

Nonprofits and the Tax Bills: Third-Quarter Action

12.05.17 | Linda J. Rosenthal, JD



Late last month, in [Nonprofits and the Tax Bills: Half-Time Update](#), we reported on the action in the political football game called “tax reform.” By November 21st, the full House of Representatives had passed its version of the “[Tax Cuts and Jobs Act](#),” (H.R.1). In the Senate, moving at “[lightning speed](#),” GOP legislators only reached the point of a party-line vote of the Senate Finance Committee advancing its version of the bill for consideration by all of the Senators after the Thanksgiving recess.

At that point, there was considerable daylight between the House bill and the Senate Finance Committee bill. The National Council of Nonprofits has posted – and updated – a helpful [House-Senate Comparison Chart](#).

Senate Approves Tax Legislation in Squeaker Vote

When Congress returned after the holiday recess, there was no time wasted in moving the action to the full Senate for consideration and swift passage of a Senate Version of the legislation. With an unprecedented rush that included amendments written directly by lobbyists with margin annotations in Sharpies ink, and just a few hours for lawmakers to review the “final” version, a vote was taken late on Friday night, December 1st. The measure passed 51-49.

Over the first weekend of December, lawmakers and citizens pondered the future of this massive proposed overhaul of the federal tax code including – particularly – the many stark differences between the respective bills passed by the full House and the full Senate.

Third-Quarter Tax Action

The clock is ticking. The buzzer is (artificially) set to go off before the Christmas 2017 Congressional recess.

The current action has moved to the “conference” stage, where the House and Senate leadership must choose conferees to develop a plan to write a “conference bill” that can pass another vote in each legislative chamber.

Because of the dramatic breadth of the measures – tax-related and otherwise – that have been stuffed into each of the current versions, often inserted to win a single vote of one or another legislator, reconciling the bills will be no easy task.

One possible route that may be chosen is for leadership to decide to put the current Senate bill before the House of Representatives, urging the Congressional representatives to accept the Senate version without a single change. This would be difficult but not impossible.

That would be followed by a Senate vote, essentially confirming its own legislation. In that event, Mitch McConnell would have to finesse keeping almost every one of his previous “aye” votes, despite what is turning out to be massive public opposition and pressure on a few Senators to reconsider.

The alternate route is to proceed to the conference stage to somehow work out reconciling the House and the Senate bills, and drafting new legislation that can hold on to enough House votes and the same squeaker majority in the Senate. Once again, this would be an excruciatingly tough hurdle, and the behind-the-scenes sausage-making would be truly revolting, but it could happen.

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[Update 12/5/17: On Monday evening, December 4th, the House narrowly voted to proceed to the conference (after a brief revolt by Freedom Caucus members ended). GOP and Democratic leadership selected conferees. The Senate is expected to take similar action shortly.]

Nonprofits and a Final Tax Bill

The dilemma facing the nonprofit sector is that there are many huge issues that will directly or indirectly affect the future viability of the sector as a whole as well as individual provisions that will more narrowly have an impact on one particular type of tax-exempt organization or another.

The three “overarching” issues we mentioned in the earlier post remain as footballs to be tossed around the field: that is, the future of the Johnson Amendment, the prospective loss of billions of dollars annually in charitable giving, and the near-certainty of deep cuts to federal (and state and local) spending.

Separately, though, the philanthropy world includes individual citizens whose tax and financial lives may be affected quite dramatically one way or another – depending on which provisions survive the final legislative cut.

Conclusion

Can the nonprofit world have any practical effect on the future of this tax legislation, or the individual parts of it? Sadly, it appears not. Based on how the first half of this game proceeded, there will be

little, if any, debate and a final vote may be taken before the ink is dry on the bill's text. The only possibility may lie in the public opposition that is gaining steam and visibility this week, directed particularly at the few legislators whose votes may make or break final passage.