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Tax

Tax News & Views

December 11, 2015

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Lawmakers buy more time to finish omnibus funding bill, extenders

Facing a December 11 expiration of the current federal spending authorization, lawmakers this week passed a five-day continuing resolution to keep the federal government open through December 16 while they continue to seek agreement on agency funding for the rest of the fiscal year. Although a bill to extend 50-plus expired and expiring tax provisions might move through Congress separately, the fate of that package now is tied to the so-called omnibus spending bill.

Leadership and the senior members of the taxwriting committees remain in discussions about a potential deal that would make some tax provisions permanent and provide multi-year extensions for others, but with many moving parts in play, negotiations remain "shaky," in the words of Senate Finance Committee Chairman Orrin Hatch, R-Utah, and a smaller short-term deal could be the fallback.

Sen. John Thune, R-S.D. – a member of the Finance Committee and Senate leadership – told Politico on December 10 that the extenders bill was not "anything close to done yet," adding that "[t]here's a lot of stuff in play, and it's kind of gotten conflated with the [omnibus] now, too."

Senate Majority Whip John Cornyn of Texas likewise told reporters that extenders and appropriations legislation "seem to be linked, although I can't tell you whether it will be one vote or two votes; but they're clearly part of the overall negotiations."

For her part, House Minority Leader Nancy Pelosi, D-Calif., said in a December 11 press conference that she would not support efforts to move the tax and spending packages in tandem.

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Brady preps 'Plan B'

To inoculate against the possibility of a long-term extenders deal falling flat, House Ways and Means Committee Chairman Kevin, Brady, R-Texas, on December 7 released the Tax Increase Prevention and Real Estate Investment Act of 2015, which would retroactively extend the last year's expired tax deductions, credits, and incentives through 2016 and make certain provisions more generous for 2016 only.

More than just extenders: In addition to addressing extenders, the Ways and Means package includes provisions that would:

- Overhaul the rules governing the tax treatment of real estate investment trusts (REITs). Certain provisions, such as a new proposed restriction on tax-free spinoffs involving REITs, appear to address concerns about possible erosion of the corporate tax base resulting from the use of REITs. Others, such as the proposed repeal of the preferential dividend rules for publicly offered REITs, would move in the opposite direction and make REITs a more attractive investment vehicle. A few provisions would make technical tweaks to current law.
- Make technical corrections to recently enacted rules that streamline Internal Revenue Service audit procedures for large partnerships. (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
- Liberalize the rules governing tax-preferred section 529 education accounts.
- Make a variety of other targeted changes related to, among other things, the alcohol excise tax, the alternative tax for certain small insurance companies, and the treatment of income received under the Work Colleges Program.

The legislation also includes several proposed reforms to Internal Revenue Service operations and provisions addressing taxpayer access to the federal Tax Court as well as Tax Court administration.

Revenue provisions: According to a preliminary estimate from the Joint Committee on Taxation staff, the package would reduce federal receipts by a net total of $108.4 billion over 10 years. In addition to certain revenue-raising provisions included among the REIT reform proposals, the measure includes offsets that would:
URL: http://waysandmeans.house.gov/wp-content/uploads/2015/12/15-11336.pdf

- Modify the deduction for energy-efficient commercial buildings by updating energy-efficiency standards for eligible improvements to reflect new standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers, effective for property placed in service after December 31, 2015;
- Allow motion picture payroll services companies to be treated as the employer of their film and television production workers for federal employment tax purposes, effective for remuneration paid after December 31, 2015;
- Convert the measurement of the alternative fuel excise tax credit for liquefied natural gas and liquefied petroleum gas from 50 cents per gallon to 50 cents per energy equivalent of a gallon of diesel fuel (which is approximately 29 cents per gallon for

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liquefied natural gas and approximately 36 per gallon for liquefied petroleum gas), effective for fuel sold or used after December 31, 2015.

- Allow eligible noncorporate recipients to exclude from gross income and alternative minimum taxable income any grant, award, or allowance under the Clean Coal Power Initiative, and require taxpayers to make an up-front payment to the government of 1.18 percent of the value of the grant and reduce adjusted basis in depreciable property related to the grant, effective for payments received in taxable years beginning after December 31, 2011.

Some of these proposed offsets were included in the two-year extenders legislation that was approved by the Senate Finance Committee in July.

The full text and a section-by-section summary of the legislation are available on the Ways and Means Committee Web site.
URL: http://waysandmeans.house.gov/wp-content/uploads/2015/12/BILLS-114hr34eas-AMNT1.pdf
URL: http://waysandmeans.house.gov/wp-content/uploads/2015/12/WM-extenders-2015-2016-summary-12-7-2015-FINAL.pdf

No floor action yet: The House has not taken action on the bill yet, and Ways and Means Chairman Brady has made clear that it is a “Plan B” in the event that the longer-term deal cannot be finalized.

Déjà vu

This time last year, taxwriters were similarly negotiating what they hoped would be a major tax deal to permanently extend a number of business and individual tax credits and deductions, but when negotiations broke down, the fallback was a one-year across-the-board retroactive extension that was signed into law December 19 only to expire again at the end of the year.

Key sticking points from last year still hold this year, including a desire by the White House and congressional Democrats for permanent extensions of certain enhancements to the child tax credit and the earned income tax credit – as well as Republicans’ desire to mitigate what they view as improper payments under those programs. Key House Democrats this year are also pushing for a provision that would index the child tax credit to inflation.

In addition, negotiators are debating an end or easing of the ban on crude oil exports – tied to various energy-related tax provisions – and the possible delay or repeal of two provisions that are part of the Patient Protection and Affordable Care Act: the medical device excise tax and the so-called Cadillac tax on high-cost employer-sponsored insurance plans.

Some lawmakers also have been wary of the potential deficit impact of an expansive extenders bill with a mix of permanent and long-term provisions – which, according to some unofficial estimates, could reduce federal receipts by as much as $800 billion over 10 years. But in remarks to reporters this week, Senate Minority Leader Harry Reid, D-Nev., appeared to downplay that concern, noting that Congress routinely passes smaller extenders packages that are largely unoffset.

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“These tax extenders, many of them are good for business, but those that are good for business are also good for everyday Americans, and each year we do that, they’re not paid for with rare exception. So I don’t know what people are talking about,” Reid said.

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House approves bipartisan trade enforcement deal with permanent extension of Internet tax moratorium

The House of Representatives voted 256-158 on December 11 to approve a conference agreement on a Customs overhaul and trade enforcement bill that includes a provision to permanently extend the current-law moratorium on state and local taxes on Internet access service. The Trade Facilitation and Enforcement Act of 2015 (H.R. 644) now heads to the Senate, where it is expected to receive a vote the week of December 14.

Internet tax moratorium

The Internet tax moratorium – known officially as the Internet Tax Freedom Act (ITFA) – was originally enacted as a temporary measure in 1998 and has received multiple short-term and long-term extensions since then. The latest extension expires December 11.

The original moratorium included a grandfather clause to give states that were then taxing Internet access some time to transition to other sources of revenue. To date, most of the originally grandfathered states have discontinued taxing Internet access. H.R. 644 would require any remaining state-imposed Internet access taxes to be phased out by June 30, 2020.

The House approved a permanent Internet tax moratorium earlier this year as well as in 2014. In the Senate, however, efforts to move similar legislation have been stymied by lawmakers who sought to link action on Internet access taxes with provisions from the Marketplace Fairness Act (MFA) that are intended to make it easier for states to capture sales and use tax revenue from transactions involving on-line and other “remote” vendors that do not have an in-state physical presence.

H.R. 644 does not address the tax treatment of remote sales, and the exclusion of the MFA language could complicate its path to approval in the Senate. MFA supporters are expected to raise a point of order against the conference agreement to strike the ITFA language from the underlying legislation. It would take 60 votes to waive the point of order and keep the ITFA provision in the legislation, and it is currently unclear whether the provision could garner supermajority support.

Increased failure-to-file penalty

H.R. 644 also includes a revenue provision that would increase the penalty for failure to file a tax return more than 60 days after its due date to the lesser of $205 or 100 percent of the

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amount required to be shown as tax on the return (from $135 or 100 percent of the amount required to be shown as tax on the return under current law). The provision would be effective for returns required to be filed in calendar years after 2015.

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