Our Friend the 311

Fun with the Fazio Exception and Its Anomaly

What Are Aggregates?

When the Congress decided to take a stronger role in budget making, whether out of intense dislike for President Richard Nixon, or a Congressional concern overall about the power of the purse wandering down Pennsylvania Avenue to set up shop at 1600, it decided one of the things it would do is set overall spending and revenue levels: Queue the aggregates found in the budget resolution via the *Congressional Budget and Impoundment Act of 1974.*

While there are a variety of aggregates, the three most important from an enforcement standpoint are overalls levels of budget authority, outlays and revenue. In the last fifteen years or so, they may be found in section 101 of Title I of the budget resolution.

Perhaps late to this description is the question: "What do aggregates have to do with anything? Good question: They matter because every bill, in order to escape being tagged as a violator of the section 311 point of order in the House (and Senate) must not cause spending to be above the budget authority or outlay aggregates or below the revenue aggregate (colloquially known as the "revenue floor").

The 311 Enforcement Periods: Spending

While not exactly tricky, the enforcement periods have to be kept in mind, since this is where the sides of the ledger, always important, come in to play. For spending, the test is the budget resolution year – the fiscal year for which a budget resolution is adopted. As of right now, that fiscal year is 2015. Hence it is a one-year test.

Why? Another good question: It is because, despite the fact that there is a discretionary spending baseline, it's really unknown how much discretionary spending will be the years following the above budget resolution fiscal year. We know what it will be for that fiscal year because there is an allocation to the Appropriations Committee (the much talked about 302(a) allocation) that says what it will be.

The 311 Enforcement Periods: Revenue

The other side of the ledger is different – the budget resolution sets revenue aggregates that will not change in projection absent a change in law, law that is set in statute. Not law that has yet to be enacted (as is the case with appropriations bills on the spending side). So the enforcement period for revenue measures is the first year of the budget resolution and the overall "window" – the total of the fiscal years covered. A bill (or amendment for that matter) must not cause revenue to fall below the levels provided for in the budget resolution in that first year and the total number of years or zap, 311 comes calling.

BUMBLE QUERY: WHAT'S A MOTION TO RECOMMIT?

In the House, it is not ground breaking news that being in the Minority is not as much fun as being in the Majority.

One procedure the Minority does have at its disposal is the Motion to Recommit (the "MTR"). While it sounds very Parliamentary complicated, it's really just an amendment and is treated as such.

It is offered at the end of debate on a bill by a Minority Member. No text is required in advance. The catch on the MTR? It must comply with all the House Rules, including budget.

Not always easy.

Adjustments

For a variety of reasons, a reserve fund, an update for baseline changes, a designation provided for in law or in the text of the budget resolution, and "adjustment" may be called for. As garden variety legislative drafting, the term "the aggregates and allocations" may be adjusted. For the purposes of enforcing the section 311 point of order, this language is a method by which the aggregates (as well as allocations which are committee based rather than totals which by definition cross committee jurisdictions) may be altered to accommodate bills or amendments.

When the Chairman of the House Budget Committee submits a letter to the Speaker, normally being published in the Congressional Record, this has the effect of altering the budget resolution aggregates and the point of order which might otherwise lay, is taken care of ("provided for" in the jargon of budget resolution text).

The Fazio Exception

In the mists of time, on the spending side, it became clear that there was an odd result in mixing discretionary and direct spending to get the overall spending aggregate. Congress starts off with current law projections of spending (direct, mandatory, backdoor, entitlements, all terms used for it). This of course falls short of the projected aggregate because no appropriation bills have yet to be enacted. Only the bill which causes the spending aggregate to be exceeded is the one in violation.

This had the unintended result of a bill that might have been pushed through despite the heroic efforts of the Budget Committees to avert such catastrophe and been enacted without offsets. The 311 didn't kick in because it was earlier in the year before the appropriation bills had been enacted. Injury was added to injury after this when the final appropriation bill came along, and was in compliance with its allocation, but still caused the 311 violation because some scoundrel previously had gotten away with breaking through the budget laws and spending more money than allowed.

So the Fazio Exception[1] was adopted. This is straightforward in application, consequences? Not so straightforward. The basic: If a Committee is within its allocation of budget authority, that is it complies with its 302(a) allocation, then it will not be held responsible for some other Committee's malfeasance and an exception (section 311(c)) will be made for it. This has the result of making the 311 point of order either irrelevant for spending insofar as there will be two points of order (section 302(f) for breaking the (a) allocation) and the 311 (for breaking the budget authority or outlays aggregate), or no point of order (compliant with 302(f)? You're okay with 311).

The Fazio Anomaly

Unfortunately, the story is not over yet. If one reviews the exact language of section 311(c), if a bill is in compliance with its 302(a) allocation, the entirety of section 311 is turned off. This has the unintended result of turning off the control for revenue as well.

[1] The "Fazio Exception" was named after Congressman Representative Victor Herbert Fazio, Jr., (CA), instrumental in its adoption.

So a bill that may reduce revenues, such as cutting every tax in sight for whatever reason, or whatever the circumstances, without offsetting increases elsewhere, can escape the section 311 point of order as long as it provides budget authority and does not violate the 302(f) point of order by breaching its 302(a) allocation.

Why does that matter? Well, it's an escape hatch out of a control on revenue reductions below the floor, for which no budget decision had been made.

Takeaway on the Fazio Anomaly

Escape hatches when it comes to fleeing fire, felons, or freelance journalists? Then they're good.

Escape hatches when fleeing the controls over the budget? Then they're bad.

Quote of the Day

> "Budget process is like hockey: You let through 100% of the bills you don't try to enforce points of order on."