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**Congress approves tax relief and spending legislation, president’s signature expected**

The House and Senate this week approved and President Trump is expected to sign two appropriations bills (H.R. 1865 and H.R. 1158) that together fund the government for the remainder of fiscal year 2020, thus averting the prospect of a partial government shutdown that would have occurred when the stopgap funding legislation keeping the government’s doors open expires at midnight on December 20.

One of those two spending bills (H.R. 1865) incorporates several tax priorities – such as extensions of expired and expiring tax provisions, repeal of some revenue provisions enacted in the Patient Protection and Affordable Care Act of 2010 (PPACA), retirement security measures (the SECURE Act), fixes to some of the policy changes made by the 2017 tax overhaul known as the Tax Cut and Jobs Act (TCJA, P.L. 115-97), and tax relief for victims of certain federally declared natural disasters – that have been gridlocked for months, or in some cases even longer.

But the legislation does not include significant technical corrections to the TCJA, something that had topped the wish list of most congressional Republicans. Nor does it include expansions of the earned income tax credit or the child tax credit, which had been a key priority for congressional Democrats, particularly in the House.

Also missing are enough revenue offsets to cover the entire cost of the tax relief provisions. The nonpartisan Joint Committee on Taxation (JCT) staff estimates that the tax components of H.R. 1865 will reduce federal receipts by...
nearly $426.3 billion between 2019 and 2029. (The House waived its pay-as-you-go budgeting rules to advance the legislation.)

URL: https://www.jct.gov/publications.html?func=startdown&id=5237

This edition of Tax News & Views looks at the tax provisions in H.R. 1865. At press time, the complete text of the bill as approved by Congress was not available in a single document. Text of the retirement security provisions and repeal of the PPACA taxes can be found in the base version of H.R. 1865 as considered in the House Rules Committee. (Retirement provisions are in Division O; PPACA provisions are in Division N.) Text of the extenders and disaster relief provisions is included in an amendment to the spending bill that was submitted to the Rules Committee.


New life for expired and expiring extenders

With a few notable differences, the tax extender package approved by lawmakers in H.R. 1865 resembles legislation (H.R. 3301) reported by Ways and Means Committee Democrats earlier this year, which would have extended through 2020 – on a retroactive basis where necessary – most of the roughly two dozen temporary tax deductions, credits, and incentives that expired in 2017 and 2018, as well as those that are scheduled to expire at the end of this year. (For prior coverage of H.R. 3301, which was never taken up by the full House, see Tax News & Views, Vol. 20, No. 21, June 21, 2019.)

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

Among the key differences, however, is that, unlike that earlier package put forward by House Democratic taxwriters, the bill that is about to become law would grant longer-term extensions (through 2022) for tax incentives benefiting biodiesel and renewable diesel fuels – a priority of Senate Finance Committee Chairman Charles Grassley, R-Iowa – and a separate provision supporting maintenance expenditures on so-called “short-line” railroads. (Both of these credits expired at the end of 2017.)

The current package also extends the full slate of 2017-2019 expired and expiring provisions, including the faster expensing rules for race horses and mine safety equipment that were left out of H.R. 3301.

The extenders provisions are not offset and would decrease federal receipts by over $39 billion between 2019 and 2029, according to the JCT staff estimate.

Included below are highlights of the tax extender provisions included in H.R. 1865. A complete list of extenders provisions in the bill is available from Deloitte Tax LLP.

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1_suppA.pdf

Renewable energy and energy-efficiency provisions: In addition to the extension of biodiesel incentives through 2022, the legislation would extend for three years (retroactive for two years and prospective through 2020) a number of incentives supporting renewable energy and energy efficiency which expired after 2017, including credits for certain nonbusiness energy property (section 25C) and the construction of new energy-efficient homes (section 45L), as well as a deduction for energy-efficient commercial building improvements (section 179D). It also would extend the beginning-of-construction deadline to claim the credit for electricity produced from nonwind renewable resources along with the related election to claim the energy credit in lieu of the electricity production credit (sections 45 and 48(a)(5)).

With respect to the beginning-of-construction deadline for wind facilities, which was slated to lapse at the end of 2019, producers will receive one additional year – through 2020 – to break ground, and will receive 60 percent of the production tax credit if those projects are brought online before 2025. The package is silent on the investment tax credit for solar energy, however.

Also left out of the deal is an expansion of the investment tax credit to include energy storage and an expansion of the current-law credit for electric vehicles, policies which Democrats – particularly in the House – have been advocating for in recent months, including as part of a green energy discussion draft released by Ways and Means Democrats in November (for prior coverage, see Tax News & Views, Vol. 20, No. 38, Nov. 22, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191122_2.html
Multinational and domestic business provisions: H.R. 1865 would provide a one-year extension (through 2020) to several business incentives that were otherwise set to lapse after this year, including the controlled foreign corporation lookthrough rule under section 954(c)(6), the Work Opportunity Tax Credit (section 51(c)(4)), and the New Markets Tax Credit (section 45D(f)). The latter provision provides a $5 billion credit allocation in 2020 (up from $3.5 billion this year), and also extends for one year (through 2025) the ability to carry forward unused New Markets Tax Credits.

It would also give another year of life (through 2020) to temporary provisions enacted as part of the TCJA that lowered excise taxes on craft beer, wine, and distilled spirits – and reduced record-keeping requirements on such producers – as well as a separate TCJA provision under section 45S that provides an employer credit for paid family and medical leave.

Other business provisions that expired after 2017 – including the Indian employment credit (section 45A(f)) and the mine rescue team training credit (section 45N) are granted three years of life (again, retroactive for two years and then prospective through 2020).

Individual provisions: Among provisions benefiting individual taxpayers, the legislation would extend through 2020 a handful of provisions that lapsed after 2017, including the above-the-line deduction for tuition and fees (section 222), the itemized deduction for mortgage insurance premiums (section 163(h)(3)), and the exclusion from gross income of up to $2 million of discharged qualified principal residence indebtedness (section 108(a)(1)(e)).

The bill also would extend through 2020 a TCJA-related provision under section 213(f) that temporarily lowered the percentage of adjusted gross income floor – from 10 percent to 7.5 percent – for claiming an itemized deduction for out-of-pocket medical expenses. That provision most recently expired after 2018.

Cost recovery provisions: Along with the previously mentioned three-year extensions of accelerated depreciation for certain race horses (section 168(e)(3)(A)(i)) and the election to expense advanced mine safety equipment (section 179E), H.R. 1865 would renew through 2020 cost recovery provisions benefiting motorsports entertainment complexes (sections 168(i)(15) and (e)(3)(C)(ii)) and qualified film and live theatrical productions (section 181).

PPACA taxes repealed

H.R. 1865 would repeal three revenue raisers that were enacted as part of the Patient Protection and Affordable Care Act of 2010 but have only been in effect intermittently – if at all – since they became law.

- **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). The tax would be repealed effective for sales after December 31, 2019.

- **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). Its repeal would be effective for calendar years beginning after December 31, 2020.

- **'Cadillac' tax:** The “Cadillac” tax, a 40 percent excise tax imposed on certain high-cost, employer-provided health insurance plans, was originally set to take effect in 2018 but was delayed until 2020 under the Protecting Americans Against Tax Hikes Act in 2015 and was delayed again – until 2022 – under a short-term government funding bill that was enacted in January of 2018. This levy would be repealed for taxable years beginning after December 31, 2019.

According to the JCT staff, these provisions, which are not offset, would reduce federal revenues by a combined $373.3 billion over the next decade.

TCJA fixes

As already noted, H.R. 1865 does not include a host of TCJA technical corrections that had been sought by congressional Republicans. Among the more notable items that remain on the “to do” list are provisions to treat
qualified improvement property as 15-year property under MACRS (and eligible for bonus depreciation), clarify the tax
treatment of legal fees incurred by plaintiffs in certain sexual harassment suits, clarify the effective date of the new
net operating loss rules, amend section 965(h) to allow taxpayers to elect to treat claims for refunds or credits
separately from their installments of the repatriation tax, and clarify the application of attribution rules (downward
attribution) under the subpart F controlled foreign corporation provisions.

The legislation does, however, make a modest technical correction to address a clerical issue related to the reduced
excise taxes on craft beer, wine, and distilled spirits. And while not “technical corrections” per se, Democrats and
Republicans did agree to amend a few TCJA provisions that led to unintended consequences and raised the ire of
affected constituencies.

'Church parking tax' rescinded: The bill nixes the TCJA requirement under section 512(a)(7) that tax-exempt
organizations – including churches – include in their unrelated business taxable income the value of qualified
transportation fringe benefits.

Electric co-ops get reprieve: H.R. 1865 also modifies the definition of income used by mutual or cooperative electric
or telephone companies to determine their tax-exempt status to exclude certain grants, contributions, and assistance
provided by a government entity – or received in the wake of a disaster. Without this fix, affected cooperatives argued
they could run afoul of cooperative tax rules requiring them to receive at least 85 percent of their income from
member-owners in order to maintain their tax-exempt status.

'Kiddie tax' change repealed: The bill also repeals – as part of the SECURE Act (incorporated as Division O of H.R.
1865, discussed below) – a change to the so-called “kiddie tax” that was enacted in the TCJA and led to unexpectedly
high tax bills for some recipients of military survivors benefits, first responder survivors benefits, scholarship awards,
and certain other income.

Retirement savings, 'stretch' IRAs, and 'kiddie tax' fix

H.R. 1865 incorporates the provisions of the Setting Every Community Up for Retirement Enhancement Security
(SECURE) Act, a House-passed bipartisan retirement savings bill aimed at making it easier for smaller businesses to
offer tax-qualified retirement savings plans to their employees, encouraging individuals to participate in retirement
plans, and promoting savings for certain nonretirement expenses.

These provisions are partially offset by revenue raisers that, among other things, would accelerate distributions of
retirement account assets in certain cases after an account holder’s death.

The JCT staff estimates that the SECURE Act provisions would reduce federal receipts by $428 million (net) over 10
years.

Qualified plan changes generally: Among its many proposed changes to the qualified plan rules, the legislation
would require an employer to allow part-time employees to participate in the employer’s defined contribution plan if an
employee has worked for the employer at least 500 hours a year for at least three continuous years and has reached
the age of 21 by the end of the three-consecutive-year period. The provision generally would be effective for plan
years beginning after December 31, 2020.

The bill would allow an employer that adopts a qualified retirement plan after the close of a taxable year but before
the deadline for filing its tax return for the taxable year (including extensions) to elect to treat the plan as having been
adopted as of the last day of the taxable year. This provision would be effective for plans adopted for taxable years
beginning after December 31, 2019.

Plan design and administration: H.R. 1865 includes changes to the rules for plan design and administration that
would:

- Give employers more flexibility in electing safe harbor 401(k) status (effective for plan years beginning after
  December 31, 2019).
- Allow all members of a group of plans to file a single consolidated Form 5500 if all the plans in the group are
defined contribution plans; have the same trustee, the same named fiduciary (or named fiduciaries), and the
same administrator; use the same plan year; and provide the same investments or investment options to plan
participants and beneficiaries. This provision would be effective for returns required to be filed with respect to plan years beginning after December 31, 2019, and annual returns and reports for plan years beginning after December 31, 2021.

- Modify the qualified plan nondiscrimination rules to protect older, longer-serving plan participants (generally effective upon enactment).
- Prohibit qualified employer plans from making loans through credit cards and similar arrangements (effective for loans made after the date of enactment).

**Annuities and lifetime income streams:** The legislation includes several provisions addressing annuities offered within a defined contribution plan and a provision that would require plan sponsors to provide participants with information about their estimated lifetime income stream based on their account balances. These provisions would:

- Modify the in-service distribution rules to allow employees who have an annuity investment within an employer-sponsored defined contribution plan to roll over that investment to an IRA without incurring a penalty if the employer drops the annuity product as an investment option in the retirement plan (effective for plan years beginning after December 31, 2019);
- Create a safe harbor for plan fiduciaries to satisfy the prudence requirement for selecting an insurance company to provide annuities to plan participants and protect fiduciaries from liability if that insurance company later becomes insolvent and is unable to provide those annuities (effective upon enactment); and
- Require employers sponsoring defined contribution plans to provide plan participants an annual disclosure (based on rules to be developed by the Labor Department) that estimates the monthly payments they would receive if their total account balance was used to provide a lifetime income stream (generally effective 12 months after the Labor Department issues guidance).

**Automatic enrollment and small-employer provisions:** The legislation would encourage small employers to offer qualified retirement plans and provide automatic enrollment to employees through provisions to:

- Increase the cap on automatic salary deferral for an employee in an automatic enrollment safe harbor plan to 15 percent (from 10 percent) beginning after the employee's first plan year (effective for plan years beginning after December 31, 2019);
- Increase the limitation on the credit for small-employer pension plan start-up costs to the greater of (1) $500 or (2) the lesser of (a) $250 multiplied by the number of nonhighly compensated employees who are eligible to participate in the plan or (b) $5,000 (effective for tax years beginning after December 31, 2019); and
- Create a new credit of up to $500 per year to defray start-up costs for small-employers who offer new 401(k) plans or SIMPLE IRA plans with automatic enrollment features or convert an existing plan to an automatic enrollment design. The credit would be available in addition to the current-law plan start-up credit (effective for tax years beginning after December 31, 2019).

**Changes to multiple employer plan rules:** H.R. 1865 would ease administrative burdens for small employers participating in multiple employer pension plans (MEPs) by eliminating the so-called “one bad apple” rule under which a MEP defined contribution plan can lose its tax-qualified status because one or more participating employers fails to take certain required administrative actions with respect to the plan.

The measure also would encourage more businesses to participate in MEPS by making it easier for employers that are not in a common industry or do not share some other employment-based nexus to form “pooled” retirement plans that would be considered qualified MEPS under the Employee Retirement Income Security Act of 1974 (ERISA) rules.

These provisions would be effective for plan years beginning after December 31, 2020.

**Special funding rules for community newspapers:** The legislation would provide alternative rules for calculating funding obligations for qualified plans sponsored by community newspapers. (Financially struggling newspapers that elect to use the alternative rules would be able to lower the amount they would be required to contribute to their plans.) The provision would be effective for plan years ending after December 31, 2017.

**Other qualified plan provisions:** H.R. 1865 also includes provisions that would:
- Clarify the treatment of custodial accounts upon the termination of section 403(b) plans (effective on enactment);
- Clarify the treatment of retirement income account rules relating to church-controlled organizations (effective for years beginning before, on, or after the date of enactment); and
- Reduce the fixed Pension Benefit Guaranty Corporation premiums for cooperative and small-employer charity plans (effective for plan years beginning after December 31, 2018).

**Other retirement provisions:** H.R. 1865 would allow individuals to delay tapping into their tax-preferred retirement account savings by increasing the age for beginning required minimum distributions from a defined contribution plan or IRA to 72 (from 70-1/2 under current law). This provision would be effective for distributions required to be made after December 31, 2019, for plan participants and IRA owners who reach age 70-1/2 after December 31, 2019.

The legislation also would repeal the maximum age (currently 70-1/2) for making contributions to a traditional IRA. This provision would be effective for contributions made for tax years beginning after December 31, 2019.

The bill would liberalize other retirement account rules by:

- Allowing penalty-free withdrawals of up to $5,000 (per individual) from an IRA or qualified retirement plan to cover expenses associated with the birth or adoption of a child and permitting recontributions of withdrawn amounts (effective for distributions made after December 31, 2019);
- Treating nontaxable "difficulty of care payments" received by certain home health care workers as compensation for qualified plan and IRA contribution purposes (effective for plan years beginning after December 31, 2015); and
- Treating certain taxable nontuition fellowship and stipend payments to graduate and postdoctoral students as compensation for IRA contribution purposes (effective for taxable years beginning after December 31, 2019).

**Benefits for 529 plan holders, volunteer emergency responders:** H.R. 1865 includes a nonretirement benefit that would expand the rules for tax-preferred section 529 education savings accounts to allow distributions for expenses associated with registered apprenticeship programs and up to $10,000 of qualified student loan repayments, effective for distributions made after December 31, 2018.

The legislation also would extend for one year (through 2020) the exclusions for qualified state or local tax benefits and qualified reimbursement payments to members of qualified volunteer emergency response organizations and would increase the exclusion for qualified reimbursement payments to $50 a month for each month that a volunteer performs services. This provision would be effective for tax years beginning after December 31, 2019.

**'Kiddie tax' fix:** The legislation also would repeal a change Congress made to the so-called "kiddie tax" as part of the Tax Cuts and Jobs Act that requires unearned income of children to be taxed at the rate for estates and trusts. Specifically, H.R. 1865 provides that children’s unearned income would be taxed at their parents’ top marginal rates, as was the case before the TCJA was enacted. The provision generally would be effective for taxable years beginning after December 31, 2018, although taxpayers would be able to elect to have it apply retroactively to taxable years beginning after December 31, 2017.

The TCJA’s change to the kiddie tax rules generally was intended to discourage wealthy individuals from making tax-motivated transfers of investment income to their minor children; but the provision as enacted also ended up ensnaring survivors’ benefits paid to children of deceased active-duty military service members as well as other types unearned income – such as survivors’ benefits paid to children of first responders, distributions from qualified disability trusts, scholarship payments, Indian tribal government payments, and Alaska permanent fund dividends – received by children in less affluent families, leaving them facing significantly higher tax rates on that income than they would have before the TCJA was enacted.

**‘Stretch IRAs’ and other revenue offsets:** The single largest retirement-related offset – increasing receipts by an estimated $15.75 billion over 10 years – would clamp down on so-called “stretch IRAs” by requiring that amounts in an IRA or defined contribution plan generally must be distributed within 10 years of the death of the IRA holder or plan participant, unless the beneficiary is within 10 years of the account holder’s age, an individual with special needs, a minor, or the account holder’s spouse. (In those cases, the 10-year rule would apply after the beneficiary dies or, if the beneficiary is a minor, reaches the age of majority.)
The provision generally would be effective for required minimum distributions for IRA holders or plan participants who die after December 31, 2019.

Other revenue offsets to this section of the bill include compliance provisions that would:

- Increase the failure-to-file penalty for a tax return to the lesser of $435 or 100 percent of the amount required to be shown as tax on the return, effective for returns with filing dates (including extensions) after December 31, 2019;
- Increase the penalty for (1) failure to file returns or other required information for deferred compensation plans, trusts, and annuity and bond purchase plans to $250 per day, subject to a cap of $150,000, (2) failure to file annual pension plan registration statements to $10 per day for each participant to whom the failure applies, subject to a cap of $50,000 in any plan year, (3) failure to provide required notification of change of status to $10 per day, subject to a cap of $10,000 for any failure, and (4) failure to provide notices to recipients of pension plan distributions to $100 for each failure, subject to a cap of $50,000 for all failures in any calendar year, effective for returns, statements, and notifications required to be provided in calendar years beginning after December 31, 2019; and
- Allow the IRS to share returns and return information with the US Customs and Border Patrol for purposes of administering and collecting the heavy vehicle use excise tax, effective upon enactment.

Logjam broken: The inclusion of the SECURE Act provisions in H.R. 1865 resolves a months-long stalemate on Capitol Hill. The SECURE Act cleared the House with an overwhelming bipartisan vote in May and Senate leaders had hoped to win quick passage in that chamber. But efforts to move it through the Senate under expedited unanimous consent rules had been stymied by various procedural objections raised by a few Republicans who wanted to strike certain provisions from the bill, such as pension funding relief for certain financially struggling community newspapers, or add others in, such as one that would make home schooling costs a qualified expense under the section 529 rules 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.

Disaster tax relief

H.R. 1865 generally would provide targeted, temporary tax relief to individuals and businesses in areas in which a major federal disaster was declared during the period running from January 1, 2018, through 60 days after the measure’s enactment date. (These provisions would not apply to victims of the California wildfire disaster area who already received similar relief under the Bipartisan Budget Act of 2018.)

- **Employee retention incentives:** The bill includes a temporary tax credit for 40 percent of wages (up to $6,000 per employee) paid by an eligible employer to an employee from a designated disaster area. The credit would not be available in the case of wages paid for which the employer is already receiving a benefit under the Work Opportunity Tax Credit.
- **Access to retirement funds:** The measure would make it easier for disaster victims to gain emergency access to funds in qualified retirement plans by: (1) waiving the 10 percent early withdrawal penalty for qualified disaster-relief distributions, allowing income tax on the distributions to be paid over three years, and permitting recontributions of withdrawn amounts during that three-year period; (2) permitting recoordination of retirement plan withdrawals for home purchases that were cancelled due to eligible disasters; and (3) relaxing the rules for loans from retirement plans for qualified disaster relief.
- **Deduction for personal casualty losses:** For individuals who incur uncompensated disaster-related losses, the proposal would temporarily eliminate the current-law requirements that personal casualty losses must exceed 10 percent of adjusted gross income to qualify for deduction. Nonitemizers with qualifying disaster-related losses would also be eligible to take advantage of this tax relief.
- **Earned income tax credit and child tax credit calculations:** The bill would allow taxpayers to determine their earned income tax credit and child tax credit for the taxable year in which a disaster was declared based on their earned income from the immediately preceding year.
- **Charitable giving:** For businesses and individuals, the bill would temporarily suspend limitations on the deduction for charitable contributions associated with qualified disaster relief.
- **Excise tax on net income tax of private foundations:** The bill would reform the two-tier excise tax on the net investment income of private foundations, including replacing the two rates on the investment income of foundations exempt from federal income tax with a single tax rate of 1.39 percent.
• **Low-income housing tax credit:** The bill would provide additional low-income housing tax credit allocations for qualified 2017 and 2018 California disaster areas.

• **Disaster relief for US possessions:** The bill also includes a permanent provision that calls for disaster-relief payments to US possessions based on certain revenue losses sustained in a federally declared disaster (for possessions with so-called "mirror" tax codes that replicate the US tax system) or an approximation of such losses for non-mirror possessions.

• **Automatic filing extension for all federally declared disasters:** More broadly, the bill would provide an automatic 60-day extension of tax filing deadlines for individuals and businesses located in a federally declared disaster area. This provision would apply to all federally declared disasters declared after the date of enactment.

These provisions generally would be effective upon enactment. They are not offset and would reduce federal receipts by an estimated $12.76 billion over 10 years.

**Some glee, some grumbling, some work left to do**

The tax package allowed both parties to claim some victories but also provided opportunities for grumbling – and ensured taxwriters will still have a to-do list in 2020.

The most highly prized provision among the Democrats that was left out of the final deal was an expansion of refundable credits for low-income families, which the party's taxwriters had put on the table in exchange for addressing extenders and enacting technical corrections to address drafting errors in the TCJA, especially the one related to qualified improvement property. That correction would primarily benefit retailers, which of course are numerous and widespread enough to be constituents of both parties, but Democrats have made clear that they consider technical corrections to the 2017 bill Republican "wins" since the tax law was passed entirely along party lines.

"We're trying to help the people at the very bottom of the economic ladder,” House Ways and Means Committee Chairman Richard Neal, D-Mass., said, in discussing the push to expand the earned income tax credit and child tax credit.

Despite Treasury Secretary Steven Mnuchin placing a high priority on fixing the retail glitch, Republicans ultimately decided against the tradeoff as part of this week’s package.

"It's pretty clear that their price tag is a non-starter,” House taxwriter Adrian Smith, R-Neb., told Politico December 17, referring to the Democratic demand for expanding the family tax credits as the condition for agreeing to the technical correction.

However, Neal insists the price tag will be the same next year, when the discussion will inevitably continue.

"We still think before you do any technical corrections bills, refundables will be the price,” he said.

**Looking ahead:** As has been the case so often in recent years, the short-term nature of the tax extensions also sets the stage for advocacy work to begin almost immediately, as lawmakers and stakeholders look to the next expiration deadline – which for the bulk of the extenders is December 31, 2020. But given that so many provisions have now been extended retroactively and that this year's bill set a new record for how far back lawmakers were willing to go to revive lapsed incentives, the end of next year may not be seen by many as a hard deadline for Congress.

And there is no shortage of additional tax cliffs on the horizon, with TCJA's new treatment of research expenses and interest and the change from EBITDA to EBIT under the limitation on business interest expense – which some businesses are lobbying to avoid – due to kick in at the beginning of 2022, 100 percent capital expensing set to start phasing down after 2022, and most of TCJA's individual and passthrough provisions due to sunset at the end of 2025. This spate of deadlines makes it highly likely that tax bills will be in the legislative mix for at least the next five years.

'This annual temporary tax circus': The passage this week of another short-term extension of expired and expiring tax provisions prompted now-familiar calls from some lawmakers in both parties for Congress to make some difficult decisions about which provisions still have policy merit and should be made a permanent part of the tax code, which
should be renewed temporarily but phased out, and which have outlived their utility and should be excised. (Senate Finance Committee members formed task forces earlier this year to review the 2017-2019 extenders and recommend how to address these provisions for the long term; but that process yielded few concrete conclusions and none were incorporated into this week’s tax package.)

Finance Committee ranking Democrat Ron Wyden of Oregon indicated on December 17 that House and Senate negotiators actually were close to a deal to make some extenders permanent but were thwarted by the White House.

“A better agreement to make a number of policies permanent and [extend] others was near the finish line, but the administration opposed the package,” he told Bloomberg Tax.

For his part, House Ways and Means Committee ranking Republican Kevin Brady of Texas has made no secret over the year of his distaste for temporary tax incentives and for Congress’ frequent extenders exercises. As the committee’s chairman when the TCJA moved through Congress, he pushed for permanence in the new law, as did other congressional Republicans, although the final product included sunsets for many of the provisions because of revenue constraints imposed by the budget reconciliation rules in the Senate. He also has frequently criticized the short-term and often retroactive extension of various tax incentives, as well as the revival of provisions previously on track to phase out.

Accordingly, Brady was critical of this week’s deal, calling it “business as usual” and insisting in a press statement that “[t]his annual temporary tax circus needs to end.”

A December 17 tweet seemed to sum up his pessimism that the process will ever be reformed as he hopes: “When I die,” Brady wrote, “sprinkle my ashes over the extenders – so I live thru eternity.”

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