



Republicans Passed Their Tax Bill, Now They Have to Fix It

Mark Hay

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On Friday morning, Donald Trump signed **the irresponsible and unpopular** Republican tax bill into law, securing at least one legislative victory for 2017. But that doesn't mean the tax bill's saga is anywhere close to over. **Any major piece of legislation will contain glitches**, flawed language that opens an unforeseen loophole or minor clauses that clash in unexpected ways. These quirks always require follow-up legislation or regulations to patch up the new regimen. But this bill was not only an especially massive overhaul of the tax system, it was also **a 1,097-page rush job**, created by fusing **two equally rushed and flawed** prior versions over a week of secret conferencing.

There was, to tax policy expert Steven Rosenthal's eye, no real attempt to even try to catch mistakes before the bill was signed into law. "This bill was drafted so badly and in such a rushed fashion," he told me, "that the level of errors will be unlike anything we've seen before."

Republican leaders are well aware that their bill is deeply flawed. **Days before they released the final bill**, congressional heavy hitters were already talking about how to flesh out vague language and troubleshoot problems; they plan on writing a corrections bill soon. Yet while technical corrections are often routine legislative measures, it's not actually clear at this point that Republicans will be able to make any major fixes. Intrigue surrounding the fixes for this bill will be going on behind the scenes for a good chunk of 2018, if not longer.

So what will need fixing in the bill? No one's sure at this point. Policy wonks have already pointed out that there are many ways to game tax breaks for "pass-through" firms, **allowing wealthy individuals to masquerade as small businesses** to reduce their tax burden and thus government revenues. Firmer guardrails against abuse are vital. **US trading partners in Europe** have also pointed out that a tax break on certain exports may run afoul of World Trade Organization rules, requiring a tweak to avoid harmful retaliatory trade measures. And Republicans may wish to re-insert a couple clauses they were forced to remove due to Senate rules. **These include measures** on using tax-advantaged college savings accounts to pay for homeschooling expenses and determining when universities can be exempt from new taxes on large endowments.

But the bill is a jumble of moving parts whose interactions and implications will **only reveal themselves in full over time**. “Some problems are discovered when lawyers and accountants and other tax practitioners talk about the bill at conferences,” said Rosenthal. “Some problems are picked up through the audit cycle” as the IRS realizes how the new tax system plays out in the real world.

“It could take months, or even longer” to sort this out, said tax law expert Manoj Viswanathan. When it comes to the implications for multinational corporations, added Cato Institute tax policy wonk Chris Edwards “It’s going to take years to become evident how new rules are working.” We could find fewer errors than expected, or a flood of loopholes and unintended skewers. But the final roster of glitches will likely be at least as diverse as those we already know about.

But legislation introduced to fix errors as people cop onto them will face an uphill battle. Unlike the tax bill itself, corrections can be filibustered in the Senate. In previous eras, passing fixes was routine, but that’s no longer the case: In 2010, Republicans, bitter about the partisan passage of the Affordable Care Act, used the filibuster power to stonewall tweaks that would have allowed healthcare exchanges and individual plans to work better, crippling the program to make it easier to attack. Now there’s a real fear that Democrats, **angry at the partisan nature and breakneck pace** of this legislative process, will return that favor. With any major legislation, said Bill Hoagland, a longtime Senate staffer now at the Bipartisan Policy Center, “if it’s not done in a bipartisan way, the other party doesn’t have any incentive to make it better.”

There are major differences between the rancor over the ACA and this tax bill, through, which some analysts believe could force Democrats to the table on corrections in the near future. Viswanathan pointed out that leaving flaws in the tax code probably won’t cripple the underlying legislation in the same way blocking fixes to the ACA undermined that program. Instead, it will just make it harder for the federal government to generate revenue, both by leaving the system easy to game—especially for the wealthy—and by driving down American faith in the tax system. The GOP didn’t want the ACA to work, said Rosenthal, “but I think the Democrats want our Treasury to continue to collect revenue to fund the programs we all enjoy.”

Some fixes, like to that tax break that could provoke international trade backlash, are also vital. “Democrats may prefer working with Republicans to resolve this type of problem, despite their opposition to the tax legislation on the whole,” said Tax Foundation economist Gavin Ekins.

However, Hoagland is skeptical that even these considerations would push the Democrats to work with Republicans on corrections. “If the government is losing revenue, Democrats can simply blame it on Republicans,” he said. The only way Hoagland sees even piecemeal cooperation happening is if Republicans paired up fixes with things the Democrats want, like infrastructure spending or protections for undocumented immigrants who entered the US as children.

Edwards and Hoagland have both heard chatter that Republicans may just try to initiate another reconciliation process next year, allowing them to pass whatever fixes they want on a simple partisan majority vote in the Senate. But even that would be a unreliable process, stressed Hoagland. “That requires passing a budget resolution,” he pointed out. “That can be done with a

simple majority. But that'll take time. And now that we're moving into an election year, it's going to be very difficult to even put together a budget for 2019." There'd likely be a push to offset deficits by cutting into welfare programs—a risky move near midterms.

Even if Republicans can craft a budget and kick off reconciliation, there's no guarantee they'll be able to agree on how to fix flaws in the tax bill. That's likely part of the reason this bill was rushed, and many provisions were left vague. Some of their donors may *want* to keep the tax code full of holes.

To Edwards and Hoagland, all of this suggests Republicans will try to rely as much as possible on the administration to fix flaws through new Treasury and IRS rules and regulations. The bill **explicitly delegates the resolution of a number of ambiguities** to those agencies already.

But the new tax bill will go into effect before the IRS has had much time to dig into it, or received substantial guidance about what it needs to fix. The agency only has so much time to develop new rules relevant to the bill. On top of that, pointed out Rosenthal, the agency "has been beaten up for many years now" with **budget cuts** and heavy oversight provisions. And **as the Obama administration could tell Republicans** from its ACA experience, regulations intended to fix a program in lieu of legislative fixes don't always hold up when challenged in court.

All of which is to say that there's a very good chance that at least some of the flaws that are bound to emerge in the tax code may not get fixed easily, quickly, or at all. Some observers think that's part of the plan. "The whole package is horrible tax policy," said tax policy scholar Mitchell Kane, "but I don't see that there will be Republican appetite to fix it." Instead, he predicts, the GOP will use the resulting deficits to argue for the necessity of cutting social welfare programs.

But it's hard to imagine that most Republicans don't have the stomach to tackle welfare reform, especially in an election year. Senate Majority Leader Mitch McConnell **has already nixed the idea** of tackling entitlements in his chamber next year.

It's likely that Republicans felt boxed in by **their lofty promises for 2017**, which they had failed to deliver on for most of the year. They rushed to show they could do *something* before the holidays, and passed a deeply flawed tax bill, poisoning what little bipartisan goodwill was left in Congress. And they're just hoping they'll be able to resolve even more problems of their own making down the road. One more can kicked down the road, hopefully to be tackled later. It's the story of the Republican Congress in 2017 in miniature.