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Fast action on tax reform technical corrections unlikely, Ryan says

House Speaker Paul Ryan, R-Wis., this week indicated that Congress likely will wait until late in the year to attempt to move a technical corrections bill addressing glitches in the comprehensive tax legislation (P.L. 115-97) that was enacted last December.

Meanwhile, Treasury Secretary Steven Mnuchin continued to make the case for giving the IRS more money to implement the new law; House Democratic taxwriters criticized the Service for the way it has interpreted one aspect of the new federal cap on state and local tax deductions; and Senate Democrats unveiled a plan to scrap major elements of the law to pay for infrastructure spending.

Slow-walking technical corrections

In a question-and-answer session after touring Home Depot's Store Support Center in Atlanta March 8, Ryan commented that lawmakers will "wait until the end of the year to see if there's any technical glitches [in the new tax law] that need to be fixed. There always are when you do something this big, and you rewrite the tax code for the first time in 31 years."

At two hearings last month, congressional taxwriters identified a number of ambiguities in the law that need to be addressed – for example, issues around the carried interest rules, "guardrails" to prevent abuses of passthrough entities, the depreciable life of qualified improvement property, and sales to agricultural cooperatives. House Ways and Means Committee Chairman Kevin Brady, R-Texas, has said his panel is developing "a punch list of provisions that need to be addressed either administratively or through changes in the code itself" and has urged the business community to identify provisions that they believe are ripe for technical corrections. He has not, however, indicated when the panel would take up a corrections package. (For prior coverage, see *Tax News & Views*, Vol. 19, No. 7, Feb. 16, 2018.)
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180216_1.html

One possible reason for the protracted timeline is that Republican leaders will need Democratic support to get a technical corrections bill through Congress – and Democrats, who object to what they saw as a rushed and secretive process for moving tax reform legislation last fall, so far do not appear inclined to supply the votes needed to overcome procedural hurdles in the Senate. (Since Republicans control only 51 Senate seats, they would need at least nine Democrats to reach the 60 votes required to overcome a filibuster.)

Mnuchin urges IRS budget bump for tax reform implementation

In other tax reform developments this week, Treasury Secretary Mnuchin defended the Trump administration's request for an additional $397 million in funding for the IRS to implement the new tax law. Mnuchin told members of the House Appropriations Financial Services and General Government Subcommittee at a March 6 hearing that implementing the new tax law is "one of [his] top priorities" and "impacts literally everything at the IRS, from customer service to forms to technology."

The budget increase was included as part of the two-year spending agreement (covering the remainder of fiscal year 2018 and all of fiscal year 2019) currently being hammered out in Congress. (This amount is on top of the $11.5 billion in overall funding for the Service that the administration included in the fiscal year 2019 budget package it sent to Congress last month.)

Customer service and enforcement: The increased funds would go towards direct improvements in customer service and as well as initiatives to modernize IRS technology and simplify tax forms in an effort to enhance taxpayers' interactions with the Service, Mnuchin said.

Mnuchin also discussed the $362 million in additional resources for enforcement that the administration included in its FY 2019 budget request, telling the panel that "any additional people we put in enforcement do yield significant benefits, in terms of revenue."

Is the GOP receptive?: It remains unclear how the administration's request will go over with congressional Republican leaders, who in recent years have been reluctant to endorse budget increases for the Service. In a written statement, House Ways and Means Committee Chairman Brady this week appeared to link a budget hike to efforts to restructure the agency.

"That's not just about resources – it's about reform. That's why Ways and Means members are working to redesign the [IRS] to better serve taxpayers," he said.

For his part, Senate Finance Committee Chairman Orrin Hatch, R-Utah, commented during an appearance at the American Enterprise Institute on March 1 he is open to boosting IRS funding after years of budget cuts.

"We have not been very good to the IRS," Hatch said. "That's something I'm certainly looking at. . . . I want to help them down there."

March 23 deadline: Lawmakers expect to have the two-year appropriations package approved before the current continuing resolution funding government operations expires on March 23. House Majority Leader Kevin McCarthy, R-Calif., has indicated that a House vote could take place as early as the week of March 12.

Ways and Means Dems SALT-y over IRS treatment of prepaid property taxes

Also this week, House Ways and Means Committee Democrats focused on a specific aspect of the Service's implementation of the new tax law in a March 5 letter to Acting IRS Commissioner David Kautter criticizing the Service's decision to deny a deduction to certain taxpayers who sought to prepay their 2018 property taxes in 2017 before a new cap on the state and local tax (SALT) deduction took effect at the beginning of this year.
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180309_2_suppA.pdf

According to prior law, taxpayers who itemize could deduct all their state and local income taxes (or sales taxes) as well as their property taxes paid against their federal tax liability; but the new law caps the amount of state and local taxes that can be deducted at $10,000, effective for taxable years beginning after January 1, 2018. (The deduction tends to be used more heavily in higher-taxed "blue" states such as California, New York, and New Jersey, although as the tax reform debate played out last year, the prospect of repealing or limiting the SALT deduction raised concerns among lawmakers in both parties who represent constituents in jurisdictions with expensive housing markets and steep property taxes.)

An intentional omission?: The legislation states specifically that prepaid state and local *income* taxes for 2018 cannot be deducted against 2017 taxes, but it is silent on the treatment of prepaid state and local *property* taxes. Ways and Means Democrats contend in their letter that this omission was intentional and therefore the IRS exceeded its authority when it asserted in IR-2017-210 (issued December 27, 2017) that prepaid property taxes could be deducted for 2017 only if they had been assessed as of December 31, 2017. The letter notes that the statute makes no references to property tax assessments and that there does not appear to be any "report language, hearing testimony, or other indication that Congress contemplated such a restriction, or delegated to the IRS the ability to establish one."
URL: https://www.irs.gov/newsroom/irs-advisory-prepaid-real-property-taxes-may-be-deductible-in-2017-if-assessed-and-paid-in-2017

Blue state audits?: The Democratic taxwriters also took issue with comments made by Treasury Secretary Mnuchin in January – reported in the tax press – that alluded to audits of real estate taxes in states that pursue workarounds for the new limitation on SALT deductions. (New Jersey, for example, is exploring legislation that would allow local jurisdictions to establish charitable funds to which taxpayers could make deductible contributions to pay for schools, law enforcement, and other public services. Taxpayers would receive a property tax credit in exchange for their contribution.)

"We are surprised and dismayed at this expression of IRS priorities, and we are angry to read of this naked political payback against taxpayers in 'blue' states, the letter said."

Questions for Kautter: To ensure this type of alleged political targeting is not occurring, the Ways and Means Democrats asked Kautter to:

- Explain how any real estate audits would be conducted and whether they would be confined to blue states or spread proportionally across all 50 states;
- Identify the enforcement initiatives that would be placed on the back burner if limited IRS resources were diverted to these audits;
- Provide more information on the legal foundation for the IRS's guidance on the deductibility of prepaid property taxes; and
- Provide details on the number of taxpayers that have claimed itemized deductions for property tax prepayments, the states and counties in which they live, and the dollar value of the deductions.

The letter asked Kautter to respond by March 16.

Senate Dems propose tax reform rollbacks

On the other side of the Rotunda, Senate Democrats on March 7 launched a broader attack on the GOP tax law as they unveiled a proposal that would undo several of its key provisions to bankroll $1 trillion in proposed new infrastructure spending.

According to a summary of the plan, the Democratic proposal calls for:
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180309_2_suppB.pdf

- Increasing the top income tax rate for individuals to its prior-law level of 39.6 percent (from 37 percent under current law).
- Restoring the individual alternative minimum tax (AMT) exemption amounts to their 2017 levels of $84,500 for married taxpayers filing jointly and $54,300 for single taxpayers, with phase-outs beginning at $160,900/$120,700 and all breakpoints indexed for inflation. (Current law provides AMT exemptions of $109,400/$70,300 and phase-out thresholds of $1 million/$500,000, all indexed for inflation).
- Restoring the estate, gift, and generation-skipping transfer tax exemption amounts to their 2017 levels of $5.49 million per taxpayer, indexed annually for inflation. (Current law provides a base exemption of $10 million per taxpayer, indexed annually for inflation.)
- Treating income from carried interests as ordinary. (Current law, like prior law, treats income from qualified carried interests as long-term capital gains, but the holding period to qualify for the preferential long-term capital gain rates was increased in last year's tax bill from one year to three years.)
- Increasing the corporate income tax rate to 25 percent (from 21 percent under current law but still well below the 35 percent rate in effect under prior law).

A "very preliminary" revenue estimate from the Joint Committee on Taxation staff indicates these provisions would increase federal receipts by just over $1 trillion between 2018 and 2027.
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180309_2_suppC.pdf

Going nowhere: The plan is not expected to be taken up in committee or on the Senate floor. In comments to reporters March 8, Finance Committee member and Senate Republican Conference Chairman John Thune of South Dakota called it "a complete nonstarter," adding "I don't know how you sell that anywhere."

Democrats are expected to use the plan primarily as a messaging document to help advance their larger effort to retake control of the Senate in the 2018 midterm elections.

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Desmond to get the nod for IRS chief counsel slot

The White House announced March 2 that President Trump intends to nominate Michael Desmond to be chief counsel of the Internal Revenue Service and assistant general counsel of the Treasury Department. In this role, Desmond would advise the IRS commissioner on the interpretation, administration, and enforcement of tax laws – a critical position at a time the agency is working to implement the extensive new tax law (P.L. 115-97) that was enacted last December.

Desmond is currently a sole practitioner in California, focused on tax controversy issues, but he is well known in Washington, D.C., where he previously spent time as a partner at Bingham McCutchen LLP and its predecessor McKee Nelson LLP. In previous government experience, he worked as a trial attorney in the Justice Department's Tax Division and later as tax legislative counsel at Treasury, departing in 2008.

If confirmed by the Senate, Desmond will succeed William Paul, the current acting IRS chief counsel.

Also awaiting Senate confirmation is Charles Rettig, who the president nominated on February 13 to be the IRS commissioner. A date for Rettig's confirmation hearing has not yet been announced.

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Hatch, Wyden introduce bipartisan retirement savings legislation

Senate Finance Committee Chairman Orrin Hatch, R-Utah, and ranking member Ron Wyden, D-Ore., introduced bipartisan legislation March 8 aimed at making it easier for small employers to offer retirement savings plans to their employees and for individuals to save for retirement.

The Retirement Enhancement and Savings Act of 2018 (S. 3471) would, among other things:

- Increase access to retirement plans for workers in small companies by authorizing multiple employer defined contribution plans;
- Remove the cap under section 401(k) that limits automatic escalation of employee deferrals to no higher than 10 percent of employee pay under an automatic enrollment safe harbor plan;
- Simplify the section 401(k) safe harbor rules;
- Increase the tax credit limitation for small employer pension plan start-up costs;
- Provide a tax credit to employers who start new section 401(k) or SIMPLE IRA plans that include automatic enrollment or convert an existing plan to an automatic enrollment design; and
- Allow individuals to make contributions to an IRA beyond the current-law cutoff age of 70-1/2.

The text of the legislation and a section-by-section summary are available on the Finance Committee website.
URL: https://www.finance.senate.gov/imo/media/doc/3.8.18%20RESA%20bill%20text%20FINAL.pdf
URL: https://www.finance.senate.gov/imo/media/doc/3.8%20RESA%20Section-by-Section.pdf

Hatch and Wyden did not indicate when the measure will be taken up by the full committee. Senate taxwriters approved a similar version of the bill in 2016.

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