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Short-term spending bill clears House, path forward in Senate unclear

The House of Representatives voted 326-96 on December 8 to approve a continuing resolution that generally will fund government operations at their current levels through April 28, 2017. The Further Continuing and Security Assistance Appropriations Act, 2017 (H.R. 2028) is now in the Senate, where it faces a possible procedural blockade by some Democrats who are pushing for a more generous extension of health care benefits for certain retired members of the United Mine Workers Union.

The continuing resolution is the sole "must pass" bill of the congressional lame duck session. The current government funding agreement is set to expire on December 9.

Details on how Senate leaders plan to move the bill through the chamber and avert a potential government shutdown were unclear at press time. While senators seeking to call attention to the mine workers' health care issue are unlikely to prevent the measure from passing, they could use procedural tools to delay its passage long enough to cause a partial shutdown of some government functions beginning early December 10; however, those delays likely cannot extend much beyond then.

The 114th Congress is expected to officially adjourn once the government funding measure has cleared both chambers.

No tax extenders

As expected, the funding bill does not include extensions of a few dozen temporary tax deductions, credits, and incentives that are set to expire at the end of the year.

Congressional Democrats – and some Republicans – had pushed for the renewal of several expiring alternative energy provisions – including the investment tax credits under section 48 for combined heat and power property, fuel cell property, small wind property, and geothermal property – which they contend were inadvertently left out of last year's extenders agreement because of a drafting error.

But Capitol Hill Republican leaders – most notably, Ways and Means Committee Chairman Kevin Brady, R-Texas – were not inclined to pursue an extenders package. They argued that last year's Protecting Americans from Tax Hikes 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.

The funding bill also does not include a package of tax technical corrections that was introduced earlier this week by Republican and Democratic leaders on the House Ways and Means and Senate Finance committees. (See separate coverage in this issue for details.)

Targeted tax-law changes sent to White House

Although no tax provisions were included in the continuing resolution, lawmakers this week approved and sent to the White House two targeted changes to the rules for tax-preferred health reimbursement arrangements (HRAs) and health savings accounts (HSAs) that were tucked into larger nontax bills. Both of those bills are expected to be signed into law.

One new provision would allow an employer with fewer than 50 employees that does not offer group health insurance coverage to establish an HRA and use pre-tax dollars to pay or reimburse employees for medical care expenses, including premiums for individual health insurance coverage or Medicare supplemental insurance. Reimbursement amounts received by an employee generally would not be includable in the employee's gross income. The HRA provision was introduced last year in legislation (H.R. 2911) sponsored by House Ways and Means Committee member Charles Boustany, R-La. It was approved as part of the 21st Century Cures Act (H.R. 34), a medical research funding bill that cleared the House on November 30 and the Senate on December 6.

The second provision would expand access to HSAs for veterans covered under the TRICARE program. The provision was introduced earlier this year in legislation (H.R. 5458) sponsored by Rep. Chris Stewart, R-Utah, and was approved as part of the National Defense Authorization Act (H.R. 2943).

— Michael DeHoff
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Ways and Means Republicans plan post-recess tax reform discussions

House Ways and Means Committee Chairman Kevin Brady, R-Texas, said this week that House Republican taxwriters will meet during the upcoming congressional recess to discuss "decision points on tax reform and health care." In comments to Bloomberg BNA, Brady indicated that the meeting, which is set for December 14 and 15, may also include a representative from the incoming Trump administration.

House GOP leaders and President-elect Donald Trump have stated that they expect to move legislation to overhaul the tax code and repeal the Patient Protection and Affordable Care Act early in 2017. Brady indicated that the meeting will

give Republican taxwriters an opportunity to weigh in on specific issues as the Ways and Means Committee staff continues its efforts to turn the House GOP tax reform and health care blueprints released last June into formal legislative proposals. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 23, June 24, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160624_1.html

Among the issues expected to be up for discussion is a proposal in the tax reform blueprint that calls for a border adjustable, destination-based cash-flow tax that would serve to eliminate US tax on products, services, and intangibles exported abroad (regardless of their production location) but impose US tax on products, services, and intangibles imported into the US (regardless of their production location).

The provision is part of a package of international reforms in the blueprint – including a shift to a territorial taxation system as well as a reduction in the corporate tax rate – and is intended to obviate the benefits of inversion transactions. Although details on the proposal are scant, it has become a focus of increased attention, especially from industry sectors that are import-dependent.

Brady commented that Ways and Means leaders are “listening to [taxpayer] concerns about border adjustability.”

Panel vacancies to be filled in January

In organizational news, House Speaker Paul Ryan, R-Wis., indicated this week that assignments to serve on House committees – including Ways and Means – in the incoming 115th Congress will not be announced until after the chamber holds its election for speaker, which is scheduled for January 3. (The House Republican Conference last month formally nominated Ryan to remain as speaker in the new Congress, but he must be confirmed by a majority vote of the entire House. Ryan is expected to easily win the gavel for another term.)

As many as seven seats on the Ways and Means Committee are currently up for grabs. On the Republican side, confirmed vacancies include the slots held by Reps. Charles Boustany of Louisiana (who mounted an unsuccessful Senate bid), Todd Young of Indiana (who was elected to the Senate), and Bob Dold of Illinois (who lost his House re-election bid).

Republicans also will need to replace taxwriter Tom Price of Georgia if, as expected, he is confirmed by the Senate to serve as secretary of Health and Human Services in the incoming Trump administration. (President-elect Trump nominated Price to the cabinet post on November 29.)

Democrats who will not be returning to the panel next year include Rep. Xavier Becerra, who was recently nominated to become attorney general of his home state of California (pending confirmation by the California Legislature), as well as Reps. Charles Rangel of New York and Jim McDermott of Washington, both of whom are retiring at the end of the 114th Congress.

Decisions on how – or whether – to fill these vacancies will depend in part on how House leaders set party ratios for committees in the chamber.

‘Green Book’ released

Also this week, Ways and Means Chairman Brady announced the release of the committee’s 2016 “Green Book,” which describes key health, welfare, retirement, disability, and related programs under the jurisdiction of the panel and provides current data on these programs, the individuals they serve, and relevant historical information. It also contains data and discussion on related issues of interest to the committee, including federal policy affecting low-income households.
URL: http://greenbook.waysandmeans.house.gov/2016-green-book

The Green Book is prepared by the Congressional Research Service under the direction of Ways and Means Committee staff.

— Michael DeHoff
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Taxwriting leaders introduce new technical corrections legislation

House Ways and Means Committee Chairman Kevin Brady, R-Texas, and Senate Finance Committee Chairman Orrin Hatch, R-Utah, introduced identical bills in their respective chambers on December 6 that would make a variety of technical changes and clarifications to provisions included in recently enacted tax legislation. The bipartisan measures were cosponsored by Ways and Means ranking Democrat Richard Neal of Massachusetts and Finance Committee ranking Democrat Ron Wyden of Oregon.

The Tax Technical Corrections Act of 2016 (H.R. 6439 and S. 3506) seeks to address a broad array of issues, many of which were raised in similar legislation unveiled in April. (The April proposal was not acted upon in either chamber.)
URL: https://www.congress.gov/114/bills/hr6439/BILLS-114hr6439ih.pdf

Like the April bill, the new technical corrections legislation contains clarifications to current law on bonus depreciation, the research credit, and the American Opportunity Tax Credit enacted in last year's Protecting Americans from Tax Hikes (PATH) Act of 2015.

However, some notable additions in the most recent bill include proposed clarifications of the partnership audit rules enacted in the Bipartisan Budget Act of 2015, REIT income testing rules in the PATH Act, and certain rules under section 199 for oil refineries enacted in the Consolidated Appropriations Act, 2016.

The corrections legislation also would clarify language in the:

- Fixing America's Surface Transportation Act;
- Surface Transportation and Veterans Health Care Choice Improvement Act of 2015;
- Stephen Beck, Jr., ABLE Act of 2014;
- American Taxpayer Relief Act of 2012;
- United States-Korea Free Trade Agreement Implementation Act;
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU);
- American Jobs Creation Act of 2004; and
- The Energy Policy Act of 2005.

More information on the proposed changes is available in a technical explanation released by the Joint Committee on Taxation staff on December 6.
URL: https://www.jct.gov/publications.html?func=startdown&id=4965

Stage-setting for 2017

With both chambers currently planning to adjourn for the year after passing a continuing resolution to fund government operations into April of next year (see separate coverage in this issue for details), the legislation was not expected to receive a floor vote in the 114th Congress. Finance Committee member John Thune, R-S.D., told reporters December 7 that moving a tax bill so late in the session "would open the floodgate for all kinds of amendments."

Finance Committee Chairman Hatch's office said that introducing technical corrections legislation now would help lay the groundwork for changes in the next Congress. Thune suggested that Ways and Means Chairman Brady shared a similar goal in the House and was "laying down a marker for next year."

Even without a floor vote, the release of the bill provides the IRS with a basis for interpreting the relevant current-law provisions and gives stakeholders time to comment on the language of the bills well before any action is taken in Congress.

— Jacob Puhl
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CBO releases list of deficit reduction options

The Congressional Budget Office (CBO) on December 8 released *Options for Reducing the Deficit: 2017-2026*, describing 115 policy options that Congress could use to decrease federal spending or increase federal revenues over the next decade. The report includes an estimate of cost savings or revenue increases for each option. (CBO releases such a report periodically.)
URL: https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/52142-budgetoptions.pdf

The revenue and spending options cited in the CBO report are culled from a variety of sources, including previously proposed legislation and budget proposals from various presidential administrations. Among the more notable business and individual revenue items included in the report are proposals to:

- Eliminate all itemized deductions (estimated 10-year revenue gain: $2.23 trillion);
- Cap the deduction for state and local taxes at 2 percent of a taxpayer's adjusted gross income ($955.4 billion);
- Tax Social Security and Railroad Retirement benefits in the same way that distributions from defined benefit plans are taxed ($423.1 billion);
- Limit the deduction for charitable giving to contributions exceeding 2 percent of adjusted gross income for taxpayers who itemize ($229.4 billion);
- Repeal the deduction for domestic production activities ($173.7 billion);
- Expand the tax base for the net investment income tax to include income of active participants in S corporations and limited partnerships ($160 billion);
- Convert the mortgage interest deduction to a 15 percent tax credit ($105 billion); and
- Repeal the LIFO and lower of cost or market inventory accounting methods ($101.9 billion).

According to CBO, the report does not include options "that entail comprehensive changes to the tax code" because "such proposals often are combined with those that would reduce individual and corporate income tax rates, and therefore their effects are best addressed in the context of such broader packages."

CBO also notes that the options cited in the report "are intended to reflect a range of possibilities, not a ranking of priorities or an exhaustive list" and that "inclusion or exclusion of any particular option does not imply endorsement or disapproval by CBO…"

— Michael DeHoff
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A note on our publication schedule

The 114th Congress is set to officially adjourn once the Senate approves the stopgap government funding measure that cleared the House on December 8. Barring any significant developments on the tax policy front, the next edition of *Tax News & Views* will be published after the 115th Congress convenes on January 3, 2017.

— Jon Traub
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