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Partial shutdown ends as short-term government funding bill becomes law

After a three-day partial shutdown of the federal government that was fueled in part by a standoff over immigration policy, the House and Senate on January 22 passed a continuing resolution (CR) that funds government operations through February 8, temporarily suspends three revenue provisions from the Patient Protection and Affordable Care Act (PPACA) – the medical device excise tax, the so-called "Cadillac tax" on high-cost employer-provided health care plans, and the annual fee imposed on health insurers – and reauthorizes the Children's Health Insurance Program (CHIP) for six years. President Trump quickly signed the measure into law.

The latest temporary spending deal – the fourth CR of fiscal year 2018 – is identical to the proposal that failed in the Senate on January 20 except that it expires eight days sooner, setting up the possibility of another shutdown in just a few weeks. Congress hopes to find agreement in this period on overall government spending levels as well as the treatment of undocumented immigrants brought to the US as children (known as "DREAMers"), who are protected only through early March under the Obama-era Deferred Action for Childhood Arrivals (DACA) program. (President Trump has indicated he will terminate the DACA program as of March 5.)

Congressional Democrats had demanded a DACA fix as a condition for supporting another funding bill and the stalemate in the Senate over DACA as the previous CR lurched toward expiration at midnight on January 19 was a significant factor in the partial government shutdown. (For prior coverage, see *Tax News & Views*, Vol. 19, No. 3, Jan.

19, 2018.) Senate Democrats accepted the latest funding bill after Majority Leader Mitch McConnell, R-Ky., indicated he planned to take up immigration reform legislation on the Senate floor after February 8 if there was no agreement between Congress and the White House on an immigration plan before then.
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180119_1.html

PPACA taxes

In addition to funding government operations through February 8, the legislation signed into law on January 22 includes provisions to:

- Suspend the 2.3-percent excise tax imposed on the sale of medical devices, effective for calendar years 2018 and 2019. There have been efforts to fully repeal the tax since it came into force in 2013, and the levy was suspended for 2016 and 2017 under the Protecting Americans from Tax Hikes (PATH)/Consolidated Appropriations Act, enacted in December 2015.
- Delay the implementation of the Cadillac tax until 2022 rather than 2020. (The tax was originally set to take effect in 2018 but was delayed until 2020 under the PATH Act.)
- Suspend the annual fee imposed on health insurers for calendar year 2019. (The PATH Act suspended this fee for calendar year 2017; the fee will be in effect for 2018.)

According to an estimate the Joint Committee on Taxation published January 23, these three changes will reduce federal receipts by a total of $31.3 billion over 10 years. (The medical device tax moratorium is estimated to cost $3.8 billion, the delay of the Cadillac tax $14.8 billion, and the fee moratorium $12.7 billion.)
URL: https://www.jct.gov/publications.html?func=startdown&id=5058

White House budget request, CBO budget outlook delayed

One apparent casualty of the short government shutdown is the timely submission of the president's budget request for fiscal year 2019. Officials at the Office of Management and Budget (OMB) said on January 24 that the administration's request to Congress will be sent no earlier than February 12 and blamed the delay on the government's closure.

Under the Budget and Accounting Act of 1921, every presidential administration is required to submit its budget request for the upcoming fiscal year no later than the first Monday in February – which for 2018 is February 5 – but in practice that deadline often goes unmet.

"The shutdown came at a very critical time, and therefore we have to slip to at least the 12th," John Czwartacki, OMB's communications director, told *Politico*.

Also this week, the Congressional Budget Office (CBO) announced that its annual budget and economic outlook, which is typically released each January, will be delayed as the agency awaits details of a long-term appropriations agreement for 2018 and works to incorporate the effects of the recently enacted tax reform legislation into its forecast.
URL: https://www.cbo.gov/publication/53503

The annual report provides an update of CBO's economic forecast and 10-year projections of federal revenues and spending consistent with that forecast.

CBO did not indicate when it expects the next budget outlook will be released.

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White House may support private activity bond expansion as part of infrastructure plan

A draft outline circulating in Washington this week that has been attributed to the White House suggests that the Trump administration may consider expanding tax-preferred private activity bonds as part of its yet-to-be-released plan to overhaul the nation's infrastructure system.
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180126_2_suppA.pdf

Bond proposals

According to the outline, which is undated and not on White House letterhead, the administration will propose to amend section 142 of the tax code "to allow broader categories of public-purpose infrastructure, including reconstruction projects to take advantage of [private activity bonds]" – a change that would "encourage more private investment in projects to benefit the public."

Specific proposals, which are listed without elaboration, include:

- Excluding interest from private activity bonds from the alternative minimum tax;
- Allowing advance refunding of private activity bonds;
- Eliminating the transportation volume caps on private activity bonds and expending eligibility to ports and airports; and
- Removing state volume caps on private activity bonds.

The outline also lists proposals to provide change-of-use provisions to preserve the tax-exempt status of governmental bonds, require public attributes for core public infrastructure projects, and provide change-of-use cures for private leasing of projects to ensure preservation of tax exemption for core infrastructure bonds.

The House of Representatives proposed to repeal private activity bonds in the tax reform legislation (H.R. 1) it approved last November; but that provision was not included in the Senate version of H.R. 1 or in the bicameral conference agreement that President Trump signed into law on December 22, 2017 (P.L. 115-97). The enacted law does, however, repeal advance refunding bonds as well as tax credit bonds.

No mention of gas tax hike

The outline does not discuss increasing the federal gasoline tax or other fuel excise taxes as a way to finance additional infrastructure spending.

Detailed plan to come

Politico reports that a White House official said in a recent meeting with conservative groups that the president will discuss infrastructure issues in his upcoming State of the Union address (scheduled for January 30) and will deliver a detailed infrastructure plan to Congress within the next two to four weeks.

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Ways and Means Oversight panel to hold hearing on improving IRS administration

House Ways and Means Oversight Subcommittee Chairman Lynn Jenkins, R-Kan., announced January 23 that her panel will hold a "member day" hearing on legislation to improve federal tax administration. The hearing, which is set for January 30 at 2:00 p.m., will allow House lawmakers – taxwriters and nontaxwriters alike – to present proposals for improving IRS operations that they have sponsored in the current Congress.

“Members of Congress are committed to making good on our promises to reform the IRS and ensure it finally delivers better customer service, improves taxpayer rights, and ensures taxpayer access to resources,” Jenkins said in a news release. “Our hearing is an opportunity for members to discuss their best legislative ideas that will finally help ensure the agency is working for taxpayers.”

Jenkins took over leadership of the subcommittee earlier this month.

— Michael DeHoff
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