Insight

The FY2018 Budget Resolution, and the Historical Use of Reconciliation

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Executive Summary

- The Senate-passed budget provides reconciliation instruction to the major tax-writing committees that should allow for fast-track consideration of tax reform legislation
- Reconciliation can improve the odds for successful passage of tax reform, which has historically proven very challenging for Republicans and Democrats alike
- While reconciliation has been used for strictly partisan exercises, notably for the enactment and attempted repeal of the Affordable Care Act, it has historically been a bipartisan process
- Reconciliation is not inherently partisan – meaning policymakers should reserve judgment for the substance of the related legislation, rather than the mechanism for its consideration

Introduction

This week, the House of Representatives will reportedly take up the Congressional Budget Resolution passed by the Senate last week. If the House passes the budget, it will provide Congress with an important tool – reconciliation – to allow for expedited consideration of tax reform legislation. Reconciliation is often misunderstood for its use involving highly partisan legislation, but it is not inherently a partisan exercise as the historical record demonstrates.

Reconciliation in the House and Senate

A reconciliation bill is legislation that changes laws affecting mandatory spending and/or tax revenue to achieve a specific budget outcome. It is a legislative process that reflects the long-tested notion that fiscal policy changes, particularly deficit reductions, such as changes to tax or entitlement programs, can be politically perilous, and therefore more difficult to pass.[1]

The reconciliation process is among the most powerful procedural tools available to policymakers because bills passed through reconciliation are considered under expedited rules that limit the time allotted for debate, the scope of amendments and the number of votes needed for passage. In the House, simple majorities can attach similar conditions to most legislative matters, so the unique parliamentary characteristics of reconciliation legislation are largely intended to override otherwise prevailing Senate rules.

In the Senate, a reconciliation measure is privileged, which means it requires only a simple majority to be brought to the Senate floor rather than the usual 60 votes. Thereafter, floor debate is limited to 20 hours, with further limitation on the scope and time that may be devoted to amendments. A simple majority is required for passage without the usual supermajority vote needed to advance to a vote on final passage.

Reconciliation and the FY2018 Budget Resolution

The reconciliation process can only be spurred from a conference report on the budget, meaning a budget must be agreed-to by both chambers, and must include instructions to committees to achieve specific budget outcomes through legislation. These instructions must include four key elements:

1.) the Committee to which the instruction is directed,

2.) the deadline by which the relevant committee or committees must comply,

3.) the specified dollar amount change to either revenues, outlays, the deficit, or the public debt,

4.) and the time period over which those budgetary changes must be achieved.

It is important to note that a reconciliation instruction does not prescribe how the specified budgetary changes must be met. Those changes remain the purview of the instructed committee.

The FY2018 Budget Resolution as passed by the Senate includes reconciliation instructions to the Senate Finance Committee and the House Committee on Ways and Means. Specifically, the Budget Resolution directs these committees to, "report changes in laws within its jurisdiction that increase the deficit by not more than $1,500,000,000,000 for the period of fiscal years 2018 through 2027," and to report these recommended changes to the Budget Committees of the respective chambers no later than November 13(although this deadline is not binding).[2]

The FY2018 Budget Resolution also includes an instruction to the Senate's Energy and Natural Resources Committee and the House's Natural Resources Committee to report changes in law providing at least $1 billion in deficit reduction for the period of fiscal years 2018 through 2027. Whenever the budget resolution provides reconciliation instructions to more than one committee, the various committees report their measure to the respective chamber's Budget Committee. The Budget Committee then performs what is essentially an administrative function of reviewing the measures and packaging them into an omnibus reconciliation measure that is then reported to the chamber as a whole. The Budget Committee may make no substantive changes to the measures.

Congress may only consider one bill for each of the fiscal changes provided for in the reconciliation instructions. Thus, a budget resolution provides Congress with only one "bite at the apple" each for making changes to revenues, spending and the debt limit through reconciliation, for a maximum of three reconciliation bills. A single bill may make changes to all three, for instance, or a bill may make changes to revenue and outlays (possibly though a "deficit" reconciliation instruction) and a separate bill may make changes to the debt limit, or some other similar combination.[3] The important constraint is that Congress may *not* consider multiple bills satisfying the same instruction in a budget resolution. Accordingly, if Congress utilizes the instruction to the Senate's Finance Committee and the House's Ways and Means Committee to pursue tax reform that includes changes to both revenues and outlays (very likely given possible changes to refundable tax credits), it cannot later pursue health care reform in a separate bill – or any other reconciliation bill that year. This restriction also means that whatever measure is reported out of the Senate's Energy and Natural Resources Committee and the House's Natural Resources Committee , respectively, would also need to be folded into the tax reform bill.

Reconciliation Beyond the Budget Resolution

In the Senate, simple majorities typically do not prevail. Rather, unanimity or super-majorities are usually required to advance legislation. Reconciliation provides an exception to this requirement, which can lead many to assume that it is an inherently partisan process. Indeed, many of the most politically divisive pieces of legislation in recent history have been passed through reconciliation such as part of the Affordable Care Act and the 2003 Bush tax cuts. However, these are more exception than rule. Since it was created in the 1974 Congressional Budget Act, reconciliation has been used by Congress to pass 24 pieces of legislation, four of which were vetoed. Over that period, most of the legislation passed through reconciliation was bipartisan and more than half passed with over 60 votes or by voice vote.[4]

Name of Bill	Final Senate Vote
Omnibus Reconciliation Act of 1980	83-4 (12/3/80)
Omnibus Budget Reconciliation Act of 1981	80-14 (7/31/81)
Tax Equity and Fiscal Responsibility Act of 1982	52-47 (8/19/82)
Omnibus Budget Reconciliation Act of 1982	67-32 (8/18/82)
Omnibus Budget Reconciliation Act of 1983	67-26 (4/5/84)
Consolidated Omnibus Budget Reconciliation Act of 1985	Voice (3/14/1986)
Omnibus Budget Reconciliation Act of 1986	61-25 (10/17/86)
Omnibus Budget Reconciliation Act of 1987	61-28 (12/22/87)
Omnibus Budget Reconciliation Act of 1989	Voice (11/22/1989)
Omnibus Budget Reconciliation Act of 1990	54-45 (10/27/90)
Omnibus Budget Reconciliation Act of 1993	51-50 (8/6/93)
Balanced Budget Act of 1995	52-47 (11/17/95)
Personal Responsibility and Work Opportunity Reconciliation Act of 1996	78-21 (8/1/96)
Balanced Budget Act of 1997	85-15 (7/31/97)
Taxpayer Relief Act of 1997	92-8 (7/31/97)
Taxpayer Refund and Relief Act of 1999	50-49 (8/5/99)
Marriage Tax Relief Reconciliation Act of 2000	60-34 (7/21/00)
Economic Growth and Tax Relief Reconciliation Act of 2001	58 – 33 (5/26/01)
Jobs and Growth Tax Relief Reconciliation Act of 2003	51 – 50 (5/23/03)
Deficit Reduction Act of 2005	51-50 (12/21/05)

Tax Increase Prevention and Reconciliation Act of 2005	54 – 44 (5/11/06)
College Cost Reduction and Access Act	79 – 12 (9/7/07)
Health Care and Education Reconciliation Act of 2010	56 – 43 (3/25/10)
Restoring Americans' Healthcare Freedom Reconciliation Act of 2015	52 – 47 (12/3/15)

Reconciliation is often characterized by its use involving highly partisan legislation, but it is not inherently a partisan exercise as the historical record demonstrates. Its invocation for tax reform should not engender partisan opposition. Rather, policymakers should make their judgments on the substance of the tax legislation not the process used to debate it.

Conclusion

Reconciliation is a powerful legislative tool that provides for expedited consideration of budget-related legislation in Congress. To employ this tool, Congress must agree to a budget resolution with reconciliation instructions which can only produce a maximum of three reconciliation bills – one per each of the major budgetary categories – limiting their use. Congress will likely pass a budget resolution this week providing reconciliation instruction to two committees in each chamber, and provide for expedited consideration of tax reform legislation. While many observers will likely characterize this as a partisan exercise, the historical record suggests otherwise.

[1] https://www.americanactionforum.org/research/budget-reconciliation-primer/

[2] Lynch, Megan Suzanne, "Reconciliation Directives: Components and Enforcement," Congressional Research Service, R41186, April 15, 2010

[3] Note that past budget resolutions have precluded this approach, but the underlying statute still provides for changes to the debt limit through reconciliation.

[4] And in the instances of the voice votes, the preceding roll-call votes were 78-1 and 87-7.