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House clears stop-gap spending bill without tax changes

The House of Representatives this week passed a stop-gap appropriations measure, or “continuing resolution,” that would extend government spending authority through November 21 and avert a shutdown at the end of the month; but the bill, which is expected to also win passage in the Senate in the coming days, does not include any tax changes.

Bumpy spending talks ahead this fall

The Continuing Appropriations Act, 2020 and Health Extenders Act of 2019 (H.R. 4378) – was rolled out by House Appropriations Committee Chairwoman Nita Lowey, D-N.Y., on September 18 and cleared the House the next day on a bipartisan vote of 301-123. The Senate is expected to take up the measure the week of September 23 and send it to President Trump’s desk prior to the end of federal fiscal year 2019 on September 30.


The legislation is necessary because, although the Bipartisan Budget Act of 2019 (BBA, H.R. 3877), enacted on August 2, lifted the statutory caps on discretionary spending known as the “sequester” for fiscal years 2020 and 2021 and also suspended the statutory debt limit until mid-2021, it did not appropriate federal dollars at the programmatic level. That task falls to lawmakers on the House and Senate Appropriations committees.
So far this year, the full House of Representatives has passed 10 of 12 appropriations bills for fiscal 2020. However, those bills were developed prior to enactment of the BBA and largely reflect the priorities of the House Democratic majority. As a result, they will need to be reworked to fit within the BBA's parameters.

The GOP-controlled Senate, meanwhile, has not yet passed any appropriations legislation for fiscal 2020, as spending leaders in that chamber were awaiting the top-line numbers ultimately delivered in the BBA. Since returning from their August recess, Senate appropriators have been processing bills at the committee level – including a Financial Services and General Government funding bill reported this week that would give the Internal Revenue Service an extra $200 million next year, mainly targeted at enforcement activities. (Additional details on that measure are available from the Senate Appropriations Committee.)

Shutdown fears – déjà vu all over again?: However, Senate Democrats have taken issue with how Republican appropriators have subdivided the BBA’s top-line spending authorization for fiscal year 2020 to the 12 Appropriations subcommittees that draft the actual funding bills, arguing that Republicans are attempting to shift dollars to help fund the president’s proposed wall along the southern US border. Earlier this fiscal year, the government went into partial shutdown for a record 35 days due to a similar dispute over border wall funding.

Senate Minority Leader Chuck Schumer, D-N.Y., summed up his concerns in a September 18 floor speech.

"We had a bipartisan deal on the budget caps," Schumer said. “... We were working on allocations to the 12 subcommittees when the Republicans decided, without consulting any Democrat, to divert funds from medical research, opioid treatment, and our military and their families so they could appease the president’s wish to spend up to $12 billion extra for a border wall – a wall, by the way, that the president said Mexico would pay for.”

Schumer went on to say that the approach taken by Senate GOP appropriators “puts the entire appropriations process in jeopardy.”

Based on where talks currently stand, then, it would appear Democrats and Republicans will have their work cut out for them enacting full-year fiscal 2020 spending bills before the likely deadline extension to November 21 itself expires.

Tax policy not hitching a ride

As the bill’s title implies, H.R. 4378 is also carrying extensions of certain public health-related policies that are slated to expire at the end of September. It also includes short-term reauthorizations – through November 21 – of the Export-Import Bank and the National Flood Insurance Program.

Otherwise, however, the bill is devoid of provisions unrelated to appropriations policy.

That includes myriad tax provisions that various lawmakers and outside stakeholders are eagerly awaiting action on this year, such as the expired and expiring tax “extenders,” technical corrections to the 2017 tax bill informally known as the Tax Cuts and Jobs Act (TCJA), further suspensions of certain taxes enacted as part of the Patient Protection and Affordable Care Act which are slated to come into force next year, and the SECURE Act (H.R. 1994) – a House-passed retirement security measure that also would address unintended consequences of a change to the so-called “kiddie tax” that was included in the TCJA. The SECURE Act would likely be able to pass the Senate by a wide margin but for the objections of a small band of GOP senators who are holding up the bill due to tax policy concerns unrelated to the kiddie tax. (For a review of these issues, see Tax News & Views, Vol. 20, No. 29, Sep. 13, 2019. Also see separate coverage in this issue for developments in the Senate Finance Committee on extenders and some of the suspended Affordable Care Act taxes.)

That dynamic – as well as differences of opinion as to whether the budgetary cost of the tax extenders should be offset and a separate debate among Democrats as to whether they should work with Republicans to fix technical
glitches in the GOP-written Tax Cuts and Jobs Act and if so, at what price – have led many observers to the conclusion that any tax legislation taken up by Congress before the end of the year is unlikely to move on its own but rather will have to be attached to a larger, “must-pass” legislative package such as a government funding bill.

Under that theory, since the continuing resolution that has just cleared the House includes no extraneous tax provisions, it would appear that late November may be the next likely opportunity for lawmakers to move tax legislation.

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No policy recommendations from Finance Committee task force on health care tax extenders

A bipartisan Senate Finance Committee task force charged with examining several temporary health care-related tax provisions "did not come to a consensus" on whether those provisions should be further extended, made permanent, or allowed to expire or remain lapsed, according to a report released September 16.

URL: https://www.finance.senate.gov/imo/media/doc/Health%20Task%20Force%202019-09-16.pdf

The health care task force, which was headed by Senate Republican taxwriter Pat Toomey and Democrat Bob Casey, both of Pennsylvania, is one of six the committee established earlier this year to examine temporary policy in the tax code, with a specific focus on provisions that expired or are set to expire between 2017 and 2019.

Health extenders, Affordable Care Act taxes

The task force looked at four traditional tax “extenders” provisions related to health care issues, including the:

- Reduced threshold (7.5 percent of adjusted gross income) for determining eligibility for the itemized deduction for medical expenses, which expired in 2017;
- Increase in the excise tax on coal to finance the Black Lung Disability Trust Fund (expired in 2017);
- Employer credit for family paid and medical leave (expires at the end of 2019); and
- The credit for health insurance costs of individuals receiving a trade reimbursement allowance or a benefit from the Pension Benefit Guaranty Corporation (expires at the end of 2019).

Also under the microscope were two permanent tax provisions that were enacted in the Patient Protection and Affordable Care Act of 2010 (PPACA) but are not currently being collected as a result of temporary moratoriums approved by Congress:

- Medical device excise tax: The 2.3 percent excise tax on the sale of certain medical devices was in effect from January 1, 2013, to December 31, 2015. Since then, Congress suspended its collection for calendar years 2016 and 2017 (under the Consolidated Appropriations Act, 2016) and for calendar years 2018 and 2019 (under the Extension of Continuing Appropriations Act, 2018).
- Health insurance provider fee: The fee on health insurance providers, which is assessed based on a provider’s market share, took effect at the beginning of calendar year 2014 but was suspended for calendar year 2017 (under the Consolidated Appropriations Act, 2016). It was reinstated for calendar year 2018 and then suspended again for 2019 (under the Extension of Continuing Appropriations Act, 2018).

If Congress takes no further action, both PPACA levies will be payable beginning in 2020.

Another suspended PPACA tax – the so-called “Cadillac” tax on certain employer-provided insurance plans – is not scheduled to take effect until 2022 and was not among the provisions that the task force examined. But the issue of repealing the tax outright could be on the table later this year if lawmakers seek to negotiate a broad extenders bill. The House approved legislation in July that would repeal the tax, but the Senate has not yet acted on that measure. (For prior coverage, see Tax News & Views, Vol. 20, No. 24, July 19, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190719_2.html
All wind-up, no pitch

In its 277-page report, the task force is silent on how Congress should address any of these provisions going forward. Instead, the discussion is limited to background details on each provision, summaries of the views presented in meetings with outside stakeholders, the text of written comments received from stakeholders, and a list of relevant legislative proposals that have been introduced in the 116th Congress.

This lack of policy prescriptions largely aligns the health care report with the four other Finance Committee task force reports that have been released so far. Those reports – addressing cost recovery, energy incentives, individual and excise taxes, and workforce and economic development incentives – for the most part steered clear of policy specifics. There were, however, a few notable exceptions: the cost recovery panel recommended permanent extensions of the tax credit for short line railroad rehabilitation and the deduction for energy-efficient commercial building investment, both of which expired at the end of 2017, and the individual and excise taxes task force called for permanently extending certain tax breaks for producers of craft beer, wine, and distilled spirits that were enacted in the 2017 tax cut legislation and are set to expire at the end of this year. (For details on and links to the reports on cost recovery, energy, and individual and excise tax provisions, see Tax News & Views, Vol. 20, No. 27, Aug. 16, 2019. For more on the report on workforce and economic development incentives, see Tax News & Views, Vol. 20, No. 28, Aug. 30, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190816_1.html
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190830_1.html

The sixth and final task force report – on the feasibility of developing a core package of short-term tax relief provisions for victims of federally declared natural disasters – has not yet been released.

Still no path forward on extenders package this year

When the first tranche of task force reports was released last month, Finance Committee Chairman Charles Grassley, R-Iowa, indicated that moving extenders legislation would be “a top priority” for the panel when lawmakers returned from their summer recess. Since the legislative session resumed on September 9, however, Grassley has not stated when or if the panel will mark up an extenders bill of its own.

Grassley and Finance Committee ranking member Ron Wyden, D-Ore., unveiled a proposal in late February that would renew the now-expired 2017 and 2018 extenders through the end of this year but is silent regarding the 2019 expiring provisions. (For prior coverage, see Tax News & Views, Vol. 20, No. 8, Mar. 1, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190301_1.html

For its part, the House Ways and Means Committee approved legislation (H.R. 3301) in June that would extend through 2020 the bulk of the 2017 and 2018 expired provisions as well as those set to lapse at the end of 2019. (For prior coverage, see Tax News & Views, Vol. 20, No. 21, June 21, 2019.) House leaders have not yet indicated when, or even if, that legislation will be brought to the floor.

URL: https://www.congress.gov/116/bills/hr3301/BILLS-116hr3301ih.pdf
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190621_1.html

Whether each chamber passes its own version of extenders legislation or uses their committee-developed measures as a bargaining position, the biggest threat to eventual House-Senate negotiations is likely to be disagreements over whether to offset the cost of renewing the temporary provisions. Republicans (and Senate Democrats) have traditionally argued that extensions of current law need not be paid for, and the Finance Committee proposal includes no offsetting revenue raisers. But Ways and Means Committee Democrats are insisting that extenders legislation should be fully offset, and they included in their bill a provision that would accelerate by three years (to 2022) the scheduled expiration of the more generous estate and gift tax exemption that was enacted in the 2017 GOP tax cut legislation.

— Michael DeHoff
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Ways and Means Democrats eye temporary repeal of SALT deduction cap

House Ways and Means Committee member Bill Pascrell, D-N.J., said this week that a forthcoming compromise proposal from the panel’s Democrats to address the current-law cap on the deduction for state and local taxes (SALT) may call for a temporary repeal of the provision.

The $10,000 limitation on the SALT deduction, which applies to individual taxpayers and married couples alike and is not indexed for inflation, was enacted in the 2017 tax cut legislation known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97).

Pascrell told reporters September 18 that a short-term repeal of the cap would buy time for Democrats to pursue a broader array of changes to the TCJA if they win the White House and take control of the Senate in the 2020 elections.

“It may simply be a three-year plan [or] four-year plan because it need not be beyond that. Because, if we, God willing, if we take over the presidency, and the Senate, which is a possibility, we are going to be talking about total reform,” he said.

Pascrell said the proposal could be unveiled in October. He did not indicate how it would be offset.

An informal working group of House Democratic taxwriters led by Ways and Means Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., worked throughout the summer on a plan to address the cap. Thompson told reporters September 12 that the group had reached “an agreement on the outline of a plan” but he did not disclose additional details. Thompson also said that he hoped the full committee would mark up a proposal before the end of this year.

But even if such a measure passes in the House, any plan to repeal or claw back the cap is likely to encounter resistance in the Republican-controlled Senate. 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, although House members 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 in the middle class. Generally, though, Republicans have resisted calls to modify the cap, arguing that repealing it would disproportionately benefit wealthier taxpayers; indeed, a report from the Joint Committee on Taxation staff on the distributional effects of various provisions in the TCJA suggests that it may be difficult for Democrats to reconcile their characterization of the SALT limitation as a tax hike on the middle class with the reality of the profile of taxpayers that would benefit from a repeal of the provision.

URL: https://www.jct.gov/publications.html?func=startdown&id=5093

As enacted, the SALT deduction cap is scheduled to expire at the end of 2025, along with a host of other TCJA provisions affecting individuals, estates, and passthrough entities. Republicans are likely to pursue legislation to make those provisions permanent as part of a “Tax Cuts 2.0” effort if they retain control of the White House and Senate next year. (The House approved a permanent extension of the TCJA provisions as part of a proposed second round of tax cuts in late 2018, while the chamber was still under Republican control; but that measure was never taken up in the Senate and expired as active legislation when the 115th Congress formally adjourned early this year. For prior coverage, see Tax News & Views, Vol. 19, No. 32, Sep. 28, 2018.)


Subcommittee looks at ‘how the tax code subsidizes hate’

In other Ways and Means developments, the panel’s Oversight Subcommittee held a hearing on September 19 to consider whether the government inadvertently subsidizes hate groups by providing tax-exempt status to organizations that promote animus toward or violence against individuals based on factors such as their race, religion, nationality, gender or gender identity, or sexual orientation. Much of the discussion among lawmakers focused on the tension between ensuring that the government has appropriate standards for granting, denying, and revoking tax-exempt status and also ensuring that it is protecting the free-speech rights of organizations that are seeking or already have a tax exemption.
One of the witnesses at the hearing, Marcus Owens, a Washington-based attorney who worked for the IRS's Exempt Organizations division for 25 years and ran it for 10, told the panel that the Service needs to develop a more rigorous application process for groups seeking exempt status – for example, by requiring them to provide more detailed information about their charitable or educational missions – and more stringent monitoring of exempt organizations to ensure that they are adhering to their mission statements. But according to Owens, the years-long erosion of the Service’s enforcement budget has forced the agency to focus more of its resources on collecting revenue and less on scrutinizing organizations that, because they are tax-exempt, do not contribute to the fisc. He argued that Congress should beef up the IRS’s enforcement budget to allow it to more effectively address issues with exempt organizations. He also floated the idea of creating a government entity separate from the IRS whose sole responsibility would be to oversee the tax-exempt sector.

Another witness, Eugene Volokh of the UCLA School of Law, cautioned that standards for granting, denying, or revoking tax-exempt status must be applied “in a viewpoint-neutral way” to prevent the process from becoming politicized and ensure that adverse decisions are based on the specific actions of a group rather than the views that group expresses. He also stated that tightening the application process for tax-exempt status and ramping up enforcement activities related to tax-exempt organizations would create additional burdens for the IRS and for organizations of all ideological stripes.

Lawmakers also heard from several individuals who were affected by several high-profile mass shooting incidents that have occurred in the US in recent years.

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Senate clears two nominees for Treasury slots, postpones consideration of a third

The Senate on September 18 voted to approve the Trump administration’s nominations of Brent McIntosh to serve as Treasury undersecretary for international affairs and Brian Callanan to be Treasury general counsel. But a planned vote to confirm Brian McGuire to be Treasury deputy undersecretary for legislative affairs using an expedited process common for noncontroversial matters was delayed by a week after a Republican senator objected.

**Party-line votes for McIntosh, Callanan**

Similar what happened in late July when their nominations came before the Senate Finance Committee, McIntosh and Callanan cleared the full Senate on largely party-line margins of 54-38 and 55-39, respectively. Republicans generally supported the nominations and Democrats generally opposed them, although four Democrats broke ranks to vote in favor of McIntosh and six voted for Callanan. One Republican – Sen. Rand Paul of Kentucky – opposed Callanan’s nomination.

Finance Committee ranking Democrat Ron Wyden of Oregon said during that panel’s mark-up to advance the nominations that he opposed McIntosh (who at the time was Treasury’s general counsel) and Callanan (who was deputy general counsel) over their roles in certain Treasury Department actions that he viewed as politically motivated. (For prior coverage, see Tax News & Views, Vol. 20, No. 26, Aug. 2, 2019.)

**URL:** http://newsletters.usdbriefs.com/2019/Tax/TNV/190802_4.html

Wyden reiterated those concerns in a statement released ahead of the September 18 confirmation votes.

**URL:** https://www.finance.senate.gov/ranking-members-news/wyden-statement-on-treasury-department-nominations-of-brent-mcintosh-and-brian-callanan-

**McGuire vote delayed over treaty issues**

McGuire, who formerly served as the chief of staff to Senate Majority Leader Mitch McConnell, R-Ky., cleared the Finance Committee by voice vote in late July and appeared to be gliding to confirmation September 19 by unanimous consent. However, the vote hit an unexpected speedbump when McConnell’s fellow Kentuckian, Sen. Paul, raised an...
objection. (Under a unanimous consent request, the objection of any one senator means the request is rejected and the chamber must take additional time to consider the matter at hand.)

A spokesman for Paul said the objection was not personal but stemmed from Paul’s longtime battle with Treasury over tax treaties. (For background on that issue, see Tax News & Views, Vol. 20, No. 24, July 19, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190719_1.html

“For many years, Sen. Paul has advocated to amend tax treaties to protect the privacy of American citizens,” the spokesman said. “Recently, the Department of Treasury has been less than responsive, and Sen. Paul has decided to vote against some of their nominees. There is no animosity toward this specific nominee.”

Tax Court nominee still awaits confirmation

Also cleared by the Finance Committee in late July but still awaiting confirmation by the full Senate is Travis Greaves, who has been nominated to serve a 15-year term on the Tax Court.

— Storme Sixeas
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