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Fate of tax extenders remains uncertain as lawmakers continue deliberations

House and Senate lawmakers this week continued to negotiate the contours of legislation that would renew dozens of temporary tax provisions that expired at the end of 2014 – but disagreement over which, if any, provisions should be made permanent still stands in the way of a final deal.

Forever or for now?

So far this year, the House and Senate have taken very different approaches with respect to renewing the expired provisions.

The Senate Finance Committee opted in late July to approve unoffset legislation that would extend nearly all of the lapsed temporary tax deductions, credits, and other incentives for two years – i.e., through 2016, retroactive to the end of 2014.

The House, in contrast, has approved a series of unpaid-for measures that would permanently extend – and in some cases expand – the research credit, the state and local general sales tax deduction, increased section 179 expensing for small businesses, tax relief provisions targeting S corporations, and several charitable-giving provisions. Each bill drew a veto threat from President Obama in large part due to its negative impact on reported budget deficits.

Several additional permanent extenders bills have cleared the Ways and Means Committee – such as the lookthrough rule for payments between related controlled foreign corporations, the exception to Subpart F for active financing income, 15-year straight-line cost recovery for certain leasehold improvements, and 50 percent bonus depreciation – and currently await action on the House floor, while dozens of other expired provisions remain unaddressed.

For additional details on how the House and Senate are approaching the extenders debate and a side-by-side comparison of extenders legislation currently moving through the two chambers, see *Policy and politics of tax extenders in 2015* from Deloitte Tax LLP.
URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-policy-and-politics-of-tax-extenders-in-2015.pdf

The House-Senate divide continued to be on display this week. Ways and Means Committee Chairman Kevin Brady, R-Texas, noted on November 17 that negotiations around which, if any, extenders should be made permanent or left unextended would continue.

"Then, we will assess the progress," Brady said.

For his part, Senate Finance Committee member Charles Grassley, R-Iowa, predicted that a clean, two-year extension of the provisions – along the lines of the Finance Committee-reported bill – would ultimately prevail, but he added that "nobody can narrow down exactly what they want to do."

Lew: 'No' to permanent bonus depreciation; 'yes' to enhanced child credit, EITC

Negotiations took on additional complexity as the Obama administration reiterated its preferences. During a November 18 meeting with Ways and Means Committee Democrats, Treasury Secretary Jack Lew stated that the White House would not support an extenders package that includes a permanent extension of 50 percent bonus depreciation, citing its cost and the administration's belief that it was never intended to be more than a temporary stimulus measure.

During that same meeting, Lew reiterated the stance of the White House – a view broadly shared by congressional Democrats – that any permanent extension of business incentives must be paired with permanency for certain enhancements made to refundable credits including the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) as part of the economic stimulus legislation enacted in 2009. (The EITC and CTC enhancements are set to lapse after 2017.)

According to reports, Lew told the lawmakers that the White House would consider a package that makes permanent the research credit and enhanced section 179 expensing, so long as it provides equal treatment for the EITC, CTC, and American Opportunity Tax Credit for higher education costs. (The latter provision is also scheduled to expire after 2017.)

But Republicans have been wary of extending the EITC and CTC enhancements, mainly due to concerns about high error rates and perceived fraud. Ways and Means Chairman Brady told reporters November 19 that his panel's "strategy is to establish true anti-fraud measures in the most fraudulent tax credits and to do it sooner rather than later."

It remains unclear, however, whether lawmakers can unlock a permanent extenders deal by crafting measures that improve compliance and reduce fraud in those programs in a way that addresses GOP concerns but does not cause Democrats to feel that the essential anti-poverty features of those credits are being undermined.

Budget impact cannot be ignored

Even if lawmakers are able to thread the policy needle on measures benefiting low-income workers and families in a manner acceptable to both parties, it is important to note that the resulting package of permanent and temporary extensions would likely be measured by congressional budgetkeepers as costing the government hundreds of billions of dollars in lost revenue and new spending – a factor that could make some lawmakers demur.

"There are budget realities that we have to deal with," noted Ways and Means Committee member Richard Neal, D-Mass.

Hitching a ride

Although disagreements remain, most observers believe the tax extenders will be dealt with in some fashion before the end of the year, possibly in conjunction with appropriations legislation which must be enacted by December 12 in order to avoid a government shutdown. That forthcoming legislation – known as an "omnibus" spending bill because it folds together multiple appropriations measures – will fill in the details of the recently enacted Bipartisan Budget Act of 2015 which lifted the statutory caps on discretionary spending (i.e., the "sequester") in exchange for savings generated elsewhere in the budget. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 37, Oct. 30, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151030_1.html

It is also possible, although generally regarded as less likely, that an extenders package could be attached to legislation currently in conference committee that would provide a long-term reauthorization of federal highway and mass transit programs. Enactment of that legislation, or another short-term patch, must occur by December 4. (See related coverage in this issue.)

Ryan: House could take up tax reform in 2016

In recent years, House Republicans – most notably, former Ways and Means Committee chairs Dave Camp, R-Mich., and Paul Ryan, R-Wis. – have pushed for permanent extensions of selected temporary tax provisions as a way to make tax reform easier for a future Congress by building those measures into the budget baseline and lowering revenue targets, which in turn would give taxwriters more flexibility as they decide what base broadeners may be necessary to reach a desired level of rate reduction.

The tax reform discussion draft that Camp unveiled in 2014 was never taken up by Congress and Ryan's efforts to advance tax reform in 2015 ran into a series of insurmountable obstacles. Nonetheless, Ryan, who just last month became House speaker, suggested in remarks at a November 17 event hosted by *The Wall Street Journal* that House Republicans may attempt to pass tax reform in 2016 – before the November congressional and presidential elections – as a way to help draw a contrast with Democrats and to demonstrate the direction a Republican-led Congress and White House would take on US tax policy.

"We believe we ought to show what we would do differently in specifics and lay that out to the country so we can have that kind of affirming election," Ryan said.

Ryan also noted that although his negotiations with Senate Finance Committee member Charles Schumer, D-N.Y., on international tax reform are now divorced from must-pass highway legislation, they have not been shelved altogether.

“It’s not dead, it’s just not going to be connected with the highway program,” Ryan said. “We’re still talking about this, Chuck and I had a conversation recently about that.”

He added: “At the very least I think we’re beginning to see a bipartisan consensus to change our international tax laws, and that is something I’m not giving up on. I can’t speak for where the White House comes down on this but I’ve had productive conversations with Democrats in Congress about it.”

Earlier this year, Ryan, Schumer, and Senate Finance Committee member Rob Portman, R-Ohio, were in talks on an international reform plan that would transition the US toward a territorial system for taxing foreign-source income of domestic multinationals, implement an “innovation box” for income from certain intellectual property, put in place certain measures to prevent erosion of the US tax base, and leverage a “deemed repatriation” tax on US firms’ untaxed foreign profits in order to help address the long-term insolvency of the Highway Trust Fund.

In remarks reported in *Politico* on November 18, Schumer stated that he wants “to get [international reform] done as soon as we can. But [Ryan’s] got to tell me he can do it.” A Senate Democratic aide, however, cautioned that an overhaul of the US international tax rules would have to be linked to a highway spending package to garner Democratic support.

“Democrats are interested in pursuing international reform to fund our infrastructure needs. The two need to be paired together,” the aide said.

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Congress OKs another short-term highway patch

Conceding they were unlikely to reach a conference agreement in time to send a multi-year transportation bill to the president before the scheduled expiration of the Highway Trust Fund’s spending authority on November 20, congressional leaders this week pushed through another short-term extension – the fourth this year – giving themselves until December 4 to reconcile competing Senate- and House-passed proposals.

The two-week patch cleared the House on November 16 and the Senate on November 19. President Obama signed it into law on November 20.

A long-term highway bill is expected to be finalized this year – for the first time since 2005 – but key differences in the two versions have compelled extensive negotiations by the conferees, led by Sens. James Inhofe, R-Okla., and Barbara Boxer, D-Calif., of the Senate

Environment and Public Works Committee, and Reps. Bill Shuster, R-Pa., and Peter DeFazio, D-Ore., of the House Transportation and Infrastructure Committee. Among the more notable issues are funding levels and the length of the Highway Trust Fund's reauthorization. Instead of the six-year authorization included in both versions of the bill, essentially maintaining flat funding levels, some conferees are now advocating a five-year bill with higher annual funding. They argue that such a compromise would still provide the stability and certainty needed for major projects but would better address the nation's infrastructure challenges.

Also in the negotiations mix are some of the proposed revenue offsets needed to fund a long-term measure. The House and Senate bills include a variety of miscellaneous provisions to cover the annual shortfall in the Highway Trust Fund, such as selling some of the oil from the federal Strategic Petroleum Reserve (also controversial because it assumes a sales price nearly double current oil prices), reducing the amount of interest that the Federal Reserve pays to member banks, and shifting funds from a Federal Reserve surplus account. In addition, newly elected House Ways and Means Committee Chairman Kevin Brady, R-Texas, has raised concerns about a provision that would redirect Customs user fees paid by airline and cruise passengers into the Highway Trust Fund.

Negotiators are also expected to consider various tax compliance offsets such as requiring the Internal Revenue Service to use private debt collection agencies and permitting the State Department to revoke passports held by or deny new passports to individuals with unpaid tax debts.

One offset that will not be considered is an increase in federal fuel taxes. Because infrastructure work is carried out at the state and local levels, where officials have in some cases sought more secure funding streams, all but 13 states have raised their own gas taxes since the last federal hike in 1993, to bolster their ability to pay for long-term road and transit projects. At the federal level, however, a hike in fuel excise taxes has proven to be politically unpopular despite calls in some circles for Congress to stick to a "user-pays" approach to funding infrastructure spending.

The conference committee held its first – and likely only – public meeting on November 18, and Chairman Shuster said they plan to have a bill finalized by November 30 so it can be voted on in both chambers before the new deadline. Chairman Inhofe has indicated that the broad outlines of a conference agreement could be announced at any time.

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Brady announces leadership, membership changes on Ways and Means subcommittees

House Ways and Means Committee Chairman Kevin Brady, R-Texas, on November 18 announced several organizational changes on the taxwriting panel, including the appointment of new subcommittee chairs and a reshuffling of subcommittee assignments for some Ways and Means Republicans.

As part of that reorganization, the committee also unanimously approved rule changes to rename the Subcommittee on Select Revenue Measures as the Subcommittee on Tax Policy and increase its size by two Republican members and one Democratic member. In addition, taxwriters voted to add one new Republican seat and one new Democratic seat to the Health Subcommittee, the release said.

Who's going where?

The Subcommittee on Tax Policy will now be chaired by taxwriter Charles Boustany, R-La., who formerly helmed the Human Resources panel. In July, Boustany and Ways and Means Democrat Richard Neal of Massachusetts released a discussion draft of a proposal for an "innovation" box that would provide corporations a deduction for certain income from patents and a broad range of other intellectual property. An innovation box is regarded as a potentially significant component of a broader international tax reform plan that House Republican leaders hope to unveil as early as 2016. Boustany has previously indicated that he is revising the innovation box proposal to incorporate comments submitted by stakeholders following the release of the original discussion draft.

Boustany stated in a November 18 news release that his goals as Tax Policy Subcommittee chairman are to "look for ways to stop driving American businesses away from our shores, stop harming the very small businesses that are the economic engines of our recovery, and stop the gross overreach into pocketbooks of families who are struggling to put food on the table."

Republicans now serving on the Tax Policy Subcommittee with Boustany are: Reps. Dave Reichert of Washington, Pat Tiberi of Ohio, Tom Reed of New York, Todd Young of Indiana, Mike Kelly of Pennsylvania, Jim Renacci of Ohio, Kristi Noem of South Dakota, and George Holding of North Carolina.

Other newly appointed subcommittee chairs include Pat Tiberi (Health); Dave Reichert (Trade); and Rep. Vern Buchanan, R-Fla., (Human Resources). Reps. Sam Johnson, R-Texas, and Peter Roskam, R-Ill., retain the top spots on the Social Security and Oversight subcommittees, respectively.

The complete list of Republican Ways and Means subcommittee assignments is available on the panel's Web site.
URL: http://waysandmeans.house.gov/chairman-brady-announces-republican-subcommittee-chairs-members/

The organizational changes are the result of the election of former Ways and Means Chairman Paul Ryan, R-Wis., to his new position as House speaker, Brady's election to succeed Ryan as the House's top taxwriter, and the appointment of Rep. Tom Rice, R-S.C., to fill the vacancy on the GOP roster created by Ryan's resignation from the committee.

Tiberi named vice chair of JEC

In other developments, Speaker Ryan announced November 20 that he has appointed Ways and Means Republican Pat Tiberi to serve as vice chair of the congressional Joint Economic Committee (JEC).

Established by the Employment Act of 1946, the JEC's primary responsibilities are to review economic conditions and recommend improvements in economic policy.

"I have worked with Pat Tiberi for years, and he is the right person to help lead the Joint Economic Committee," Ryan said in his announcement. "He understands that through policies like tax reform and strong trade agreements we can grow the economy and encourage job creation."

Tiberi replaces former JEC Vice Chair Kevin Brady in the wake of Brady's election as Ways and Means chairman. The JEC's current chairman is Indiana Republican Sen. Dan Coats. The chairmanship and vice-chairmanship positions alternate between the Senate and House every Congress.

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