In this issue:

Spending leaders eye ‘clean,’ one-month punt on appropriations, pushing tax bill hopes to December ...................... 1

---

Spending leaders eye ‘clean,’ one-month punt on appropriations, pushing tax bill hopes to December

With the current stopgap spending measure funding government operations set to expire in a matter of days, Democratic and Republican leaders on the two congressional Appropriations committees confirmed this week that they will move another continuing resolution that will last only through December 20 rather than stretch into early next year and will very likely not carry any extraneous policies. And that means that must-pass spending legislation due by the new late December deadline could be the last possible vehicle to move tax legislation in 2019.

Another short-term funding fix

Absent action by lawmakers, funding for daily government operations will dry up when the current continuing resolution for fiscal year 2020 (which began on October 1) expires November 21. The short-term funding fix announced by the top congressional appropriators following a meeting on November 12 is in line with what House Speaker Nancy Pelosi, D-Calif., and Senate Majority Leader Mitch McConnell, R-Ky., reportedly prefer; but it runs counter to the slightly longer-term stopgap bill – lasting through February or March of next year – that Senate Appropriations Committee Chairman Richard Shelby, R-Ala., had advocated for in recent weeks.

Shelby has argued that Congress may be better served by clearing the legislative decks during the politically contentious impeachment process, when making progress on legislation may be even more difficult than under normal circumstances. (One forecast of the impeachment timeline has the House voting on articles of impeachment of
President Trump during the week of December 16 – the same week that government funding would run out under the just-announced stopgap agreement – with a potential Senate trial commencing in January.)

**No 'kumbaya moment':** The House is set to take up the short-term spending measure early in the week of November 18, with Senate action to follow thereafter. The White House has indicated that President Trump will sign the bill in advance of the November 21 deadline.

Still, not everyone is confident that Democrats and the GOP will be able to bridge the policy divides that so far have stymied Congress’s ability to pass any full-length appropriations bills for fiscal year 2020 – namely, how to allocate among the 12 appropriations subcommittees the top-line spending number agreed to earlier this year (as part of the Bipartisan Budget Act of 2019) and how to address the president’s stated desire to pursue policy priorities such as wall construction along the southern US border – by the extended Christmastime deadline. Failure to reach an agreement by December 20 would require yet another continuing resolution for some or all of the government in order to prevent a shutdown.

Senate Minority Leader Charles Schumer, D-N.Y., was particularly blunt on this topic in comments to reporters on November 12.

“If President Trump stays out of it, I think we can solve the whole problem by December 20,” Schumer said.

**'Four corner' talks to continue:** Negotiations on a final fiscal 2020 spending package are expected to continue between Sen. Shelby and top Senate Democratic appropriator Patrick Leahy of Vermont, along with House Appropriations Committee Chairwoman Nita Lowey, D-N.Y., and ranking member Kay Granger, R-Texas – the so-called “four corners” of the congressional Appropriations committees – with the goal of striking a bipartisan accord that the president will accept.

“What we want to do is try to reach an agreement between us that the president will sign onto and we’ll get something done,” Shelby said after the four concluded their November 12 meeting to map out a path forward.

A Democratic aide told reporters after a November 14 meeting that included Speaker Pelosi, Treasury Secretary Steven Mnuchin, Rep. Lowey, and Sen. Shelby that an agreement on subcommittee allocations is “very close,” but noted that wall funding was not discussed.

**Tax bill negotiations ongoing**

As the appropriations developments unfolded, taxwriting committee leaders and staff this week continued discussions of their own on a possible year-end tax package that they hope to move with the late December funding bill. Such a package could include some combination of provisions to address expired and expiring tax “extenders,” technical corrections to the 2017 tax bill known as the Tax Cuts and Jobs Act (TCJA), a House-passed retirement security bill that has been stalled in the Senate, and green energy tax incentives.

However, opinions differ on what kind of a deal will come together – or if any deal can be reached at all. Some observers are concerned that compromise will remain elusive and others are worried that a potential tax title could become so bloated that it either falls under its own budgetary (or political) weight or must be stripped down to a handful of lowest-common-denominator provisions that can maintain bipartisan support.

**Mixed signals on extenders:** That dynamic was evident this week as two congressional taxwriters weighed in on the prospects for an agreement on legislation to address temporary tax extender provisions. The House Ways and Means Committee passed a bill in June that would renew through 2020 the deductions, credits, and incentives that expired in 2017 and 2018 and those that will expire at the end of 2019. In the Senate, Finance Committee Chairman Charles Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore., introduced their own proposal in February that would extend, through 2019, the tax provisions that expired at the end of 2017 and 2018; but that bill has not been marked up by the Finance Committee.

Speaking November 13 at the American Institute of CPAs (AICPA) National Tax Conference in Washington, Senate Finance Committee member Ben Cardin, D-Md., predicted that lawmakers ultimately will pass a blanket one-year extension of all the provisions – a prospect he called “really outrageous,” given growing calls in recent years to address these provisions on a more durable basis.
“There is bipartisan support to make them permanent or get rid of them or reform them or do something, but not to have every year the guessing work to whether Congress will extend and when they will extend,” Cardin said.

For his part, House Ways and Means Committee ranking member Kevin Brady, R-Texas, appeared skeptical about prospects for reaching an agreement of any kind on extenders this year.

“It’s been very slow-going in trying to pull all the parties into the real world,” Brady told reporters on November 13, arguing that Democrats are making what he considers unreasonable and expensive demands in the negotiations, including expanding programs such as the refundable portion of the Child Tax Credit and Earned Income Tax Credit, lifting the TCJA’s cap on state and local tax deductions, and providing funding relief for cash-strapped multiemployer pension plans as conditions for making other tax law changes.

Retirement security still stuck in the Senate: Also being considered for inclusion in a year-end tax package is the Setting Every Community Up for Retirement Enhancement (SECURE) Act (H.R. 1994), a bipartisan retirement security bill that also includes a provision that would address unintended consequences of changes to the so-called “kiddie tax” that were enacted 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 easily cleared the House in May but efforts to move it through the Senate under expedited “unanimous consent” rules 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 Tax Cuts and Jobs Act by clarifying the cost recovery period for qualified improvement property. Democrats, for their part, have insisted on advancing the House-passed bill without changes and recently blocked a GOP effort to bring it to the floor under a unanimous consent agreement that would have allowed each party to offer a limited number of amendments.

Senate Finance Committee Chairman Grassley recently told reporters that the measure 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. (For prior coverage, see Tax News & Views, Vol. 20, No. 36, November 8, 2019.) And Sen. Ben Cardin appeared to confirm that prognosis in his remarks at the AICPA conference.

A draft green energy bill coming soon?: In other developments, House Ways and Means Committee Chairman Richard Neal, D-Mass., indicated that a discussion draft of a green energy incentives bill – something long-awaited by committee Democrats – could be unveiled the week of November 18.

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.” It is not yet clear, however, whether there will be effort to mark up a bill in committee or to roll any of its provisions into a year-end tax package.

“I think that it’s taking form and I would like to put something out,” Neal told reporters November 13.

Rep. Bill Pascrell, D-N.J., a senior Ways and Means member, said committee Democrats agree on principles of a green energy incentives plan but have not worked out some of the details. House Democratic taxwriter Dan Kildee of Michigan told reporters that the legislation will include production credits for clean energy, extensions for wind and solar tax credits that are scheduled to phase out, and an expansion of the current-law tax credit available to purchasers of electric vehicles.
A fix for the SALT cap?: Another widely anticipated proposal from Ways and Means Democrats that could soon be made public is legislation that would provide temporary relief from the $10,000 cap for the state and local tax (SALT) deduction implemented as part of the Tax Cuts and Jobs Act.

Lawmakers in both parties who represent jurisdictions with expensive housing markets and steep property and income taxes have criticized the cap as unfair to their constituents, but the deduction tends to be used more heavily in higher-taxed "blue" states disproportionately represented by Democrats. Most Republicans have argued that repealing or suspending the provision or increasing the $10,000 cap would largely benefit wealthier taxpayers, and some Democrats have been sensitive to that criticism as they have tried to craft a proposal to lessen its impact.

Rep. Bill Pascrell told reporters November 12 that he thinks any Democratic taxwriters who had been skeptical of a legislative fix have been persuaded to support a temporary elimination of the cap and that he expects the proposed legislation will be rolled out this month.

“I would say that it’s going to be done before the end of November,” he said.

House taxwriter Ron Kind, D-Wis., told reporters this week that details such as the anticipated length of a temporary suspension of the cap were still being finalized. A three-year suspension has reportedly been discussed in recent weeks.

The proposed bill is also expected to address the so-called marriage penalty under the TCJA provision, referring to the fact that the $10,000 cap on the deduction currently applies to single taxpayers and married couples alike.

The proposal is expected to be offset but details around a likely pay-for have not been confirmed. Pascrell has indicated in the past that an eventual proposal could be paid for by increasing the top individual income tax rate from the level enacted in the TCJA.

Although many Democrats may be inclined to support such a proposal, they likely would have a difficult time securing a spot for it in a year-end tax bill – if there is one – because the Republicans who drafted the TCJA still believe the cap is meeting its goal of limiting the extent to which the federal government is subsidizing the high tax burdens that mostly “blue” states and localities have chosen to impose; moreover, the notion of paying for the proposal by undoing other pieces of TCJA likely would only stiffen the GOP’s opposition.

— Alex Brosseau and Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the "Deloitte" name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.

Copyright © 2019 Deloitte Development LLC. All rights reserved.
36 USC 220506