

Larry's Tax Law

Tackling Tax Reform – Part II: The Legislative Process

By Larry Brant on 4.26.17 | Posted in Legislation, Tax Planning, Tax Reform

On April 11, 2017, we discussed [what constitutes Tax Reform](#). In this blog post, we will explore the process by which Tax Reform will likely be created. After reading this post, if it seems to you that the legislative process for making tax laws is an awful lot like “making sausage,” you are perceptively correct.

Sausage Making

The legislative process starts with the selection of special ingredients by lawmakers, who generally keep a keen eye on the intended result. The ingredients are mixed together carefully during the legislative process. Spices and other ingredients are added from various sources (e.g., input from legislative staff, the Treasury and industry). The product that results from the process is not always what was exactly intended at the start. Consequently, it may be tweaked somewhat before it is finally packaged and presented to the public.

Political Trivia

The political landscape in Washington is strongly “red” these days. Our President is a Republican. The House of Representatives is currently comprised of 237 Republicans and 193 Democrats. There are five vacancies in the House today. The Senate is currently comprised of 53 Republicans, 46 Democrats and two Independents (both of whom caucus with the Democrats).

Before we get too far along in our discussion about the legislative process, I want to point out an interesting bit of political trivia.

The Republican Party was not always denoted with the color “red” by the media. In 1976, NBC debuted its first election map on television. It used “red” for the states that Democratic presidential candidate Jimmy Carter won and “blue” for the states that Republican presidential candidate Gerald Ford won. NBC took this color scheme from the United Kingdom where “red” is used to denote the more liberal party.

In 2000, however, the *New York Times* and *USA Today*, published their first full-color political maps. They both used “red” to denote Republicans since the word “Republican” starts with the letter “R.” This color system stuck with the media and it continues to be uniformly used today.

Legislative Process

U.S. House of Representatives

Article I, Section 7, of the U.S. Constitution requires that all legislation raising revenue originate in the U.S. House of Representatives. That said, most recommendations for new tax legislation come from the White House. The President likely obtains the input of Treasury and the IRS. Then, he sends his tax law recommendations to the House of Representatives.

Within the House, the Ways and Means Committee sits. This committee is likely the most powerful congressional committee. The Ways and Means Committee is generally comprised of the most senior members of Congress.

All tax legislation within the House is referred to this committee for consideration. The committee schedules hearings wherein it assesses testimony from administration officials such as the Secretary of Treasury and the Director of the Office of Management and Budget, and from representatives of industry. During this process, private interest groups and industries lobby the committee members.

At the conclusion of the hearings, the committee meets in executive session. At that point, with the possible assistance of Treasury and the Joint Committee on Taxation, the members “mark-up” the proposal with changes and points of clarification.

If the committee approves the proposed bill (by majority vote) as marked-up, the bill is sent to the full House of Representatives for a vote. It takes a majority vote of the House to pass the bill.

With 430 Representatives in the House (since we currently have five vacancies), it takes 216 votes to pass tax legislation. Because the Republicans have 237 members, it appears that a majority party vote on Tax Reform should be easily attainable. Given the reaction to various proposals to repeal and replace the Affordable Care Act by Republican members of the House, we cannot take it for granted that a majority vote is easily attainable these days.

U.S. Senate

On the other side of the stage, we have the United States Senate. Once a tax bill passes the House, it is referred to the Senate.

Within the Senate, all tax legislation is referred to the Senate Finance Committee for consideration. Like the House Ways and Means Committee, the Senate Finance Committee is very powerful. It conducts hearings and takes testimony to carefully consider, understand and recommend tax legislation.

At the conclusion of the Senate Finance Committee hearings, it meets in executive session to “mark-up” (make changes and corrections) the bill. If the committee approves the proposed bill (by majority vote) as marked-up, the bill is sent to the full Senate for a vote. It normally takes a majority vote of the Senate to pass the bill.

The Senate rules, however, allow a parliamentary procedure known as a “filibuster.” In essence, a “filibuster” allows infinite debate to occur on the Senate floor over a bill. Ultimately, it prevents a bill from ever being put to a vote of the members. A “filibuster” is only allowed in the Senate. The House rules do not allow a “filibuster.”

To stop a “filibuster,” the vote of three-fifths or 60 percent of the Senate is required. With 100 Senators in the Senate, currently comprised of 52 Republicans, 46 Democrats and two Independents (both of whom caucus with the Democrats), President Trump has to be concerned that the Democrats would engage in a filibuster in the Senate to prevent his Tax Reform proposal from ever becoming law. President Trump is keenly aware that it may be impossible to get a 60 percent favorable vote to overcome a filibuster.

The Congressional Budget Act of 1974 created a concept called “reconciliation.” If the reconciliation process is used to pass legislation in the Senate, a “filibuster” is **not** allowed.

It is important to note that it only takes a simple majority vote to pass reconciliation legislation in the Senate (that means 51 votes). Reconciliation is a type of legislation that changes the budgeted spending, revenue and/or the debt limit. Tax legislation meets these criteria. Many commentators speculate that President Trump will ask the Senate Republican leader (Senator Orin Hatch) to use the reconciliation process in the passage of Tax Reform. It still requires a majority to pass a bill. That may not be as simple as it sounds given the disharmony in Washington these days.

Reconciliation has two major limitations:

1. In general, the Senate can only have one reconciliation bill during the year that changes each the budgeted spending, revenue and the debt limit; and
2. Reconciliation legislation potentially expires after 10 years. It is not always permanent legislation.

Conference Committee

Once a tax bill passes the Senate, if it is not identical to the bill passed in the House, it goes to a Conference Committee made up of members from the House Ways and Means Committee and the Senate Finance Committee. The members of the Conference Committee try to negotiate a compromise bill. If they reach a compromise, the bill is sent back to the Senate and House for passage. If the identical bill is passed by both the House and the Senate, it goes to the President for signature.

President

If the President signs the bill, it becomes law. If, however, the President vetoes the bill, it goes back to the Senate and the House. Unless each the House and the Senate elect to override the President, which takes a two-thirds vote, the bill (as presented) is dead.

That is how tax legislation is created.

Stay tuned for more on Tax Reform!

Tags: Conference Committee, Congressional Budget Act of 1974, Democrats, filibuster, political trivia, President Trump, Reconciliation, Republicans, Senate Finance Committee, Trump Administration, U.S. House of Representatives, U.S. Senate, Ways and Means Committee