

TAX REFORM:

Prospects for Reform Benefiting Indian Tribes and Indian Country

**Mary J. Streit
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OVERVIEW

- **Backdrop for tax reform**
 - **Expiring tax and related provisions: “The Fiscal Cliff”**
 - **Policy considerations favoring longer-term reform**
 - **Political climate**
- **Specifics**
 - **Shorter-term measures**
 - **More fundamental, longer-term reform ideas**
 - **Reform for Indian tribes and Indian country**

EXPIRING TAX AND SPENDING PROVISIONS AND SCHEDULED TAX INCREASES: “THE FISCAL CLIFF”

- **Important “sunset” provisions in prior tax legislation will take effect in 2013**
 - **Tax cuts enacted in 2001 and 2003 and extended in 2009 will expire, restoring Clinton-era tax laws**
 - **Individual ordinary income rates scheduled to go up for all taxpayers**
 - **Highest long-term capital gains rate will go up from 15% to 20%**
 - **Highest dividend rate will go up from 15% to 39.6%**
 - **AMT “patch” will be eliminated**
 - **Employee portion of Social Security tax will return to 6.2% from 4.2%**

EXPIRING TAX AND SPENDING PROVISIONS AND SCHEDULED TAX INCREASES: “THE FISCAL CLIFF” (cont.)

- **Extenders for over 60 temporary tax breaks expired in 2011 or will expire in 2012**
 - **Indian reservation employment tax credit and accelerated depreciation provisions, for example, expired in 2011**

EXPIRING TAX AND SPENDING PROVISIONS AND SCHEDULED TAX INCREASES: “THE FISCAL CLIFF” (cont.)

- **Scheduled tax increases under Patient Protection and Affordable Care Act in 2013**
 - **New 3.8% tax on investment income of individuals earning more than \$200,000 and married couples earning more than \$250,000**
 - **Increase in Medicare tax from 2.9% to 3.8% on wages and salaries in excess of \$200,000 for individuals and \$250,000 for married couples**
 - **New 2.3% excise tax on manufacturers of medical devices**

EXPIRING TAX AND SPENDING PROVISIONS AND SCHEDULED TAX INCREASES: “THE FISCAL CLIFF” (cont.)

- **Automatic spending cuts provided for in the Budget Control Act of 2011 are scheduled to begin in January 2013**
 - **Defense spending will be cut by \$55 billion/year for 10 years, as will non-defense spending**
 - **Republican-controlled House has enacted bill repealing defense cuts and replacing them with cuts in food stamps, Medicaid, and other social programs**
 - **Senate unlikely to consider the House bill**

EXPIRING TAX AND SPENDING PROVISIONS AND SCHEDULED TAX INCREASES: “THE FISCAL CLIFF” (cont.)

- **Expanded unemployment compensation will expire**
- **Delay in the scheduled 27% cut in Medicare reimbursements to physicians will expire**
- **U.S. government debt ceiling of \$16.394 trillion is expected to be reached in early 2013**

HOW WILL CONGRESS DEAL WITH THE FISCAL CLIFF?

- **In short term, especially in light of the continuing economic problems, Congress may continue to “kick the can”**
- **Best guess is that short-term legislation may be enacted in lame duck session after November election, but not before**
- **Legislation likely to have a very short time frame, so new Congress can consider a longer-term solution**
- **Current fiscal situation – too little revenue and too much spending – is unsustainable**

POLICY CONSIDERATIONS FAVORING TAX REFORM

- **Federal fiscal situation unsustainable**
- **Can raise more revenues, while lowering rates at the same time, only if the tax base is broadened**
- **Tax system has not been structurally reformed since 1986**
 - **Concerns about complexity**
 - **Concerns about outdatedness**
 - **Concerns about fairness**
 - **Concerns about widening income inequality**

POLITICAL CLIMATE

- **Divided Congress and Democratic President**
- **2012 elections create uncertainty**
- **Election will result in a more stable political environment, at least temporarily**
- **Reform more likely earlier in the next presidential cycle rather than later**

“PAYGO”

- **New law enacted in 2010**
- **Ordinarily, law requires Congress to fund increases in mandatory spending or decreases in revenue by cuts in spending cuts or increases in revenue, in current year and over 5- and 10-year periods**
- **Law is complicated, with rules for scoring legislation and exceptions for specific programs**

TAX REFORM IN HOUSE OF REPRESENTATIVES

- **Republicans control House**
- **Dave Camp (R-Mich.) is Chairman of House Ways and Means Committee**
- **Sander Levin (D-Mich) is ranking minority member**

TAX REFORM IN HOUSE OF REPRESENTATIVES (cont.)

- **Committee's Republicans have established the following framework for comprehensive reform:**
 - **Maximum corporate and individual rates: 25%**
 - **Collapse six rates on individual side to two rates: 10% and 15%**
 - **Eliminate AMT**
 - **Move to territorial corporate tax system from a world wide system – American companies would be taxed on their income only in countries in which income is earned**
 - **Enact fast-track procedures to compel comprehensive reform**

TAX REFORM IN HOUSE OF REPRESENTATIVES (cont.)

- **Chairman Camp has announced that all people and all groups will have a “seat at the table” in the tax reform process**

TAX REFORM IN SENATE

- **Democrats control Senate**
- **Max Baucus (D-MT) is Chairman of Senate Finance Committee**
- **Orrin Hatch (R-UT) is ranking minority member**

TAX REFORM IN SENATE (cont.)

- **Senator Baucus has outlined a framework for tax reform that is less specific than the Republican Ways and Means Committee members' framework, centered around the following broader policy goals:**
 - **Trim fat from Code by eliminating tax expenditures, unless there is clear evidence they spur growth and create jobs**
 - **Reduce U.S. companies' incentive to move overseas**
 - **Support innovation by putting research and new technologies on an more level playing field with existing technologies**
 - **Promote education and opportunity, particularly for people with fewer opportunities**

TAX REFORM IN SENATE (cont.)

- **Finance Committee has held a series of hearings dedicated to tax reform**
- **There is a full committee hearing taking place today titled “Confronting the Looming Fiscal Crisis”**

POTENTIAL TAX REFORM FOR INDIAN TRIBES AND INDIAN COUNTRY

- **Tax-exempt bonds – Department of Treasury issued a report in December 2011 favoring this reform**
- **Other incentives for reservation economic development**
- **Pension plans**
- **Kiddie tax**

POTENTIAL TAX REFORM FOR INDIAN TRIBES AND INDIAN COUNTRY (cont.)

- **General welfare benefits**
- **Tribal member income derived from tribal trust land**
- **“Codification” of federal tax immunity principles established in Warren Trading and Central Machinery cases**
- **Tribal parity with states for purposes of streamlining of sales and use tax system**

SIGNS OF CONGRESSIONAL RECEPTIVITY TO TRIBAL TAX REFORM

- **Senate Finance Committee held hearing on “Tax Reform: What it Could Mean for Tribes and Territories,” on May 15, 2012**
 - **Statements by Chairman Baucus and Ranking Member Hatch**
 - **Testimony by NCAI President Jefferson Keel, Oglala Sioux Tribe President John Yellow Bird Steele, Seneca Nation President Robert Odawi Porter, IRS Assistant Commissioner Sarah Hall Ingram, and Professor Lindsay G. Robertson**

SIGNS OF CONGRESSIONAL RECEPTIVITY TO TRIBAL TAX REFORM (cont.)

- **Senate Finance Committee hearing (cont.)**
 - **Testimony focused principally on general welfare benefits and tax-exempt bonds**
 - **President Porter proposed legislation establishing demonstration project for up to 50 largely tax-free tribal empowerment zones of up to 50 acres each, with half of the zones reserved for tribes with unemployment rates exceeding 50%**

SIGNS OF CONGRESSIONAL RECEPTIVITY TO TRIBAL TAX REFORM (cont.)

- **Senate Committee on Indian Affairs held oversight hearing entitled “New Tax Burdens on Tribal Self Determination” on June 14, 2012**
 - **Chairman Akaka (D-HI), Ranking Member Barrasso (R-WY), and Senators Johnson (D-SD) and Udall (D-NM) were present and asked questions**

SIGNS OF CONGRESSIONAL RECEPTIVITY TO TRIBAL TAX REFORM (cont.)

- **Senate Committee on Indian Affairs hearing
(cont.)**
 - **Testifying witnesses were Oglala Sioux President John Yellow Bird Steele, Yakama Nation Secretary Athena Sanchey-Yallup, Mohegan Chief Lynn Malerba, NAFOA President Bill Lomax, U.S. Deputy Assistant Treasury Secretary Aaron Klein, and IRS ITG Director Christie Jacobs**
 - **Questions and testimony focused on IRS general welfare doctrine and IRS policy regarding taxation of tribal member distributions from tribal trust funds and other trust resources**

PROSPECTS FOR TRIBAL TAX REFORM

- **Work collectively on strategy to the extent possible**
- **In deciding on strategy, look for policy/thematic overlap with broader reform discussion**
 - **For example, if broader reform goal is fairness or simplification, then provisions that level the playing field with states and that eliminate the kiddie tax on tribal distributions might resonate with more members**
 - **For example, if goal is to promote education, then provisions that exclude tribal education benefits from a tribal member's taxable income and that eliminate the kiddie tax for adults who are in college might resonate**
- **Educate members of Congress and their staffs about tribal concerns**

Current Members of House Committee on Ways and Means, Chairman Dave Camp, R-MI

- Additional Republican members

- Wally Herger, CA
- Sam Johnson, TX
- Kevin Brady, TX
- Paul Ryan, WI
- Devin Nunes, CA
- Pat Tiberi, OH
- Geoff Davis, KY
- Dave G. Reichert, WA
- Charles W. Boustany Jr., LA
- Peter J. Roskam, IL
- Jim Gerlach, PA
- Tom Price, GA
- Vern Buchanan, FL
- Adrian Smith, NE
- Aaron Schock, IL
- Lynn Jenkins, KS
- Erik Paulsen, MN
- Kenny Marchant, TX
- Rick Berg, ND
- Diane Black, TN
- Tom Reed, NY

Current Members of House Committee on Ways and Means, Chairman Dave Camp, R-MI

- **Democratic members**
 - **Sander Levin**, MI *Ranking Member*
 - Charles B. Rangel**, NY*
 - Fortney Pete Stark**, CA
 - Jim McDermott**, WA
 - John Lewis**, GA
 - Richard E. Neal**, MA
 - Xavier Becerra**, CA
 - Lloyd Doggett**, TX
 - Mike Thompson**, CA
 - John B. Larson**, CT
 - Earl Blumenauer**, OR
 - Ron Kind**, WI
 - Bill Pascrell Jr.**, NJ
 - Shelley Berkley**, NV
 - Joseph Crowley**, NY

Current Members of Senate Committee on Finance, Chairman Max Baucus, D-Mont

- **Additional Democratic members**
 - Rockefeller, John D. (WV)
 - Conrad, Kent (ND)
 - Bingaman, Jeff (NM)
 - Kerry, John F. (MA)
 - Wyden, Ron (OR)
 - Schumer, Charles E. (NY)
 - Stabenow, Debbie (MI)
 - Cantwell, Maria (WA)
 - Nelson, Bill (FL)
 - Menendez, Robert (NJ)
 - Carper, Thomas R. (DE)
 - Cardin, Benjamin L. (MD)

Current Members of Senate Committee on Finance, Chairman Max Baucus, D-Mont

- **Republican members**
 - Hatch, Orrin G. (UT), Ranking Member
 - Grassley, Chuck (IA)
 - Snowe, Olympia J. (ME)
 - Kyl, Jon (AZ)
 - Crapo, Mike (ID)
 - Roberts, Pat (KS)
 - Enzi, Michael B. (WY)
 - Cornyn, John (TX)
 - Coburn, Tom (OK)
 - Thune, John (SD)
 - Burr, Richard (NC)

DISCUSSION

CONTACT INFORMATION

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