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**Senate Floor Vote on Tax Reform Slips as “Tweaks” Needed, Negotiations Continue**

Senate Majority Leader Mitch McConnell late November 30, announced he was putting off the Senate’s vote on its tax reform package in order to “tweak” language and ensure all GOP Senators are on board with the package. The vote is now expected late on December 1. Former House Speaker Newt Gingrich (R, GA) told one reporter he sees the chances of passage at better than 90%.

Insiders agree McConnell has adopted a “win-at-any-cost” strategy, meaning language changes and deal cutting to remove obstacles, particularly those posed by GOP member, are removed quickly. The goal is to get a bill – “though far from perfect,” said one senior Senator – approved by the Senate and on its way to conference with the House-passed version of federal tax cuts and some reforms. All agree the devil is in the details of whatever conference report emerges this month from House-Senate efforts to marry the two versions of tax reform. One sure thing, said a veteran Hill staffer, the end product will bear little resemblance to either chamber’s current bill.

McConnell told reporters after President Trump met with GOP Senators this week, “We know we won’t be able to go forward until we get 50 people satisfied, and that’s what we’re working on.” The Republicans can only afford to lose two of their own and still reach 50 votes, at which point Vice President Mike Pence, as president of the Senate, would cast the tie-breaking vote.

It's recognized agriculture’s biggest benefits of tax reform come with expanded immediate expensing and a doubling of the estate tax exemption. While most of agriculture’s criticism of the Senate bill has been mitigated at this point, with only the Sec. 199 manufacturing deduction repeal issue outstanding. It’s this tax deduction, cherished by agriculture cooperatives because they pass it along to member-owners or use it, at times, to pay for internal improvements, that may disappear, and the National Council of Farmer Cooperatives (NCFC) is aggressively looking for a compromise.

A major concern to agriculture is how the Senate bill treats so-called “pass-through” businesses – partnerships, sole proprietorships, limited liability corporations (LLCs) and S-corporations – which as of early this week had Sens. Ron Johnson (R, WI) and Steve Daines (R, MT) threatening to oppose the bill. However, an 11th-hour fix moved both Johnson and Daines to the “aye” column.

The House bill cuts the rate on pass-throughs to 25% on the first 30% of income, with the remainder taxed at regular personal income tax rates. The Senate bill would tax these entities at ordinary rates, but allow up to a 17.4% deduction for qualified income. An increase in the Senate deduction is likely to make Daines and Johnson happier, observers said, but the question becomes how to pay for the lost federal revenue.

A report from the Joint Committee on Taxation (JCT) this week saying the bill will add $1 trillion to the deficit even with economic growth, and that that growth won’t be sufficient to cover the costs of the various tax cuts, had the GOP on defensive. The JCT report also complicated a move late November 30, when the Senate Parliamentarian said language from Sen. Bob Corker (R, TN) to create a “trigger” in the bill to automatically raise tax rates if income projections failed to materialize violates chamber budget rules, important given the bill is moving under the budget reconciliation process. Instead, it’s likely some form of automatic tax increase set for 2024 or later will make it into the bill. The amount of revenue that would trigger the automatic increase has not been determined, Senators said.

Negotiations are expected to clear a path to victory for the legislation, particularly since Sen. John McCain (R, AZ) has endorsed the package Sen. Susan Collins (R, ME) has also gotten out of the way of the bill now that McConnell has promised her votes on two bills to protect health care, and her action prompted critic Sen. Lisa Murkowski (R, AK) to say she’ll vote for the bill as well.

**Congress Needs to Suspend “PAYGO” Rules or Risk Spending Cuts Post-Tax Reform**

As Congress appears poised to move to the half-way point in the Republican’s push to reform the federal tax code and slash both personal and corporate taxes, warnings abound that part of the ultimate tax reform price must be congressional action to suspend so-called “pay-as-you-go” (PAYGO) rules or risk massive spending cuts across the federal government.

PAYGO requires across-the-board spending cuts – except for “exempt” programs, including food stamps – to offset the increased cost or lost revenue that adds to the deficit. The tax reform move carries a price tag of $1.5 trillion, and without congressional intervention, every non-exempt program could go under the budget knife.

The National Farmers Union (NFU), which strongly opposes the tax reform effort, warned earlier this week, “In the case of the tax bill, current law would require 100% sequestration (budget adjustment) of all commodity program payments and other farm bill programs.” The Commodity Credit Corporation (CCC) is the second largest non-exempt program in the federal government after Medicare, and to not suspend PAYGO would leave all CCC-funded programs “in the lurch.”

Between projections of another $1 trillion added to the deficit and PAYGO challenge, Democrats are slamming House and Senate GOP tax reform actions for likely precipitating cuts to domestic spending, including entitlement programs like Medicaid and Social Security. However, Republicans are quick to counter that no such spending disaster is coming, with Sen. Chuck Grassley (R, IA) saying, “A tax bill is going to be considered as a tax bill, nothing to do with spending in any other program.”

However, Senate Majority Leader Mitch McConnell (R, KY) has promised Sen. Susan Collins (R, ME) that the Senate will waive PAYGO. “We have 16 times waived the PAYGO requirements to prevent (budget cuts) from happening, and I expect that it will be done on either the continuing resolution (CR)…or the omnibus spending bill,” Collins said.

**NAFTA Outlook Depends on to Who’s Talking; MI, ND, WI Take Big Hit if NAFTA Dies, Says C of C**

After the U.S., Mexico and Canada concluded their fifth round of formal negotiations to modernize NAFTA – and the Mexican team hit Washington, DC, for an “intersessional” series of meetings – the future of the reinvented agreement was either “in doubt,” “moving along nicely,” or it’s “time to get serious,“ depending on which negotiator was delivering the prognosis.

Meanwhile, as its latest counter to administration negative statements about the future of NAFTA, the U.S. Chamber of Commerce this week said Wisconsin, North Dakota and Michigan would take the biggest overall economic hits if NAFTA dies. The full report and a longer list of states can be found by going to <https://www.uschamber.com/above-the-fold/which-states-would-be-hit-hardest-withdrawing-nafta>.

For Michigan, the automobile industry – cars, truck, parts – would be hit the hardest, with Wisconsin’s dairy industry taking the fall over loss of tariff-free sales to Mexico. The Chamber also said the new European Union (EU)-Mexico free trade deal would allow duty-free access for EU dairy, while U.S. producers would face a 45% tariff. For North Dakota, it’s the loss of tariff-free wheat sales to Mexico, with post-NAFTA tariffs hitting as high as 67%, the Chamber said.

Meanwhile, chief U.S. negotiator Robert Lighthizer remains “concerned” that Canada and Mexico have shown little evidence of willingness to compromise on U.S. proposals, including a sunset provision, changes to anti-dumping language, automobile/parts access and access to U.S. government contracts.

Canada says, “We’re trying to be flexible and find solutions, but we can’t do it within an impractical framework that would have several damage to the Canadian economy,” referring to U.S. demands for complete access to Canadian dairy, poultry and egg markets, now protected behind government tariff/supply/pricing programs.

Mexican Economy Secretary Ildefonso Guajardo said there’s room to compromise on some of the U.S. proposals. “At some point in the negotiation, we have to start clearing up the field of many obstacles that have been placed during the process and to show clearly how possible balance can be defined. We are just beginning the process of looking at what’s next,” Guajardo told reporters this week.

House Speaker Paul Ryan (R, WI) met with Guajardo, saying as much to President Trump as anyone else: “Right now, Congress is working to enhance trade relations with our southernmost neighbor to advance our shared priorities. I expect this administration will continue to work to modernize NAFTA and bolster our robust relationship with such an important ally,” Ryan said.

**Third Disaster Assistance Bill Taking Shape**

The third disaster assistance bill designed to help victims of recent hurricanes, wildfires and other natural disasters will likely spend more than the $44 billion requested by the White House, said Rep. Rod Frelinghuysen (R, NJ), chair of the House Appropriations Committee. So far, Congress has appropriated $52 billion in disaster relief.

Both sides of Capitol Hill were unimpressed by the White House request given Texas has asked for $61 billion, Florida wants $27 billion, and Puerto Rico alone says it needs a whopping $94 billion to repair damage done and economic losses incurred.

USDA is asking Congress to give it $1 billion for farmer-rancher relief as part of the administration’s $44 billion. The request includes $465 million for Farm Service Agency (FSA) programs, of which $375 million would be spent on the Emergency Conservation Program, $50 million on emergency reforestation and $40 million on Emergency Assistance for Livestock, Honeybees & Farm-Raised Fish. The department is also seeking $500 million for the Watershed Protection Program, and $1 million for the USDA Inspector General to review department disaster response programs.

**Unions Take Dead Aim at Effort to Expand H-2A Visa Program**

The AFL-CIO and the United Farm Workers (UFW) lead a list of 140 organizations which put Congress on notice in September they oppose efforts by Rep. Bob Goodlatte (R, VA) to reinvent and expand the agriculture guest worker visa program, also known as the H-2A program. The Goodlatte legislation would expand the program to year-around visas, rather than seasonal workers, and move the program from the Department of Homeland Security (DHS) to USDA.

The unions want to see comprehensive federal immigration reform. However, in the current debate over reform, unions favor legislation by Sen. Dianne Feinstein (D, CA) and Rep. Luis Gutiérrez (D, IL) to create a so-called “blue card” program. Under such a program, undocumented workers would be offered a new “blue card” to work legally in the U.S. if they can demonstrate they’ve worked in agriculture for at least 100 days in each of the previous two years. If a worker successfully maintained blue card status for three to five years, depending on the number of hours worked, they’d be eligible for a green card or legal permanent residency.

The blue card initiative in the House was dealt a blow this week when Gutierrez announced he will not seek reelection. The unions called Gutierrez “irreplaceable” in the immigration reform battle. “It will take a team of people to replace what he has meant as a leader,” said the UFW.

**EPA Notes**

**EPA Pleases Ethanol with Final 2018-2019 RFS Mandate, Disappoints Biodiesel** – EPA November 30, met its deadline for releasing its final mandate on Renewable Fuel Standard (RFS)/Renewable Volume Obligations (RVO) for 2018, and for “biomass-based diesel” for 2019, and neither figure moved much from the levels proposed last July. Overall, the renewable fuel RFS is pegged at 19.29 billion gallons for 2018, and corn ethanol makes up 15 billion gallons of that total. The total advanced biofuels (biodiesel, renewable diesel and cellulosic ethanol) RFS/RVO is set at 4.29 billion gallons. Biodiesel – for both 2018 and 2019 – makes up 2.1 billion gallons of that total, unchanged from the July proposal. Cellulosic biofuel is set at 288 million gallons for 2018, up 50 million gallons. Agency Administrator Scott Pruitt said “Maintaining the RFS at current levels ensures stability in the marketplace, and follows through with my commitment to meet the statutory deadlines and lead the agency by upholding the rule of law.” The numbers were “a marked improvement,” said ethanol makers, but biodiesel refiners were not pleased, having expected an increase. “EPA Administrator Pruitt has disappointed the biodiesel industry for failing to respond to our repeated calls for growth,” said the National Biodiesel Board (NBB), saying the static numbers will “harm Americans across several sectors – be they farmers, grease collectors, crushers, biodiesel producers or truckers – as well as consumers.” Said the Renewable Fuels Assn. (RFA) about the biodiesel numbers, “The biofuels industry will rise or fall together…we are disappointed the final rule is not more aggressive with regard to other advanced biofuels such as biodiesel.”

**Pruitt Gives Official “No” on RFS Point of Obligation Change** – EPA this week – on the same day it released the final transport fuel blending mandate under the Renewable Fuel Standard (RFS) – made good on Administrator Scott Pruitt’s October commitment to a band of Senators and has formally rejected a petroleum industry request to shift the point of obligation under the Renewable Fuel Standard (RFS) for meeting blending mandates from the refiner/importers to the blenders of transportation fuel. The change was opposed by renewable fuel makers broadly. Sen. Charles Grassley (R, IA) said the decision was “the right policy conclusion.” Billionaire investor and former advisor to President Trump Carl Icahn reportedly favored the point of obligation shift, but EPA said, “The agency has determined that changing the regulatory point of obligation for compliance with the RFS program is not appropriate.” The agency said changes would not “result in net overall benefits to the program.”

**WOTUS Effective Date to be Delayed Two Years** – EPA this week proposed delaying for two years after finalization and *Federal Register* publication the formal effective date of the 2015 “waters of the U.S. (WOTUS)” final rule on expanding the agency and the U.S. Army Corps of Engineers jurisdiction over domestic waters under the Clean Water Act (CWA). The move is designed to “ensure the scope of CWA jurisdiction will be administered as it is now” while the administration continues its plan to withdraw the existing final rule and rewrite it with greater stakeholder input. The final rule is on hold nationally thanks to a federal court order, and the U.S. Supreme Court has not decided on a challenge to whether federal district courts or appeals courts have appropriate jurisdiction over challenges to the rule. Following October oral arguments, the high court’s decision is expected any time, EPA said. At the same time, both House and Senate Republicans have inserted language into their respective FY2018 EPA spending bills to permit the administration to roll back the rule “without regard to any provision of statute or regulation that establishes a requirement for such withdrawal,” effectively blocking challenges to the agency’s action under the Administrative Procedures Act (APA) which requires agency explanation and public participation in rulemaking actions.

**ND Department of Ag Restricts Dicambra Use** – The North Dakota Department of Agriculture will restrict in 2018 the use of dicambra, banning all applications after June 30 or during high temperatures. The new rules, designed to protect other crops from drift damage, say farmers who want to apply the herbicide to soybeans need to do so before July or the crop’s first bloom, according to media reports. The chemical can also only be applied when the temperature is less than 85 degrees F, and when winds are less than 12 miles per hour and all applications must be reported to the state. The state rules are on top of EPA designation of dicambra as a “restricted use” herbicide, meaning only trained applicators can spray crops. The state applauded EPA action, but said a one-size-fits-all rule doesn’t “address some of the unique conditions in our state.” The Arkansas State Plant Board said this month it will ban the use of the herbicide from April 16-October 31, but the state’s legislative counsel if reviewing the action, and Monsanto has petitioned an Arkansas state judge to block the state action.

**DC Appeals Court Extends Emissions Reporting Stay** – At the request of EPA, the U.S. Court of Appeals for the District of Columbia late last week granted an extension of a stay to the recent decision that confined animal feeding operations (CAFOs) must report manure-generated air emissions containing ammonia. The reporting requirement is put off until January 18, 2018, and farms with “continuous releases” don’t have to submit initial reports until the courts decide on how to implement an April 11 court decision requiring the reporting. EPA’s request for an extension came after it issued a guidance in which it concurred that technical information on how producers should calculate emissions is lacking.

**France to Buck EU Five-Year Glyphosate License Renewal** – The see-saw regulatory review of glyphosate, the most widely used herbicide in the world, ended this week with the European Union (EU) food safety committee approving a five-year license renewal. Without the action, glyphosate’s license for use would have expired December 15. The renewal came when Germany, which has abstained from voting on the glyphosate licensing issue, decided at the last minute to support the action. France, however, immediately announced it will begin action to ban the chemical. “France will go it alone and ban the herbicide glyphosate in three years,” announced President Emmanuel Macron. Communicated in a tweet, Macron said his action will commence “as soon as alternatives are found, and at the latest within three years.” The Italian government said it can get rid of glyphosate by 2020. On the renewal, the European Commission (EC) originally proposed a 10-year relicensing. The decision helps bolster a a court case in San Francisco that finds several farmers suing Monsanto alleging glyphosate gave them cancer. That case has not gone to trial as the judge continues to review scientific data to show the chemical causes cancer. The International Agency for Research on Cancer (IARC) said glyphosate is a “probable carcinogen,” a finding at odds with determinations by the European Food Safety Authority (EFSA) and the European Chemicals Agency (ECA).