

## BUDGET RECONCILIATION AND OBAMACARE

The budget reconciliation process was introduced in the Congressional Budget Act of 1974. Budget reconciliation refers to a procedural rule in the United States Senate that allows certain tax and spending provisions to pass with a simple majority, thus avoiding a filibuster. The reconciliation process also limits the amount of debate over various budgetary issues to twenty hours. Technically, a procedure for budget reconciliation also exists in the House as well, but due to the House having less strict voting and debate procedures, it rarely requires reconciliation compared to the Senate.

### *FILIBUSTERS AND BUDGET RECONCILIATION*

Many Americans are introduced to the concept of the filibuster when they watch the old Jimmy Stewart movie, *Mr. Smith Goes to Washington*. Under the filibuster rule, any one senator theoretically has the power to stop all legislative action. In a filibuster, the senator may choose to extend the floor debate by talking about whatever subject he or she chooses. If there are more senators who join the filibuster, then together they can sustain floor debate for a longer period of time. The record for a filibuster sustained by a single senator is 24 hours and 18 minutes by Sen. Strom Thurmond.

To break the filibuster, at least 60 senators have to vote to invoke “cloture,” a rule that allows the Senate supermajority to end debate. However, under the rules of the Congressional Budget Act of 1974, budgetary provisions may be protected from the possibility of a filibuster under budget reconciliation. Since reconciliation limits debate to 20 hours before requiring a vote, filibusters cannot extend debate.

### *LIMITS ON RECONCILIATION*

The budget reconciliation process has a number of limitations that restrict its application. Under section 310(a) of the 1974 Budget Act, the most obvious limitation is that it can only be used when budgetary provisions are on the Senate floor (2). Conversely, non-budgetary bills cannot be moved through the reconciliation process, but instead are subject to traditional Senate rules.

Budget reconciliation also requires a budget resolution to be in place so that the Senate is actually reconciling tax and spending provisions according to the budget that Congress set out earlier in the year (3). If no budget has been passed, then reconciliation cannot be used.

Budget reconciliation also does not apply under section 310(g) of the 1974 Budget Act when the Senate considers Social Security funding. It cannot be used to pass budget bills that increase spending or otherwise increase the national deficit outside of the ten-year budget window. If any amendments are proposed during the budget reconciliation process, those amendments are under the same restrictions.

### QUICK FACTS

- The budget reconciliation process allows Congress to change tax and spending aspects of the federal budget with a simple majority in the U.S. Senate.
- In order for the Senate majority to utilize the budget reconciliation process, a budget must already have been passed by Congress.

### NOTABLE & QUOTABLE

“Chief Justice John Roberts ruled that the financial penalty enforcing the individual mandate is within Congress’s constitutional power to ‘lay and collect Taxes,’ and that the mandate and penalty are inextricably linked. This should suffice to enable repeal, through reconciliation, of both the individual and employer mandates, and their respective penalty taxes.”

- Keith Hennessey (1)

## **WHY BUDGET RECONCILIATION MATTERS**

Budget reconciliation is gaining attention in light of the Supreme Court's decision on President Obama's health care law in June of 2012. Opponents of the law immediately referenced reconciliation as a strategy for repealing aspects of the health care law. Within days after Justice Roberts issued the majority ruling on the health care decision, the idea of reconciliation became a hot topic among those who wanted to see the Patient law repealed.

The Senate cannot overturn Obamacare in its entirety through budget reconciliation. However, many aspects of the law are tax and spending provisions, including the individual mandate. Theoretically, these tax and spending provisions may be overturned by a simple majority under budget reconciliation.

Budget reconciliation can be an important tool to help overcome the threat of a filibuster when applied to select budget and spending measures. However, its use is fairly limited. Nevertheless, it may be useful in overturning the budgetary provisions within the President's new health care law. Although budget reconciliation is not a panacea for overcoming filibuster efforts in the senate, it spurs much discussion in relation to the debate surrounding the health care law.

### Endnotes:

1. Keith Hennessey, "A Strategy to Undo ObamaCare," Wall Street Journal Op-ed, July 2, 2012 (online at: <http://online.wsj.com/article/SB10001424052702304211804577500573035021342.html>)
2. Robert Keith and Bill Heniff Jr., "The Budget Reconciliation Process: House and Senate Procedures," CRS Report for Congress, August 10, 2005 (online at: [http://assets.opencrs.com/rpts/RL33030\\_20050810.pdf](http://assets.opencrs.com/rpts/RL33030_20050810.pdf)), p. 8.
3. Ibid, p.13.
4. Ibid, p. 8.

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