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IN FOCUS

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The House-Proposed Tax Cut: Amendment to H.R. 88

On November 26, 2018, Chairman Kevin Brady of the House Ways and Means Committee released the Retirement, Savings, and Other Tax Relief Act of 2018. The bill was reported to the House on November 28, 2018. The measure is an amendment to a minor bill already passed by the House and Senate, H.R. 88. On December 10, Chairman Brady released a new version, which was subsequently modified on December 17 by a restoration of two extender provisions and passed the House on December 20.

The original bill had six major parts: (1) the extension of expiring provisions (the "extenders"), (2) disaster relief, (3) provisions for retirement plans, (4) benefits for start-up firms, (5) some technical corrections to the 2017 tax revision (P.L. 115-97), and (6) reforms to the Internal Revenue Service (IRS). The November 28 proposal was estimated to cost $54.1 billion in revenue losses from FY2019 to FY2028, with a small $1.4 billion savings in spending. The new version is estimated to cost $99.2 billion.

The revised bill eliminates most of the extender provisions as well as the start-up provisions and adds some additional provisions, including delaying some taxes and user fees adopted as part of the Patient Protection and Affordable Care Act (P.L. 111-148, as amended). This In Focus summarizes the original and new provisions with notations as to whether the current bill eliminates, retains, or adds provisions as compared with the November 28 bill.

Some of the provisions of these bills were in a prior tax package passed by the House in September 2018. See CRS In Focus IF10977, *Tax Reform 2.0: The Ways and Means Tax Proposals*, by Jane G. Gravelle.

Extenders (Partially Eliminated)

A number of tax provisions that have been enacted on a temporary basis are extended or, in one case, made permanent, and in another case are extended and phased out. Expiring provisions are listed in CRS Report R45347, *Tax Provisions That Expired in 2017 ("Tax Extenders")*, by Molly F. Sherlock. The November 26 bill extends through 2018 all the provisions that expired at the end of 2017, with some exceptions. First, the bill makes permanent the railroad track maintenance credit but reduces the rate from 50% to 30%. Second, it extends through 2021 and then phases out over the next three years the $1.00 per gallon credit for biodiesel fuel. Two of the extenders, the special rate for capital gains on timber and the production activity deduction for Puerto Rico, were made obsolete because of changes in the 2017 tax revision (P.L. 115-97). The one-year extensions include 3 individual provisions, 9 business provisions outside of energy, and 12 energy provisions.

In addition to these extenders, the November 26 bill extends the 9 cent per barrel tax on oil that funds the Oil Spill Liability Trust Fund and the increased excise tax rate on coal that funds the Black Lung Liability Trust Fund through 2019.

The December 10 proposal dropped the extenders (which may subsequently be considered in separate legislation), but the December 17 proposal added the railroad track maintenance provision and the biodiesel credit. These provisions were estimated to cost $18.8 billion over 10 years.

Disaster Relief (Retained)

This section of the bill provides tax benefits for disasters including Hurricanes Florence and Michael; Typhoons Mangkhut and Yutu; the Mendocino, Camp, and Woolsey California wildfires; the Kilauea volcanic eruption and earthquake; and severe storms in Alabama, Hawaii, Indiana, North Carolina, Wisconsin, and Texas (states except Hawaii added in the December 10 proposal). The tax benefits include access to retirement accounts without penalties, employee retention credits, temporary suspension of limits for charitable contributions, increased casualty loss deductions, and the option to use prior-year earnings for purposes of the child credit and the earned income tax credit. The disaster relief provisions lose $4 billion in revenue from FY2019 to FY2028, primarily due to the increased casualty loss deduction.

Retirement and Savings (Retained)

This section provides a series of rule revisions. Many of these retirement provisions were in H.R. 6757 (passed by the House on September 27, 2018). They include simplifications to benefit multiemployer plans; relaxing certain notification requirements for electing a safe harbor status for 401(k) retirement saving plans; treating taxable non-tuition fellowships and stipends as compensation for Individual Retirement Accounts (IRA contributions cannot exceed compensation); repealing the prohibition on IRA contributions by those aged 70½ and older; prohibiting plans from making loans through credit cards and similar arrangements; allowing the transfer of lifetime income investments (annuities) between plans or as a distribution if no longer allowed as an investment option in a plan; allowing custodial accounts on termination of certain plans (Section 403 plans) to be converted into IRAs; clarifying which individuals will be covered by church-controlled organization plans; increasing a cap on increases in auto-enrollment retirement plans to achieve nondiscrimination safe harbors; increasing the credit (for three years) for setting up small employer plans from $500 to the greater of (1) $500 or (2) the lesser of $250 times the number of non-highly compensated employees or $1,500; increasing the credit by $500 for small employers that establish automatic enrollment plans; exempting individuals with accounts of $50,000 or less from minimum distribution rules; and allowing elective deferrals by members of the Ready Reserve of the Armed Forces.

The proposal also has some administrative changes. It allows due dates for establishment of employer plans on the tax filing day rather than year-end; modifies the antidiscrimination rules so they are not triggered by participation in the plan of older, longer-service employees; provides a safe harbor to satisfy prudence requirements for fiduciaries who are trustees of plans; requires employers of defined contribution plans to provide a lifetime disclosure; and reduces the premiums of the Pension Benefit Guaranty Corporation (PBGC) for cooperative and small employer charity plans that are a subset of multiemployer plans, as well as requiring use of the same discount rate used for benefits to measure unfunded liabilities. The bill also allows penalty-free withdrawals of up to $7,500 from retirement plans in the case of birth or adoption.

The revenue loss from these provisions totals $13.8 billion for FY2019-FY2028, with $6.2 billion due to the exemption from the required minimum distribution rules, $3.7 billion due to the multiemployer plans, $1.9 billion due to withdrawals for birth or adoption, and $1.4 billion due to the modification of PBGC premiums.

Provisions for Start-Up Firms (Dropped in the December 10 Bill)

This proposal would increase the amount of start-up costs that can be deducted immediately from $5,000 to $20,000, (phased out dollar for dollar after start-up costs exceed $120,000 rather than $50,000). The proposal also would allow net operating losses and unused tax credits arising within three years of start up to be carried over to a new owner that continues the business, without regard to the general rules that restrict these carryovers. These provisions cost $4.9 billion for FY2019-FY2028, with each provision responsible for about half the cost. These provisions were in H.R. 6756 (passed by the House on September 27, 2018).

Technical Corrections to the 2017 Tax Cut and Clarifications (Retained)

Several proposals address provisions viewed as drafting errors in the 2017 tax revision.

(1) The 2017 act combined certain categories of real estate improvement property (qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property), which previously had a tax life of 15 years and were eligible for bonus depreciation (deducting half of the cost immediately or deducting all of the cost for certain small business) into one category, qualified improvement property. The legislative language, however, resulted in the tax life becoming the tax life for new nonresidential buildings, 39 years, which made the property not eligible for temporary expensing of investments. The bill restores the 15-year life, which also restores eligibility for expensing and shorter lives if expensing is allowed to expire. (2) The bill would ensure individual shareholders of a regulated investment company (RIC or mutual fund) that holds shares in a Real Estate Investment Trust or publicly traded partnership to be eligible for the 20% deduction for business income. (3) The bill would allow losses that occurred in 2017 and predated the bill to be eligible for offset under prior-law net operating loss carryback provisions. (4) The bill would clarify that the nondeductibility of attorneys' fees for sexual harassment or abuse does not apply to plaintiffs' costs. (5) The bill would allow overpayments for tax installments on accumulated income earned abroad (Section 965, deemed repatriation) to be treated as overpayments and refunded. The Joint Committee on Taxation reports no revenue effect for these provisions. In addition to these five changes relating to the 2017 law, the bill would clarify that veterans housing complies with the general public- use requirements for the low-income housing tax credit and tax-exempt bond treatment.

Manager's Amendment (Retained)

The Ways and Means Committee adopted a manager's amendment that removed the provision in the 2017 act that taxed fringe benefits of nonprofits under the unrelated business income tax (UBIT), as well as some other minor changes, and would clarify refunds of overpayments and installments of deemed repatriation net tax liability, allow for automatic filing extensions in disaster areas, and clarify the applicability period for Section 403(b) plan revisions. The UBIT provision loses $1.8 billion in revenue for FY2019-FY2028.

Repeal or Delay of Health Related Taxes (Added)

The December 10 proposal extends the moratorium on the medical device excise tax by five years until 2025, delays the excise tax on high-cost insurance (the "Cadillac" tax) by one year until 2023, extends the suspension of the fee on health insurance provisions by two years until 2022, and repeals the tax on indoor tanning services. These provisions are estimated to cost $52.4 billion for FY2017-FY2028.

Additional Provisions in the December 10 Proposal

In addition to the health-related tax delays, the proposal includes several additional provisions. It would extend the exemption from interest deduction restrictions on floor stock of motorized vehicles to nonmotorized trailers and campers, which some have viewed as a drafting error. It would limit the scope of new stock attribution rules adopted in 2017 to U.S. persons with a majority control of a foreign corporation. (See CRS Report R45186, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, for a discussion.) It disregards purchases of employee-owned stock for determining the foundation tax on excess business holdings, allows charitable and other nonprofit organizations to make political statements (limiting the "Johnson amendment"), permits charitable organizations to make collegiate housing and infrastructure grants, and prohibits restrictions on contingency fees for tax services. These provisions are estimated to cost $8.2 billion for FY2019-FY2028, with $7.7 billion due to the limits to the Johnson amendment.

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