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Episode - Inside the Senate's new tax bill: Essential takeaways

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Carrie Falkenhayn: From Deloitte Tax, welcome to the Tax News and Views podcast. In this series, we talk to specialists from Deloitte, about the latest business issues. I'm Carrie Falkenhayn, your host, for Tax News and Views and joining me today are my frequent guests on tax policy topics. We have Jon Traub and Anna Taylor from Deloitte's tax policy crew. And we are back at it again to talk about the latest activity on the 'One big, Beautiful Bill' that's currently moving through Congress. The last time we got together to discuss it was in late May, and the House of Representatives had just passed their version of the bill. Now it's a few weeks later, and the Senate yesterday released their version of the tax package. Jon, what do we need to know about the new Senate proposal?

Jonathan Traub: Well, Carrie, the Senate version is thematically similar to the House Bill, with some important differences that I think will be discussed a lot in the days to come. 1st of all, where the House Bill had a cap of $40,000 on the State and local tax deduction. The Senate kept the $10,000 cap of current law. They noted in their explanatory materials that this is a negotiating point. They know they need to come up from there, but it was surprising to me they didn't at least start with some number. Between 10 and 40, they made a number of changes to what the house did on the Inflation reduction act. In some cases, they lengthened the life of various credits, in some cases they shorten them. They appear to have left transferability of credits untouched, which was something. The house took a pretty aggressive scalpel on a provision that's gotten a ton of attention is so-called 899, that provides retaliatory measures for the US. Against countries deemed to discriminate against our taxpayers. The Senate left 899, mostly intact, despite a furious, lobbying effort. Although it did make a couple of changes, the 2 most notable ones are. They delayed the effective date to give companies and countries more time to come into compliance or to change their laws, and they also capped the rate increase, and the House said taxes could go up by 20%. The Senate says rates can go up by 15% unaffected companies and individuals.

There is a huge package of international tax changes that will take some time to decipher, but on 1st glance it appears they made some of the rules, especially around BEAT and FDI, and more taxpayer friendly. They made some changes to guilty that are probably a more of a mixed bag for taxpayers, but they did these by raising the beat rate and lowering the value of the guilty and FDI deductions. So, whether you're better off or worse off will be very facts and circumstances dependent.

They narrowed the language on remittance, excise tax to clarify. It was really just trying to cover cash being sent by a person here to a family member abroad.

They did make the big, 3 permanent. This is 174,163 J and bonus depreciation. It's retroactive to the start of the year for 174 and 163 J, Bonus Depreciation effective back to 1, 2025. And those are all permanent. As expected, the changes for research and development are for domestic research only foreign research still done over 15 years. And interestingly, a twist I did not see coming is that, as they said, for companies who have been capitalizing their R&D costs for the last few years since 174 came into effect that they could choose to accelerate the remaining deductions over a period of 1 or 2 years. So, it's not quite retroactive, but it's kind of close to it. It's something that I did not see coming. And then 2 other quick notes they did make. They did include all of the so-called Big 4 Trump campaign ideas, tips, overtime, senior citizen, deduction, auto interest, loan deductions. But for tips and overtime they made them less generous than what was the house passed package.

They did reduce the tax on university endowments and struck entirely the tax hike on private foundations. And one thing not in there that we still on the lookout for potentially coming in late in the game are tax increases affecting higher income individuals, whether it's a rate increase or what Trump's calls in the past to tax carriage as ordinary income. But those are things we're still looking for. So that's a quick overview of a very big Senate package, with lots of changes from what the house passed last month.

Carrie Falkenhayn: Anna, many of the Senators are just getting into the details and seeing some of the changes with this new package. How is it being received so far?

Anna Taylor: Well, initial reactions have been mixed. There is a lot of support in the Senate to make all of those TCJA provisions set to expire permanent. So, John mentioned that the Senate proposal does make those big 3 business provisions 174, 163 J. And bonus depreciation all permanent. And so, I do think there's really broad support in the Senate for doing that. And they're all excited about doing that. But there are some other pieces that there's not maybe full consensus on. Yet you definitely still have some of the fiscal hawks who are expressing concerns about the net deficit impact of the package. Then, on the other side of that issue, you have some members who are expressing concerns that maybe the spending cuts, particularly with respect to the Medicaid program and so they would like to see some of those reforms potentially pulled back.

And then you have, of course, a very vocal contingent in the house who are not at all happy with that $10,000, cap placeholder on the individual salt deduction. You know the that salt caucus in the house feels like they went through this big negotiation already to land at that $40,000 cap that was included in the house passed package, and they are not at all happy about seeing that negotiated agreement pulled out of the Senate proposal. So, while you know, I do think that the Senators are pretty excited about the TCJA extensions. There's going to have to be more negotiations to come in the days ahead, and I do think that there's still likely a few more tweaks to the policy before we see Senate passage of this package.

Carrie Falkenhayn: So, we should expect those negotiations that happen, and a lot more work to be done. What else should we expect as the process moves forward?

Anna Taylor: Well, we're at the point in the process now where the Senate Parliamentarian, starts to play a really pivotal role, and you're going to see the committee staff, both the majority and the minority staff going in to vet the bill with the Senate Parliamentarian to ensure that all the provisions are compliant with the reconciliation rules to ensure they can be included in the package. So, this means that you're gonna have to ensure that every provision has a revenue effect, and you're gonna have to ensure that revenue effect is not merely incidental to other policy objectives that they're trying to achieve in the bill. And so, because if either it doesn't have a revenue effect or the revenue effect is merely incidental, then that provision cannot be included in the bill, and it will be struck from the bill. So, in the tax space, traditionally most tax provisions, of course, have a have a revenue effect. So, they kind of meet that hurdle. And then the question of is the revenue incidental? Usually, a tax provision can be clearly determined to meet the merely incidental test because it is a revenue provision. So, it's meant to raise revenue in and on its face. But there are a few where I do think you'll see the committee staff litigate before the Parliamentarian over the next several days to see if maybe they need to come out. I think that section 899, the new retaliatory tax that John mentioned I do think that there will be a merely incidental litigation occur on that one. You've seen over the last couple years. You've seen both the sponsors of this bill and the Administration itself have talked about how this new 899 could be a negotiating tool so that they can negotiate with other countries to try to get taxes in other countries off the books.

So, if it's meant to be a negotiating tool in these global negotiations, maybe the revenue that is raised from it is merely incidental to that other objective of it being a negotiating tool. So, I think you'll see that litigation happen before the Parliamentarian.

There are other questions that I think that will be put before her as well. You know there's the repeal of the direct file program here is that, does that have a real revenue effect?

There's the question of what baseline budget baseline they're using to score the package, traditionally, a current law baseline is used which basically scores every provision based on, you know, current law. And here they're planning to use in the Senate as they move this bill forward. They're using a current policy baseline which says anything that's in effect now. So, all of these TCJA provisions set to expire at the end of the year, if it's in effect. Now we're going to presume those provisions were going to be extended, and therefore we don't have to account for the cost of that extension.

So, the difference there really is, if you're using a current law baseline, those TCJA expirations would score, I think the latest score we saw from CBO was somewhere in the neighborhood of 3.8 trillion dollars. But if you're using a current policy baseline, they score $0. So, one way or another, the Parliamentarian is going to have to participate in a litigation on that baseline question whether the budget chairman himself claims the authority to set the baseline. Then there are follow on questions about you know, if you do set these expirations at a zero-revenue effect, then you know, when you just tweak their rates by a little bit. Are you doing that just to get around that $0 revenue effect? And is that a violation of the reconciliation rules? So, she's going to play a role in that baseline question, one way or another in the coming days, I think. And then, of course, there's going to be, you know, a litigation to determine if a provision doesn't have a revenue impact, even very minor provisions like a title or the Table of Content. If those provisions don't have a revenue effect, they can be struck from the bill. And so, I do think you'll see the minority party going through and looking at all of those types of provisions. They do that, some people say, Oh, that's pretty petty. Well, maybe it is, but I think it's also, they do that to protect President. Because if you don't, if you don't burn something out of the package when you're going through the process, it sets a precedent for the next Reconciliation Bill, and makes it harder to get it struck from the bill in the next. Go around. So that's why they always do go through with a fine-tooth comb and find all of these provisions without a revenue impact to bird them out.

And then, lastly, they're going to be looking through each provision to figure out? Is it overly prescriptive? Is it something that could affect only a very small number of taxpayers? And if it is then potentially those could violate the reconciliation rules and need to come out too. So, all of those things are going to be litigated with the Parliamentarian behind closed doors over the next several days, and once they've completed that step in the process, the Senate Republicans can cure any problems with the bill that the Parliamentarian finds, and then it can come to the floor for full consideration on the Senate floor.

Carrie Falkenhayn: Sounds to me like there's a lot of work to be done, is it? You know there's been a lot of talk from the President and Congressional leaders to have this bill done by July 4th for a signing ceremony. Jon, what do you think based on where we are today? Is that deadline doable?

Jonathan Traub: Well, it's possible, but it's very difficult to be clear to meet that deadline. The various Senate members who have expressed some concerns about what they've seen so far would need to get on the same song sheet and be able to vote on the bill next week. We, as Anna said, we expect this week to be devoted to the Byrdbath process while that's going on. We have parallel negotiations going on between the Senate and the House on SALT and other issues, including Medicaid but presumably for this to work, the Senate would begin debate on it next week. They would pass the bill by the end of the week, and the last amendment offered during consideration will be what is colloquially known as a wraparound amendment. It would be an amendment offered, we would presume by Senate, Leader Thune. It would incorporate whatever changes are necessary to accommodate and reflect negotiations that have been made with Senators and with House members to produce a final product out of the Senate that can also pass the House pretty quickly. That would be the normal course of order. How things would go, and by a so-called wraparound amendment, then it passes. Then, sometime, Thursday or Friday of next week or the so that'd be June 26th or 27th and then the question is, would Speaker Johnson call the House into session the week of the 30th which is currently scheduled to be a recess week.

And have the House vote on the bill before the before July 4th. It is certainly possible, but that is not definite. Members are pretty protective of their recess weeks, and of course, to even be in that position that requires the Senate to do everything right between now and then to get the bill off Senate Floor by the 26th or 27th of June. And that's not an insignificant task.

Carrie Falkenhayn: Sounds like there's gonna be a real flurry of activity to try to get this over the finish line in the next couple of weeks. And what are you in particular, going to be watching as we enter the home stretch of this process?

Anna Taylor: Well, there's really kind of 3 buckets that I think are going to be outcome, determinative one. You've got to find a deal on that individual SALT deduction cap. And you know the Senate leader and the Finance Committee chairman. You know they they've already indicated. They know they're going to have to that. The $10,000 is really kind of a placeholder, and they're going to have to have a negotiation here with the house SALT caucus. But you know. How quickly can that happen, and can they all get to a good place? And you know this issue is a compromise deal that makes all sides happy has been very difficult to find for a number of years now. So, that's going to take a lot of work in the coming days, and then that tension between the members who want to see more dine on the deficit reduction side. You know the fiscal hawks and those members who have reservations about some of the spending cuts in the bill, particularly with respect to the Medicaid program. There's a real tension there, and if you solve for one, you are arguably creating a bigger problem for the other. So, it's a difficult needle to thread. And so, we're going to have to see how leadership and the President really handle making both of those crowds happy. And then, lastly, the President himself, he has often in these kinds of negotiations. He'll have last minute demands things that he wants to add to the package. You know. He's got a number of priorities that are already in the package, but he does have others that aren't in the package yet that he has been advocating for. So, I'll be interested to see if he's satisfied with this Senate package, and whether or not he pushes to make additional changes in the next couple of days.

Carrie Falkenhayn: So, Jon, do you think we get this done? Does it all get done as it is today?

Jonathan Traub: I will say this, Carrie it seems almost impossible to me, given the number of issues that Anna in particular has identified here, that seem in some ways insurmountable. But throughout his career as President, both in this 1st term and especially in the second term we've seen Donald Trump pull bigger rabbits out of smaller hats time after time after time, to extract the votes he needs on Capitol Hill. So, well, I have a hard time, seeing how it gets done. I also have a hard time seeing this being the one-time Trump comes up short and doesn't get what he wants out of the US Congress.

Carrie Falkenhayn: All right. Well, thank you both so much with that. I'm sure there's going to be a number of new developments. As this bill continues to make its way through Congress that we're going to get back together and talk about as warranted in the days and weeks ahead. Thank you, audience, for listening in as always. If you'd like more information from Jon and Anna and Deloitte's Tax Policy group. I'd encourage you to go to deloitte.com search on tax news and views. And you can sign up for the email weekly email plus special edition version of our tax policy updates. Of course, I hope you join us the next time we're together, and I hope everyone continues to be well. Take care, everyone!

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