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Spotlight on Senator Rubio's Tax Reform Plan; Panels Approve HCTC Revival and SAVE UP Unveiled

This week's *Legislate* reviews a tax reform proposal offered by Senators Mike Lee (R-UT) and Marco Rubio (R-FL). This week, Rep. Joseph Crowley (D-NY) unveiled a retirement savings proposal aimed at closing the coverage gap — new SAVE UP accounts. Also, the tax-writing committees in Congress held markups on international trade legislation that includes a proposal to revive the expired healthcare tax credit. The president signed Medicare legislation into law last Thursday.

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Tax Reform

In March, Senators Marco Rubio (R-FL) and Mike Lee (R-UT) unveiled a federal tax reform plan — the Economic Growth and Family Fairness Tax Plan. We spotlight a number of changes to the tax code outlined in the proposal that are likely to garner attention now that Senator Rubio has announced his candidacy for president in 2016.

The reform plan includes the following two proposals that would impact employer-provided benefits:

- **Employer-provided healthcare.** The plan notes that the tax exclusion for employer-provided health coverage is frequently mentioned as one of the largest expenditures in the tax code, and that reforming the exclusion must be made in the context of a broader reform of the healthcare system. While the plan does not detail how the exclusion would be modified, it does note that the employer exclusion creates a distortion by providing healthcare premiums more favorable tax treatment than cash compensation, and it would be "imprudent and disruptive to eliminate this provision without creating alternative means to ensure sustained access to health care."
- **Mass-transit benefits under a qualified transportation fringe.** The plan would not renew any of the "tax extenders" (tax code provisions that have expiration dates) that expired at the end of 2014. While the proposal does not provide a list, parity in the monthly dollar limits for mass transit benefits and

parking under a qualified transportation fringe benefit was among the tax extenders that expired. The 2014 limit for both was $250 (see our *FYI Alert* from January 9, 2015 *FYI Alert* for more information on legislation that retroactively provided parity for 2014). The parity lapsed for 2015, dropping the monthly dollar limit for mass transit benefits to $130, while the parking limit remains at $250.

The plan does not address tax-preferences for retirement saving — such as through tax qualified retirement plans or IRAs.

Along with the employee benefit-related items described above, the reform plan would make a number of significant changes to current tax law including:

- **Taxation of businesses.** The plan would cap the top corporate tax rate at 25% (with no additional taxation of dividends and capital gains on stock at the individual level), set a 25% top rate on income from sole proprietorships and pass-through income (such as from partnerships, LLCs, and S corporations), and allow the immediate, full expensing of capital investments (as opposed to current law, which requires that some expenditures be amortized over multiple tax years).
- **Interest.** Interest on new debt would no longer be a deductible business expense, and most interest income would be nontaxable (although banks and other financial institutions would be exempt from these changes and would continue under current rules).
- **Taxation of individuals.** The current law's seven tax brackets (ranging from 10 to 39.6%) would be collapsed into two — 15% and 35%. The top rate would apply to income in excess of $75,000 for single taxpayers and $150,000 for joint filers, and presumably would apply to wage income — but not income from taxpayer owned businesses, which would be subject to a proposed top rate of 25%. The current law's standard deduction and personal exemptions would be replaced with a new refundable personal credit — $2,000 for individuals and $4,000 for joint filers. Itemized deductions — other than the home mortgage interest and charitable contribution deductions — and the Alternative Minimum Tax would be eliminated.
- **Refundable credit against payroll taxes.** The proposal would create a new $2,500 child tax credit. The credit would offset a taxpayer's income tax and payroll tax liabilities — including the employer's share of payroll taxes. Unlike the existing child tax credit, the new credit would not phase out with rising income.

Retirement

Vice Chair of the Democratic Caucus in the House, Joseph Crowley (D-NY), unveiled a savings initiative on Tuesday. Of interest to employers is a proposal aimed at closing the retirement plan coverage and savings gap — by establishing Secure, Accessible, Efficient Universal Pension accounts, or SAVE UP accounts.

The proposal would require employers with at least ten employees to either offer a retirement plan or open SAVE UP accounts for each employee. Non-elective contributions would be required from employers — the amount is not specified. However, the proposal contemplates a contribution formula based on hours worked and an example uses $0.50 per hour for illustration. Additionally, employees would be automatically enrolled in pre-tax contributions — starting at 3%, with automatic escalation after the first year. Employees would be permitted to opt out. As with traditional tax-qualified plans and IRAs, earnings in SAVE UP accounts would not be taxed until distribution. The proposal contemplates that a limited number of low-fee index funds would be offered as investments — similar to the Thrift Savings Plan for federal employees.

In a departure from current law IRAs and defined contribution plans, the proposal contemplates there will be an element of pooling and risk sharing among SAVE UP account holders. Above-average returns in some years would be held back and used to make up for below-average returns or losses in other years.

The proposal would provide a refundable tax credit to small employers (defined as less than $5 million in gross receipts) to assist with the cost of employer contributions for up to ten employees. The credit would be available for five years and capped annually at $10,400.

New Medicare Law

President Barack Obama **signed** H.R. 2 into law last Thursday — the Medicare Access and CHIP Reauthorization Act of 2015. See our *Legislate* from **April 17, 2015** for more information on the legislation's changes for Medicare beneficiaries and employer reporting obligations.

Healthcare

The House Ways and Means and Senate Finance Committees approved international trade legislation this week. Among the provisions is a proposal that would revive the healthcare tax credit (HCTC), which lapsed at the end of 2013. The credit assisted individuals eligible for Trade Adjustment Act (TAA) benefits (because their jobs were displaced by a trade agreement) — or whose pensions have been taken over by the PBGC — with the cost of health coverage, including COBRA continuation coverage.

The HCTC proposal approved by the Ways and Means Committee (H.R. 1892) would retroactively revive the HCTC for 2014 through January 1, 2020. While COBRA continuation coverage would still be considered qualifying coverage, the proposal would not extend pre-2014 HCTC special rules that lengthened the COBRA maximum eligibility periods for HCTC eligible taxpayers. Under those rules, the COBRA maximum eligibility period lasted until the date of death for taxpayers eligible because the PBGC had taken over their pension, or, for trade-affected workers, until the date the taxpayer loses TAA benefit eligibility. The legislation approved by the Senate Finance Committee was similar to H.R. 1892.

The cost of this legislation, in both the Ways and Means and Finance Committee proposals, would be partially offset with a six-month extension of Medicare budget sequestration for the last half of FY 2024. "Budget sequestration" refers to automatic, across the board spending cuts — enacted as part of the Budget Control Act of 2011 — that apply when government spending exceeds certain levels.

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