s positive experience with funding infrastructure projects through public-private partnerships. However, in an exchange with Sen. Tom Carper, D-Del., an outspoken advocate of increasing the federal gas tax, Daniels expressed his view that users of transportation systems should pay more in order to put infrastructure funding streams on a more stable footing.
“I think the fairest and most efficacious way is a major expansion of user fees and tolling. There’s nothing novel about it. It’s more equitable, and it’s more flexible. …I think it’s the single biggest opportunity,” Daniels said.

However, congressional leaders have eschewed any near-term increase in the 18.3 cent-per-gallon federal gas tax due to a lack of political consensus.

**Wyden touts tax credit bonds:** Finance Committee ranking Democrat Ron Wyden of Oregon – a strong advocate of the now-expired Build America Bonds (BABs) program, focused his remarks on how federal tax credit bonds can leverage private capital for transportation infrastructure projects. The BABs program, authorized by the American Recovery and Reinvestment Act of 2009, allows – in lieu of an exemption for interest income – a 35 percent payment to the issuer to offset borrowing costs. Alternatively, BABs could be structured so bond holders claim a credit equal to 35 percent of interest income received. The authority to issue new BABs expired at the end of 2010.

Earlier this year, Wyden introduced the Move America Act (S.1186), which would expand qualified private activity bonds for infrastructure and allow the authority to issue such bonds to be converted into tax credits that states could sell or allocate to project sponsors, who themselves could sell the credits to raise capital.

**More alternatives from infrastructure working group?** Senate taxwriters may get additional ideas on long-term highway funding when the Finance Committee’s tax reform working group addressing community development and infrastructure issues releases its recommendations for overhauling the tax code. Although all five of the bipartisan working groups were expected to submit their recommendations to Finance Committee leaders on June 26, a committee spokesperson confirmed that the deadline has been moved to early July after lawmakers return from the Independence Day recess.

This marks the second deadline extension the working groups have received. The original due date for recommendations was May 31, but that was bumped to the end of June after several co-chairs indicated that they needed additional time to develop consensus within their groups. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 19, June 5, 2015.)

— Jon Almeras & Alex Brosseau
Tax Policy Group
Deloitte Tax LLP