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Another stopgap spending bill looks likely as government funding deadline approaches

Signals coming from both ends of Pennsylvania Ave. this week suggested that Congress will move another short-term spending bill to keep the government’s doors open after the continuing resolution that is currently funding government operations expires later this month. And that development likely means a delay in finalizing a tax package that could possibly include some combination of extensions of expired and expiring deductions, credits, and incentives; “green energy” incentives; retirement security legislation; technical corrections and other fixes to address issues in the 2017 tax code overhaul; and new reporting requirements for Qualified Opportunity Funds.

Appropriations: Another deadline, another extension

The Senate is still working to finish its version of the 12 spending bills needed to fund government agencies for fiscal year 2020 (which begin October 1) and will have to conference those bills with competing measures that have cleared the House. Many observers believe that process will not be completed before November 21, when the current stopgap appropriations bill is set to lapse, and that lawmakers will have to adopt yet another interim fix that extends funding at fiscal year 2019 levels.

But the duration of a subsequent funding bill has been a matter of debate. Senate Appropriations Committee Chairman Richard Shelby, R-Ala., has stated that he would prefer an extension that would last into February or March of next
year, noting that a potential impeachment trial against President Trump later this year could dominate the agenda for the upper chamber during the last weeks of 2019 and possibly even into early 2020. But House Speaker Nancy Pelosi, D-Calif., and Senate Majority Leader Mitch McConnell, R-Ky., reportedly have agreed that “the goal” is to finish appropriations for the remainder of fiscal year 2020 by December 31 of this year, suggesting a shorter-term funding extension will be in the offing.

At the White House, meanwhile, Director of Legislative Affairs Eric Ueland commented that “the center of gravity” for a funding extension “is coalescing around a date in December” and noted that the president would sign a continuing resolution as long as it “does not restrict his authorities or ability to pursue his policy priorities including wall construction” along the southern US border.

Shelby told reporters this week that he and Sen. Patrick Leahy of Vermont (the ranking Democrat on the Appropriations Committee) will meet with House Appropriations Committee Chairman Nita Lowey, D-N.Y., and ranking Republican Kay Granger of Texas on November 12 to discuss a path forward. (The House was in recess this week and will not be back in session until November 12.)

“We’re going to talk about everything – any way to move the process. We have to do the best we can as soon as we can,” he said.

**Tax proposals largely stuck in neutral**

The prospect of another continuing resolution buys some time for lawmakers who are trying to finalize details of various tax proposals that they want to attach to a “must-pass” legislative package like an appropriations bill. But in many cases negotiations around those proposals have been mired in partisan disagreements and it is unclear which, if any, will be ready to go if Congress does indeed move a funding package for the remainder of fiscal year 2020 next month.

**Extenders:** Negotiations are said to be ongoing among the “four corners” of the taxwriting committees – that is, House Ways and Means Committee Chairman Richard Neal, D-Mass., and ranking member Kevin Brady, R-Texas, and Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore. – and their staffs as to the contours of a package to address temporary tax extenders provisions. (A complete list of provisions that expired in 2017 and 2018 and those that are set to lapse at the end of this year is available from Deloitte Tax LLP.)


Ways and Means Democrats staked out their position on extenders in legislation that cleared the committee in June that would re-up the bulk of the expired and expiring provisions through the end of 2020. (For details on that bill, see *Tax News & Views*, Vol. 20, No. 21, June 21, 2019.) Across the Capitol, Finance Committee Chairman Grassley and ranking member Wyden introduced legislation this past February that would retroactively extend the 2017 and 2018 expired provisions through the end of this year but does not address the provisions that are scheduled to lapse in 2019. (For prior coverage, see *Tax News & Views*, Vol. 20, No. 8, Mar. 1, 2019.)


But progress on a bicameral pact has so far proved elusive. Rep. Brady has attributed the sluggish pace of negotiations to a push by some House Democrats to expand refundable credits such as the Earned Income Tax Credit and Child Tax Credit, blunt the impact of the cap on the federal deduction for state and local taxes enacted in the 2017 tax code overhaul informally known as the Tax Cuts and Jobs Act or TCJA, and provide funding relief for cash-strapped multiemployer pension plans as conditions for making other tax changes.

For his part, Sen. Grassley this week questioned insistence among House Democrats on pairing extenders with other tax priorities.

“In the past, it’s been very bipartisan and most of these [extenders] tax credits have more Democrat[ic] support than they have Republican support,” he told reporters.

**Green energy incentives:** In related news, *Politico* reported this week that Ways and Means Committee Democrats could unveil a package of green energy tax incentives in the coming days. According to the report, leadership would
brief committee Democrats on the proposal shortly after the House returns from recess and the details could become public as soon as the week of November 18. The package is generally understood to be aimed at addressing expired and expiring incentives for renewable energy and energy efficiency and expanding the current-law credit available to purchasers of electric vehicles.

The House Sustainable Energy and Environment Coalition recently sent Speaker Pelosi and Majority Leader Steny Hoyer, D-Md., a letter signed by 166 House Democrats calling for the “inclusion of critical clean energy tax policies in negotiations around must-pass legislation this year.”


Whether green energy incentives can find a spot in a broader tax deal this year is difficult to assess. The Politico report, for example, indicates that it is not yet known whether the energy package will be released as a formal legislative proposal or a discussion draft.

Another significant unknown is whether the package will include revenue offsets. Ways and Means ranking member Kevin Brady recently said that he expects Democrats to target oil and gas tax incentives as pay-fors – an outcome that would be consistent with prior discussions among House Democratic taxwriters but that would surely present an obstacle during bipartisan negotiations.

**SECURE Act:** Also this week, Finance Committee Chairman Charles Grassley appeared to concede that a bipartisan retirement security bill that passed the House in May is unlikely to advance out of the Senate on its own and will not make it to the president’s desk unless it is attached to the fiscal year 2020 funding legislation.

“Seems to me [a funding bill] is where it has to go,” he told reporters November 6.

The Setting Every Community Up for Retirement Enhancement (SECURE) Act (H.R. 1994) generally would make it easier for smaller businesses to offer tax-qualified retirement savings plans to their employees, encourage individuals to participate in retirement plans, and promote savings for certain nonretirement expenses. (For additional details, see Tax News & Views, Vol. 20, No. 18, May 24, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190524_1.html

It also includes a provision that would address unintended consequences of a change to the so-called “kiddie tax” that was included in the Tax Cuts and Jobs Act. (The TCJA provision, among other things, adversely affected the tax treatment of survivors’ benefits paid to children of deceased active-duty military service members and public safety officers.)

The SECURE Act is broadly similar to a proposal introduced earlier this year by Grassley and Ron Wyden and Senate leaders had hoped to be able to move it through that chamber under expedited “unanimous consent” rules. But those efforts have been stymied by a few disparate Senate Republicans who 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 one that would expand the section 529 rules for tax-preferred education savings accounts to include expenses for home schooling and another that would make a technical correction to fix the so-called “retail glitch” in the TCJA by clarifying the cost recovery period for qualified improvement property.

Senate Republicans on November 7 sought to bring the bill to the floor under a unanimous consent agreement that would have allowed each party to offer a limited number of amendments, but that effort was blocked by an objection from Democratic Sen. Patty Murray of Washington. Murray likewise requested unanimous consent to consider the bill without amendments but was blocked by an objection from Pennsylvania Republican Sen. Pat Toomey.

**Qualified Opportunity Zones:** Other legislation being discussed as a possible rider on a must-pass spending vehicle would expand reporting rules around (and potentially tighten eligibility for) the Qualified Opportunity Zone tax incentives enacted as part of the TCJA.

Finance Committee ranking Democrat Ron Wyden introduced legislation on November 6 that would require annual, public information reporting from Qualified Opportunity Funds (QOFs) and annual statements to the IRS from fund investors; eliminate perceived loopholes that could allow QOFs to invest in “sin list” projects like casinos and prohibit investments in stadiums and luxury apartments; terminate zones that are not low-income or impoverished, while
allowing states to replace zones that are terminated; and tighten existing rules to ensure that the incentive goes to productive, new investments that are actually in zones, and not to projects that were already underway.

URL: https://www.finance.senate.gov/imo/media/doc/Opportunity%20Zone%20Reporting%20and%20Reform%20Act%20of%202019%20Bill%20Text.pdf

Other proposals getting attention include bipartisan companion bills introduced earlier this year by House taxwriters Ron Kind, D-Wis., and Mike Kelly, R-Pa., (H.R. 2593) and Senate Republican taxwriter Tim Scott of South Carolina and Democratic presidential hopeful Sen. Cory Booker of New Jersey (S. 1344) would require the Treasury Department to collect data on QOFs and their underlying investments and make that information publicly available to assist in determining whether the Opportunity Zone program is meeting its stated objectives.

URL: https://www.congress.gov/bill/116th-congress/house-bill/2593/text?q=%7B%22search%22%3A%5B%22h.r.+2593%22%5D%7D&r=1&s=1
URL: https://www.congress.gov/bill/116th-congress/senate-bill/1344/text?q=%7B%22search%22%3A%5B%22s.+1344%22%5D%7D&r=1&s=2

A number of Ways and Means Committee members held a bipartisan closed-door meeting with Opportunity Zone stakeholders and critics late last month to discuss the need for reporting requirements and other potential measures to ensure the program is funding projects in disadvantaged areas rather than in those that are not economically distressed (and would arguably have attracted investment without the tax incentive). The meeting was prompted at least in part by press reports suggesting that unmerited Opportunity Zone designations have been awarded to projects funded by certain prominent, wealthy investors.

Rep. Kind told reporters after that meeting that “[t]here seems to be a lot of bipartisan support for” requiring data reporting by QOFs. It is less clear, though, whether the tighter eligibility rules proposed by Sen. Wyden will also attract bipartisan interest.

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Senate panel approves bipartisan budget process reforms

The Senate Budget Committee approved legislation November 6 that is intended to reform the federal budget process by promoting long-term fiscal planning, eliminating “brinksmanship” around the nation’s debt limit, requiring lawmakers to include deficit-reduction targets in their budget resolutions, and creating a mandatory fast-track procedure for moving measures to lower the deficit if Congress appears to be falling short of its deficit-reduction goals.

The Bipartisan Congressional Budget Reform Act of 2019 (S. 2765) was introduced late last month by Budget Committee Chairman Mike Enzi, R-Wyo., and Budget Committee Democrat Sheldon Whitehouse of Rhode Island. It cleared the panel by a bipartisan vote of 15-6.

URL: https://www.budget.senate.gov/imo/media/doc/Enzi%201.pdf

The legislation marks a valedictory of sorts for Enzi, who announced earlier this year that he would not seek re-election to the Senate in 2020 and would spend the remainder of his term focusing on how to improve the budget process to bring the federal debt under control.

Overview

At a high level, the bill includes provisions that, among other things, would:

- Put the congressional budget resolution on a two-year cycle. Top-line spending numbers would cover two budget years, but regular appropriations bills would continue to be developed and processed annually.
- Require congressional appropriators and taxwriters to provide detailed spending and revenue plans at the start of the budget cycle to aid in developing fiscal blueprints.
- Create a mechanism within the federal budget process that would automatically conform the statutory debt limit to levels called for in the budget resolution. Adoption of a budget resolution would generate separate
legislation conforming the debt limit to levels set in the resolution. This legislation would go directly to the president.

- Require congressional budget resolutions to include deficit-reduction targets based on the ratio of federal debt to gross domestic product (GDP).
- Create an additional reconciliation process that would be activated automatically in the second year of a budget cycle to facilitate passage of deficit-reduction legislation if the Congressional Budget Office (CBO) projects that 10-year deficit levels will exceed the targeted debt-to-GDP ratio in the budget resolution. (The provision drew objections from some Budget Committee Democrats, who claimed that it could make it easy for a majority party to make cuts in spending programs such as Medicare and Medicaid. A Democratic-sponsored amendment to remove the provision from the bill was defeated.)
- Create a new procedural pathway that would allow the Senate to fast-track a budget resolution that has the support of at least 60 members – including at least 15 from the minority party.
- Simplify the “vote-a-rama” process – the marathon session of amendment votes that occurs in the Senate following the conclusion of debate on that chamber’s budget resolution – but preserve the ability of senators in the majority and minority parties to offer amendments. (Currently in the Senate, debate time on a budget resolution is limited to 50 hours, but there is no limit on the number of amendments that may be considered without debate after the 50-hour debate period has lapsed.)
- Require the Congressional Budget Office to include the interest effects of authorizing and revenue legislation in the cost estimates it prepares and to provide regular reports to Congress on portfolios of federal spending. (The committee approved by voice vote an amendment offered by Sen. Tim Kaine, D-Va., that would require the CBO to include tax expenditures in the portfolio reports.)

Next steps uncertain

It is currently unclear whether the legislation will receive a vote in the Senate this year. Co-sponsor Sheldon Whitehouse acknowledged after the mark-up that some issues – particularly around the proposed new reconciliation process for deficit reduction – likely would need to be addressed before the bill is brought to the floor.

Enzi has indicated that he intends to work with senators to build support for the legislation in advance of a floor vote.

It is also unclear just how much support the bill would have in the House in its current form. In a statement on November 5, House Budget Committee Chairman John Yarmuth, D-Ky., called the bill “a starting point,” but noted that it does not provide safeguards that would prevent the executive branch from redirecting appropriated funds to further its own policy goals – a reference to the Trump administration’s efforts to shift dollars to help fund the president’s proposed wall along the southern US border.

The bill “falls short of addressing the most pressing issue facing the Budget Committee – the Trump administration unabashedly trampling on Congress’s constitutional power of the purse. That should and must be our top priority when pursuing budget reform,” Yarmuth said.

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