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Tax agenda items loom as McConnell cuts short Senate's August recess

Senate Majority Leader Mitch McConnell, R-Ky., upended the traditional Capitol Hill calendar this week, announcing that the chamber will be in session for most of August rather than taking its customary month-long summer break. But even though McConnell's announcement focused largely on the need to clear President Trump's judicial and administrative nominations and complete a series of spending bills for the upcoming fiscal year, the extended work period also may give lawmakers time to take up some of the open tax policy items on their legislative agenda.

The Senate is expected to recess for just one week, beginning July 27, and then return to work the week of August 6. This year's calendar originally had senators out of session beginning on August 4 and returning immediately after Labor Day. The House has not changed its schedule, and its members are expected to be back in their districts or travelling outside Washington throughout the whole month of August.

Workload concerns – and some election-year politics

In a statement breaking the news, McConnell cited "the historic obstruction by Senate Democrats of the president's nominees," as well as the need to pass appropriations bills before the September 30 fiscal year-end as the reason for keeping the chamber in session. However, in a contentious election year, the move also appears designed to prevent endangered incumbent Democratic senators from heading home to campaign for the month. This year's Senate map should favor Republicans, who are defending just 9 seats to Democrats' 26. Moreover, there are 10 Democrats running for re-election in states won by President Trump in 2016, more than half of whom are considered vulnerable by independent election analysts. In a typical election year, those incumbents would spend the month of August campaigning hard back in their home states.

A typical election year also tends to bring a significant slowdown in legislative activity by the summer, but McConnell has signaled that this will be a busier season, telling reporters on June 5 that he expects to make progress on the defense authorization bill, farm bill, and Federal Aviation Administration (FAA) authorization bill in June. Over August, he wants to move pending federal appointments requiring Senate confirmation and many of the spending bills – though at least one continuing resolution (a measure that maintains current fiscal year funding levels) to fund the government into the beginning of FY 2019 is still considered likely by most in Washington.

"I think we have enough work to do for the American people that we should be here during these weeks," McConnell said.

Here's an overview of some of the open tax policy items – some of which are time sensitive, others less so – on the Senate's agenda that the chamber could address in the weeks ahead.

Confirming Rettig to head IRS

With the first tax filing season since the enactment of last year's massive tax cut legislation (P.L. 115-97) only months away, the Senate has yet to confirm Charles "Chuck" Rettig as the new IRS commissioner. (Treasury Assistant Secretary for Tax Policy David Kautter has also served as IRS acting commissioner since former Commissioner Robert Koskinen's term expired last November.)

Rettig, who was nominated by President Trump on February 13, has had discussions with Senate Finance Committee members on both sides of the aisle and has received generally positive reviews; but as of yet no confirmation hearing has been scheduled – a delay that Finance Committee leaders have attributed to the fact that they did not receive his official paperwork until late April. Once his nomination clears the Finance Committee, Rettig still faces a final confirmation vote on the Senate floor, meaning it could be weeks or even months before he assumes the top spot at the IRS.

The delay also means that David Kautter continues to do double duty in his IRS and Treasury roles during a period when the Service is gearing up for the 2018 filing season and Treasury is focused on issuing guidance to implement the new tax cut law.

Also awaiting Senate confirmation is Michael Desmond, who was nominated in March to serve as IRS chief counsel and Treasury assistant general counsel.

FAA reauthorization

Congress is staring at a September 30 deadline for reauthorizing expenditure authority for the Federal Aviation Administration and the excise taxes on fuel and passenger tickets that supply the agency's dedicated revenue stream.

The House approved legislation (H.R. 4) in April that would extend the FAA's expenditure authority and the related excise taxes through September 30, 2023. The Senate is preparing its own bill but has not yet announced plans for bringing it to the floor. Senate Commerce, Science, and Transportation Committee Chairman John Thune, R-S.D., whose panel has jurisdiction over the legislation, told reporters June 4 that the timing could depend on whether or not Republican and Democratic leaders in the chamber can reach an advance agreement on amendments. (Because FAA reauthorization is one of the few bills with a tax title that is expected to move through Congress this year, it has the potential to become a magnet for amendments from lawmakers eager to see their specific tax priorities or various technical corrections to the 2017 tax cuts enacted into law.)

"It's on [Mitch McConnell's] radar screen and he knows we need to do it, and I think he's hoping we can negotiate something with the Democrats that would enable us to process it with a limited amount of floor time," Thune said.

Thune, who also sits on the Senate Finance Committee, has said he hopes the FAA reauthorization can move without a slew of extraneous tax amendments.

Any differences between an eventual Senate bill and the House-passed legislation would need to be reconciled and a final agreement would need to be approved in both chambers before it can be sent to the White House for the president's signature.

IRS reform

A significant – but less deadline-driven – priority for many congressional Republicans is legislation to revamp the Internal Revenue Service. The House in April approved and sent to the Senate a bipartisan package of bills aimed at reorganizing IRS operations, making its enforcement and customer service policies more taxpayer-friendly, and modernizing its information technology systems. (For details on the House package, see *Tax News & Views*, Vol. 19, No. 13, Apr. 20, 2018.) But Senate Republican leaders so far have said little about when they will take up the legislation and whether they intend to make significant changes.
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180420_3.html

Shortly after the House passed its bill, Finance Committee Chairman Orrin Hatch, R-Utah, said only that his panel was "going to have to look at everything and be very, very careful how we handle it." Finance Committee member Rob Portman, R-Ohio, subsequently offered some – but not much – additional detail, telling reporters that Senate taxwriters would use the House-passed bill as "a base, and try to expand it in certain ways – focus a little more on the structure of the IRS, and some of the IT challenges."

Portman and Finance Committee Democrat Ben Cardin of Maryland are leading the effort to move IRS reform legislation through the Senate. (As House members, Portman and Cardin were two of the lead sponsors of the IRS Reform and Restructuring Act of 1998.) The two have made few public comments about specific provisions in the House package, although both have said they do not support the House's proposal to repeal the IRS Oversight Board, a nine-member body created under the 1998 act that is tasked with monitoring the Service's implementation of federal tax law. House lawmakers argued that the oversight board has been ineffective largely due to its inability to reach a quorum. But Portman has attributed the board's perceived failures to a lack of presidential support across several administrations.

Portman and Cardin have indicated they are hopeful that Congress can approve a bipartisan bill and get it to the White House later this year.

Health care

Senate Democratic Leader Charles Schumer of New York responded to the news of a shortened recess by announcing that he intends to use August to promote a series of Democratic proposals to lower the cost of health care coverage by, among other things, expanding current-law tax credits. For their part, however, Senate GOP leaders have not indicated that they intend to advance health care legislation in the near future.

House Ways and Means Committee Chairman Kevin Brady, R-Texas, meanwhile, told reporters June 6 that his panel is developing legislation to expand access to and increase the flexibility of health savings accounts (HSAs) – tax-preferred savings accounts which, when used in conjunction with a high-deductible health insurance plan, allow individuals to pay for qualifying out-of-pocket health care expenses with tax-free dollars.

Although Brady did not go into specifics, a Ways and Means Health Subcommittee hearing on June 6 explored several bipartisan proposals that would, among other things, increase the maximum HSA contribution limit to the amount of the deductible for the underlying insurance plan, expand the list of HSA-eligible expenses to include over-the-counter medications, and permit high-deductible health plans to provide chronic disease prevention services to plan enrollees prior to satisfying their plan deductible. (Some Democrats on the subcommittee stated at the hearing that they do not object to HSAs in principle, but argued that the accounts do little to make health care coverage more affordable for many working families.)

Brady did not indicate when an HSA bill would be marked up in committee.

Tax Cuts 2.0

In the category of legislation *least* likely to be taken up in the Senate and completed before the mid-term elections is an as-yet unreleased proposal from House Republicans that would, at the very least, permanently extend the tax cuts for individuals enacted in last year's tax bill. These provisions are generally set to expire at the end of 2025. House Ways and Means Chairman Brady and President Trump have said repeatedly in recent weeks that they expect a so-called "Tax Cuts 2.0" bill will be released this summer and approved in the House before November.

The Senate, however, is far less likely to take up such a measure in that timeframe – if at all. Although the legislation could win approval in the House on the strength of Republican votes alone, it would almost certainly fall short of the three-fifths supermajority support it would need to clear procedural hurdles in the Senate. Democrats, who control 49 Senate seats, likely would vote in lockstep against a second round of tax cuts – though a few of the vulnerable incumbents running in Republican-leaning states would have a tough decision to make – and even some Republicans are wary about another large tax bill that would further increase the deficit. The Congressional Budget Office has estimated that extending the individual provisions in last year's tax bill would cost $650 billion over 10 years.

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