

FEDERAL POLICY UPDATE



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» **TAX REFORM TALKS BEGIN, BUDGET STILL IN LIMBO, ADMINISTRATION'S REGULATORY AGENDA ADVANCES**

Congress invariably takes advantage of the tax filing deadline to either focus on the IRS or to message about the need to overhaul the tax code. So it was no surprise that the House passed four bills in April aimed at making the IRS more accountable. In addition, the House Committee on Ways and Means approved bills to prevent identity theft and tax refund fraud, and the Senate Finance Committee approved similar legislation.

On the tax reform front, Ways and Means Committee Chairman Kevin Brady (R-TX) created a buzz after announcing plans to release a tax reform "blueprint" in June. In addition, the Senate Finance Committee continued to lay the groundwork for tax reform by holding a hearing that focused on business tax reform. The Finance Committee's ranking Democrat, Ron Wyden (D-OR), used the hearing to unveil a draft of his proposal to rewrite the business depreciation rules which is detailed below.

Less progress has been made on the budget. As a result, it seems increasingly unlikely that Congress will be able to move the annual appropriations bills individually, and once again Congress will have to pass a continuing resolution to fund the federal government for the fiscal year starting on October 1st.

» **HOUSE REPUBLICAN POLICY AGENDA TASK FORCES**

The chairs of the six task forces created by House Speaker Paul Ryan (R-WI) to formulate an election year House Republican policy agenda appear to be on track to complete their work by mid-July before the Republican convention. Two of the task forces will be of particular interest to ASHA's members:

Tax Reform Task Force

House Ways and Means Committee Chairman Kevin Brady (R-TX) recently announced that the tax reform task force, which he chairs, expects to produce a "consensus blueprint" for comprehensive tax reform by late June. Chairman Brady said the proposal will focus on six core principles: (1) a simpler, fairer, and flatter tax code; (2) elimination of loopholes and special interest provisions; (3) more competitive corporate taxes; (4) U.S. international tax system reform; (5) promotion of economic growth; and (6) limits on the use of the tax code to pay for spending increases. Those themes should come as no surprise, but the key will be in the details.

Health Care Reform Task Force

The four co-chairs of the health care reform task force say they are moving closer to releasing an alternative to Obamacare. The task force has been meeting almost weekly since February and although the discussions have taken place behind closed doors, members reportedly have been reviewing a variety of proposals including: (1) the significant expansion of health savings accounts; (2) limits on the exclusion for employer-provided health insurance; (3) the creation of a standard deduction or tax credit for the purchase of health insurance; and (4) the establishment of association health plans.

The health care reform task force's activity has been coordinated with various hearings to supplement the group's work.

» **FEDERAL TAX POLICY**

Senate Finance Committee Ranking Democrat Proposes to Rewrite Business Depreciation Schedules

One potentially critical element of any tax reform proposal is the treatment of depreciation expenses. On April 26th, the Senate Finance Committee's ranking Democrat, Ron Wyden (D-OR), released a discussion draft bill, *The Cost Recovery*

Reform and Simplification Act, which proposes to streamline business depreciation rules. His proposal would replace the more than 100 depreciation schedules with six “pools” based on current accelerated depreciation schedules while also simplifying and expanding the tax-free reinvestment rules. Under the Wyden draft proposal:

- The general real estate depreciation rules would remain unchanged.
- Personal property (including land such as landscaping, fences, sewers, sidewalks, roads, and sometimes parking lots that are currently depreciated over 15 years or 20 years) would be assigned to one of 6 pools based on its current MACRS property class assignments. Remaining basis of existing capital assets would be transferred to the appropriate pool. Thereafter, each pool’s balance would increase by the assets assigned to that pool placed in service in a year and reduced by asset dispositions during the year and any previous depreciation deductions. At year-end, the depreciation deductions would be determined by multiplying each pool’s balance by the pool’s applicable percentage (e.g., 11% for the pool that includes land improvements).
- MACRS lives would not be changed, but Treasury Department authority to update class lives would be reinstated.
- The existing half-year and mid-quarter conventions would be eliminated.
- Real property like-kind exchange rules would not change, but many like-kind exchanges for personal property would generally be irrelevant as long as the acquired replacement property is in the same asset pool and the asset pool balance does not go below zero. However, Senator Wyden has requested comments on whether like-kind exchange rules for personal property are still necessary.
- The legislation also appears to preserve the faster rate of depreciation for leasehold improvements, which was made permanent last year.

ASHA has been working closely with others in the real estate community to educate lawmakers on the importance of retaining fair depreciation rules for real estate, including the retention of like-kind exchange rules. We are pleased that Senator Wyden’s discussion draft is generally responsive to our concerns. This bill is not expected to move in this Congress but could form a piece of tax legislation that is anticipated in 2017.

» HOUSING

Senate Banking Committee Chairman Requests Review of FHFA Decisions

Senate Banking Committee Chairman Richard Shelby (R-AL) recently asked the Congressional Budget Office (CBO) and the Government Accountability Office (GAO) to review a series of recent actions taken by the Federal Housing Finance Agency (FHFA) that appear to encourage Fannie Mae and Freddie Mac to take a more active role in the mortgage marketplace.

In his letter Chairman Shelby asked CBO to study the potential implications of Fannie and Freddie devoting some profits to rebuilding capital reserves on the budget, on risks to taxpayers, and on the mortgage markets.

» EB-5 INVESTOR PROGRAM

Congressional Review of EB-5 Immigration Investor Program Continues

The Senate Judiciary Committee held its second hearing of the year on the EB-5 Immigration Investor Program that is scheduled to expire on September 30, 2016. The April 13th hearing focused on the program’s Targeted Employment Areas (TEAs) (rural areas and areas with high unemployment). Current law authorizes a lower investment threshold for such areas in order to incentivize foreign nationals to invest, but critics (including notably the Chairmen and ranking Democrats of the House and Senate Judiciary Committees) say the provision has been abused and incentives intended for underserved areas are being diverted to urban and affluent neighborhoods. Committee members from both parties suggested that EB-5 reforms to address concerns with respect to national security risks and investor fraud should be enacted even if agreement cannot be reached on TEAs before the September 30th expiration date.

» FEDERAL REGULATIONS

House Actions to Stop Labor Department ERISA Fiduciary and “Persuader” Rules

Under the Congressional Review Act (CRA), Congress can pass a resolution of disapproval that would prevent a federal agency from implementing a regulation, or issuing a substantially similar rule without congressional authorization. Congressional resolutions under the CRA cannot be filibustered in the Senate and thus can be passed with a simple Senate majority. Our expectation is that congressional Republicans will utilize the CRA to draw attention to numerous Obama Administration regulations over the upcoming



months. However, successful CRA challenges are very rare because they require passage by both chambers and the President's signature (or an override of his veto) in order to take effect.

On April 28th, the House approved a CRA resolution of disapproval with respect to the controversial Department of Labor ERISA fiduciary rule on a straight party line vote, and the Senate is expected to vote on that resolution later this month. President Obama has already announced that he will veto the resolution should it reach his desk. A similar CRA challenge is expected on the DOL's March release of the so-called Persuader regulation that would require employers to disclose agreements with the consultants they hire to develop and implement their message in union organizing campaigns. ASHA, as a member of the Coalition for a Democratic Workplace (CDW), supports House Joint Resolution 87, which would use the CRA to block the Persuader rule, and further action is expected in the near future.

» **FLOOD INSURANCE**

House Passes Flood Insurance Reforms

On April 28th, the House passed the Flood Insurance Market Parity and Modernization Act (H.R. 2901) by a vote of 419-0. As we reported last month, the bill will expand flood insurance coverage options by clarifying that flood insurance offered by private insurers outside of the National Flood Insurance Program satisfies the federally mandated flood insurance purchase requirements provided it meets certain criteria. Senator Dean Heller (R-NV), who introduced the Senate companion bill (S. 1679), called on his colleagues to move quickly on the legislation.

» **COPYRIGHT PROTECTION**

Copyright Protection Extends to Movies in Seniors Housing

Movies purchased, rented or streamed are protected by copyright that prohibits their use for anything except private home viewing. When showing a movie for a public performance such as in a senior living community common area or via closed circuit television in a resident's units, a license from the company that manages copyright licensing is required. Failure to comply can expose the community to copyright infringement and potentially significant fines

ASHA is currently in discussions with the Motion Picture Licensing Corporation ("MPLC"), a copyright licensing agency that provides an annual license, called an Umbrella License®, for the public performance of copyrighted motion pictures and other audiovisual programs. By entering into an agreement with MPLC, ASHA member companies can access a discounted licensing agreement. Pricing is established on a per unit basis and the anticipated discount is 10% off their stated prices. Once finalized we will provide more details.

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