House panel clears budget that would expedite tax reform – but GOP divisions cloud its future

On a party-line vote on July 19, Republicans on the House Budget Committee advanced a long-awaited fiscal year 2018 budget resolution that includes a broad set of reconciliation instructions aimed at expediting both revenue-neutral tax reform and significant cuts to entitlement programs, but familiar divisions within the GOP – particularly as to spending policy – cast doubt on its viability on the House floor should it be brought to a vote.

Contours of the plan

The budget blueprint for upcoming fiscal year 2018 – which begins on October 1 – is the product of months of haggling between the committee’s chair, Rep. Diane Black, R-Tenn., and the panel’s other Republican members. In broad terms, it resembles other GOP fiscal plans put forward in recent years and calls for bringing the federal budget into balance within the 10-year budget window through major reductions in spending on entitlement programs (such as Medicare, Medicaid, and food stamps), nondefense appropriations (offset in part by increases in defense spending), and reduced debt service costs.

The budget also factors in $1.8 trillion in additional “dynamic” savings over 10 years as a result of faster projected economic growth, and devotes $1.5 trillion of that total to deficit reduction, with the remainder earmarked to help finance tax reform (suggesting implicitly, that under conventional – or “static” – scoring, the budget’s vision of tax reform would result in a net tax reduction of $300 billion).

**American Health Care Act – and its tax cuts – included:** The budget assumes enactment of the American Health Care Act (AHCA) – the bill passed by the House during May aimed at repealing and replacing key aspects of the Patient Protection and Affordable Care Act of 2010 – including its call for repeal of the 3.8 percent net investment income tax, the additional 0.9 percent Medicare hospital insurance tax, and the medical device excise tax, among other taxes and fees. (For prior coverage of the tax changes included in the AHCA, see Tax News & Views, Vol. 17. No. 16, May 5, 2017.)

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As a result of this assumption, the revenue levels in the budget are roughly $1.1 trillion lower over the next decade when compared to projections made by the nonpartisan Congressional Budget Office (CBO) in January 2017 on the basis of current law.

Whether those proposed tax cuts ever go into effect, however, remains highly uncertain as Senate Republicans struggle to coalesce around their own health care legislation. (See related coverage in this issue for additional details.)

**Nonbinding tax reform recommendations:** Although it is not binding on congressional taxwriters, the budget resolution also includes a policy statement on tax reform citing budget writers’ perceived flaws with the current tax system and enumerating a handful of proposed remedies. Those suggested changes – which are very high-level in nature – include lowering tax rates for individuals and corporations, repealing the alternative minimum tax, transitioning to a territorial system for taxing foreign-source business income of US multinationals, and simplifying the tax code.

**Threatened GOP border-adjustment tax amendment causes flare-up:** Near the end of a marathon mark-up session in which Republicans successfully batted away more than two dozen Democratic amendments – some on tax issues, such as expanding Earned Income Tax Credit and reducing tax expenditures for top income earners – Republican Rep. Mark Sanford of South Carolina attempted to offer a change to the budget resolution effectively aimed at blocking any inclusion of a border-adjustment tax regime in a future tax reform plan. (The border-adjustment tax proposal included in the House GOP tax reform blueprint and supported by Speaker Paul Ryan, R-Wis., and Ways and Means Committee Chairman Kevin Brady, R-Texas, generally would impose a 20 percent tax on goods and services imported into the US and impose no tax on US exports. It has proven highly controversial, both within the business community and among congressional Republicans.)

“I’m not saying there’s a guarantee of a [border-adjustment tax] going forward, but increasingly, what I’ve seen over the last couple of days, puts it in that direction,” Sanford said. “That puts myself and others on this committee in a bad spot.”
Sanford ultimately stood down and did not offer his amendment after a lengthy exchange with Chairman Black in which she emphasized an earlier agreement with Democrats that members of the committee’s Republican majority would not offer amendments to the budget.

**Reconciliation: Fast-track tax reform tied to entitlement cuts**

The budget plan would also make good on Republican promises to establish a fast-track process – that is, “budget reconciliation” – to move subsequent tax reform legislation. Provided strict parliamentary and procedural rules are met, legislation moved under budget reconciliation can pass both chambers with a simple majority vote – a potentially powerful tool for Republicans who control 52 seats in the Senate, where 60 votes (a three-fifths majority) are normally required to advance legislation under regular order.

However, the reconciliation instructions included in the blueprint call for a much broader suite of policy changes than just tax reform. Eleven House committees are charged under the plan with reporting legislation by October 6, 2017, that would reduce the deficit by a total of at least $203 billion over the next decade. (The October 6 deadline is generally understood to be nonbinding from a parliamentary perspective.) In that way, the budget would establish an expedited legislative process to achieve a portion of the several trillion dollars in total savings called for in the plan.

The Ways and Means Committee, for its part, would be tasked with producing legislative changes achieving at least $52 billion in deficit reduction. Although those budgetary savings could theoretically come from tax changes, the policy document accompanying the budget resolution stresses the view of budget writers that (1) tax reform should be revenue-neutral (after taking into account a portion of the plan’s projected “dynamic” savings, as discussed above) and (2) the committee’s deficit reduction target should be met through changes to spending programs within its jurisdiction such as Supplemental Security Income, Temporary Assistance for Needy Families, and unemployment insurance.

Similarly, the House Agriculture and Judiciary committees would be charged with reporting bills that cut the deficit by at least $10 billion and $45 billion, respectively. Again, those savings could come from any program in the committees’ jurisdictions, but budget writers telegraphed their view that the savings should be generated within the Supplemental Nutrition Assistance Program (food stamps) in the case of the Agriculture Committee and from medical malpractice reform in the case of the Judiciary Committee.

Because each committee receiving a reconciliation instruction must meet its savings goal in order for the bundled legislation to receive expedited treatment on the floors of the House and Senate, this approach – if implemented – could complicate the path for tax reform by essentially making it contingent upon other lawmakers coalescing around unrelated (and sometimes controversial) spending cuts.

**GOP moderates, conservatives defect in advance**

That concern was being expressed by some moderate Republicans not on the Budget Committee even before the panel began marking up its blueprint.

“I have serious concerns about the budget in its current form,” said Rep. Charlie Dent, R-Pa. “The focus of this budget should be on reconciliation instructions for tax reform. Trying to use mandatory savings in the same reconciliation instructions is going to make tax reform much harder, not easier. Anybody with a pair of eyes can see this.”

Meanwhile, many conservative Republicans, including most members of the House Freedom Caucus, believe the $203 billion in reconciled spending cuts does not go far enough, and that the budget should seek to expedite passage of a greater portion of the plan’s overall savings.

Other conservatives are smarting over the relatively secretive process under which Republican leaders have attempted to draft PPACA repeal-and-replace legislation – which is also moving under budget reconciliation – and are angling to influence the shape of any tax reform reconciliation bill on the front end.

“We’ve done this before – where you pass a budget for reconciliation to deal with a big issue. We saw how that played out over the past seven months,” said Freedom Caucus member Rep. Jim Jordan, R-Ohio.
“Fool me once, shame on you, fool me twice, shame on me. I just want to know more about what tax reform looks like before we open the gate,” Jordan explained.

Another divide exists between Republicans who sit on the House Appropriations Committee and those who do not, with appropriators generally of the view that the cuts to nondefense accounts called for in the plan – roughly $1.3 trillion over the next decade – are unrealistically steep and would prevent them from writing appropriations bills that could ever become law.

A significant number of these lawmakers have argued to Speaker Ryan that Republicans should begin bipartisan negotiations with Democrats to ease the statutory caps on appropriations known as the “sequester” which are set to return in full force on October 1. (Two bipartisan deals have been struck in recent years that raised the spending caps for fiscal years 2014 through 2017.)

All of these dynamics are coalescing to cast a great deal of uncertainty on the budget plan’s prospects on the House floor, should it be brought to a vote. While Speaker Ryan can lose 22 Republican votes and still pass legislation with GOP-only support, more than that number have publicly expressed reservations about the current blueprint.

Radio silence from the Senate

The Senate Budget Committee, for its part, has been silent on its plans for a fiscal 2018 budget resolution and Majority Leader Mitch McConnell, R-Ky., has not discussed a budget blueprint as being part of the chamber’s legislative agenda this summer.

If no fiscal 2018 budget, then what?

Even if House and Senate Republicans cannot agree on a new budget resolution for fiscal 2018, there are at least two other pathways by which the GOP could – at least theoretically – seek to move tax legislation on a filibuster-proof basis.

Co-opt fiscal 2017 instructions: One option would be to co-opt the fiscal 2017 reconciliation instructions currently being used to move health care-related legislation and use them to move tax legislation instead. The nature of those instructions – which require the Ways and Means and Energy and Commerce committees in the House and the Finance and Health, Education, Labor, and Pensions committees in the Senate to each report legislation that reduces the deficit by at least $1 billion over the next decade – would essentially require the taxwriting committees to produce revenue-neutral tax reform. (A “tax relief” bill would not be allowable under these nominal deficit reduction instructions.)

This option, however, would require Republicans to officially give up on their hopes of repealing and replacing the PPACA – at least for the time being – and could also run into a roadblock in the Senate if that chamber’s parliamentarian should rule that the fiscal 2017 reconciliation instructions lose their privilege after September 30 when fiscal year 2017 comes to an end – an issue that is presently unclear.

‘Shell’ budget: Another option would be for Republicans to adopt a “shell” budget resolution for fiscal 2018 that ignores broader budget policy, includes only placeholder numbers, and is shuttled through Congress solely for the purpose of setting up the reconciliation process. This is the approach congressional Republicans took in January 2017 with an eye toward swiftly dismantling the PPACA.

This option faces its own set of challenges, though, as Speaker Ryan promised at the time the fiscal 2017 budget was adopted that there would not be another shell budget later in the year – a vow many House conservatives took to heart.

“The shell budget on health care produced no results, so why do we think a shell budget on tax reform is going to produce results?” said Rep. Mark Meadows, R-N.C., the chairman of the Freedom Caucus on July 20. “The speaker assured us when we voted for one shell budget that we wouldn’t have to vote for another.”

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