

U.S. Budget

Budget Democrats Wary of Obama Spending Cut Proposal, GOP Praises It

Several Democrats on the House Budget Committee expressed deep concerns June 17 about the Obama administration's proposal for fast-track authority to propose spending cuts to enacted bills, a sign the idea faces skepticism from the larger party caucus.

In contrast, the few Republicans that showed up at the committee's hearing to receive testimony on the idea from Jeff Liebman, the acting deputy director of the White House's Office of Management and Budget, were generally supportive.

Rep. Paul Ryan (R-Wis.), the ranking Republican on the committee, and Budget Chairman John Spratt (D-S.C.) suggested the proposal be expanded to include targeted tax breaks, which were included in a 2006 bill authored by Ryan that passed the House (115 DTR G-10, 6/15/06).

Ryan called the White House initiative "a good start, a good proposal," and Rep. Charles Djou (R-Hawaii) said he too liked it.

Under the proposal, which has been introduced in the House by Spratt as H.R. 5454, the president would have up to 45 legislative days after a bill was signed to send back to Congress a list of spending items to be cut. Congress would then have 25 days in which to have an up-or-down vote on the package of cuts. The cuts would only take place if Congress approved them, and the power would expire Dec. 31, 2014, unless extended.

The proposal is similar to the line-item veto wielded temporarily by President Clinton in the mid-1990s. Unlike the veto, however, it would leave the final decision on the cuts in Congress's hands and thus would be less likely to raise the constitutional concerns that led to the line-item veto's invalidation by the U.S. Supreme Court.

Targeted Tax Breaks. Committee members expressed a variety of concerns about the proposal, ranging from its focus mainly on discretionary spending bills to the possibility it could be used by an aggressive White House to coerce lawmakers to vote on unrelated legislation.

Liebman said the administration shared an interest in including targeted tax breaks such as those proposed by Ryan and Spratt, but said the nature of tax law, where individual provisions interact and are part of a larger revenue-collection system, did not lend itself to the streamlined process intended for cutting spending that the administration had devised.

"If there's a way to apply a similar streamlined procedure to limited-purpose tax provisions, we'd be very much open to that. We just didn't think it really worked given how we're trying to set up a way to simply reduce spending levels and do nothing else," Liebman said.

Presidential Coercion. Other members saw the idea as changing the delicate balance of power between the president and Congress on spending matters. Rep. Marion Berry (D-Ark.) said the president could use his existing rescission authority, although does it not require the Congress to consider his proposed cuts, to highlight spending he deems wasteful.

"How this solves any of our problems is beyond me," he said.

Rep. Bobby Scott (D-Va.) said he worried the expedited rescission power could be used to pressure lawmakers. "The president would not coerce members of Congress into taking unrelated action by using this rescission package?" he asked. Liebman said the administration would only use it for "broad classes of spending."

Other Democratic members were more supportive. Rep. Gerald Connolly (D-Va.) said he favored it "with some enthusiasm," even as he said there were "legitimate" institutional concerns.

Boehner Supportive. At the end of the hearing, Spratt outlined a series of areas that needed to be looked at. They included the possibility that allowing a rescission bill for each appropriations bill could create a "legislative logjam"; the concern that 45 legislative days may be too long for the president to wait to send up cuts; adding tax expenditures to the list of things that could be cut; allowing lawmakers the opportunity to defend their favored projects if included in a rescissions list; and defining what would constitute unneeded spending.

"These things remain to be worked out but the bill is in active play, as you can see. It's getting support from both sides of the aisle," Spratt said.

The idea also got a boost June 17 from House GOP Leader John Boehner (R-Ohio). At his weekly press conference, Boehner said, "I've supported this idea in the past. And I'll support it again." He also said Obama could send up proposed rescissions under the existing law.

"The president could send those rescissions up here today. [House GOP Whip] Eric Cantor (R-Va.) and I have promised the president, if he sends a package of spending cuts up to the Congress, that we would work to get Republican support for those—for that proposal. And we will," he said.

BY JONATHAN NICHOLSON

Text of Liebman's prepared remarks is at http://budget.house.gov/hearings/2010/06.17.2010_Liebman_Testimony.pdf.

Tax Administration

IRS Rolls Out Long-Awaited Procedures For Making Tax Whistleblower Awards

The Internal Revenue Service posted to its website June 17 long-awaited award procedures for tax whistleblowers under Internal Revenue Code Section 7623, contained in an update to the Internal Revenue Manual.

The procedures, dated June 18, create an initial award recommendation on which the whistleblower will have the opportunity to comment before the service makes a final determination, said Gregory Lynam, a tax partner at the Ferraro Law Firm.

IRS will send the whistleblower a letter stating the amount of tax that was attributable to his or her information, the percentage award they are applying from the 15 percent to 30 percent scale, and the total award they are proposing for the whistleblower, he said. "That in and of itself should result in fewer Tax Court cases being filed," Lynam said.

The letter will provide whistleblowers with three options:

- to agree with the amount recommended by IRS;
- to disagree with the determination and offer comments as to why; or
- to disagree, ask to receive a copy of the full recommendation, and ask to enter into a confidentiality agreement so the whistleblower and his or her counsel may look at the supporting documents and determine how IRS came up with the award amount, after which the whistleblower will comment.

Rules Afford Access to Full Record. The last option allows whistleblowers access to the full report on the taxpayer about whom they notified the service, Lynam said. “You’re basically getting just about everything that would be in the audit file,” he said.

The full amount of tax collected and any adjustments made are essential items in determining the amount of an award, Lynam said, and a whistleblower and his or her counsel will be able to see that information so they can determine whether or not they have been fully paid. The tax base, not just the percentage applied, is important in award determinations, he said. Since the procedures provide that whistleblowers will not be allowed to make copies of any documents they examine, it behooves them to have legal representation who can help determine whether or not any tax was improperly excluded from the initial award determination, Lynam said.

Bryan Skarlatos, Kostelanetz & Fink, LLP, New York, said he anticipates the IRS Whistleblower Office will now move quickly to make award determinations and announce them in the near future since the procedures constitute the “last piece of the puzzle” that has been holding up award payments under the program, which was established by a 2006 law. The IRM update provides the guidelines for how the Whistleblower Office will determine awards and the guidelines the Tax Court will be reviewing when taxpayers contest the awards, he said.

“It sort of provides the skeleton around which the award can be paid and the whistleblower can choose to contest,” Skarlatos said.

Criminal Fine Exclusion Questioned. Lynam said he thinks one aspect of the procedures runs contrary to the law—the exclusion of criminal penalties for use in making whistleblower award payments. Criminal fines are excluded from IRS’s definition of “collected proceeds” in the IRM, but if one reads Section 7623(b)(1) in conjunction with Section 7623(a), he said, “there is no rationale for the IRS to exclude criminal fines from the definition of collected proceeds.”

Section 7623(b)(1) states that the treasury secretary may award an individual 15 percent to 30 percent of the collected proceeds—including penalties, interest, and additions to tax—resulting from the administrative or judicial action, or any settlement in response to such action. Section 7623(a) states that the secretary is authorized to pay awards for detecting tax underpayments or detecting and bringing to trial and punishment individuals guilty of violating the tax laws.

Lynam said he is sure the first Tax Court case to address the criminal penalties issue will “knock that one out of the park.” He added that some may think this IRM provision has a connection to the UBS AG whistleblower case, as UBS fines would not be included in the

collected proceeds definition. “It’s a tiny little statement that makes a lion’s roar,” Lynam said.

An interesting question the procedures leave unanswered is how long it will take IRS to pay whistleblowers once the final award amount is decided, Lynam said. The IRM says the director of the Whistleblower Office will “initiate payment action,” but it is not clear what that means and how long that will take, he said.

By LAUREN GARDNER

The update to the Internal Revenue Manual is available at http://www.irs.gov/irm/part25/irm_25-002-002.html.

Exempt Organizations

IRS EO to Focus on Employment Tax, Charitable Spending Audits Through FY 2010

Internal Revenue Service Exempt Organizations personnel will be focusing on two examination projects for the rest of fiscal year 2010—one on employment tax, the other on charitable spending, Nanette Downing, acting director of exempt organizations examinations, said June 17.

“Because exempt organizations have the same obligation as other businesses to properly classify workers and report and pay employment taxes, EO will be participating with other IRS operating divisions in this National Research Project,” she told an American Institute of Certified Public Accountants national not-for-profit industry conference.

Approximately 500 audits of charities and other exempt organizations will result from an agencywide study of employment tax issues aimed at finding out whether businesses and exempt organizations are properly complying with employment tax law and reporting requirements, Downing said. For the next three years, the EO portion of the project will involve examining randomly selected returns from exempt organizations.

Specific areas of study will be worker classification, fringe benefits, officer compensation, employee expense reimbursement, and nonfilers, she said. EO agents have received the same training and will be using the same capture tools as other agents in IRS. Many of the exams have already begun, she said.

Charitable Spending Initiative. The charitable spending initiative will explore the sources and uses of charitable funds and their relationship to the accomplishment of charitable purposes, Downing said.

The first phase of the project focuses on organizations with unusually high fund-raising levels and organizations reporting high levels of unrelated business activity but low levels of program services.

The study will look at all sources of revenue, including fund raising, public contributions, grants, and revenues from related or unrelated trades or businesses, she said. It will also look at the uses of funds, including the types and amounts of direct and indirect unrelated business income expenses, officer compensation, fund-raising expenses, program service activities, and the effect each has on charitable spending. Much of the study will be quantitative, Downing said.

“To the extent the study is also evaluative, it looks at whether spending advances the ends anticipated by the