

Deloitte.

Dbriefs U presents:

The Tax Legislative Process

A Little Knowledge Goes a Long Way

Mark Garay
Jeff Kummer

Agenda

Why should you care about tax policy?

Legislative process — Overview

How tax laws get made

Reality of tax policy — Advocacy matters

Political issues influencing tax law changes

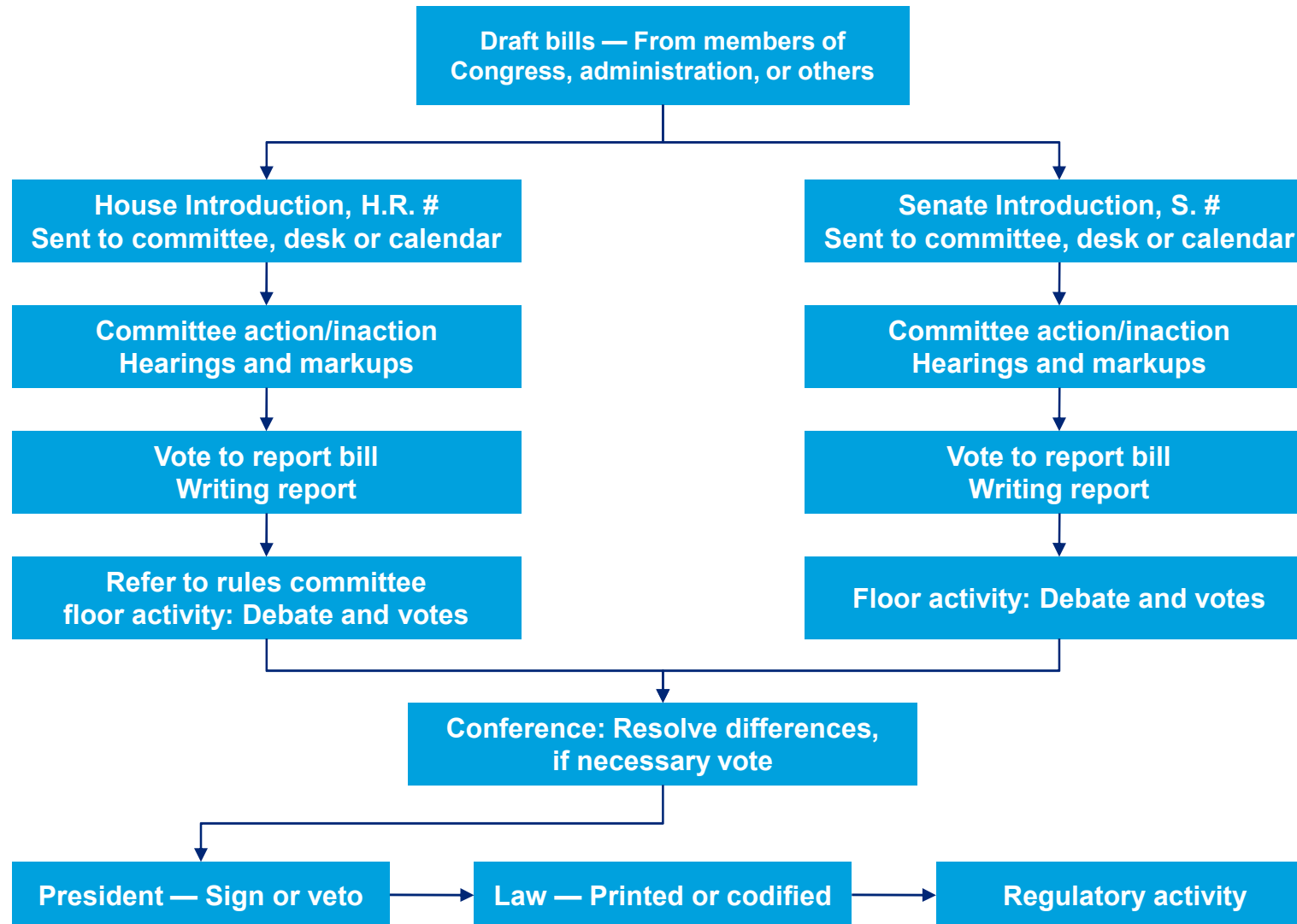
Q&A

Q: Why should you care about tax policy?

A: Evolution of the tax department

- Each phase has been additive
 - Compliance officers
 - Tax planners
 - Profit center
 - Trusted advisors
 - Risk managers
- Uncertain economic environment
 - Tax plays a role

The legislative process



Reconciliation instructions

- Allow for an expedited process
 - Section 310 of the “Budget Act” provides Congress with expedited procedures to achieve changes in revenues and reductions in direct spending
- Total debate is limited to 20 hours in the Senate
 - Motions and amendments may be offered and considered without debate at the end of 20 hours
- Exempt from filibuster in the Senate
 - Requires 51 votes to pass (need 60 under regular order)
- Procedural rules in the House are determined by the House Rules Committee

Example – Health Care Reform

- House passed Senate bill (H.R. 3590), then passed the reconciliation package (H.R. 4872)
- President Obama then signed H.R. 3590 into law
- Congress passed reconciliation bill, making changes to H.R. 3590
- Reconciliation bill includes delayed taxes
 - 40 percent excise tax on high-cost plans in 2018
 - 3.8 percent tax on unearned income in 2013
 - 2.3 percent excise tax on medical device manufacturers in 2013

Reality of tax policy: Not what you learned in civics class

- Contact with tax writing member is key
 - Don't overreact to a tax bill sponsored by a non-tax writer
 - Bill needs leadership endorsement
 - Often, committee staff support is most important
- Influencing tax policy
 - What tax issues do you and your client have?
 - What connections do you and your client have?
 - Where do you have facilities? Significant work force?
 - If your client has a PAC, where has it spent its money?

Reality of tax policy: Consider options

- Spending a lot of money on lobbying efforts is not always the right approach
 - Ruling request v. congressional lobbying activity
 - Technical argument on merits v. political persuasion
 - White papers and economic studies
 - Trade association participation
- Act sooner rather than later
 - If you're thinking about it after the issue has been in the *Wall Street Journal*, it's too late
 - Have your ear to the ground

Health care

- \$1.2 billion was spent in 2009 by 1,750 businesses
- 4,525 registered lobbyists – 8 per lawmaker
 - Increased from 1,400 in early 2009 to 3,700 at end of 2009
- Top 12 lobby firms made \$43.7 million
 - Highest earning firm made \$7.68 million on health issues
- Organizations opposing or supporting legislation
 - NAM, Chamber opposed due to burden on businesses
 - AMA, PhRMA, AARP supported after negotiations

Reality of tax policy: Overlooked inroads

- Hearings
- Studies
- Colloquies
- Congressional record
- Report language
- Technical corrections
- Regulatory comments (particularly useful before proposed regulations come out)
- Newspaper articles

Extenders

- Over 50 temporary tax provisions expired at the end of 2009
 - R&E tax credit
 - CFC look-through treatment
 - State sales tax deduction
 - New markets tax credit
- Senate and House have approved bills, but disagreement exists over revenue offsets

Estate tax options

- Estate tax disappeared on 1/1/2010 and returns in 2011 with pre-2001 rates and exemption amounts
- White House, Congress had been seeking permanent fix that would avert a zero tax year in 2010, but failed to do so
- Lawmakers also expected to act on estate tax later this year
 - Retroactive extension
 - Allow taxpayers to choose between current 2010 law or the fix

Poll question #1

- Does tax legislation always originate in the House of Representatives?
 - Yes
 - No
 - Both yes and no

Poll question #2

- When was the reconciliation process originally enacted?
 - 1990 Budget Enforcement Act
 - Congressional Budget and Impoundment Control Act of 1974
 - Omnibus Reconciliation Act of 1993
 - Tax Reform Act of 1986

Poll question #3

- How many times has the research and development tax credit been extended since it was enacted in 1981?
 - 0
 - 13
 - 6
 - 29

Deloitte.

Dbriefs U

Tax webcast series for students

Log in and learn more at

www.deloitte.com/us/dbriefsu



The information contained in this publication is for general purposes only and is not intended, and should not be construed, as legal, accounting, or tax advice or opinion provided by Deloitte & Touche to the reader. This material may not be applicable or suitable for, the reader's specific circumstances of needs. Therefore, the information should not be used as a substitute for consultation with professional accounting, tax, or other competent advisors. Please contact a local Deloitte & Touche professional before taking any action based upon this information.

Recorded on April 7, 2010.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu, a Swiss Verein, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.

Copyright © 2010 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu