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Prospects for lame duck extenders action unclear as Congress adjourns for elections

The House and Senate this week wrapped up their September work period and are headed for an extended recess to give members facing re-election a chance to make a final campaign push before voters head to the polls on November 8. But as lawmakers left town they offered mixed signals on how – or whether – they will address a number of soon-to-expire tax deductions, credits, and incentives when they return to Capitol Hill for a post-election lame duck session.

Congress on September 28 approved and sent to President Obama a continuing resolution to fund federal government operations from the start of the new fiscal year on October 1 through December 9. The fact that lawmakers will have to act on another government funding bill in the lame duck session sets the stage – and provides a potential legislative vehicle – for moving other year-end tax legislation such as an extenders package or technical corrections bill. (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/160930_1suppA.pdf

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Will they or won't they?

Congressional Democrats and some Republicans – mostly in the Senate – have been pushing for the renewal of several alternative energy provisions set to expire at the end of this year – including the investment tax credits under section 48 for combined heat and power property, fuel cell property, small wind property, and geothermal property. They contend that these provisions were supposed to be included in last year's extenders agreement – the Protecting Americans Against Tax Hikes (PATH) Act – but were inadvertently left out because of a drafting error.

House Ways and Means Committee Chairman Kevin Brady, R-Texas, has consistently stated that the PATH Act, which made many expiring provisions permanent and renewed others for two years or longer, was intended to be the last large catch-all extenders package to move through Congress and that any provisions not included in that legislation were left out deliberately and would need to be taken up individually in freestanding bills or as part of a comprehensive tax reform effort in 2017. As recently as this month he referred to the year-end extenders process as a "circus…that frankly has created real problems in the past."

But in remarks to reporters on September 26, House Majority Leader Kevin McCarthy, R-Calif., appeared to suggest that action on extenders in the lame duck session was a possibility.

"It will be a discussion when we come back. It…seems tax extenders are always at the end of whatever we're doing in the cycle. So I don't see anything changing this year."

House Minority Leader Nancy Pelosi, D-Calif., expressed a similar sentiment, telling reporters on September 27 that "[w]e hope to get tax extenders [at the end of the year]."

Across the Capitol, Senate Majority Leader Mitch McConnell, R-Ky., said at a press conference September 29 that his chamber was "committed to taking a look [at the energy extenders] before the end of the year."

Nevada Republican Sen. Dean Heller of Nevada – one the GOP lawmakers who supports renewing the alternative energy provisions this year – told reporters September 28 that the final decision on whether to pursue an extenders package could hinge on the results of the upcoming presidential and congressional elections.

"It all depends on what happens November 8 and we should probably finish this conversation on November 9," he said.

Targeted tax legislation on the House's docket

Although the prospects for action on extenders remain unclear, House Majority Leader McCarthy indicated this week that he expects the House to vote during the lame duck session on targeted tax relief bills that would:

- Amend the current allocation mechanism for nuclear production tax credits under section 45J by allowing reallocation of credits that remain unutilized as of 2020 and allowing public entities (who generally cannot utilize these tax credits) to forgo credits and transfer them to an eligible project partner (H.R. 5879);
- Modify section 108(f)(4), which currently exempts from income student loan debts forgiven as part of a National Health Service program to place medical professionals in underserved areas, to include any amounts forgiven on loans made under the Indian Health Service Loan Repayment Program (H.R. 5406);
- Provide an income exclusion for forgiven student loan debt in the cases of students who have died or become disabled (H.R. 5204); and
- Relax certain rules regarding how tax-exempt water cooperatives raise revenue in order to reduce the cost of water to end users (H.R. 4220).

All four measures cleared the Ways and Means Committee on September 21. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 30, Sep. 23, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160923_2.html

House approves individual mandate exemption

In floor action this week, the House voted 258-165 on September 27 to approve legislation (H.R. 954) that would exempt from the individual mandate under the Patient Protection and Affordable Care Act (PPACA) those individuals

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who purchased minimum essential health insurance coverage under a qualified health plan through one of the PPACA's Consumer Operated and Oriented Plan (CO-OP) programs but subsequently lost that coverage because their CO-OP program folded. The exemption would apply beginning in the first month in which coverage was terminated and would continue through the end of that calendar year.

H.R. 954 is sponsored by Ways and Means Committee member Adrian Smith, R-Neb., and would be effective for months beginning after December 31, 2013. The Joint Committee on Taxation staff estimates that it would decrease federal receipts by $4 million over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4940

There is no Senate companion bill and it is unclear whether lawmakers in that chamber intend to take up the House-passed measure during the post-election lame duck session.

In a statement of administration policy issued on September 27, the White House indicated that President Obama would veto the measure if it reached his desk, commenting that it "undermines a key part of the [PPACA] and would do nothing to help middle-class families obtain affordable health care."
URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr954h_20160927.pdf

— Michael DeHoff
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Clinton, Trump offer few new details on tax policy in presidential debate

Democratic presidential nominee Hillary Clinton and Republican nominee Donald Trump largely stuck to familiar talking points on tax policy during their first one-on-one debate at Hofstra University on September 26, offering broad-based defenses of their respective tax plans and lobbing equally general criticisms at each other's proposals.

Trump: Giving business a reason to stay

Trump, who has proposed to cut the US corporate tax rate to 15 percent (from 35 percent) argued that the primary problem facing the US economy is the steady loss of jobs as companies relocate overseas to take advantage of lower tax rates. His proposal – which he said would apply to "small and big businesses," would reverse this trend by offering job creators an incentive to stay.

"Companies will come. They will expand. New companies will start. And I look very, very much forward to doing it," he said.

(Trump did not address lingering questions within the tax community as to how the revised tax plan he released earlier this month would treat passthrough business income. For prior coverage, see *Tax News & Views*, Vol. 17, No. 30, Sep. 23, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160923_1.html

Repatriation: Alluding to his proposal for a deemed repatriation of previously untaxed foreign-source income of US multinationals at a tax rate of 10 percent, Trump noted that his plan also would encourage companies to bring back what the Joint Committee on Taxation staff recently estimated to be $2.6 trillion in foreign-source earnings currently trapped overseas. Those repatriated funds, he added, could be funneled into domestic priorities. (Trump's repatriation proposal is part of a broader international reform plan that, going forward, would repeal deferral on active foreign-source income.)
URL: http://waysandmeans.house.gov/wp-content/uploads/2016/09/20160831-Barthold-Letter-to-BradyNeal.pdf

Tariffs?: Trump also suggested that his administration would actively discourage domestic companies from relocating jobs offshore by imposing a tariff on any products that companies exiting the US seek to export back into the country.

A Trump administration's message to those companies would be "if you think you're going to make your [products abroad] and bring them into our country without a tax, you're wrong," he said.

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Individual tax cuts = Job growth: Asked by moderator Lester Holt to defend his proposed tax cut for the nation's wealthiest individuals, Trump – who among other things has proposed to collapse the current seven individual rates to three brackets of 12, 25, and 33 percent and eliminate the estate tax – replied that tax relief for those at the upper end of the income scale will encourage them to expand their businesses, leading to job growth for the lower- and middle-classes.

Trump also pushed back against assertions that his tax plan is too heavily skewed to the rich, citing as an example his proposal to tax carried interest income as ordinary rather than capital gain, which he characterized as "not a great thing for the wealthy. It's a great thing for the middle class. It's a great thing for companies to expand."

Noting that the US is in the midst of what he called "the worst revival of an economy since the Great Depression," Trump argued that Clinton's proposed tax plan, which relies on eliminating many current-law corporate tax expenditures and increasing taxes on wealthier individuals, would "drive business out."

Clinton: Building up the middle class

Clinton, meanwhile, argued that the US has "pulled back from the abyss" of the 2008 financial crisis and is now "on the precipice of having a potentially much better economy," but that Trump's tax cuts for corporations and the wealthy would explode the deficit and lead to a loss of jobs. (The nonpartisan Tax Foundation recently estimated that under a traditional "static" scoring model Trump's revised plan would reduce federal revenues by between $4.4 trillion and $5.9 trillion over 10 years, depending on exactly how his proposal for taxing business passthrough income is intended to operate. Those estimates drop to between $2.6 trillion and $3.9 trillion, respectively, under a "dynamic" scoring model that takes into account the macroeconomic impact of Trump's proposals.)

Clinton advocated "a tax system that rewards work and not just financial transactions." She characterized Trump's tax plan as an "extreme version" of "trickle-down economics" and cautioned this his approach is "not how to grow the economy."

A 'fairer' economy: In contrast to Trump, Clinton called for creating a "fairer" economy through investing in infrastructure, advanced manufacturing, and clean energy; encouraging businesses to participate in profit sharing; and focusing on middle-class pocketbook issues such as affordable child care and debt-free higher education. These priorities would be paid for through proposed tax increases on upper-income individuals and corporations, who, she argued, have "made all the gains in" the current economy. Under her plan, the wealthy would face higher tax rates on ordinary and capital gain income, a cap on the value of their itemized deductions, and higher estate tax rates, while corporations would lose some deductions, credits, and incentives available under current law, face new taxes in certain cases (for example, a new "risk fee" on large financial institutions), and encounter tighter statutory constraints on their ability to redomicile.

Higher taxes on the wealthy = A stronger middle class: In response to a question from Holt, Clinton characterized her proposed tax increases on the wealthy as an investment in building a strong middle class and promoting economic growth.

"I think building the middle class, investing in the middle class, making college debt-free so more young people can get their education, helping people refinance their debt from college at a lower rate, those are the kinds of things that will really help boost the economy. Broad based, inclusive growth is what we need in America, not more advantages for the people at the very top," she said.

Clinton also argued that "a lot of really smart, wealthy people" share her vision.

"[T]hey're saying, hey, we need to do more to make the contributions we should be making to rebuild the middle class," she said.

Support for repatriation incentive?: For the most part, Clinton addressed her corporate tax proposals only in terms of eliminating perceived "loopholes." But in one brief exchange with Trump she appeared to suggest – without elaboration – that she could "support" some form of a repatriation tax incentive "in a way that will actually work to our benefit."

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Aside from provisions targeted at preventing inversions and the offshoring of US jobs, Clinton has not formally proposed specific changes to the tax rules governing US multinationals; however, President Obama and Democratic leaders such as Senate Finance Committee member Charles Schumer of New York, as well as House Republicans in their 2016 tax reform blueprint, have supported so-called "deemed" repatriation provisions as part of broader international tax reform plans that include an infusion of one-time revenue for infrastructure spending.

More debates ahead

Clinton and Trump may have an opportunity to discuss tax policy issues during their next scheduled debate on October 9 at Washington University in St. Louis. The Commission on Presidential Debates describes the format for that event as a town-hall style meeting with half of the questions chosen by members of the public and half chosen by the moderators "based on topics of broad public interest as reflected in social media and other sources."

Their final debate is set for October 19 at the University of Nevada in Las Vegas. This will be a single-moderator format covering a range of topics to be chosen by the moderator.

The two vice presidential candidates – Democratic Sen. Tim Kaine of Virginia and Republican Gov. Mike Pence of Indiana – square off in their only debate on October 3 at Longwood University in Farmville, Va.

— Michael DeHoff, Alex Brosseau, and Jacob Puhl
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Ryan, Wyden split over role of territoriality, deferral in reformed tax code

House Speaker Paul Ryan, R-Wis., and Senate Finance Committee ranking member Ron Wyden, D-Ore., this week laid out their respective visions of what a reformed tax code should look like and highlighted areas of potential disagreement over how to address issues such as whether to adopt a territorial tax system and what to do about the current-law deferral rules.

Ryan: Territorial imperative

Ryan told an audience at the Economic Club of Washington September 28 that a tax code overhaul is the "number one" item on his economic agenda for 2017 and that the prospect of comprehensive reform is "not unrealistic."

Ryan touted the tax reform "blueprint" that House Republicans unveiled in June – which proposes to lower tax rates for individuals, passthrough entities, and corporations; simplify the code by cutting the number of tax brackets and eliminating various tax expenditures; and move businesses from a worldwide to a territorial tax system for taxing foreign-source income, among other provisions – and explained how through dynamic scoring, Republicans have begun to show the public that large-scale tax reform can be accomplished in a revenue-neutral manner. (Ways and Means Committee staff are currently working on turning the blueprint into legislative language.)

Ryan argued that moving to territoriality is the most effective way to stem the tide of corporate inversions and foreign takeovers of US firms and added that such a move "makes sense" given that our major trading partners have all adopted territorial systems of their own.

"I don't think you can stand against a territorial system much longer," he said.

But Ryan noted that many Democrats advocate retaining the worldwide system and repealing the current-law deferral rules. He cited this disagreement as the main reason negotiations fell through last year when lawmakers considered an international tax reform deal that would have coupled deemed repatriation and a switch to a territorial system with an infusion of cash for infrastructure spending.

Ryan noted that the territoriality-repatriation plan envisioned in the GOP blueprint "brings revenue into the [budget] window" that can be used for the Highway Trust Fund or infrastructure spending, and he suggested that those Democrats currently opposed to such a tradeoff may see the issue differently in the future.

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"My guess is that they will think twice about rejecting that offer again," he said.

Wyden: Ending deferral 'front and center'

Across the Rotunda, Sen. Wyden told Reuters in a September 26 interview that if Democrats win control of the Senate in the upcoming congressional elections and he becomes the chamber's top taxwriter next year, ending deferral would "be front and center at the beginning of January."

His first action as Finance Committee chairman, he said, would be to propose a funding package to upgrade US infrastructure that would be paid for through a mandatory repatriation provision included as part of a larger international tax reform package.

"The first bill out of the gate would be roads and bridges and transportation. ...My sense is that there will be an interest among members in using a portion of the money derived from international reform for the roads and bridges and transportation systems."

As for transitioning to a territorial system, as Speaker Ryan would like, Wyden indicated that a proposal allowing US companies to forgo paying tax on foreign income likely would come in for wide-spread public criticism.

"At a time when Americans are so angry about jobs being shipped overseas...I don't think it's going to go over very well," he said.

Wyden argued instead that tightening the current-law rules to eliminate loopholes is preferable and achieves the same goals.

"A competitive rate, no deferral, and no gaming, I'm going to argue gets you the benefit of territorial," he said.

— Jacob Puhl
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A note on our publication schedule

Congress has adjourned for an extended pre-election recess and will return to Capitol Hill for a year-end lame duck session that is scheduled to begin in mid-November.

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

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