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Rules and Practices Governing Consideration of Revenue Legislation in the House and Senate

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Summary

The term *revenue* is defined as funds collected from the public that arise from the government's exercise of its sovereign or governmental powers. Federal revenues come from a variety of sources, including individual and corporate income taxes, excise taxes, customs duties, estate and gift taxes, fees and fines, payroll taxes for social insurance programs, and miscellaneous receipts (such as earnings of the Federal Reserve System, donations, and bequests). The executive branch often uses the term *receipts* or *governmental receipts* in place of the term *revenues*.

The collection of revenue is a fundamental component of the federal budget process that provides the government with the money necessary to fund agencies and programs. Further, the collection of revenue directly affects individual citizens and businesses and, in some cases, can achieve specific policy outcomes. The Constitution grants Congress this considerable power to "lay and collect taxes, duties, imposts, and excises."

Most revenue is collected by the federal government as a result of previously enacted law that continues in effect without any need for congressional action. However, Congress routinely considers revenue legislation that repeals existing provisions, extends expiring provisions, or creates new provisions. Congress may consider such legislation either in a measure dedicated solely to revenues or as a provision in another type of measure.

As with all legislation considered by Congress, revenue measures are subject to general House and Senate rules. In addition, revenue measures are subject to further House and Senate rules, as well as constitutional and statutory requirements (e.g., the Origination Clause, the Congressional Budget Act of 1974). The purposes of such revenue-specific rules are generally to centralize and coordinate the development and consideration of revenue legislation, to provide Members of Congress with the information necessary to judge the merits of revenue legislation, and to control the budgetary impact of revenue measures.

This report provides an overview and analysis of the most consequential revenue-specific rules that apply during the process of developing and considering revenue legislation. It highlights certain rules and precedents that apply specifically to revenue measures and distinguishes them into four categories: (1) rules that apply to the origination and referral of revenue measures; (2) rules that require supplemental materials or information to be included with revenue measures; (3) rules that apply to the budgetary impact of revenue measures; and (4) rules related to the consideration of revenue measures under the budget reconciliation process, which carries with it additional unique procedures.

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Introduction

The term *revenue* is defined as funds collected from the public that arise from the government's exercise of its sovereign or governmental powers. Federal revenues come from a variety of sources, including individual and corporate income taxes, excise taxes, customs duties, estate and gift taxes, fees and fines, payroll taxes for social insurance programs, and miscellaneous receipts (such as earnings of the Federal Reserve System, donations, and bequests).[1] The executive branch often uses the term *receipts* or *governmental receipts* in place of the term *revenues*.

The collection of revenue is a fundamental component of the federal budget process that provides the government with the money necessary to fund agencies and programs. Further, the collection of revenue directly effects individual citizens and businesses and, in some cases, can achieve specific policy outcomes. The Constitution grants Congress this considerable power to "lay and collect taxes, duties, imposts, and excises."[2]

Most revenue is collected by the federal government as a result of previously enacted law that continues in effect without any need for congressional action. However, Congress routinely considers revenue legislation that repeals existing provisions, extends expiring provisions, or creates new provisions. Such legislation may (1) increase revenues, (2) decrease revenues by lowering taxes or by providing new exemptions, deductions, or credits—often referred to as tax expenditures[3]—or (3) redistribute the incidence of taxation without significantly changing overall revenue amounts. Revenue legislation may make changes to excise taxes, individual and corporate income taxes, social insurance taxes, or tariffs and duties. Congress may consider such legislation either as a measure dedicated solely to revenues or as a provision in another type of measure. (It should be noted that the phrase "revenue measures" as used throughout this report applies to all measures containing revenue provisions.)

As with all legislation considered by Congress, revenue measures are subject to general House and Senate rules. In addition, revenue measures are subject to further House and Senate rules, as well as constitutional and statutory requirements (e.g., the Origination Clause, the Congressional Budget Act of 1974). The purposes of such revenue-specific rules are generally to centralize and coordinate the development and consideration of revenue legislation, to provide Members of Congress with the information necessary to judge the merits of revenue legislation, and to control the budgetary impact of revenue measures. Such rules significantly affect revenue legislation, in particular by shaping their content and having an impact on their timing. This report provides an overview and analysis of the most consequential revenue-specific rules that apply during the process of developing and considering revenue legislation, including when they apply and to what legislation.

[1] This definition is taken directly from the Congressional Budget Office glossary, which defines economic and budgetary terms as they apply to *The Budget and Economic Outlook*, http://www.cbo.gov/budget/glossary.shtml#1058151.

[2] Article I, §8.

[3] For more information, see CRS Report RL34622, *Tax Expenditures and the Federal Budget*, by Thomas L. Hungerford.

Rules Related to Origination and Referral of Revenue Measures

The requirements related to the origination and referral of revenue measures are derived from the Constitution, as well as House and Senate rules, and are supplemented by established practice and policies established by the Speaker. The general effect of such rules and practice is to define what constitutes "revenue" in order to allow Congress to centralize and coordinate the development and consideration of revenue measures.

The Origination Clause

Article I, Section 7, clause 1, of the U.S. Constitution, referred to as the Origination Clause, states:

> All Bills for Raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

This clause prescribes that the House, not the Senate, must originate measures that contain revenue provisions. It is generally accepted that the goal of the Origination Clause was to grant the power to tax to the chamber directly elected by the people[4]and as part of the compromise that enabled the Philadelphia Convention to create a bicameral Congress.

The Senate may author revenue provisions but only as amendments to House-originated measures that already contain revenue provisions.[5] Senate rules place no general limits, however, on the Senate's power to amend, so the Senate may amend a House bill containing revenues with any other type of revenue provisions. For instance, in the 111th Congress, the Senate took up H.R. 3590, a House bill to provide tax credits to servicemembers, and inserted in the bill language overhauling the health care system including a number of revenue provisions, which ultimately became the Patient Protection and Affordable Care Act (P.L. 111-148).

The Origination Clause does not necessarily extend to other types of receipts or collections, often referred to as "user fees," which are further discussed below, nor to budget resolutions, because budget resolutions only establish revenue levels for governing subsequent consideration of legislation and do not provide revenue-raising language.

Enforcement of the Origination Clause

As with other provisions of the Constitution, the Supreme Court can hear cases concerning the Origination Clause. If the Court were to find that a revenue bill had been enacted in violation of the Origination Clause, the statute could be struck down.[6]

Additionally, the House and Senate each have internal procedures and practices related to enforcement of the Origination Clause.

[4] Senators were elected by the various state legislatures until ratification of the 17th Amendment in 1913.

[5] For more information on the Origination Clause and its enforcement, see CRS Report RL31399, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

[6] Ibid.

The House of Representatives

If the House determines that a measure received from the Senate violates its prerogatives under the Origination Clause, it may respond by employing either the formal procedure of "blue-slipping" or a number of other less formal practices.

Blue-Slipping

House Rule IX, clause 2(a)(1), provides for the process of blue-slipping, which is the term used to describe the act of formally returning a measure to the Senate that the House has determined violates the Origination Clause. The term *blue-slipping* is derived from the color of paper on which the resolution returning the offending bill to the Senate is printed.

If the House decides to use the blue-slip procedure, a Member—typically the chair of the House Ways and Means Committee[7]—raises a question of the privileges of the House in the form of a resolution expressing that the prerogatives of the House have been violated.[8] The text of such a resolution typically reads:

> Resolved, That the bill of the Senate ... in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill be respectfully returned to the Senate with a message communicating this resolution.[9]

This is a highly privileged resolution and has precedence over all other motions, except a motion to adjourn. If the Speaker determines that the resolution does raise a valid question of privilege, the House proceeds to the immediate consideration of the resolution. The resolution is considered under the hour rule,[10] and if agreed to, the resolution is sent, along with the offending measure, back to the Senate.

Other Practices

As a constitutional requirement, the House has an affirmative responsibility to enforce the Origination Clause if it determines that the Senate has violated its prerogative, so it cannot be waived. It does not, however, have to blue-slip the measure but may respond to the offending measure in several other less formal ways. For example, the House may simply take no action on the violating measure or refer the measure to committee, in which case the committee may choose to report a House bill rather than to consider the Senate bill further.[11] The House may also use a conference committee or an exchange of amendments between the chambers as a way of dealing with a questionable measure by removing the offending provision.[12]

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[7] The Chairman of the Ways and Means Committee typically raises the question of privilege because Ways and Means has jurisdiction over revenue legislation. Any member, however, could offer such a privileged resolution.

[8] For more information about questions of privilege, see CRS Report 98-411, *Questions of Privilege in the House*, by James V. Saturno.

[9] H.Res. 393 (106th Congress).

[10] For more information regarding the House's hour rule, see CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*, by James V. Saturno.

[11] *Deschler's Precedents of the United States House of Representatives*, H. Doc. 94-661, 94th Cong., 2nd sess. (Washington: GPO, 1977), ch. 13, §§18.1-18.5.

[12] Going to conference would not prevent the House from later using the blue-slip process if the offending provision remained in the measure. Ibid., ch. 13, §14.2.

The Senate

The Origination Clause can also be enforced by the Senate. Any Senator may raise a point of order if the pending measure or amendment is in question of violating the Constitution. Constitutional points of order are submitted by the presiding officer directly to the Senate to be decided by majority vote.[13]

Referral and Jurisdiction of Revenue Measures

Although revenue provisions can deal with different types of subject matter, both House and Senate rules grant only one committee in each chamber jurisdiction over revenue measures: the House Ways and Means Committee (House Rule X, clause(1)(t)) and the Senate Finance Committee (Senate Rule XXV, clause (1)(i)). Revenue measures introduced in either chamber, therefore, are referred to these committees.

House and Senate rules protect the jurisdiction of these committees not only through referral but also by making certain legislation that contains revenue provisions out of order if not reported by either revenue committee. The Budget Committees, however, may affect revenue legislation in two major ways: (1) by setting forth overall revenue totals in the budget resolutions that can be enforced by points of order on the House and Senate floor, and (2) by including reconciliation instructions in the budget resolution that direct the House Ways and Means and Senate Finance Committees to report revenue changes within their jurisdictions that would accomplish a particular budgetary goal. For more information, see sections on the budget resolution and budget reconciliation process below.

The House of Representatives

House Rule X grants the House Ways and Means Committee jurisdiction over revenue measures, including

- customs revenue,
- revenue measures generally, and
- revenue measures relating to insular possessions.[14]

House rules provide that every measure be referred to each committee having jurisdiction over subject matter within the bill to the maximum extent feasible,[15] thereby requiring any measure containing a revenue provision to be referred to the Ways and Means Committee for consideration of those provisions. In the House, if a measure contains provisions that touch on the jurisdiction of more than one committee, the Speaker designates a committee of primary jurisdiction and then will typically refer the bill to one or more additional committees for consideration of the portion of the measure within that committee's jurisdiction. Therefore, if a measure is predominantly revenue related, Ways and Means would be the committee of primary referral. If the measure is not predominantly revenue related but contains revenue provisions, it would be referred a committee of primary jurisdiction and also to Ways and Means for consideration of revenue provisions.

[13] For more information on such points of order, see CRS Report R40948, *Constitutional Points of Order in the Senate*, by Valerie Heitshusen

[14] House Rule X, clause 1(t).

[15] House Rule XII, clause 2(b).

House rules further protect the jurisdiction of the Ways and Means Committee by providing for a point of order against any measure or amendment containing a tax or tariff provision if not reported from Ways and Means. Specifically, the rule states:

> A bill or joint resolution carrying a tax or tariff measure may not be reported by a committee not having jurisdiction to report tax or tariff measures, and an amendment in the House or proposed by the Senate carrying a tax or tariff measure shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against a tax or tariff measure in such a bill, joint resolution, or amendment thereto, may be raised at any time during pendency of that measure for amendment.[16]

It should be noted that the jurisdiction of the Ways and Means Committee over revenue provisions is broad, and therefore even provisions having a less obvious effect on revenues, such as import restrictions, are encompassed in its jurisdiction.

User Fees

Congress sometimes considers measures that include user or regulatory fees—for example, fees for entering a national park or user fees for water or mineral rights on federal land. While these fees, like revenues, represent money coming into the Treasury, they are treated differently in the federal budget process. User fees are often referred to as "offsetting receipts or collections," and for accounting proposes, they are typically counted as negative amounts of spending. Because user fees are not considered revenue, they are not typically under the jurisdiction of the Ways and Means Committee. The Speaker provided guidance on the distinction between revenues and fees at the beginning of the 111th Congress in a policy statement:[17]

> Standing committees of the House, other than the Committees on Appropriations and Budget, have jurisdiction to consider user, regulatory and other fees, charges, and assessments levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity, but not on the general public, as measures to be utilized solely to support, subject to annual appropriations, the service, program or activity, including agency functions associated therewith, for which such fees, charges, and assessments are established and collected and not finance the costs of government generally.
>
> The fee must be paid by a class benefiting from the service, program or activity, or being regulated by the agency; in short, there must be a reasonable connection between the payors and the agency or function receiving the fee. The fund that receives the amounts collected is not itself determinative of the existence of a fee or a tax.

The statement provided further guidance on the referral of measures that include user fee provisions:

> The Committee on Ways and Means is entitled to an appropriate referral of broad based fees and could choose to recast such fees as excise taxes.
>
> A provision only reauthorizing or amending an existing fee without fundamental change, or creating a new fee generating only a de minimis aggregate amount of revenues, does not necessarily require a sequential referral to the Committee on Ways and Means.

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[16] House Rule XXI, clause 5(a)(1).

[17] Such policy statements are typically made by the Speaker at the start of each new Congress. "Announcement by the Speaker ProTempore," House, *Congressional Record*, daily edition, Jan. 6, 2009, p. H22. In this announcement, a reference is made to the policy announced in the 102nd Congress with respect to jurisdictional concepts related to clause 5(a) of rule XXI, *Congressional Record*, vol. 137 (January 3, 1991), p. H31.

The Senate

Senate Rule XXV grants the Senate Finance Committee jurisdiction over revenue measures, including

- revenue measures generally, except as provided in the Congressional Budget Act of 1974;
- revenue measures relating to the insular possessions;
- tariffs and import quotas; and
- matters related thereto.[18]

Senate rules require that a measure be referred to a single committee based on "the subject matter which predominates" in the legislation.[19] In general, for any measures containing revenue provisions, such matter is regarded as predominant and the measure is referred to the Finance Committee, regardless of other subject matter. Although Senate rules allow for a measure to be referred to more than one committee, such multiple referrals are rare and are typically employed only by unanimous consent.

The jurisdiction of Senate Committees, including the Senate Finance committee, is protected by Senate Rule XV, clause 5, which states:

> It shall not be in order to consider any proposed committee amendment (other than a technical, clerical, or conforming amendment) which contains any significant matter not within the jurisdiction of the committee proposing such amendment.

As mentioned above, the Constitution prohibits the Senate from originating revenue measures, but current Senate practice generally allows the Senate Finance Committee to report revenue measures to be considered by the Senate in advance of receiving a revenue measure from the House. The text of such measures may later be inserted into a House revenue measure as an amendment.

Rules Requiring Materials to Accompany Revenue Measures

House and Senate rules have evolved to require specific materials to accompany revenue measures. The purpose of such rules is to provide Members with information on the content of the measure to assist them in considering the merits of the legislation.

Rules Requiring Revenue Estimates

The requirement for revenue estimates is set forth in the Budget Act and further supplemented by House and Senate rules. It provides Members of Congress with information on the budgetary implications of the legislation.

[18] Senate Rule XXV, clause 1(i).

[19] Senate Rule XVII.

Requirements in the Budget Act

The Budget Act states that revenue measures reported from either the House Ways and Means Committee or the Senate Finance Committee require a prepared projection of how the measure will affect current revenue levels. Specifically, Section 308(a)(1) of the Congressional Budget Act requires that whenever a committee of either House reports a measure providing an increase or decrease in revenues or tax expenditures for a fiscal year (or fiscal years), the accompanying report must contain a statement,[20] prepared after consultation with the director of the Congressional Budget Office (CBO), containing a projection by CBO of how the measure will affect the levels of revenues or tax expenditures under existing law for such fiscal year (or fiscal years) and each of the four ensuing fiscal years if it is timely submitted before such report is filed. The Budget Act also requires that any conference report that provides an increase or decrease in revenues for a fiscal year (or fiscal years) shall contain the same estimate described above if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make it available as soon as practicable prior to the consideration of the conference report.

For the purposes of estimating the budgetary impact of revenue legislation,[21] Section 201(f) of the Congressional Budget Act requires CBO to "use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation."

The House of Representatives

House Rule XIII, clause 3(c), states that a measure that has been reported by committee shall include in the accompanying committee report, separately set out and clearly identified, the statement required by Section 308(a) of the Budget Act described above.

The Senate

Senate Rule XXVI, paragraph 11(a), requires that any bill or joint resolution of a public character reported from committee include in the committee report an estimate of the costs that would be incurred in carrying out such bill or joint resolution in the fiscal year in which it is reported and in each of the five fiscal years following such fiscal year (or for the authorized duration of any program authorized by such bill or joint resolution if less than five years), except that, in the case of measures affecting revenues, such reports require only an estimate of the gain or loss in revenues for a one-year period.

House Requirements for Analysis of Certain Revenue Measures

House Rules XIII, clause 3(h), requires a tax complexity analysis to be prepared by the Joint Committee on Taxation for bills and joint resolutions reported from the Ways and Means Committee that propose to amend the Internal Revenue Code of 1986.

Such an analysis provides information on the relevant administrative issues raised by provisions that would amend the Internal Revenue Code. In effect, it answers the question of whether this provision would add significant complexity or provide significant simplification to the tax code either for individuals or businesses subject to the tax or for its administration.

[20] Or the committee shall make the statement available in the case of an approved committee amendment that is not reported to its chamber.

[21] Designated by the Budget Act as "income, estate and gift, excise, and payroll taxes (i.e., Social Security)."

The rule states that it is not in order to consider a bill or joint resolution reported from the Ways and Means Committee that proposes to amend the Internal Revenue Code of 1986 unless (1) there is included in the committee report a tax complexity analysis prepared by the Joint Committee on Taxation in accordance with Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or (2) the chairman of the committee causes a tax complexity analysis to be printed in the *Congressional Record* before the measure is considered.

Rules Related to Limited Tax and Tariff Benefits (Earmark Rules)

In 2007, the House and Senate adopted rules related to congressionally directed spending items, limited tax benefits, and limited tariff benefits. While the rules place requirements on Members of Congress requesting such items, (e.g., requiring certification that the Member has no financial interest in the request), this report addresses the requirements related to congressionally directed spending items, limited tax benefits, and limited tariff benefits included in revenue measures. The House and Senate adopted such rules to bring more transparency to the process of Members requesting congressional earmarks or limited tax and tariff benefits.

The House of Representatives

House Rule XXI, clause 9, generally requires that certain types of measures be accompanied by a list of congressionally directed spending items, limited tax benefits, or limited tariff benefits that are included in the measure or its report or a statement that the proposition contains none. Depending upon the type of measure, the list or statement is to be either included in the measure's accompanying report or printed in the *Congressional Record*. If either the list or the statement is absent, a point of order may lie against the measure's floor consideration. The point of order applies only in the absence of such a list or letter and does not speak to the completeness or the accuracy of either document.[22]

House Definition of Earmark

As mentioned above, House Rule XXI, clause 9, applies not only to congressionally directed spending items but also to limited tax and tariff benefits. As provided in the rule, a limited tax benefit is defined as (1) any revenue-losing provision that (a) provides a federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and (b) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or (2) any federal tax provision that provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986. A limited tariff benefit is defined as a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

Legislation Subject to the Rule

House earmark disclosure rules apply to any congressionally directed spending item, limited tax benefit, or limited tariff benefit included in either the text of the measure or the committee report accompanying the measure, as well as the conference report and joint explanatory statement. The

[22] U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 110th Congress*, H. Doc 109-157 (Washington: GPO, 2007), §1068e. For more information on the requirements associated with the House earmark rule, see CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan S. Lynch.

disclosure requirements apply to items in authorizing, appropriations, and revenue legislation. Furthermore, they apply not only to measures reported by committees but also to unreported measures, "manager's amendments,"[23] Senate measures, and conference reports.

Such disclosure requirements, however, do not apply to all legislation at all times. For example, when a measure is considered under "suspension of the rules," House rules are laid aside; therefore these disclosure rules do not apply. Also not subject to the rule are floor amendments (except a "manager's amendment"), amendments between the houses, or amendments considered as adopted under a self-executing special rule, including a committee amendment in the nature of a substitute made in order as original text.[24]

The Senate

Senate Rule XLIV[25] prohibits a vote on a motion to proceed to consider a measure or a vote on adoption of a conference report unless the chair of the committee or the majority leader (or designee) certifies that a complete list of congressionally directed spending items, limited tax benefits, limited tariff benefits, and the name of each Senator requesting each is made available on a publicly accessible congressional website in a searchable form at least 48 hours before the vote. If the certification requirements have not been met, a point of order may lie against consideration of the measure or vote on the conference report.

If a Senator proposes a floor amendment containing an additional congressionally directed spending item, limited tax benefit, or limited tariff benefit, those items must be printed in the *Congressional Record* as soon as "practicable."[26]

Senate Definition of Earmark

Rule XLIV applies not only to congressionally directed spending items but also limited tax benefits and limited tariff benefits. The rule defines limited tax benefit as any revenue provision that (1) provides a federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986, and (2) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision. Limited tariff benefit is defined as a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

Legislation Subject to the Rule

Such disclosure rules apply to any congressionally directed spending item, limited tax benefit, or limited tariff benefit included in either the text of the bill or the committee report accompanying

[23] As defined in the rule and clarified in a letter from the House Parliamentarian to the chairman of the House Committee on Rules (*Congressional Record*, daily edition, vol. 153 [October 3, 2007], pp. H11184-H11185), a "manager's amendment" is "an amendment offered at the outset of consideration for amendment by a member of a committee of initial referral under the terms of a special rule."

[24] Ibid.

[25] The Senate included this rule in the Honest Leadership and Open Government Act of 2007, which became law on September 14, 2007 (§521 of P.L. 110-81, 121 Stat.760). For more information on requirements associated with the Senate earmark rule, see CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

[26] The rule does not apply to all earmarks in floor amendments. It applies only to those "not included in the bill or joint resolution as placed on the calendar or as reported by any committee, in a committee report on such a bill or joint resolution, or a committee report of the Senate on a companion measure," as stated in Rule XLIV, paragraph 4(a).

the bill, as well as the conference report and joint explanatory statement. The disclosure requirements apply to items in authorizing, appropriations, and revenue legislation. Furthermore, they apply not only to measures reported by committees but also to unreported measures, amendments,[27] House bills, and conference reports.

The rule may be waived either by unanimous consent or by motion, which requires the affirmative vote of three-fifths of all Senators (60, if there is no more than one vacancy).[28] This rule, as with most Senate rules, is not self-enforcing and relies instead on a Senator raising a point of order if the rule is violated.

Rules Related to the Budgetary Content of Revenue Measures

The Budget Resolution and Revenue

The annual budget resolution serves as a central coordinating mechanism for budgetary decisionmaking in Congress and affects the consideration of revenue measures in two major ways. First, it sets forth overall revenue totals that are enforceable on the House and Senate floor by points of order. Second, it may include reconciliation directives to the committees with jurisdiction over revenue measures.

The budget resolution does not become law; it is not sent to the President for signature or veto. Instead, as a concurrent resolution, it is an agreement between the House and Senate that acts as a framework within which Congress considers legislation dealing with spending, revenue, and the debt limit.

To establish this framework, the Congressional Budget Act[29] requires that the budget resolution include several components, including an appropriate revenue level. Specifically, Section 301(a)(2) requires that the budget resolution set forth appropriate levels for "total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees." In addition, the budget resolution is required to include such amounts for future years as well. Section 301(a) sets the requirement at "the fiscal year beginning on October 1 of such year, and planning levels for at least each of the 4 ensuing fiscal years." The budget resolution can include levels for a period longer than the four ensuing fiscal years and has included up to 10 ensuing years.[30]

One example of revenue levels included in the annual budget resolution is as follows:

> SEC. 101. RECOMMENDED LEVELS AND AMOUNTS.
> The following budgetary levels are appropriate for each of fiscal years 2009 through

[27] Amendments included in the text of the reported bill are subject to the point of order that applies to reported measures. If the amendment is offered from the floor it is not subject to a point of order under the rule, but the rule states that the sponsor of an amendment including a congressionally directed spending item, limited tax benefit, or limited tariff benefit should ensure, as soon as practicable, that (1) a list of each earmark and (2) the name of any Senator requesting each earmark on the list be printed in the *Congressional Record* as described above.

[28] These points of order may also be waived if the majority and minority leaders jointly agree that "such a waiver is necessary as a result of a significant disruption to Senate facilities or to the availability of the Internet." Senate Rule XLIV, paragraph 12.

[29] Congressional Budget Act, Titles I-IX of P.L. 93-344, as amended, 2 U.S.C. 601-68.

[30] H.Con.Res. 83 (107th Congress).

> 2014:
> (1) FEDERAL REVENUES- For purposes of the enforcement of this resolution:
> (A) The recommended levels of Federal revenues are as follows:
> Fiscal year 2009: $1,532,571,000,000.
> Fiscal year 2010: $1,653,682,000,000.
> Fiscal year 2011: $1,929,625,000,000.
> Fiscal year 2012: $2,129,601,000,000.
> Fiscal year 2013: $2,291,120,000,000.
> Fiscal year 2014: $2,495,781,000,000.
>
> (B) The amounts by which the aggregate levels of Federal revenues should be changed are as follows:
> Fiscal year 2009: $0.
> Fiscal year 2010: -$12,304,000,000.
> Fiscal year 2011: -$159,006,000,000.
> Fiscal year 2012: -$230,792,000,000.
> Fiscal year 2013: -$224,217,000,000.
> Fiscal year 2014: -$137,877,000,000.[31]

The first set of numbers reflect the total amount of revenue or receipts that Congress has agreed should be brought into the federal government each fiscal year. The second set of numbers reflects the amount by which revenues projected to be collected under current law (the baseline)[32] should be altered to reach the desired levels shown in the first set of numbers.

The budget resolution may also include reconciliation directives instructing committees to develop and report legislation that will assist Congress in achieving the budgetary goals set forth in the annual budget resolution. For more information on rules pertaining to revenue measures considered under reconciliation, see the section below titled "Rules Applying to Revenue Measures Under the Reconciliation Process."

Enforcement of Revenue Levels in the Budget Resolution

In both the House and Senate, the revenue levels in the budget resolution are enforced in two main ways: (1) by generally prohibiting the chambers from considering revenue legislation until a budget resolution has been agreed to, and (2) once a budget resolution has been agreed to, by prohibiting the consideration of legislation that would cause the revenue levels in the budget resolution to be breached.

Until a budget resolution has been agreed to, Section 303(a) of the Budget Act generally prohibits consideration of "any bill or joint resolution, amendment or motion thereto, or conference report thereon" that provides for an increase or decrease in revenues that will first become effective during that fiscal year.[33] Section 303(a) can be waived in either chamber by a simple majority.

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[31] S.Con.Res. 13 (111th Congress).

[32] A baseline is an estimate of federal spending and receipts under existing law during a fiscal year. For more information on the baseline, see CRS Report 98-560, *Baselines and Scorekeeping in the Federal Budget Process*, by Bill Heniff Jr.

[33] The first fiscal year covered by the resolution with respect to the House and any fiscal year covered by the resolution with respect to the Senate. An exception is provided in §303(b)(1)(B), which allows for the House to consider measures "increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies." Further, §302(g) of the Congressional Budget Act (known as the Pay-As-You-Go exception) provides that §303(a) (after April 15) shall not apply in the House to legislation if, for each fiscal year covered by the most recently agreed to budget resolution, such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under §301(b)(8).

Although this rule deals with the timing and not the content of revenue legislation, it deters Congress from considering legislation that would not be subject to the revenue levels set forth in a budget resolution.

After the budget resolution has been agreed to by both chambers, all spending, revenue or debt limit legislation considered by Congress is expected to be consistent with the levels agreed to in the budget resolution. These are enforced by points of order on the House and Senate floors.

The House of Representatives

Section 311(a)(1) of the Budget Act prohibits House consideration of legislation that would cause revenues to fall below the levels set forth in the budget resolution. Note, however, that it is in order for the House to consider legislation that would exceed the revenue level. For this reason, the revenue level in the resolution is referred to as the "revenue floor."

Section 311(a)(1) applies to all legislation considered in the House, including bills, joint resolutions, amendments, the instructions in a motion to recommit, or conference reports. Section 311(a)(1) is enforceable by a Member raising a point of order on the House floor. Such a point of order can be waived in the House by a simple majority.[34]

In addition, Section 302(g) of the Budget Act, known as the Pay-As-You-Go exception, provides that Section 311(a)(1) shall not apply in the House under specific circumstances. The Pay-As-You-Go exception exempts revenue legislation that would otherwise be out of order for violating the "revenue floor" if such legislation, when taken in combination with other legislation, would not increase the deficit.

The Senate

Section 311(a)(2) of the Budget Act prohibits Senate consideration of legislation that would cause revenues to fall below the levels set forth in the budget resolution.

Section 311(a)(2) applies to all legislation considered in the Senate, including bills, joint resolutions, amendments, or conference reports. Section 311(a)(2) is enforceable by a Senator raising a point of order on the Senate floor. Under Section 904 of the Budget Act, the Senate may waive the application of such a point of order by a vote of three-fifths of all Senators (60 votes if there is no more than one vacancy).

PAYGO

Although currently only the Senate has a PAYGO rule, both chambers have employed them at some time. In addition, statutory PAYGO was reestablished in February 2010. While congressional PAYGO rules differ from statutory PAYGO (as described below), both derive their name from the term "pay-as-you-go," and their general purpose is to prevent the enactment of mandatory spending or revenue legislation that would cause or increase a deficit.[35]

[34] The most common method by which the House waives points of order under the Budget Act is by a special rule reported from the House Rules Committee. It should also be noted that all House rules, including §311(a)(1), are effectively waived for measures considered in the House under "suspension of the rules."

[35] For more detailed information on the Senate PAYGO rule, see CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr. For more information on statutory PAYGO, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr.

As a budget enforcement tool, PAYGO is limited in two main respects: (1) it does not apply to discretionary spending,[36] and (2) it applies only to new legislation being considered by Congress. It can have no effect on previously enacted revenue and direct spending law and so would not trigger enforcement based on changes in revenue or direct spending that result from slow economic growth, unemployment, or other factors.

The Senate PAYGO Rule

The current Senate PAYGO rule was established in the FY2008 budget resolution[37] and prohibits the consideration of direct spending or revenue legislation that is projected to increase or cause an on-budget[38] deficit in either of two time periods: (1) the period consisting of the current fiscal year, the budget year, and the four ensuing fiscal years following the budget year; and (2) the 11-year period consisting of the current year, the budget year, and the ensuing nine fiscal years following the budget year. The rule applies to any bill, joint resolution, amendment, motion, or conference report that affects direct spending or revenues.[39]

The Senate PAYGO rule allows the use of what has been referred to as a "ledger" or "scorecard" to provide some flexibility. Generally, if legislation enacted earlier in the same calendar year reduced direct spending or increased revenues, the resultant budgetary credit or surplus is placed on a pay-as-you-go ledger. The Senate can then consider legislation that would increase direct spending or reduce revenues and use the surplus recorded on the pay-as-you-go ledger as an offset. The rule states, however, that deficit reduction resulting from reconciliation legislation may not be recorded on the ledger.[40]

One or more provisions in a measure may be exempted from the rule by designating them as an "emergency."

The Senate PAYGO rule may be waived either by a vote of three-fifths of all Senators (60, if there is no more than once vacancy). The PAYGO rule is also not self-enforcing and relies instead on a Senator raising a point of order if the rule is violated.

Statutory PAYGO

In February 2010, Congress passed the Statutory Pay-As-You-Go Act of 2010,[41] establishing a budget enforcement mechanism commonly referred to as "statutory PAYGO." Similar to the Senate PAYGO rules, the goal of statutory PAYGO is to prevent new legislation from increasing the deficit, but while the Senate PAYGO rule seeks to offset each new direct spending and

[36] Discretionary spending is budget authority provided in amounts determined in appropriations bills and is under the jurisdiction of the House and Senate Appropriations Committees. Discretionary spending is subject to other budgetary enforcement procedures: §302(f) of the Budget Act prohibits consideration of any measure or amendment that would cause 302(a) committee allocations or 302(b) subdivisions to be exceeded. For more information, see CRS Report R40472, *The Budget Resolution and Spending Legislation*, by Megan S. Lynch.

[37] S.Con.Res. 21, §201. (110th Congress).

[38] On-budget excludes the off-budget entities (Social Security trust funds and the Postal Service fund).

[39] The rule specifically states that it does not apply to budget resolutions or any provision of legislation that affects the full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of the Budget Enforcement Act of 1990.

[40] Specifically, the rule states that "direct spending or revenue effects resulting in net deficit reduction enacted in any bill pursuant to a reconciliation instruction since the beginning of that same calendar year shall never be made available on the pay-as-you-go ledger and shall be dedicated only for deficit reduction."

[41] P.L. 111-139.

revenue measure passed, statutory PAYGO seeks to ensure that the new direct spending and revenue legislation enacted over a given year is deficit neutral. Another difference is that while the Senate PAYGO rule is enforced only by points of order on the Senate floor, statutory PAYGO is enforced by a process known as sequestration, in which the President is required to issue an order making across-the-board cuts to non-exempt direct spending programs.

To enforce budget neutrality on new revenue and direct spending legislation, the budgetary effects of such provisions enacted into law, including both costs and savings, are recorded on two separate scorecards: one that covers a five-year period and one that covers a 10-year period.[42] Some programs and activities are exempt from the PAYGO scorecards, such as provisions deemed an emergency by Congress.

At the end of a congressional session, the scorecards are evaluated to determine if a debit has been recorded for the current budget year—that is, new legislation has increased or created a deficit. If no such debit is found, no action occurs. If a debit is found, however, the President must issue a sequestration order, which automatically implements across-the-board cuts to non-exempt direct spending programs to compensate for the amount of the debit. Some direct spending programs and activities are exempt from sequestration, such as Social Security and Tier I Railroad Retirement benefits, federal employee retirement and disability programs, veterans' programs, net interest, refundable income tax credits, Medicaid, Temporary Assistance for Needy Families, and unemployment compensation.

House Rules Pertaining to Income Tax Increases

House Rule XXI includes two provisions that apply to legislation that would increase federal income tax rates. The first requires that three-fifths of the House must agree to a federal income tax increase.[43] The stated goal of this rule is to make passage of such tax increases more difficult.[44] Specifically, the rule states:

> A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.

The second provision, House Rule XXI, clause 5(c), prohibits a retroactive federal income tax rate increase[45]—that is, an increase that applies to a period beginning before the enactment of the provision.

[42] These budgetary effects are recorded by the Office of Management and Budget.

[43] Rule XXI, clause 5(b). The rule defines federal income tax rate increase as any amendment to subsections (a), (b), (c), (d), or (e) of §1, or to §§11(b) or 55(b), of the Internal Revenue Code of 1986 that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.

[44] *Congressional Record*, vol. 141 (January 4, 1995), p. 44.

[45] Ibid.

Rules Related to the Consideration of Revenue Measures

Timing of Consideration

The Budget Act generally prohibits consideration of "any bill or joint resolution, amendment or motion thereto, or conference report thereon" that provides for an increase or decrease in revenues that will first become effective during that fiscal year until a budget resolution has been agreed to.[46] This prohibition applies to both the House and the Senate but can be waived in either chamber by a simple majority.

The House of Representatives

Committee of the Whole

House rules are structured to generally require that revenue measures be considered by the House in the Committee of the Whole.[47] This practice is established by two House rules: (1) Rule XIII, clause 1, which requires that bills for raising revenue be placed on the Calendar of the Committee of the Whole House on the State of the Union (Union Calendar), and (2) by Rule XVIII, clause 3, which requires that "all bills, resolutions, or Senate amendments (as provided in clause 3 of Rule XXII) involving a tax or charge on the people [or] raising revenue ... shall be first considered in the Committee of the Whole House on the state of the Union."

In current practice, revenue legislation is generally considered by the House in one of three ways: It may be considered under suspension of the rules, which provides for no amendments, limited debate, and requires a two-thirds vote for approval. Revenue legislation may also be considered under the terms of a special rule reported from the House Rules Committee. Such a special rule may require that the House resolve into Committee of the Whole for consideration of the measure and include provisions setting ground rules for debate and amendment, typically either prohibiting floor amendments or specifying those that may be offered.[48] Finally, revenue measures may also be considered under reconciliation procedures, as discussed below.

The Senate

The Senate does not have rules requiring revenue measures to be considered in a specific procedural manner. However, revenue measures are sometimes considered under the reconciliation process, which carries with it additional unique procedures, particularly in the

[46] The Budget Act, §303(a). The first fiscal year covered by the resolution with respect to the House and any fiscal year covered by the resolution with respect to the Senate. An exception is provided in §303(b)(1)(B), which allows for the House to consider measures "increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies. Further, §302(g) of the Congressional Budget Act (known as the Pay-As-You-Go exception) provides that §303(a) (after April 15) shall not apply in the House to legislation if, for each fiscal year covered by the most recently agreed to budget resolution, such legislation would not increase the deficit if added to other changes in revenues or direct spending provided in the budget resolution pursuant to pay-as-you-go procedures included under §301(b)(8).

[47] For information on the Committee of the Whole, see CRS Report RS20147, *Committee of the Whole: An Introduction*, by Judy Schneider.

[48] Known, respectively, as a closed and a structured rule. For more information on special rules, see CRS Report 98-612, *Special Rules and Options for Regulating the Amending Process*, by Megan S. Lynch.

Senate. The final portion of this report discusses these additional rules and procedures associated with considering revenue measures as part of the reconciliation process.

Rules Applying to Revenue Measures Under the Budget Reconciliation Process

Revenue legislation is often considered under the budget reconciliation process that is governed by special procedures established in the Budget Act that serve to limit what may be included in reconciliation legislation, prohibit certain amendments, and encourage its timely completion.

When Congress adopts a budget resolution, it is agreeing upon revenue (and other budgetary) totals for the upcoming fiscal years. As described above, if Congress attempts to consider legislation that would violate the "revenue floor," the legislation would be subject to a point of order. In this way the totals in the budget resolution are enforced.

However, in some cases, for these revenue totals to be achieved, Congress must pass legislation that alters current direct spending and revenue laws. In this situation, Congress seeks to *reconcile* existing law with its current priorities. Budget reconciliation is an optional process that assists Congress in making these changes. Many of the major tax measures enacted in the past few decades have been considered as reconciliation.

Congress has the option of including reconciliation directives in its annual budget resolution. These directives trigger the reconciliation process, and without their inclusion in a budget resolution, no measure would be eligible to be considered under expedited parliamentary procedures.

When reconciliation directives are included in an annual budget resolution, their purpose is to require committees to develop and report legislation that will allow Congress to achieve the budgetary goals set forth in the annual budget resolution. These directives detail which committee(s) should report reconciliation legislation, the date by which the committee(s) should report, the dollar amount of budgetary change that should exist within the legislation, and the time period over which the budgetary change should occur.

In this way, the reconciliation process allows the Budget Committees to assist Congress in implementing the budgetary changes outlined in the budget resolution while at the same time protecting legislative committee jurisdiction over direct spending and revenue laws by allowing them to report legislative changes of their choice.

Sometimes these directives instruct the House Ways and Means Committee, the Senate Finance Committee, or both to report legislation within their jurisdictions that would change current revenue law.[49]

The House of Representatives

In the House, the options for consideration of a measure under the reconciliation process do not differ substantially from those for the consideration of other major legislation. Once a specified committee develops and reports legislation to satisfy its directive, the legislation is typically considered either under the terms of a special rule reported from the Rules Committee or, less frequently, under suspension of the rules.

[49] For more detailed information on the consideration of measures under the reconciliation process, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

The only major difference in how the House treats measures considered as reconciliation is in how the legislative language is packaged. If a single committee is directed in the budget resolution to develop reconciliation legislation, it will likely be instructed to report this language directly to its full chamber. For example, in 2005, the Ways and Means Committee was instructed to report to the House a reconciliation bill reducing revenues.[50] If, however, several committees are directed to develop and report reconciliation legislation, they will typically be directed to submit the language to the House Budget Committee for packaging, without any substantive change, into an omnibus measure.[51] For example, in 1990, the Ways and Means Committee was instructed to report reconciliation language making changes in revenue to the House Budget Committee to be packaged together with the reconciliation responses of other committees.[52]

The Senate

In the Senate, like the House, if a single committee is directed in the budget resolution to develop reconciliation legislation, it will likely be instructed to report this language directly to its full chamber. For instance, in 2005, the Finance Committee was instructed to report to the Senate a reconciliation bill that would reduce revenues.[53] If, however, several committees are directed to develop and report reconciliation legislation, they will typically be directed to submit the language to the Senate Budget Committee for packaging, without any substantive change, into an omnibus measure. For example, in 1993, the Finance Committee was directed to report to the Senate Budget Committee legislative changes within its jurisdiction that would increase revenues.[54]

Once a specified committee develops and reports legislative language to satisfy its directive, the legislation is considered under reconciliation procedures outlined in the Budget Act.[55]

Rules Related to Consideration of Measures Under Reconciliation

Reconciliation procedures encourage the timely completion of consideration of reconciliation legislation in the Senate in two main ways. First, a motion to proceed to the reconciliation measure is not debatable and, therefore, cannot be filibustered. Second, debate on a budget reconciliation bill—and on all amendments, debatable motions, and appeals—is limited to 20 hours.[56]

Rules Related to Content of Measures and Amendments Under Reconciliation

Reconciliation procedures prohibit certain types of language from being included in reconciliation measures or offered as amendments. For example, under Section 310(e)(1), it is not in order to offer non-germane amendments to reconciliation bills. Further, Section 313 of the Budget Act (often referred so as the Byrd rule) prohibits "extraneous" matter from being included

[50] H.Con.Res. 95 (109th Congress).

[51] §310(b)(2) of the Budget Act.

[52] H.Con.Res. 310 (101st Congress).

[53] H.Con.Res. 95 (109th Congress).

[54] H.Con.Res. 64 (103rd Congress).

[55] For more information on the consideration of reconciliation legislation in the House and Senate, see CRS Report RL33030, *The Budget Reconciliation Process: House and Senate Procedures*, by Robert Keith and Bill Heniff Jr.

[56] It should be noted that while the Budget Act limits debate to 20 hours, there is no limit on consideration of the measure. Therefore, amendments may still be offered and disposed of beyond the 20-hour limit.

a reconciliation measure. The Byrd rule provides six definitions of what is considered extraneous, but generally they are provisions not related to achieving the goals of the reconciliation instructions.[57] Also, Section 310(d) of the Budget Act prohibits any amendment to a reconciliation bill that would increase the deficit, although an amendment to strike out a provision in the bill is always in order.[58] Lastly, provisions included in reconciliation legislation that would make changes to Social Security are prohibited.[59]

Limit on the Number of Reconciliation Measures

Under current Senate practice, only one reconciliation bill dealing with revenue may be considered in response to reconciliation instructions. Section 310 of the Budget Act recognizes three types of reconciliation legislation that committees may be directed to report: spending, revenue, and debt limit. The Budget Act also recognizes that committees may be directed to report a combination of the three, including a direction to achieve deficit reductions, which may result from an unspecified combination of revenue increases and spending decreases. If a committee is given more than one directive—for instance, to increase revenues and decrease spending—then the committee may respond with separate recommendations. Under current Senate practice, however, this provision has been interpreted to mean that no more than one reconciliation measure of each type is permitted. Reconciliation instructions, therefore, may result in the creation of as many as three reconciliation bills that may be considered on the Senate floor under expedited procedures but no more than one each for spending, revenue, and the debt limit.

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[57] For more information on the Byrd rule, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule,"* by Bill Heniff Jr.

[58] §310(d)(2) of the Budget Act.

[59] §310(g) of the Budget Act.