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Congress set to punt government funding deadline to March 11 as spending leaders close in on larger-scale spending deal

The House this week approved a short-term continuing resolution (CR) that would keep the government's doors open through March 11. The Senate is expected to pass the measure during the week of February 14 before sending it to President Biden's desk to be signed into law, which would avert a government shutdown that otherwise would occur when the current stopgap appropriations measure funding government operations lapses at midnight on February 18.

The House-approved CR—which passed on February 9 by a bipartisan 272-162 vote—would, if enacted, be the third such short-term appropriations measure in fiscal year 2022, which began on October 1 of last year. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 52, Dec. 3, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211203_2.html

'Omnibus' spending deal near?

Passage of the stopgap measure—which has been widely expected and relatively noncontroversial—comes as the top Democrats and Republicans on the Senate and House Appropriations Committees (the so-called "four corners" negotiators) announced on February 9 that they had reached an agreement in principle on a "framework" for a so-called "omnibus" package of 12 fully fleshed-out appropriations bills that would fund the government for the remainder of fiscal year 2022 (that is, March 12 through September 30, 2022) while also directing larger outlays to both domestic and defense-related programs during that period.

While details of the high-level bipartisan accord—including the top-line spending level agreed to—remained somewhat murky at press time, negotiators expressed confidence that an omnibus package could be drafted and enacted in the next few weeks.

"With this agreement we will be able to invest in our communities and provide increases for health care, education, our national security, and invest in the middle class, among other priorities," Senate Appropriations Committee Chairman Patrick Leahy, D-Vt., said in a statement. ". . . I look forward to crafting a bill that will receive strong bipartisan support in both chambers in the coming weeks."

House Speaker Nancy Pelosi, D-Calif., echoed those sentiments in her own statement, while noting that the forthcoming omnibus measure—if enacted—would also enable the enhanced spending amounts authorized by last year's bipartisan "hard" infrastructure law (the Infrastructure Investment and Jobs Act, P.L. 117-58) to begin to be disbursed to states and localities.
URL: https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf

"When Congress enacts this omnibus, we will also unlock the increased federal funding included in our bipartisan infrastructure law, which will transform our roads, bridges, water systems, airports, broadband, and more as we revitalize our middle class," Pelosi said.

No tax provisions in CR, but what about the omnibus?

While the short-term continuing resolution currently moving through Congress is free of any tax-related provisions, it has not been uncommon in recent years for lawmakers to include certain discrete tax changes within larger-scale spending measures, such as an omnibus funding package.

It currently remains unclear whether policymakers will attempt to move any tax-related provisions in the forthcoming omnibus, although certain stakeholders have expressed hope that Congress could act to forestall a change within tax code section 174—originally enacted as part of the 2017 Tax Cuts and Jobs Act (P.L. 115-

97)—that, as of January 1 of this year, requires certain research expenditures to be amortized rather than deducted currently.

— Alex Brosseau
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House taxwriters debate role of IRS budget cuts in 2020 processing backlog

Members of the House Ways and Means Oversight Subcommittee generally split along party lines this week on the question of whether congressional underfunding of the Internal Revenue Service contributed to operational deficiencies at the agency that resulted in a backlog of unprocessed tax returns for tax year 2020.

The discussion came during a February 8 subcommittee hearing with National Taxpayer Advocate Erin M. Collins to consider challenges facing taxpayers and the Service in the filing season for tax year 2021.

Old business carries over into new filing season

The current tax filing season opened on January 24, with the IRS still struggling to complete work on what Collins said was roughly 5.6 million unprocessed original tax returns from the 2020 tax year, as well as a separate backlog of amended returns and taxpayer correspondence. Collins attributed the pile-up in part to the combined effects of an increased workload as the IRS implemented emergency tax code changes—such as recovery rebate payments and monthly child tax credit payments—that were enacted in the American Rescue Plan last March plus operational disruptions facing the agency as it dealt with pandemic-related facilities shutdowns and staffing shortages.

According to Collins, the volume of paper returns filed by taxpayers "remains at the heart of the agency's challenges" in clearing the backlog since those returns are still transcribed manually. Options for addressing the immediate problem of unprocessed returns include redeploying current IRS personnel to focus exclusively on returns and correspondence and outsourcing certain clerical functions to third parties. Over the longer term, the Service needs to increase its use of scanning technologies so that returns can be machine read, Collins said.

In recent days, the Service announced that it has temporarily reassigned 1,200 employees to tackle processing and correspondence and has paused sending out certain notices and warning letters to taxpayers until the backlog is addressed.

Is the budget to blame?

Several Democrats at the Oversight Subcommittee hearing suggested that the problems with last year's filing season were the result of years of congressionally mandated cuts to the Service's operating budget.

Subcommittee member Lloyd Doggett, D-Texas, argued that the IRS budget has been "sabotaged" by Congress, noting that staffing levels at the agency have dropped by 20 percent over the past decade while the number of returns submitted for processing has risen by 20 percent over the same period.

"We were pleading for additional resources for the IRS during the Obama administration. Treasury officials [and] IRS officials came into our committee and their pleas were rejected. This lack of resources is not an accident. It was intentional by those who wanted the IRS to fail, who targeted the cuts so that in real dollars the IRS budget is about 22 percent smaller today than it was a decade ago," he said.

Because of the budget cuts, the Service has had fewer resources available to process tax returns and audit returns of large corporations and wealthy individuals, Doggett added.

Taxwriter Judy Chu, D-Calif., commented that budget cuts plus the impact of the pandemic have "hamstrung" the Service and noted that the Taxpayer Advocate's annual report for 2021, which Collins submitted to Congress last month, includes recommendations for multi-year funding for the agency. Chu asked how a proposal in the House-approved Build Back Better Act that calls for a 10-year investment of roughly $80 billion to enhance the IRS's enforcement and compliance efforts would help the agency improve its operations.
URL: https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_Full-Report.pdf

Collins replied that infusing additional capital into the IRS is "very important" but noted that Congress also needs to ensure that the taxpayer service side of the agency is as well funded as the enforcement side.

Failure to modernize?

For his part, Rep. Tom Rice, R-S.C., who recently became the subcommittee's ranking member, said that the backlog of unprocessed returns "truly is a crisis," but contended that the Service's "failure" over the last several years to modernize its information technology systems left it poorly positioned to handle the pandemic-related stresses that hit the agency in 2020 and 2021.

Congress, he said, needs to "force the IRS to automate."

Rice also pushed back on the argument that the current problem can only be solved through budget increases, noting that the IRS last year received $1.4 billion in supplemental funds under the American Rescue Plan that it still has not spent.

"I expect we will hear some on this dais say that the IRS needs more money," Rice said in his opening statement. "I would suggest that money is not the problem, and if it is, the agency certainly has a huge pile of it sitting around."

Rice noted that he and Ways and Means ranking member Kevin Brady, R-Texas, wrote to Commissioner Charles Rettig on January 19 asking why the Service hasn't used these supplemental funds to address the backlog but said that Rettig has not responded to that letter or to a follow-up letter sent the week of January

31. (Joining Rice and Brady on the letters were House Appropriations Committee ranking member Kay Granger, R-Texas, and Appropriations Subcommittee on Financial Services and General Government ranking member Steve Womack, R-Ark.)
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2022/01/2022.01.19-IRS-Backlog-Crisis.v21.pdf

Oversight Subcommittee Chairman Bill Pascrell, D-N.J., commented that the lack of a response from the commissioner was "unacceptable" and said he has "started an inquiry" on the issue with the Service.

"No one from this committee should ever send a letter to the IRS and not get an answer," Pascrell said.

FY 2202 IRS budget still not set

Congressional Democrats hope to bump up the IRS's budget for fiscal year 2022, which began last October 1, although a comprehensive government funding deal has not yet been reached.

The House last July approved an FY 2022 allocation of $13.6 billion for the agency—a $1.7 billion increase over the level enacted for FY 2021. The Senate Appropriations Committee approved an identical allocation in October as part of a Financial Services and General Government funding measure that never reached the Senate floor. The two chambers have been unable to agree on a set of 12 spending bills to fund the government for this fiscal year, however, and lawmakers have been keeping the government's doors open through a series of short-term continuing resolutions that fund operations at FY 2021 levels. The current stopgap measure is set to expire on February 18, and Congress appears poised to send President Biden another short-term patch that would last through March 11.

The top Democrats and Republicans on the Senate and House Appropriations Committees announced this week that they had reached an agreement in principle on a "framework" for an omnibus package of 12 fully fleshed-out appropriations bills that would fund the government for the remainder of FY 2022 and expressed confidence that such a package—which would include a final funding number for the IRS—could be drafted, approved, and enacted in the next few weeks. (See separate coverage in the issue for more on these developments.)

— Michael DeHoff
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MacBride confirmed as Treasury's top lawyer

The Senate voted 61-33 on February 9 to confirm President Biden's nomination of Neil MacBride to serve as general counsel for the Treasury Department.

MacBride joins Treasury from private practice but has prior experience in government, including stints during the Obama administration as associate deputy attorney general for criminal enforcement and as the US attorney for the Eastern District of Virginia. He also served as chief counsel to then-Sen. Biden on the Senate Judiciary Committee.

The president nominated MacBride for the Treasury post in June of last year. The Senate Finance Committee cleared his nomination last December by a vote of 22-6.

— Michael DeHoff
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Upcoming hearings will examine economic impact of infrastructure spending, tax filing season

Congressional taxwriting leaders this week announced plans for hearings on "the economic impact of infrastructure spending" and challenges facing the IRS and taxpayers in the current tax filing season.

Infrastructure spending

House Ways and Means Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., announced that his panel will delve into "the economic impact of infrastructure spending" at a hearing scheduled for February 15.

The session follows the enactment last November of the Infrastructure Investment and Jobs Act (P.L. 117-58), which provides for roughly $550 billion in new spending over five years for "hard" infrastructure projects such as transportation, roads and bridges, broadband, and utilities.
URL: https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf

Witnesses for the hearing had not been announced at press time.

Tax filing season challenges

Across the Capitol, Senate Finance Committee Chairman Ron Wyden, D-Ore., announced that his panel will hold a hearing on February 17 to examine "the tax filing season and IRS customer service challenges."

Witnesses will include National Taxpayer Advocate Erin Collins, Jessica Lucas-Judy of the Government Accountability Office, and Jan Lewis of the American Institute of CPAs.

The House Ways and Means Oversight Subcommittee held its own hearing with Collins this week to discuss the filing season. (See separate coverage in this issue for details.)

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