Grassley, Wyden unveil tax extenders, disaster relief package

Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking Democrat Ron Wyden of Oregon released legislation February 28 that would retroactively extend through the end of this year some two dozen temporary tax deductions, credits, and incentives that expired at the end of 2017 and a handful of others that expired at the end of 2018.

The Tax Extender and Disaster Relief Act of 2019 also would provide targeted tax relief to businesses and individuals who suffered losses in certain federally declared disasters.

The full text of the bill and a summary of all the provisions are available from the Senate Finance Committee staff.


URL: https://www.finance.senate.gov/imo/media/doc/Tax%20Extender%20and%20Disaster%20Relief%20Act%20of%202019%20Summary.pdf
Two-year extensions (provisions that expired in 2017)

The bill would extend for two years (that is, through 2019) those provisions that most recently lapsed at the end of 2017.

Renewable energy & energy efficiency: Among the energy-related provisions slated for renewal are:

- Credits for qualified fuel cell vehicles (section 30B(b)), alternative fuel vehicle refueling property (section 30C), and two-wheeled plug-in vehicles (section 30D(g));
- Incentives for biodiesel and renewable diesel fuel, including the second-generation biofuel producer credit under section 40(b)(6) and the $1.00-per-gallon credit for biodiesel and biodiesel mixtures under sections 40A and 6426(c), respectively;
- The credit for electricity produced from nonwind renewable sources under section 45 (and the investment tax credit in lieu thereof under section 48(a)(5));
- The credit for construction of energy-efficient new homes (section 45L); and the
- Deduction for energy-efficient commercial buildings (section 179D).

Notably, although Chairman Grassley has advocated for a permanent extension of biodiesel tax incentives (or at least a long-term phase-out of the biodiesel credit like the one included in legislation introduced late last year by then-Ways and Means Committee Chairman Kevin Brady, R-Texas), the package introduced this week includes only a temporary two-year extension of such incentives. (For prior coverage of the Brady extenders package, see Tax News & Views, Vol. 19, No. 36, Nov. 30, 2018.)


Other energy provisions that would be extended through the end of 2019 under the bill include the:

- Credit for production of Indian coal (section 45(e)(10));
- Special depreciation allowance for second-generation biofuel plant property (section 168(l));
- Special rule for sales or dispositions to implement Federal Energy Regulatory Commission (FERC) or state electric restructuring policy (section 451(k)); and
- Incentives for alternative fuel and alternative fuel mixtures (sections 6426(d) and (e), 6427(e)).

Cost recovery: The Grassley-Wyden proposal would extend the:

- Three-year recovery period for race horses two years old or younger (section 168(e)(3)(A)(i));
- Seven-year recovery period for motorsports entertainment complexes (section 168(i)(15));
- Special expensing rules for expenses incurred as part of qualified film, television, and live theatrical productions (section 181);
- Accelerated depreciation for business property on an Indian reservation (section 168(j)); and the
- Election to expense advanced mine safety equipment (section 179E).

Miscellaneous business provisions: Other business provisions that would be renewed through 2019 include the:

- Credit for maintenance of so-called “short-line” railroad tracks (section 45G);
- Incentives for businesses operating in so-called “empowerment zones” including, for example, tax-exempt bond financing under section 1394 and accelerated depreciation on qualifying equipment under section 1397A;
- Credit for mine rescue team training costs (section 45N);
- Indian employment tax credit (section 45A(f)); and the

The extenders legislation introduced last year by former Ways and Means Committee Chairman Brady would have made permanent the short-line railroad credit under section 45G – albeit at a reduced credit rate of 30 percent rather than 50 percent – but here again, the Grassley-Wyden package would simply extend the 50 percent credit for two years.

Provisions benefiting individual taxpayers: For individuals, the measure would extend the:
• Exclusion from gross income for indebtedness discharged on a principal residence (section 108(a)(1)(E));
• Treatment of mortgage insurance premiums as qualified residence interest for purposes of the itemized deduction for mortgage interest (section 163(h)(3)); and
• Above-the-line deduction for qualified tuition and related expenses for higher education (section 222).

One-year extensions (provisions that expired in 2018)

Additionally, the Grassley-Wyden bill would grant a one-year extension through 2019 for a handful of provisions that lapsed at the end of 2018, including the:

• Reduced threshold (that is, 7.5 percent – rather than 10 percent – of adjusted gross income) for claiming out-of-pocket medical expenses as an itemized deduction (section 213(f));
• Nine-cent per barrel excise tax on crude oil and petroleum products which funds the oil spill liability trust fund (section 4611(f)(2)); and
• The higher excise tax rates on coal from underground and surface mines which funds the black lung liability trust fund (section 4121(e)(2)(A)).

Not included: 2019 extenders, further suspension of PPACA taxes

Notably, the Grassley-Wyden package is silent on a small subset of provisions that are currently slated to lapse at the end of this year, including the New Markets Tax Credit, the Work Opportunity Tax Credit, the lookthrough treatment of payments between related controlled foreign corporations for purposes of subpart F, and the beginning-of-construction date for wind facilities eligible to claim the electricity production tax credit (or the investment tax credit in lieu of the production credit).

The bill also does not include any further suspension of taxes originally enacted as part of the Patient Protection and Affordable Care Act (PPACA) which lawmakers have acted to delay in the past – such as the 2.3 percent excise tax on medical device manufacturers and a separate fee on health insurers, both of which are scheduled to come back into force in 2020.

Disaster tax relief

In addition to renewing the expired tax provisions, the Grassley-Wyden bill generally would provide targeted, temporary tax relief to individuals and businesses in areas in which a major federal disaster was declared between January 1, 2018, and March 1, 2019. (These provisions would not apply to victims of the California wildfire disaster area who already received similar relief under the Bipartisan Budget Act of 2018.)

Employee retention incentives: The bill includes a temporary tax credit for 40 percent of wages (up to $6,000 per employee) paid by an eligible employer to an employee from a designated disaster area. The credit would not be available in the case of wages paid for which the employer is already receiving a benefit under the Work Opportunity Tax Credit.

Access to retirement funds: The measure would make it easier for disaster victims to gain emergency access to funds in qualified retirement plans by:

• Waiving the 10 percent early withdrawal penalty for qualified disaster-relief distributions and allowing income tax on the distributions to be paid over three years;
• Permitting recontribution of retirement plan withdrawals for home purchases that were cancelled due to eligible disasters; and
• Relaxing the rules for loans from retirement plans for qualified disaster relief.

Deduction for personal casualty losses: For individuals who incur uncompensated disaster-related losses, the proposal would temporarily eliminate the current-law requirements that personal casualty losses must exceed 10 percent of adjusted gross income to qualify for deduction. Nonitemizers with qualifying disaster-related losses would also be eligible to take advantage of this tax relief.
Earned Income Tax Credit and Child Tax Credit: The bill would allow taxpayers to determine their Earned Income Tax Credit and Child Tax Credit for the taxable year in which a disaster was declared based on their earned income from the immediately preceding year.

Charitable giving: For businesses and individuals, the bill would temporarily suspend limitations on the deduction for charitable contributions associated with qualified disaster relief.

An extenders agreement – eventually?

Release of the Finance Committee package does not necessarily signal that fact action on extenders legislation is in the offing – something that could prove disconcerting to some taxpayers preparing their 2018 returns.

No clear timeline from Ways and Means: House Ways and Means Committee Chairman Richard Neal, D-Mass., has said that his panel will hold hearings on extenders issues beginning sometime this month, but he did not indicate when the committee intends to mark up an extenders package of its own. (See separate coverage in this issue for additional details.) And it is not yet known the extent to which an eventual Ways and Means bill will align with the Grassley-Wyden proposal.

PAYGO concerns: But even when the Ways and Means Committee has a bill of its own in place and assuming there are only minimal policy differences with the Finance panel, House and Senate taxwriters still will have to resolve a disagreement over whether to offset any revenue loss associated with renewing the expired provisions. As part of the reform package they passed after reclaiming the majority this year, House Democrats reinstated a pay-as-you-go (PAYGO) rule generally requiring spending cuts or revenue increases to offset legislation estimated to increase the deficit. The rule can be waived – and often has been during previous years when it was effect – but Democrats will have to decide if they want to do so for an extenders bill or instead send the Senate a package with revenue-raising offsets that is likely to hit a roadblock.

Senate Majority Whip and Finance Committee member John Thune, R-S.D., raised the issue in comments to reporters this week, saying, “obviously we would need, I think, the House to waive their PAYGO provisions because the Senate’s not going to vote for something that we have to raise taxes someplace else to pay for.”

Andrew Grossman, the Democrats’ chief tax counsel at the House Ways and Means Committee, has acknowledged – most recently at a February 28 Bloomberg Tax event – that waiving PAYGO for an extenders package is an option, but Thune’s view on not paying to extend current tax law is in direct contrast with at least one Democratic taxwriter in the House: Rep. Bill Pascrell, D-N.J., has said the House should adhere to the PAYGO rule for extenders.

Finding a vehicle: Adding further to the challenge of completing an extenders bill this year is the anticipated paucity of legislative vehicles. An extenders package typically does not pass Congress as a stand-alone bill but is instead marked up by the taxwriting committees and then attached to a larger – and usually must-pass – piece of legislation as it nears final passage. The FY 2019 spending bill hashed out in January and February was seen by some as a potential vehicle for extenders just ahead of this year’s tax filing season, but that bill ended up moving without any unrelated amendments. That leaves just a few obvious contenders for moving extenders this year, including a bill to raise or waive the federal debt limit, which came back into effect March 1 after being temporarily suspended under the Bipartisan Budget Act of 2018. The Congressional Budget Office forecast this week that Treasury will be able to stave off default until the end of September through the use of so-called “extraordinary measures.”

URL: https://www.cbo.gov/publication/54987

Other obvious vehicles include spending legislation for fiscal year 2020, which also has a September 30 deadline, or a bill to raise the “sequester” caps on discretionary spending that could come sooner than that.

Grossman said this week that a quick Ways and Means Committee vote on an extenders package this year wouldn’t have been fair to the 11 new Democrats on the committee who are still getting educated on the various provisions in question. He added that a hearing this year is likely, as is “probably some kind of mark-up.”

In a release that accompanied the Finance Committee proposal, Grassley argued that Congress needs to reach an agreement on extenders quickly to provide certainty to taxpayers.
“[M]any of these industries made business decisions last year based on that reasonable expectation that [these provisions] would be extended since it’s what Congress has consistently done in the past. I hope the House of Representatives acts soon since taxpayers affected by these expired provisions have to file their tax returns in the coming weeks,” the release said.

**Long-term considerations:** Grassley also commented in a February 28 floor speech that Congress ultimately has to move away from its current practice of routinely renewing temporary provisions and instead begin evaluating individual extenders and make some policy decisions to permanently extend some provisions and weed out others that have outlived their usefulness.

“...Congress needs to decide whether these provisions should be allowed to expire, be phased-out, or made permanent as current policy or modified in some way. Those decisions need to be made after we resolve the short-term crisis caused by the current lapse,” he said.

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**Desmond finally clinches IRS chief counsel post**

The Senate confirmed Michael Desmond to be the IRS chief counsel on February 28, a year after he was first nominated to the position by President Trump.

The president originally sent Desmond’s nomination to the Senate in March 2018. The Finance Committee advanced his nomination last August, but a vote in the full Senate was held up by Sen. Robert Menendez of New Jersey because of a disagreement over IRS and Treasury guidance that effectively shut down efforts in certain states – including New Jersey – to allow taxpayers to characterize certain state and local tax (SALT) payments as charitable contributions in order to circumvent the $10,000 annual cap on deductibility of state and local income and property taxes that was enacted in the 2017 tax cut law (P.L. 115-97).

The SALT deduction tends to be used more heavily in higher-taxed “blue” states such as New Jersey, New York, and California, and lawmakers in both parties who represent constituents in jurisdictions with expensive housing markets and steep property and income taxes have decried the cap as unfair to their constituents. Menendez’s hold prevented speedy consideration of Desmond’s nomination on the Senate floor last year, and without further action in the Senate, the nomination expired when the 115th Congress formally adjourned.

President Trump renominated Desmond on January 16 and the nomination cleared the Finance Committee on February 5.

The final Senate vote this week was 83-15, with Finance members Menendez and Sheldon Whitehouse, D-R.I., among those voting no. All of the chamber’s declared presidential candidates – Democratic Sens. Cory Booker of New Jersey, Kirsten Gillibrand of New York, Kamala Harris of California, Amy Klobuchar of Minnesota, and Elizabeth Warren of Massachusetts, plus Independent Sen. Bernie Sanders of Vermont – also voted in opposition.

In his new role, Desmond will serve as the chief legal advisor to IRS Commissioner Charles Rettig and oversee the IRS legal team, which is responsible for drafting regulations, providing internal legal advice during audits, and representing the agency in litigation.

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Ways and Means schedules infrastructure hearing

House Ways and Means Committee Chairman Richard Neal, D-Mass., announced this week that the panel will hold a hearing on March 6 to examine "our nation’s crumbling infrastructure and the need for immediate action."


A witness list for the hearing was not available at press time.

Neal has identified infrastructure legislation as one of his top priorities as Ways and Means Committee chairman and the issue is generally regarded as one of few where lawmakers have an opportunity to develop a bipartisan proposal that could move through a divided Congress. But bipartisan agreement on the need for overhauling the nation’s infrastructure does not necessarily translate into consensus on policy or financing proposals.

For many Democrats and some in the business community, an increase in the federal gas tax, which has not been raised since 1993 and is not indexed to inflation, remains a favorite financing option. Congressional Republican leaders generally have been opposed such a move, and anti-tax groups in the private sector likely will try to tamp down any emerging proposals.

It’s worth noting, however, Senate taxwriter Charles Grassley of Iowa, who now chairs the Finance Committee, acknowledged last year that a gas tax increase would need to be part of the discussion in negotiating an infrastructure package even though he did not count himself as a supporter. (For prior coverage, see Tax News & Views, Vol. 19, No. 5, Feb. 2, 2018.) For his part, President Trump also signaled last year that he might be open to a gas tax increase – among other options – to help bankroll a White House plan for a proposed $200 billion federal investment in infrastructure spending. (That plan was released as a legislative outline but was never taken up in Congress. For prior coverage, see Tax News & Views, Vol. 19, No. 7, Feb. 16, 2018.)


Senate Democrats last year also proposed to finance $1 trillion in new infrastructure spending by rolling back some of the 2017 tax cuts for corporations, wealthy individuals, and estates. (For prior coverage, see Tax News & Views, Vol. 19, No. 9, Mar. 9, 2018.) That plan never advanced in the GOP-controlled Senate and is unlikely to gain traction with congressional Republicans if it resurfaces in future legislative proposals.


Hearings on extenders, technical corrections coming up

In other developments, Neal told Tax Notes this week that the Ways and Means Committee will hold a series of hearings starting sometime this month to examine expired tax “extenders” provisions and technical corrections to the 2017 tax cut law known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97).

He did not give details on the number of hearings he intends to hold, when they are scheduled to begin, or the specific topics that the panel will address.

**Extenders:** Neal commented that the temporary tax deductions, credits, and incentives that expired in 2017 and 2018 “deserve some scrutiny” but he did not indicate how quickly the committee intends to mark up an extenders package. (Senate Finance Committee Chairman Charles Grassley, R-Iowa, released an extenders proposal of his own on February 28. See separate coverage in this issue for details.)

**Technical corrections:** Based on recent comments from committee staff, the upcoming hearings on TCJA technical corrections are unlikely to signal swift action on a legislative package. (For prior coverage, see Tax News & Views, Vol. 20, No. 5, Feb. 1, 2019.) Neal and other Democrats objected to the way the TCJA moved through Congress on the strength of Republican votes alone, and he has long maintained that he would not take up fixes to the TCJA until the panel holds hearings on the law, its impacts to date, and the ways in which its rushed passage in the last two months of 2017 necessitated so many fixes.

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190201_1.html
Ways and Means Chief Tax Counsel Andrew Grossman said at a February 28 conference sponsored by Bloomberg Tax that the technical corrections hearings will examine “large and small” issues related to the TCJA, noting that he could “imagine a hearing on section 199A,” as well as “multiple hearings on the international front” to consider issues such as whether any of the TCJA provisions provide incentives “for companies to potentially relocate offshore.”

**Mnuchin to appear later this month**

Neal also told reporters recently that Treasury Secretary Steven Mnuchin will appear before the Ways and Means Committee at a separate hearing later this month – likely within the next two weeks. The hearing had not been formally scheduled at press time.

This will be Mnuchin’s first appearance before the panel since Democrats took control of the House in the 2018 midterm elections. In January, Mnuchin was the sole invited witness at a planned hearing to discuss the impact of the partial government shutdown on the 2018 income tax filing season, which at the time was just about to commence. Mnuchin declined that invitation and offered to send less senior officials to answer the taxwriting committee’s questions; but Neal instead canceled the hearing, saying Ways and Means “need[ed] to hear directly from the Secretary to gain greater clarity regarding the IRS’ capabilities during the shutdown.”

**SALT deduction cap a likely discussion topic:** Although Neal did not specify the subject of the upcoming hearing, one of the issues Democratic taxwriters are expected to address is the $10,000 cap on the federal deduction for state and local taxes (SALT) enacted in the TCJA and Mnuchin’s role in the subsequent release of Notice 2018-54, in which Treasury and the IRS announced their intention to issue proposed regulations that would clamp down on efforts by certain states to allow their residents to minimize the impact of the SALT deduction limitation by characterizing payments of certain state and local taxes as deductible payments to state-sponsored charitable agencies. (The proposed regulations were released last August.)


A recently released audit conducted by the Treasury Inspector General for Tax Administration at Neal’s request determined that Treasury’s review and approval process for Notice 2018-54 was “reasonable.”


The SALT deduction tends to be used more heavily in higher-taxed “blue” states disproportionately represented by Democrats, such as New Jersey, New York, and California; but lawmakers in both parties who represent jurisdictions with expensive housing markets and steep property and income taxes have decried the cap as unfair to their constituents.

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