Finance task force delivers inconclusive report on disaster-relief tax provisions

A bipartisan Senate Finance Committee task force responsible for exploring the feasibility of enacting a permanent set of short-term tax relief provisions that would be automatically available to victims of federally declared natural disasters released its final report October 11 without providing any policy recommendations. URL: https://www.finance.senate.gov/imo/media/doc/Disaster%20Task%20Force%20FINAL%2010-11-19.pdf

The task force, which was headed by Republican taxwriter Richard Burr of North Carolina and Democrat Michael Bennet of Colorado, is one of six the Finance Committee established earlier this year to examine various aspects of temporary policy in the tax code and is the last one to weigh in on its deliberations.

A summary, but no consensus

According to the report, the task force focused chiefly on a core set of disaster-relief provisions that included:

- Special rules giving disaster victims penalty-free access to funds in tax-preferred retirement accounts (sections 72(t), 165, 401-403, 408, 457, and 3405);
- An employee retention credit for employers affected by qualified disasters (section 38);
- A temporary increase in the limitation on qualified charitable contributions (section 170);
- Special rules for deducting disaster-related personal casualty losses (section 165); and
• Special rules to give disaster victims greater flexibility in determining earned income for purposes of the child tax credit and the earned income tax credit (sections 24(d) and 32).

Substantially similar versions of these provisions are included in the draft tax extenders legislation unveiled by Finance Committee Chairman Charles Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore., in late February (for prior coverage, see Tax News & Views, Vol. 20, No. 8, Mar. 1, 2019) and in the tax extenders legislation (H.R. 3301) that cleared the House Ways and Means Committee in June (for prior coverage, see Tax News & Views, Vol. 20, No. 21, June 21, 2019).

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190301_1.html
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190621_1.html

The task force also looked at assorted other temporary tax relief provisions that were enacted between 2002 and 2008 in response to several discrete presidentially declared disasters.

But the 98-page report takes no position on the general concept of adopting a core tax relief package that could be deployed as soon as a natural disaster is declared, nor does it evaluate the relative policy merits of any of the specific proposals the task force considered. Instead, the discussion is limited to summaries of the views presented in meetings with outside stakeholders, the text of written comments received from stakeholders, a synopsis of comments received from senators that were not on the task force, and an overview of relevant legislative proposals that have been introduced in the 116th Congress.

The report’s one-sentence conclusion simply thanks “stakeholders for taking the time to submit comments and provide feedback on ways to improve disaster tax relief for taxpayers.”

**Sound familiar? A quick review**

The lack of policy prescriptions from the disaster tax relief task force largely aligns its report with those of the five other Finance Committee panels that have been released since August. Those earlier reports – addressing dozens of tax provisions related to cost recovery, energy, individual and excise taxes, workforce and economic development, and health care that expired or will expire between December 31, 2017, and December 31, 2019 – likewise focused on summarizing stakeholders’ comments and for the most part avoided making formal recommendations. There were a few exceptions, however:

• 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;
• 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 (known informally as the Tax Cuts and Jobs Act) and are set to expire at the end of this year; and
• The workforce and economic development task force recommended targeted changes to two now-expired tax incentives – the Indian employment tax credit and the American Samoa economic development credit – but left it to Congress to decide whether those provisions should be renewed or allowed to remain lapsed. (The task force itself took no position on the future of any of the provisions it examined.)


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**Implications for extenders legislation**

The formation of the six task forces back in May was generally regarded as a prelude to developing a formal proposal in the Finance Committee to address the temporary deductions, credits, and incentives that expired in 2017 and 2018 and those that are set to lapse at the end of this year. It also was seen as an opportunity for Senate taxwriters to
begin to reshape the extenders debate by moving lawmakers away from rote short-term extensions of temporary tax provisions and toward a more deliberative process intended to provide greater long-term certainty for taxpayers by making some provisions permanent, renewing others for the short term, and phasing out or eliminating those that are perceived to no longer make sense from a policy perspective. The dearth of significant policy recommendations from the six task forces suggests that a radical departure from the extenders status quo is unlikely in the near term, however.

Where things stand right now: When the first tranche of task force reports was released in August, while Congress was away for a six-week summer recess, Finance Committee Chairman Grassley indicated that moving extenders legislation would be “a top priority” for the panel when lawmakers returned to Capitol Hill. Since the legislative session resumed early last month, Grassley has been tight-lipped on the committee’s plans, but he broke his silence this week, telling Tax Notes that his staff is currently involved in a “four-corner negotiation” on an extenders deal with aides to Wyden, House Ways and Means Committee Chairman Richard Neal, D-Mass., and Ways and Means ranking Republican Kevin Brady of Texas, that would be incorporated into a year-end tax package. Grassley indicated that if those negotiations are successful it would obviate the need for a separate Finance Committee extenders mark-up.

The draft extenders proposal that Grassley and Wyden unveiled in late February would renew the now-expired 2017 and 2018 extenders through the end of this year but is silent regarding the 2019 expiring provisions. For its part, the extenders bill the House Ways and Means Committee approved in June would re-up through 2020 the bulk of the 2017 and 2018 expired provisions as well as those set to lapse at the end of 2019.

Whether each chamber passes its own version of extenders legislation or the four taxwriting committee leaders hammer out a deal, one potential 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 Grassley-Wyden proposal includes no offsetting revenue raisers. But some 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 Tax Cuts and Jobs Act.

Another source of friction could involve refundable credits such as the earned income tax credit and child tax credit, which many House Democrats would like to see expanded as part of the extenders negotiations. Legislation (H.R. 3300) that would do just that – albeit on a temporary basis – was approved by the Ways and Means Committee on a party-line basis in June alongside the panel’s extenders package. (H.R. 3300 as approved did not include revenue offsets but Ways and Means Chairman Neal stated at the mark-up that he would identify pay-fors once the measure was out of committee. That prospect could exacerbate existing partisan tensions, depending on Neal’s choice of offsets.) Republicans have been less enthused about expanding refundable tax credits, which they see as particularly vulnerable to fraud.

Additional complications could arise if the extenders debate becomes entwined with congressional Republican efforts to move technical corrections to the Tax Cuts and Jobs Act – something Democrats would be unlikely to accept without extracting additional tax policy concessions from the GOP.

Eyeing a ride on the funding train: The standoff over these issues has led many observers to conclude that extenders legislation is unlikely to advance through Congress on its own and will instead have to be attached to a larger, “must-pass” legislative package such as a government funding bill – possibly along with TCJA technical corrections and other stalled priorities such as 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 action on the SECURE Act (H.R. 1994), a bipartisan retirement savings bill that cleared the House earlier this year but remains stuck in the Senate. (For a review of these issues, see Tax News & Views, Vol. 20, No. 29, Sep. 13, 2019. Finance Committee members Tim Scott of South Carolina, Rob Portman of Ohio, and five GOP senators who are not taxwriters sent a letter to Majority Leader Mitch McConnell of Kentucky this week urging him to take up the SECURE Act “as soon as possible”; however, McConnell has not indicated that he intends to bring it to the floor in the near term.)

The House and Senate are currently working to complete the 12 spending bills needed to fund government agencies for fiscal year 2020, which began on October 1. In the meantime, the government is operating on a continuing
resolution that keeps the doors open – at fiscal 2019 funding levels – through November 21. So, in theory, the next possible opportunity for lawmakers to move tax legislation may be in late November when the stopgap spending agreement is set to expire.

But in addition to tax and spending legislation, Congress already faces 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, as well as proceedings in the House related to the formal impeachment inquiry against President Trump that has been authorized by Speaker Nancy Pelosi, D-Calif. These competing claims for lawmakers’ time and attention could leave lawmakers with little opportunity to address tax policy. They also have the potential to drag out work on appropriations and may require additional short-term spending bills to keep the government open, which in turn could mean a delay in wrapping up an agreement on tax legislation.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP