In this issue:

FAA reauthorization heads to the White House as Congress heads for the exit doors

In its final week of activity before breaking for a summer recess that will run through Labor Day, Congress approved legislation to reauthorize the Federal Aviation Administration (FAA) – including fuel and passenger excise taxes that provide the agency's dedicated revenue stream – through fiscal year 2017.

The bill, H.R. 636, passed the House on July 11 and the Senate on July 13, and now heads to the White House for the president's signature ahead of the previous authorization's July 15 expiration.

The legislation extends current FAA spending authority and related excise taxes at their current levels, renews existing FAA programs, and includes a handful of new policy provisions on which there is broad agreement.

No extenders included

While some Democrats in both the Senate and House had hoped to include extensions of a handful of alternative energy tax incentives under section 48 that are due to expire at the end of 2016, negotiators from both chambers were unable to reach consensus on these provisions and they were ultimately left out of the final package. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 24, July 1, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160701_1.html

Maybe later?: Sen. Ron Wyden of Oregon, the ranking Democrat on the Finance Committee, is still hopeful about energy extensions before the end of this year, telling reporters that the "[o]dds are certainly in favor of there being an end-of-the-year package that involves taxes. I've heard from members of both parties that there are a handful of extenders that they hope will go in at the end of the year, so I'm expecting that."

Maybe not: However, House Ways and Means Chairman Kevin Brady, R-Texas, has repeatedly voiced his opposition to an extenders package this year.

"We are not bringing the extenders circus back to town," he told reporters this week. "These [energy extender] bills either need to move [on a stand-alone basis] – one by one – or be part of the overall tax reform in 2017."

Efforts in the Senate earlier this spring to attach energy extenders to an FAA reauthorization bill ultimately collapsed as lawmakers attempted to secure extensions for a variety of other temporary deductions, credits, and incentives. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 15, Apr. 15, 2016. A list of all the tax provisions scheduled to expire between 2016 and 2021 is available from Deloitte Tax LLP.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160415_1.html
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160715_1suppA.pdf

Brady: Action on stand-alone bills possible in September

Ways and Means Chairman Brady did say that he is working with Tax Policy Subcommittee Chairman Charles Boustany, R-La., to potentially move some relatively noncontroversial tax bills through the House after Labor Day. The Ways and Means Committee has passed several stand-alone bills this summer that could be brought to the House floor, including H.R. 3608, which was marked up on July 13 and would exempt payments by private aircraft owners for certain aircraft management services from the air transport excise tax (see related coverage in this issue), and a number related to health care taxation (for prior coverage, see *Tax News & Views*, Vol. 17, No. 22, June 17, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160617_3.html

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

House taxwriters OK bill exempting aircraft management service fees from airline ticket taxes

The House Ways and Means Committee on July 13 approved by voice vote legislation (H.R. 3608) that would exempt from the so-called airline "ticket tax" the fees paid by a private aircraft owner to a third party for management services related to maintenance and support of the aircraft or flights on the aircraft. Airline ticket taxes are included among the excise taxes that provide the dedicated revenue stream for the Federal Aviation Administration (FAA). Congress has voted to renew those taxes at their current levels as part of legislation to reauthorize the FAA through fiscal year 2017. (See related coverage in this issue for details.)

Resolving 'ambiguities'

According to a Ways and Means Committee release, H.R. 3608 "resolves potential ambiguities in the airline ticket tax by codifying the current Internal Revenue Service . . . practice regarding the treatment of aircraft management services." (The IRS had held in 2012 chief counsel advice that in some circumstances the third-party management services provided to private aircraft owners could constitute taxable air transportation services; however, the Service does not currently appear to enforce this position.)

Exempt management services

Under the legislation, management services would include support activities related to the aircraft itself, such as its storage, maintenance, and refueling; activities related to its operation, such as the hiring and training of pilots and crew; and administrative services such as scheduling, flight planning, weather forecasting, and establishing and complying with safety standards. The exemption generally would apply to payments for services related to the aircraft owner's own aircraft; however, the bill provides that a lessee would be considered the owner of an aircraft if the aircraft is leased for longer than 31 days. The legislation also clarifies that the exemption would apply to management fees paid for aircraft that are owned through a wholly-owned business entity such as a limited liability company.

The bill would be effective for amounts paid after the date of enactment. The Joint Committee on Taxation (JCT) staff estimates that it would reduce federal revenues by less than $500,000 between 2017 and 2026.

Bipartisan sponsors / partisan divide

H.R. 3608 was introduced by Ways and Means Republican Pat Tiberi of Ohio. An identical companion bill was introduced in the Senate last year by Finance Committee Democrat Sherrod Brown of Ohio.

Despite the bipartisan pedigree, the bill drew some criticism from Democrats at the mark-up. Ways and Means ranking Democrat Sander Levin of Michigan contended in his opening statement that the legislation "begs the question of whether we really think that jet owners are the Americans most in need of tax relief. At a time when so many other major tax issues are looming, such as closing egregious loopholes for companies that ship jobs overseas and acting on expiring energy provisions, it is curious that this tax provision is coming before the committee." Other Democrats on the panel echoed those sentiments as they posed questions to JCT Chief of Staff Thomas Barthold, who was on hand to provide a technical walk-through of the legislation.

But Tiberi emphasized that the measure would not provide a new tax break but instead "simply clarifies that the tax on commercial air transportation which is called a ticket tax does not apply to aircraft management services for general aviation flights that do not use tickets."

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

CBO report reiterates long-term federal budget challenges

A July 12 report by the Congressional Budget Office (CBO) detailing the federal government's fiscal challenges over the next 30 years warns that a gradual projected increase in revenue will be outstripped by faster-rising Social Security and Medicare costs, as well as bigger payouts to service a growing national debt.
URL: https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51580-LTBO.pdf

CBO, Congress's nonpartisan budget scorekeeper, issues its Long-Term Budget Outlook annually. The report is distinct from what is known on Capitol Hill as the "baseline" – CBO's 10-year budget projections which are used as the yardstick for measuring the fiscal impact of congressional tax and spending proposals.

Revenue-spending mismatch to widen over time

CBO's latest long-term outlook predicts that, even absent action by Congress, federal revenues will gradually rise over the next 30 years, from 18.2 percent of gross domestic product (GDP) in fiscal year 2016 to 19.4 percent of GDP in fiscal year 2046 – an ascent driven primarily by so-called "bracket creep," or the tendency of revenues to increase as wage gains outpace the inflation index to which the personal income tax brackets are tied. The so-called "Cadillac tax" on high-cost employment-based health insurance plans enacted in the Patient Protection and Affordable Care Act of 2010 and currently set to take effect in 2020, as well as increasing withdrawals by Baby Boomers from tax-deferred retirement accounts, will also contribute to the rising-revenue phenomenon, according to CBO. (The Cadillac tax was originally scheduled to take effect in 2018, but its effective date was delayed by two years as part of the combined spending and "tax extenders" package enacted in late 2015.)

However, these revenue gains will be outstripped by a concurrent rise in outlays attributable mainly to the growing ranks of Baby Boomers becoming eligible for Social Security and Medicare, longer life expectancies, health costs rising faster than the economy, and increasing debt service costs due to an assumption that interest rates will gradually rise from their current historic lows. Between fiscal years 2016 and 2046, CBO predicts federal spending will rise from 21.1 percent of GDP to 28.3 percent of GDP.

As a result of these dynamics, CBO estimates the annual budget deficit will roughly triple from about 2.9 percent of GDP today to almost 9 percent of the economy in 2046. Over the same time span, the federal debt held by the public (i.e., debt not held in government trust funds) is projected to rise from 75 percent of GDP to 141 percent of GDP. (Over the past 50 years, the publicly held debt has averaged about 39 percent of GDP.)

Actual fiscal outlook may be even bleaker

As is customary with all CBO budget projections utilized by Congress, the primary figures included in the Long-Term Budget Outlook are based upon the assumption that current laws will not change – in other words, that any temporarily enacted tax cuts will not be renewed, any tax increases with delayed effective dates will come into force, and any scheduled spending cuts will transpire as prescribed in statute.

Therefore, if expiring tax provisions (including the tax extenders that were not made permanent in late 2015 and are now scheduled to lapse at the end of 2016) are instead renewed, recently delayed and suspended tax increases (i.e., the Cadillac tax and medical device excise tax) are delayed or suspended further into the future, and scheduled "sequester" cuts to discretionary spending are not allowed to transpire, the fiscal outlook would be even worse. This would not be the case, of course, if lawmakers choose to finance such law changes by enacting offsetting tax increases, spending cuts, or a combination of the two – an unlikely outcome, based on recent history.

Closing the fiscal gap a tall order

To give an indication of the magnitude of policy changes that would be needed to address the projected long-term fiscal imbalance, CBO notes that if policymakers wanted to stabilize the publicly held debt at its current level of 75 percent of GDP over the next 30 years they would have to either raise revenue or cut noninterest spending by 1.7 percent of GDP per year – an amount equivalent to $330 billion in 2017 alone.

If instead lawmakers sought to *reduce* the publicly held debt by 2046 to its 50-year average of 39 percent of GDP, the requisite revenue increases or noninterest spending cuts would rise to 2.9 percent of GDP per year, or $560 billion in 2017 alone.

CBO also notes that as daunting as those figures seem, the challenge becomes even more difficult the longer Congress waits to enact policies designed to address this imbalance.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

Special edition Dbriefs: New proposed QI agreement and the QDD regime – Notice 2016-42

The IRS on July 1 released Notice 2016-42, providing the proposed qualified intermediary (QI) agreement for certain foreign persons to simplify their withholding obligations under Internal Revenue Code chapters 3, 4, and 61, and section 3406. The notice also provides guidance on procedures for the qualified derivatives dealer (QDD) regime announced in temporary regulations last fall.
URL: https://www.irs.gov/pub/irs-drop/n-16-42.pdf

Find out more

Deloitte Tax LLP's FATCA leadership team and invited guests from the IRS will discuss the notice during a special edition Dbriefs webcast on Tuesday, July 19 at 11:00 AM Eastern time.

Take a moment to register for the webcast to find out more about the impact of the IRS's guidance and next steps to consider.
URL: https://subscriptions.deloitte.com/default.aspx?eventid=1226104

— Denise Hintzke
Managing Director, Global FATCA Tax Leader
Deloitte Tax LLP

A note on our publication schedule

Congress has adjourned for the Republican and Democratic national conventions and an extended summer recess. The House and Senate are scheduled to be back in session on September 6.

The recess likely will slow the pace of action on the tax policy front, although developments could take place behind the scenes. We will report on those as they occur. Otherwise, *Tax News & Views* will return to its regular publication schedule when the congressional session resumes after Labor Day.

Also in September, be on the lookout for a special publication from Deloitte Tax LLP examining the tax plans of the presidential candidates and other tax policy issues at stake in the November elections.

— Jon Traub
Managing Principal, Tax Policy
Deloitte Tax LLP