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Tax proposals remain on hold as short-term spending bill clears Senate, heads to White House

The Senate this week approved a stop-gap appropriations measure – without extraneous tax provisions – that would extend government spending authority at current levels through November 21 and avert a shutdown at the end of the month.

The Continuing Appropriations Act, 2020 and Health Extenders Act of 2019 (H.R. 4378) cleared the chamber September 26 on a bipartisan vote of 81-16, one week after winning passage in the House by a comfortable margin. The measure now heads to the White House, where President Trump is expected to sign it into law prior to the end of federal fiscal year 2019 on September 30.


FY 2020 appropriations process grinds on

Passage of the short-term funding bill (also known as a “continuing resolution”) gives Congress additional time to complete work on the 12 appropriations bills that will fund government operations for fiscal 2020. Although the Bipartisan Budget Act of 2019 (BBA) which was 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. 

URL: https://www.congress.gov/bill/116th-congress/house-bill/3877/text?q=%7B%22search%22%3A%22h.r.+3877%22%7D&r=1&s=1

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, but none of those have yet made it to the chamber floor.

Compressed timeline, crowded agenda: But just how quickly the Senate will be able to move its spending bills remains unclear, as Democrats continue to balk at the way Republican appropriators have subdivided the Balanced Budget Act’s top-line spending authorization for fiscal year 2020 to the 12 Appropriations subcommittees that draft the actual legislation. Specifically, Democrats argue 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.) Republicans counter that Democrats have slowed down the process with their demands for certain “poison pill” policy riders that the GOP finds unacceptable.

The calendar presents an additional complication. The House and Senate are scheduled to be in recess for the weeks of September 30 and October 7, with both chambers coming back into session on October 15. Once the session resumes, there will be roughly six weeks for the Senate to clear its 10 remaining bills and finalize an agreement with the House before the continuing resolution expires. But lawmakers already face a crowded agenda that could include such diverse and potentially divisive issues as trade, gun safety and regulation, prescription drug pricing, and judicial nominations (in the Senate).

Impeachment inquiry creates new pressures: And now hovering over all of this is the prospect of proceedings in the House related to a formal impeachment inquiry against President Trump, which Speaker Nancy Pelosi, D-Calif., authorized on September 24.

The impact of an impeachment inquiry on the legislative agenda generally and the appropriations process specifically is likely to become clearer in the coming days. Based on where things currently stand, though, it would appear to be a tall order for the two chambers to wrap up work on spending legislation and get a final package to the president by their self-imposed November 21 deadline, even without the additional pressure of dealing with impeachment issues.

Senate Appropriations Committee Chairman Richard Shelby, R-Ala., suggested to reporters September 24 that adding impeachment proceedings into the legislative mix is likely to drag out work on appropriations and require additional stop-gap spending bills, although he did not speculate on the number or duration of those extensions.

“I think [the impeachment process] would have an impact on taking the oxygen out of the air to regular order on the floor. So, I think we’d probably be facing more and more continuing resolutions,” Shelby said.

Tax bills stuck in neutral

As its title implies, the short-term funding bill is also carrying extensions of certain public health-related policies that are slated to expire at the end of September. In addition, it 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 several tax priorities that various lawmakers and outside stakeholders hope will be addressed this year, such as:
The future of temporary tax “extenders” provisions that expired in 2017 and 2018 or are set to expire at the end of this year;  
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;  
Technical corrections to the 2017 tax cut legislation informally known as the Tax Cuts and Jobs Act (TCJA); and  
Senate action on 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.

Progress on these agenda items has been stymied by things such as disagreements over whether the budgetary cost of the tax extenders should be offset; a separate debate among Democrats as to whether they should work with Republicans to fix technical glitches in the GOP-drafted Tax Cuts and Jobs Act and if so, at what price; and efforts by a few disparate Senate Republicans to block expedited passage of the SECURE Act because they want to strike certain provisions from the House-passed bill, such as pension funding relief for certain financially struggling community newspapers, or add others in, such as a TCJA technical correction that would clarify the depreciation rules for qualified improvement property. (For a review of key tax proposals and the issues preventing them from advancing, see Tax News & Views, Vol. 20, No. 29, Sep. 13, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190913_1.html

These seemingly intractable differences have led many observers to conclude that the underlying tax proposals are unlikely to advance through Congress on their own and will instead have to be attached to a larger, “must-pass” legislative package. Under that theory, because a government funding bill is the only such vehicle that lawmakers are expected to take up this year, and since the continuing resolution now making its way to the White House includes no extraneous tax provisions, it would appear the next possible opportunity for lawmakers to move tax legislation may be in late November.

Taxwriting chiefs see path to eventual deal: The chairmen of the House and Senate taxwriting committees indicated this week that a bicameral tax deal remains within reach and that an impeachment inquiry would not pose an insurmountable hurdle.

Rep. Richard Neal, D-Mass., the top taxwriter in the House, told reporters September 25 that “[t]here is no reason to let the inquiry get in the way of what we’re doing in the Ways and Means Committee, and I don’t intend to let it get in the way.”

For his part, Sen. Charles Grassley, R-Iowa, who chairs the Senate Finance Committee, told reporters that the 2017-2019 extenders likely would be added to an eventual FY 2020 spending bill, possibly along with the SECURE Act provisions. He cautioned, though, that agreement on an extenders package would be possible only if Democrats refrain from insisting on amendments that would undo provisions in the Tax Cuts and Jobs Act. Although Grassley did not elaborate, the extenders legislation approved by Ways and Means Democrats in June would be offset in part by a provision that would accelerate by three years – to 2022 – the scheduled expiration of the TCJA’s more generous estate and gift tax exemption amounts. More generally, Ways and Means Democrats have also called for repealing or clawing back TCJA provisions they see as benefiting corporations and wealthy individuals to pay for the cost of tax relief targeted to low- and middle-income taxpayers, such as expansions of the Child Tax Credit and the Earned Income Tax Credit.

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Senate confirms McGuire for Treasury legislative affairs post

The Senate on September 24 confirmed the nomination of Brian McGuire to become the Treasury Department’s assistant secretary for legislative affairs, wrapping up the last of four officials cleared for senior roles in the department this month.
McGuire, who previously spent more than a decade working in the Senate – including as chief of staff to Majority Leader Mitch McConnell, R-Ky. – was confirmed by a vote of 88-6.

As head of the legislative affairs team at Treasury, McGuire will advise Secretary Steven Mnuchin on congressional relations matters and coordinate the department’s interaction with Congress and with the congressional relations offices in the White House and other federal departments and agencies.

Most recently, McGuire was counselor to the secretary of the Treasury for legislative affairs. President Trump nominated him to the new role in February.

Outside of government, McGuire’s background includes time as a journalist in New York and as a policy director at Brownstein Hyatt Farber Schreck LLP. He earned his B.A. from St. John’s College in Annapolis, Md., an M.A. in philosophy from the University of Dallas, and an M.A. in journalism from Columbia University’s Graduate School of Journalism.

McGuire’s confirmation follows Senate approval of two other Treasury nominations last week – Brent McIntosh to serve as undersecretary for international affairs and Brian Callanan to be general counsel – on tighter votes largely along party lines. The Senate expected to confirm McGuire last week, as well, using an expedited process common for noncontroversial matters, but that vote was delayed after Sen. Rand Paul, R-Ky., objected. Paul said his objection was not targeted at McGuire personally but was part of the senator’s long-running battle with Treasury over tax treaties. (For prior coverage, see Tax News & Views, Vol. 20, No. 30, Sep. 20, 2019.)

Earlier in September, the Senate confirmed Thomas Feddo as the assistant secretary for investment security, a new position at Treasury.

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Neal outlines ‘significant concerns’ with digital taxes

In a letter sent September 25, House Ways and Means Committee Chairman Richard Neal, D-Mass., laid out to Treasury Secretary Steven Mnuchin and US Trade Representative Robert Lighthizer what he described as “significant concerns” about unilateral tax measures targeting US companies – most notably France’s new digital services tax (DST) – and requested clarification on the administration’s recent discussions with French officials.

Working through the Organization for Economic Cooperation and Development (OECD), 134 countries – including the US and France – have begun a multilateral effort to review international taxing rights, including potential ways in which to allow countries to collect more tax revenue from companies with limited, if any, physical presence in a country but a strong online presence or customer base. (For prior coverage, see Tax News & Views, Vol. 20, No. 19, June 7, 2019.) While waiting for a broader agreement, however, some countries have moved unilaterally to begin collecting additional tax from certain large technology companies. A number of these are still in proposed form, but France’s version was signed into law in late July and retroactively applies to digital services revenue as of January 1, 2019.

US officials including Mnuchin have expressed strong opposition to France’s tax (as well as to a proposed measure by the UK), and after a G-7 summit in Paris in late August, President Trump and French President Macron directly discussed the issue. However, a press conference following that conversation caused some confusion. Macron announced that the two had struck a deal resolving the dispute and implied that once a multilateral agreement on digital taxes is in place, France would repeal its DST and refund to taxpayers the difference between the amount of DSTs paid and the amount of tax that would have been due under the OECD plan. Trump, however, declined to confirm a deal when asked directly about it.
Adding to the lack of clarity for stakeholders, Mnuchin met the following week with French Finance Minister Bruno Le Maire, and a Treasury Department readout issued after that meeting made no mention of a deal, saying only that the two “reiterated the commitment of both parties to work together constructively to reach an OECD solution on international taxation.”


With no further details emerging since that time, Neal’s letter this week asked the administration officials to “clarify your position on digital services taxes in general, and any agreements related to the French DST in particular.” Neal advocated a multilateral solution and noted that there have been reports that “certain high-level understandings on the implementation of the French DST, the implementation of any OECD solution, and the timing of any US trade actions have been discussed.”

Neal also outlined a series of concerns about French DST and other unilateral digital taxes, most notably, the fact that they operate outside of the international tax system – including agreed-upon dispute resolution mechanisms, the imposition of new data collection burdens, the unfairness of their retroactive application, their implications for the US tax base, and their potential to undermine multilateral negotiations.

"More broadly,” Neal argued, “the lack of a multilateral process could lead to a patchwork of unilateral taxes that exacerbate [these] problems."

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