How Tax Reform Proposals Become Law

There has been much discussion and debate about the new tax reform that will be proposed by the White House. Whatever changes the proposal will bring, it is necessary to understand how exactly the process works and the hurdles the tax reform proposal will have to go through to become law.

There are two ways in which the tax reform proposal can become enacted. The first is the traditional legislative process. Under the Origination Clause (U.S. Const. art. I, § 7, cl. 1), all bills for raising revenue must start in the House of Representatives (hereafter "House"). The initial stage begins when the bill is introduced in the House. Once introduced, the bill is referred to the House Ways and Means Committee. The Committee holds public hearings and hears testimony from witnesses representing various viewpoints on the proposal. When members of this committee reach agreement about the legislation, they write a proposed tax law along with a Committee report, which describes the purpose of the law and the reasons for its recommended approval. Once the bill is fully debated and amendments have been decided upon, the House will vote on final passage. The final passage consists of Yea/Nay votes or recorded votes. The bill is passed if it has a majority (218 of 435) and then will move to the Senate.

In the Senate, the tax legislation would be assigned to the Senate Finance Committee where it would mostly likely be revised and rewritten. Similar to the House Ways and Means Committee, the Senate Finance Committee will debate, vote, and then present the committee's version to the full Senate. Unlike in the House, there is a major hurdle that the tax reform proposal would need to take in the Senate. As a general rule, any Senator can indefinitely delay a vote on a bill by using what is known as a "filibuster." In essence, a filibuster is when a Senator or group of Senators exploits Senate procedural rules in order to delay or block proposed legislation from coming to a vote. In order to overcome a filibuster, the cloture motion must be accepted to end the debate and vote to pass the matter. Only 16 Senators are needed to sign a cloture motion. The motion is voted for on the next day of the Session and requires three-fifths of the Senators sworn, or 60, if there are no vacancies. Once the bill makes it to the floor for a vote, a simple majority would be needed (51 of 100) to pass the bill.

If the Senate changes the language of the bill, it must return it to the House for concurrence or additional changes. The House and Senate would form a joint committee of House and Senate members who would try to arrive at a compromise version. This compromise version is sent to both the House and the Senate for approval. The proposal must pass both the House and Senate in order for it to go to the President, who has ten days to sign the bill into law or veto it. If the President does nothing after ten days, the bill is considered vetoed. If the President vetoes the bill, Congress may try to override the veto with a two-thirds vote from each house. If the vote succeeds in both the House and the Senate, it becomes law without the President's signature.

The second way in which the tax reform proposal can become law is an optional procedure called reconciliation. Enacted under the Congressional Budget Act of 1974 (2 U.S.C. 644 Section 313), reconciliation allows Congress to implement budget resolution policies affecting mainly permanent spending and revenue programs. The primary use of the process has usually been deficit reduction, but in recent years, the process has involved revenue reduction generally and spending increases in selected areas in order for revenue and mandatory spending levels to be brought into line with budget resolution policies.

Reconciliation is a two-step process. During the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by the amounts specified in the budget resolution. If more than one committee in each House is given instructions, each instructed committee submits reconciliation legislation to its respective Budget Committee, which incorporates all submissions, without any substantive revision into a single, omnibus budget reconciliation measure. Second, the budget reconciliation measure is considered in the House and Senate under expedited procedures (limited debate time and amendments must be germane). The process is finalized when the measure is enacted, thus putting the policies of the budget resolution into effect. Due to debate time being statutorily limited, the reconciliation process does not need the three-fifths vote required for a cloture motion to end debate. Thus, under reconciliation, the tax reform proposal would need only the 51 votes in the Senate.

Reconciliation legislation has had a history of containing provisions that were extraneous to the purpose of implementing budget resolution policies. A Senator opposed to the inclusion of extraneous matter in reconciliation legislation has two options: either make a motion to recommit the measure with instructions that would eliminate the extraneous provisions; or, under the Byrd rule (2 U.S.C. 644 Section 313), raise a point of order against the bill or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order, requires the affirmative vote of three-fifths of the Senate (60 Senators, if no seats are vacant). Once material has been struck from reconciliation legislation under the Byrd rule, it may not be offered again as an amendment.

The House Ways and Means Committee held its first hearing on President Trump’s proposed tax reform on May 19. The committee has been meeting regularly on the different elements of the GOP tax overhaul blueprint released in June 2016. The Chairman, Texas Representative Kevin Brady, stated that he will wait to mark-up the blueprint until after the White House puts out a more detailed tax plan in June.

Whatever process the tax reform proposal takes, it could take between several months to an entire year before reaching the President's desk. Schneider Downs tax professionals will continue to monitor the tax proposal and provide updates on the Schneider Downs Tax Reform page of Schneider Downs’ website.