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Senate sends three-week funding measure to Biden's desk as appropriators race to lock down larger spending deal

After voting down a handful of amendments demanded by certain Republicans, the Senate on February 17 cleared a short-term continuing resolution (CR) that will keep the government's doors open past midnight on February 18 when the current stopgap appropriations measure funding government operations is otherwise set to lapse. The new CR—which will fund the government for three additional weeks through March 11—was approved on a bipartisan vote of 65-27. It cleared the House on February 9, also with bipartisan support.

President Biden signed the measure into law on February 18, making it the third short-term appropriations patch enacted in fiscal year 2022, which began on October 1 of last year.

Appropriators race to conclude 'omnibus' spending deal

Passage of the stopgap—which has been widely expected and relatively noncontroversial (aside from a handful of GOP-demanded amendment votes touching on various issues such as vaccine mandates and a balanced federal budget, all of which were successfully turned away by Democrats)—comes as Democrats and Republicans on the Senate and House Appropriations Committees race to put the finishing touches on an "omnibus" package of 12 fully fleshed-out appropriations bills that would fund the government for the remainder of fiscal year 2022 (from March 12 through September 30, 2022) while also directing larger outlays to both domestic and defense-related programs during that period.

While the top Democrat and Republican on each of those two spending committees (the so-called "four corners" negotiators) announced on February 9 that they had reached an agreement in principle on a "framework" for an omnibus funding measure, details of that framework—including the top-line spending level agreed to and the exact breakdown of that number among the 12 subcommittees charged with drafting detailed legislation—remained murky this week. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 5, Feb. 11, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220211_1.html

Still, negotiators remained confident that an omnibus package could be drafted and enacted in the next few weeks.

"This gives us some time," Senate Appropriations Committee ranking member Richard Shelby, R-Ala., said on February 16 of the three-week CR. "Within our framework, we're moving. Nothing's final until we get there. But we're making good progress at the moment."

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

While the short-term continuing resolution 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 packages, such as an omnibus funding bill.

Section 174 delay in the mix?: It currently remains unclear whether policymakers will attempt to move any tax-related provisions in the omnibus spending package currently being negotiated, although certain stakeholders have expressed hope that Congress could act to reverse, at least temporarily, 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 over a number of years rather than deducted currently.

But even an effort to delay any required amortization under section 174, which has attracted bipartisan support in both the House and Senate, could face political headwinds in the context of an omnibus spending measure if it is perceived by enough congressional Democrats as a recognition that their broader tax-and-spending initiative—the Build Back Better Act—is foundering. The Build Back Better legislation (H.R. 5376),

which cleared that House last November but remains stalled in the Senate, contains language that would delay section 174 amortization through 2025. (For additional discussion about the status of the legislation and its prospects for reaching the White House in the near term, see *Tax News & Views*, Vol. 23, No. 4, Feb. 4, 2022.)
URL: https://www.congress.gov/bill/117th-congress/house-bill/5376/text
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220204_1.html

Any chance for extenders?: While less discussed publicly, a similar dynamic could put a damper on any efforts to use an omnibus as a vehicle to address expired and expiring tax "extenders," a number of which impact renewable energy and energy-efficiency investments and would be extended and reformed in a more wholesale way by Democrats' Build Back Better legislation.

Gas tax reprieve appears unlikely: In related news this week, Senate Finance Committee member Maggie Hassan, D-N.H., and Sen. Mark Kelly, D-Ariz., both of whom are generally thought to face difficult re-election races this fall, put forward legislation that would suspend the 18.4 cents per gallon tax on gasoline through the remainder of 2022.

"People are feeling a real pinch on everyday goods, and we must do more to help address rising costs, particularly the price of gas," Hassan said.

Several House Democrats introduced similar legislation on February 18.

But prospects for a gas tax holiday currently appear dubious at best, due to opposition from GOP leaders and even from some Democrats. If attached to the forthcoming omnibus appropriations bill, any proposed Democratic gas tax cut would require the support of at least 10 Senate Republicans to be successful—an outcome that seems unlikely.

In a February 17 floor speech, Senate Minority Leader Mitch McConnell, R-Ky., contended that "Democrats want to blow a $20 billion hole in highway funding so they can try to mask the effects of their own liberal policies on working Americans."

Across the aisle, Senate Environment and Public Works Committee Chairman Tom Carper, D-Del., expressed "real concerns about pausing something that plays such an important role in paying for our infrastructure." (Carper also sits on the Senate Finance Committee.) Even House Transportation and Infrastructure Committee Chairman Peter DeFazio, D-Ore., criticized the idea, effectively echoing McConnell's comments by saying it would "blow a $26 billion hole in the Highway Trust Fund."

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Finance Committee Republicans raise concerns over global tax pact

Senate Finance Committee Republicans this week reiterated to the Treasury Department a number of prior concerns—and raised several new ones—about the commitments the Biden administration made on behalf of the US in last year's international tax agreement led by the OECD and G-20. In a letter to Treasury Secretary Janet Yellen sent February 16, Finance Committee ranking member Mike Crapo of Idaho and his GOP colleagues on the panel argued that there have been "a number of alarming developments" in the past two months that lead them to fear the global deal will erode both US competitiveness and tax revenue.
URL: https://www.finance.senate.gov/imo/media/doc/finance_republicans_oecd_follow-up.pdf

The agreement, which nearly 140 countries signed in October, seeks to reallocate some of the taxing rights of countries (Pillar 1) and to ensure that multinational corporations are paying a minimum level of tax globally (Pillar 2). (For prior coverage, see *Tax News & Views*, Vol. 22, No. 47, Oct. 15, 2021. An alert that summarizes the agreement is available from Deloitte Tax LLP.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211015_2.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211015_2_suppA.pdf

This week's letter, which follows an earlier one that Finance Committee Republicans sent Yellen last December 22, focuses on Pillar 2 and raises concerns related to the Model Rules released by the OECD at the end of December and what GOP taxwriters view as more preferential treatment that other countries have negotiated for their current tax regimes.
URL: https://www.finance.senate.gov/imo/media/doc/republican_letter_to_treasury_oecd.pdf

"Without evidence to the contrary, we are increasingly concerned that Treasury has negotiated a deal that will harm US businesses and jobs," the senators wrote.

The OECD agreement calls for multinationals around the world to pay a minimum tax of 15 percent on all of their earnings. The current US regime imposes tax on global intangible low-taxed income (GILTI) at a rate of 12.5 percent, but congressional Democrats are seeking to raise it to 15 percent as part of their proposed Build Back Better Act. (That legislation cleared the House last November but is currently stalled in the Senate.) According to the Model Rules, if a company is deemed to have paid less than 15 percent on its domestic earnings, another jurisdiction may have the right to impose a "top-up tax," as well as disallow tax incentives from which the company legally benefited.

"Ultimately, under the Treasury-negotiated agreement, foreign countries could effectively capture the benefit of congressionally-provided tax credits and deductions targeted at domestic innovation, investment, and job creation," the GOP letter stated.

Republicans pointed to the UK as an example of other countries that have successfully negotiated preferential treatment for their own domestic tax laws and companies. According to the UK's draft Pillar 2 consultation document, its research and development (R&D) credit would not be eliminated or reduced when a UK company's tax payment is considered.

“In stark contrast,” the GOP taxwriters wrote, “the US R&D credit would not receive the same preferential treatment, nor would the low-income housing tax credit, new markets tax credit, or foreign-derived intangible income. Congress specifically enacted these provisions to encourage US jobs and investment. Yet, this administration appears intent on thwarting Congress’s constitutional taxwriting authority, including its authority to provide effective incentives that both parties agree are meaningful and necessary to promote US investment and innovation.”

Republicans have for months criticized the Democratic proposal to raise the rate on GILTI to 15 percent before other countries have implemented their own minimum tax regimes, and they raised that point once again in this week’s letter.

“. . . [W]e believe the focus on Congress to make the US global minimum tax harsher when it in a number of ways already exceeds the standards of the Pillar 2 minimum tax is misplaced,” they wrote. “The United States has had a global minimum tax for four years. Rather than mounting a pressure campaign against Congress, the focus should be on whether other countries enact a global minimum tax in the first place.”

The Finance Committee Republicans also reiterated their concerns that US participation in the global tax agreement “would surrender a share of the US tax base to foreign countries,” despite forecasts by Treasury officials that the global minimum tax will benefit the US fisc over the long term. The senators contend that Treasury “has declined to provide any data or analysis of the effect of the OECD agreement on US revenue . . . so that independent estimates and analysis can be developed and provided to members of Congress on a bipartisan basis.”

Seeking answers to what they said are “repeated” and “unanswered” questions about the potential implementation and impact of the OECD agreement, the Republican senators criticized both Treasury and the Democratic majority in Congress for failure to hold public consultations or hearings on the global deal, and they advocated for the relevant Treasury officials to appear before the Finance Committee.

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Budget issues dominate as Senate taxwriters consider IRS ‘customer service challenges’

Budget issues dominated the discussion at a February 17 Senate Finance Committee hearing focused on the backlog of unprocessed tax returns at the Internal Revenue Service from tax year 2020 and the “customer service challenges” facing the agency in the current filing season. As was the case at a similar hearing recently held by the House Ways and Means Oversight Subcommittee, the debate over whether congressionally mandated budget cuts during the past decade may have contributed to the decline in customer service at the agency left taxwriters divided along party lines.

The current tax filing season opened on January 24, with the IRS still struggling to complete work on roughly 6 million unprocessed original tax returns from the 2020 tax year, as well as a separate backlog of amended returns and taxpayer correspondence. The pile-up generally has been attributed 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. In recent days, the Service announced that it has temporarily reassigned 1,200 employees to tackle processing and correspondence and will soon deploy a second so-called "surge team" to assist in clearing the aging inventory. It also has created a new resource page on its website to provide updates on the current filing season and the status of efforts to complete work on previously filed tax returns and has paused sending out certain notices and warning letters to taxpayers until the backlog is addressed.
URL: https://www.irs.gov/newsroom/help-for-taxpayers-and-tax-professionals-special-filing-season-alerts

Partisan divide on IRS budget, tax gap

Finance Committee Chairman Ron Wyden, D-Ore., contended in his opening statement at the hearing that systematic cuts to the Service's operating budget while Republicans controlled Congress led to a deterioration of the agency's taxpayer service function and left it poorly positioned to deal with the acute stresses placed upon it by the COVID-19 pandemic.

Those budget cuts also have eroded the Service's enforcement function, according to Wyden—an issue that he said has become especially problematic as the tax code has become more complex and a spike in sophisticated tax-avoidance transactions by wealthy taxpayers has widened the "tax gap" (the difference between the amount of tax legally owed to the government and the amount actually collected).

"When the tax rules get more complicated and the IRS's enforcement division shrinks even more, it's no surprise that high-flyers see a green light for cheating," Wyden said.

Finance Committee ranking member Mike Crapo, R-Idaho, countered that the IRS's budget kept pace with inflation while Congress was under GOP control and that the agency typically received the amounts that it requested each year during the annual appropriations process.

Crapo also contended that the current focus by Democrats on IRS budget cuts is an attempt to justify their own proposal in the Build Back Better Act to provide an additional $80 billion for IRS enforcement efforts. (The Build Back Better legislation, which cleared the House last November and is now stalled in the Senate, would provide the $80 billion bump for enforcement funding over 10 years.)

According to Crapo, the Democratic proposal "would have virtually doubled the budget of the IRS over a period of time, and would have been focused almost entirely [on] funding an army of new auditors to go after the so-called 'tax gap. . . .'"

The bulk of the tax gap, Crapo contended, is attributable not to wealthy tax evaders but to lower- and middle-income taxpayers "who are having difficulty figuring out how to deal with the complex IRS code."

Greater consensus on IT modernization

Wyden and Crapo generally agreed, however, on the need to modernize the Service's information technology infrastructure, which consists of a patchwork of antiquated systems—some of which date back to the 1960s—that are poorly coordinated and difficult for taxpayers, practitioners, and IRS employees to navigate.

National Taxpayer Advocate Erin Collins, who appeared as one of the witnesses at the hearing, told the panel that the Service has a plan for modernizing its information systems and a clear idea of what it would cost to implement it. But she noted that actually putting that plan in motion would be difficult without a multiyear funding commitment from Congress.

In an exchange with ranking member Crapo, Collins explained that without sustained funding dedicated to rebuilding IT infrastructure from the bottom up, the Service is forced to direct most of its resources to applying "band-aids" to sustain its current system.

Another witness, Jessica Lucas-Judy of the Government Accountability Office (GAO), noted that the GAO is reviewing the agency's plan and agreed with Collins that multiyear funding is a prerequisite to a robust systems modernization effort.

Staffing issues

Two Republican taxwriters—Sens. Charles Grassley of Iowa and James Lankford of Oklahoma—asked about difficulties the Service has faced in its efforts to hire temporary workers to assist in addressing the backlog of unprocessed tax returns and correspondence. (The IRS had hoped to hire an additional 5,000 workers for the current filing season but thus far has only managed to fill about 200 of those openings.)

Collins told Grassley that giving the IRS direct-hiring authority would help alleviate that problem since it would speed up the process of filling open positions and ensuring that new employees are properly onboarded and trained.

In an exchange with Lankford, Collins added that direct-hiring authority would give the IRS a chance to be more competitive in attracting new employees across all experience levels.

Extend the filing season?

Senate Democratic taxwriter Mark Warner of Virginia asked the witnesses whether the IRS should consider extending deadlines for the current filing season, given the volume of unprocessed returns from the 2020 tax year and the ongoing staffing issues and other constraints the agency is facing because of the pandemic. (The deadline for filing tax year 2021 returns is April 18 for most taxpayers. IRS leaders thus far have not stated publicly that they are considering an extension.)

Collins replied that in her view, an extension would create more administrative headaches for the IRS since it would have to reprogram its systems to incorporate new deadlines, and also would have an adverse impact on states (which often key their filing deadlines to federal due dates) and return preparers. She also was doubtful that such an action would provide any significant benefit to taxpayers.

Another witness at the hearing, Jan Lewis of the American Institute of CPAs, said her organization does not currently have a position on the issue but will monitor it as the filing season continues. She added, though, that any extensions "should be announced as soon as possible" and should apply to the deadlines for filing, payments due, and for first quarter estimated tax payments.

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