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Senate Republicans eye two reconciliation bills in 2025

Incoming Senate Majority Leader John Thune, R-S.D., told his Republican colleagues that he hopes to advance two bills under fast-track budget reconciliation rules in 2025: one addressing energy, defense, and border security, that would move in the early days of the second Donald Trump administration, and a separate, tax-focused package that would follow later in the year to stave off the looming sunset of key provisions in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), according to GOP senators who spoke to reporters after a meeting of the Republican Conference on December 3.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

But such a plan, which reportedly is still in the talking stages and is one of several options being considered as Republicans anticipate a trifecta of power in Washington beginning next month, has already sparked objections from some GOP lawmakers in the House.

Two bites at the reconciliation apple?

Budget reconciliation is an expedited legislative process that has been used by both parties several times in recent decades to sidestep a filibuster in the Senate—a procedural hurdle that generally can only be overcome with a 60-vote supermajority—and enact qualifying tax and mandatory spending legislation with just 51 votes (which can include the tie-breaking vote of the vice president) instead of 60. Having the ability to advance legislation with a simple majority would be advantageous for Republicans, who will control only 53 Senate seats in the 119th Congress and are unlikely to win much if any support from Democrats on party-line legislation addressing key GOP priorities, such as extending the 2017 tax cuts. Republicans last used it to pass the TCJA in late 2017, during Trump's first year in office. Democrats used it in 2021 to pass the American Rescue Plan (P.L. 117-2) and in 2022 to pass the Inflation Reduction Act (P.L. 117-169).
URL: https://www.congress.gov/bill/117th-congress/house-bill/1319/text
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

To put the process in motion, the House and Senate are first required to adopt a joint budget resolution that includes reconciliation instructions directing congressional authorizing committees to report legislation that conforms to certain agreed-upon fiscal parameters. In short, Republicans will have to agree up front on the size of the net fiscal impacts of a tax bill before they can fill in the details; but if they can reach internal agreement on that, they will have the ability to pass legislation without having to secure any votes from the other side of the aisle.

Because there has not been a budget resolution adopted for the current fiscal year, FY 2025, Republicans could adopt one before the fiscal year ends on September 30, 2025, *and* adopt a second one with a separate set of reconciliation instructions for FY 2026, giving them two separate opportunities to use budget reconciliation next year, something Republicans tried with mixed success in 2017 (to advance the TCJA and in a failed effort to repeal the Affordable Care Act) and that Democrats also used in 2021 to advance the American Rescue Plan and the Inflation Reduction Act, even though the latter measure was not completed until the following year.

Building momentum with two bills?

Some Senate Republicans told reporters after an internal party meeting this week that quickly passing a nontax reconciliation bill early in Trump's second administration would allow the GOP to score a quick policy win and help pave the way for action on a large, complex tax package later in the year.

In comments reported in *Tax Notes*, Senate Republican Policy Committee Chairman Shelley Moore Captio of West Virginia said that the two-bill approach Thune has floated "gives us momentum to tackle maybe some more difficult and more complicated issues. What the voters are telling us they want us to do is very clear in some ways, and we can go to the clearest ones first."

GOP Sen. Kevin Cramer of North Dakota agreed, saying, “I kind of like it because I do think the first one will be easier to do in a short period of time. The tax one will be complicated.”

As a practical matter, however, there are questions about just how quickly Republicans may be able to act on a reconciliation measure in the early days of the Trump administration. For example, the GOP will have only a narrow margin of control in the House in the 119th Congress—220 seats, compared to 215 for Democrats—but that majority will quickly shrink by 3 votes, given that now-former Republican Rep. Matt Gaetz of Florida has resigned his seat in the 118th Congress and said he will not take the oath of office for the 119th Congress on January 3, and Reps. Elise Stefanik of New York and Mike Waltz of Florida are expected to leave their respective seats to take positions in the Trump administration. (All three vacancies will have to be filled in special elections. See separate coverage in this issue for additional discussion of the make-up of the incoming 119th Congress.) That means House Republican leaders can afford few, if any, internal defections on party-line legislation that is not expected to get support from Democrats.

House Speaker Mike Johnson, R-La., acknowledged these extremely tight margins in his weekly press conference.

“Do the math,” he said in comments reported by *The Washington Post*. “We’ve got nothing to spare.”

Another possible complication stems from the fact that reconciliation measures ultimately must comply with what’s known in the Senate as the “Byrd Rule,” which provides that such bills cannot include provisions that:

1. Have no budgetary effect or have a budget effect that is only incidental to the policy change or
2. Increase the deficit beyond the budget window (traditionally 10 years, but Congress could dictate a shorter or longer period).

A separate rule prohibits changes to Social Security. Any adverse rulings on specific provisions from the Senate parliamentarian—who serves as the arbiter of what does and does not comply with these restrictions—could hold up action on a larger bill as lawmakers debate whether to strike those provisions from the legislation, look for ways to modify them to make them compliant, seek 60 votes to overcome a point of order against the bill, or challenge the parliamentarian.

Any reconciliation measure moving through Congress also will bump up against other “must do” priorities facing lawmakers early next year. That includes, most notably, funding the government for fiscal year 2025, which began on October 1. The government is currently operating under a continuing resolution that funds federal departments and agencies (at fiscal year 2024 levels) through December 20. It appears increasingly likely that lawmakers will not be able to reach a deal on a full-year funding measure during the current lame duck legislative session and will instead opt for another short-term continuing resolution that will push the funding debate into the first quarter of 2025. (See separate coverage in this issue for details.)

Vetting and confirming President Trump’s nominees for cabinet posts and certain other administrative positions will also consume additional floor time in the Senate.

One and done?

On the other side of the Rotunda, some Republicans in the House questioned the merits of Thune's proposed two-bill strategy and specifically cautioned against delaying action on a tax reconciliation measure until later in 2025.

House Ways and Means Committee Chairman Jason Smith, R-Mo., told *Punchbowl News* December 4 that trying to move two reconciliation bills would be a "reckless" strategy and that putting off the tax component would increase the risk of allowing taxes to increase if TCJA provisions expire before Congress has an agreement on taxes in hand. (Among the provisions scheduled to lapse after 2025 are the reduced income tax rates for individuals, increased exemption amounts for the estate tax and the individual alternative minimum tax, and the 20 percent deduction for passthrough business income.)

Smith doubled down on that position the next day, commenting that other Republican taxwriters agree with him:

"You think I'm out for a walk by myself? Our whole purpose is to make sure we do not allow taxes to increase on small businesses, working families and farmers," he told *Punchbowl*. "[I]f you look at history, in the last 25 years, every Congress has only had one reconciliation bill become law. And we only have a 217 to 215-seat majority. So we think we can pass multiple ones into law? Yeah, I don't know what island some people [are on]."

House GOP taxwriter Rep. Kevin Hern of Oklahoma expressed similar doubts.

"It's always a concern you might run out of time," Hern said in comments reported in *Punchbowl*. "And is there enough courage to do two separate ones?"

For his part, House Budget Committee Chairman—and Ways and Means Committee member—Jodey Arrington, R-Texas, told reporters that a single reconciliation measure that includes key nontax GOP priorities could help shore up support within the conference for the tax component.

In comments reported in *The Wall Street Journal*, Arrington observed that "[t]here are some constituencies within the House, and the Senate, who would be more inclined to vote for, for example, a tax package or a spending package if there was border."

CBO weighs in on economic impact of TCJA

Much of next year's debate on extending the TCJA will focus on the legislation's impact on the broader economy and whether making those provisions permanent, as President-elect Trump and congressional Republicans have proposed, should require offsets. The nonpartisan Congressional Budget Office (CBO)

estimated in May that a permanent extension of the expiring TCJA provisions would cost some $4.6 trillion over 10 years, including additional debt service costs.
URL: https://www.cbo.gov/publication/60114

In a new report released December 4, the agency estimated that allowing the TCJA tax cuts to expire as scheduled would result in “very small changes to gross domestic product.” Specifically, the report notes that “expiration modestly reduces the supply of labor by raising tax rates on individual income,” but that “[t]he increase in tax revenues stemming from expiration reduce federal deficits and borrowing and, in turn, increases private investment.” These twin effects “largely offset each other,” the agency said.
URL: https://www.cbo.gov/publication/60986

The CBO also noted in a separate blog post on December 4 that its latest estimate of receipts since the TCJA was signed into law (covering fiscal years 2018 through 2024) is $1.5 trillion higher than earlier projections for that period that it released in April of 2018. Much of that increase—$900 billion—is attributable to “the burst of high inflation that began in March 2021,” according to the agency. Other factors contributing to the higher revenues include an increase in real economic activity ($700 billion) and customs duties from new tariffs ($250 billion).
URL: https://www.cbo.gov/publication/60987

Several other soon-to-be-released publications from the CBO are also likely to capture the attention of policymakers as the tax debate unfolds. The agency announced this week that the latest edition of its recurring report on options for reducing the federal deficit will be released on December 12. The report will describe 76 policy options that would decrease federal spending or increase federal revenues over the next decade.
URL: https://www.cbo.gov/publication/61049

A separate report, *Current View of the Economy From 2025 to 2027*, which will provide details about CBO’s updated projections of the economy through 2027 and will reflect economic developments as of December 4, 2024, is slated for release on December 18.

Also pending is CBO’s *Budget and Economic Outlook: 2025 to 2035*, which will be released on January 17. The report will include the agency’s full 10-year economic forecast, as well as its updated 10-year budget baseline projections. The report will be shorter than usual to accommodate a release date earlier in January, the CBO noted, although additional information on the agency’s economic forecast will be available “later in January or early February.”

— Michael DeHoff
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Disaster tax relief bill passes Senate, heads to White House

In what could turn out to be the only action on tax legislation in this year's lame duck congressional session, the Senate this week approved and will send to President Biden a $4.9 billion aid package that would provide tax relief to victims of certain hurricanes, wildfires, and other natural disasters, as well as the East Palestine, Ohio, train derailment.

Federal Disaster Tax Relief Act

The Federal Disaster Tax Relief Act (H.R. 5863) cleared the Senate by voice vote on December 4. It was approved in the House on May 21.
URL: https://www.congress.gov/bill/118th-congress/house-bill/5863/text

The package includes provisions that would:

- Extend temporary taxpayer-favorable rules for deducting certain personal casualty losses related to major federally declared disasters that were last renewed in the Consolidated Appropriations Act, 2021 (P.L. 116-260) and are now expired;
  URL: https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf
- Provide an exclusion from gross income for amounts received as qualified wildfire relief payments; and
- Treat payments received by individuals incurring damages or losses related to last year's train derailment in East Palestine, Ohio, as qualified disaster relief payments for purposes of section 139(b) and therefore excludable from gross income.

Mirror language in Tax Relief for American Families and Workers Act: The provisions are identical to those in the Tax Relief for American Families and Workers Act (H.R. 7024), a bipartisan measure negotiated that Senate Finance Committee Ron Wyden, D-Ore., negotiated with House Ways and Means Committee Chairman Jason Smith, R-Mo., that also would temporarily expand the child tax credit and temporarily reverse certain taxpayer-unfavorable changes enacted in the Tax Cuts and Jobs Act of 2017 related to bonus depreciation, the treatment of research and development costs, and the deduction for business interest expenses.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf

The Smith-Wyden measure was approved in the House with a large bipartisan majority early this year but has since been stalled in the Senate, primarily due to opposition from current Finance Committee ranking member Mike Crapo, R-Idaho, who will take the Finance Committee gavel early next year when Republicans assume control of the Senate in the 119th Congress.

Smith-Wyden, RIP?: Passage of the disaster tax relief measure by the House in May came after taxwriter Greg Steube, R-Fla., filed a discharge petition with respect to the bill, which he introduced in October of 2023. (A discharge petition is a parliamentary mechanism by which 218 members—regardless of party—may bring a bill to the House floor and demand its consideration, even if that bill was not reported by a committee or is not supported by party leadership.) Steube's discharge petition cleared the 218-signature requirement on May 15 and was supported by a wide swath of Democrats, including Ways and Means Committee ranking member Richard Neal, D-Mass.

At the time, however, Wyden vowed to place a "hold" on that bill in the Senate in an effort to force Republicans in that chamber to act on the broader tax package he had brokered with Ways and Means Chairman Smith; however, an August 1 procedural vote to advance the Smith-Wyden legislation in the Senate failed. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 26, Aug. 2, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240802_1.html

This week's passage of the stand-alone disaster relief measure in the Senate appears to be a tacit acknowledgment that the Smith-Wyden tax bill has a dim future in this Congress. A provision in the larger bill that would relieve double-taxation on investments between the US and Taiwan conceivably could be attached to upcoming legislation reauthorizing the National Defense Authorization Act; however, any discussion of further action on bonus depreciation, the treatment of research and development costs, and the deduction for business interest expenses is likely to be swept into next year's debate over extending expiring TCJA provisions. (See separate coverage in this issue for details on how Republican congressional leaders may approach tax policy legislation when they have control of the House and Senate in the 119th Congress.)

Another CR likely as December 20 government funding deadline approaches

In other lame duck developments, with Congress back this week from its Thanksgiving recess, it is becoming more evident that efforts to reach agreement on a must-pass measure to fund the federal government for the remainder of fiscal year 2025 will result in a short-term continuing resolution (CR), rather than a full-year funding bill. The CR that emerges is expected to fund federal departments and agencies at fiscal year 2024 levels into 2025; however, the terms of the agreement are still unclear.

Although fiscal year 2025 began on October 1, the House and Senate have not yet approved the 12 full-year appropriations bills required to pay for government operations. To date, the House has approved only 5 of these measures and the Senate has yet to approve any. Congress is currently keeping the government's doors open through a short-term CR, approved in September, which expires on December 20.

The current CR—the Continuing Appropriations and Extensions Act of 2025 (H.R. 9747)—cleared the House and Senate on September 25 under expedited rules, and with bipartisan support, leading the way for President Biden to sign the bill a day later, thus averting the possibility of a partial shutdown of government operations when fiscal year 2025 began on October 1. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 29, Sept. 27, 2024.)
URL: https://docs.house.gov/billsthisweek/20240923/CR1FY25_xml%20-%20FINAL%20FOR%20INTRODUCTION.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240927_3.html

House Speaker Mike Johnson, R-La., anticipates another CR that would continue to fund the government into late March of next year to give lawmakers time to complete a full-year measure; however, he expects the House and Senate to finish their work on the fiscal year 2025 bill "well before the deadline," as reported by *Punchbowl* on December 4.

For his part, Senate Minority Leader Chuck Schumer, D-N.Y., expressed optimism about funding the government for the near term, stating on the House floor on December 2 that “both sides are making progress negotiating a bill that can pass the House and Senate with bipartisan support.”

“We need to keep divisive and unnecessary provisions out of any agreement funding extension, or it will get harder to pass a CR in time,” he added. “For now, I’m pleased negotiations are on the right track, and I thank appropriators in both chambers for their good work.”

Sen. Susan Collins of Maine, who currently is the senior Republican on the Senate Appropriations Committee, suggested that leadership failed to negotiate top-line numbers to fully fund the government, indicating that, as a result, “we’ve missed the deadlines for getting CBO to score the bill and [the Government Printing Office] to print the bill and us to pass the bill by December 20,” as reported by *Politico* on December 3.

While holding out hope for a short stopgap measure rather than the three-month agreement that House Speaker Mike Johnson envisions, Collins raised concerns about provisions in the Fiscal Responsibility Act of 2023 (P.L. 118-5) that she indicated could trigger “across-the-board cuts going into effect” that would “disproportionately affect the Department of Defense” if a CR stretches into next year.
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The Fiscal Responsibility Act was signed into law in June of last year and affirmed this past January in a handshake deal on government funding between current House Speaker Johnson and Senate Majority Leader Schumer. That measure suspended the federal debt limit through January 1, 2025, and made certain fiscal policy changes—including provisions to keep nondefense discretionary spending flat for fiscal year 2024 and to limit annual growth to 1 percent for fiscal years 2025 through 2029. The measure gives Congress a strong incentive to pass all 12 appropriations bills by imposing an automatic, across-the-board 1 percent cut to discretionary spending if a continuing resolution for *any* discretionary budget account remains in place beyond January 1 of next year. (The resulting sequester would not be triggered until next May if all 12 bills are not enacted by the end of April.)

Biden administration officials and congressional Democrats are also anxious to ensure that a year-end stopgap measure does not contain language in the current CR that would appear to reauthorize a $20 billion rescission to certain mandatory funding for the IRS that was agreed to in the Fiscal Responsibility Act. (The agency originally received a 10-year, $80 billion infusion of mandatory funding under the Inflation Reduction Act.)

Senate Democrats hold leadership elections

In other developments this week, Senate Democrats held internal elections to select their leaders for the 119th Congress, choosing outgoing Senate Majority Leader Charles Schumer to continue as their leader in the minority, with Richard Durbin, D-Ill., continuing as the Democratic whip, a position Durbin has held since 2005.

Sen. Amy Klobuchar of Minnesota took the number 3 spot—chair of the Policy and Communications Committee—which opened up in the wake of Sen. Debbie Stabenow's, D-Mich., decision to retire after more than two decades in the Senate.

Now that Senate Democratic elections are settled, the majority and minority leadership rosters on Capitol Hill are complete. House Republicans last month chose current Speaker Mike Johnson as their speaker-designee in the 119th Congress, although he will still have to win an absolute majority of votes on the House floor in January before he officially takes the gavel. Democrats, meanwhile, chose Hakeem Jeffries of New York to continue as minority leader. Senate Republicans elected Sen. John Thune of South Dakota last month as the new majority leader starting in 2025 after Mitch McConnell, R-Ky., announced earlier this year that he would not run for another term as the chamber's top Republican, a post he's held since 2007. (For prior coverage, see *Tax News & Views*, Vol 25, No. 30, Nov. 15, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241115_2.html

House headcount final (for now)

It's been a month since the nation cast its votes in the 2024 presidential and congressional elections, and the roster for the House of Representatives is finally complete, with Republicans securing 220 seats, and Democrats taking 215 seats.

Departing Republican members: But House Republicans are still expected to face three upcoming vacancies early next year as several lawmakers take up posts at the new administration or leave office, diminishing the number of the GOP's working majority from 220 to 217 during the first few months of 2025. Those vacancies will make it even more difficult for Republicans to pass party-line legislation, since they will not be able to afford any internal defections on bills if all members are present and voting.

Now-former Rep. Matt Gaetz of Florida resigned from the 118th Congress and indicated in his resignation notice that he would not take the oath of office when the 119th Congress convenes on January 3, 2025, a move he made shortly after President-elect Trump announced his intention to nominate him as attorney general. Gaetz withdrew his name from consideration for the attorney general post on November 21 but has stated that he does not intend to reclaim his House seat in the new Congress. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 31, Nov. 22, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241122_2.html

President-elect Trump named a second Florida Republican, Rep. Mike Waltz, as his national security adviser, a post he is expected to start on January 20 when Trump takes office. A special election will be held for both of their seats on April 1.

Another likely departure is Republican Rep. Elise Stefanik of New York, who is expected to become part of President-elect Trump's new administration as the US Ambassador to the United Nations. New York Governor Kathy Hochul will set the date for a special election to replace Stefanik once the congresswoman vacates her seat to join the Trump administration.

Another Ways and Means vacancy: In other developments, Republican taxwriter Michele Steel has officially lost her race for California's 45th District by 653 votes, with 99 percent of the votes counted. The Associated Press called the race for Democrat Derek Tran on November 27.

Steel served on the influential House Ways and Means Committee which will be at the heart of tax policy negotiations in next year's 119th Congress. Other Republican rank-and-file members who will not return to the committee next year include Brad Wenstrup of Ohio and Drew Ferguson of Georgia, who did not seek re-election, creating additional open seats on the committee for the GOP.

On the Democratic side, two Ways and Means Committee members—Earl Blumenauer of Oregon and Dan Kildee of Michigan—did not seek re-election this year, creating potential openings on the panel for the minority.

— Michael DeHoff and Steven Grodnitzky
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Trump to replace IRS commissioner

President-elect Donald Trump said on December 4 that he intends to nominate former Rep. Billy Long, R-Mo., as the new commissioner of the Internal Revenue Service even though the current commissioner, Danny Werfel, who was nominated by President Biden and confirmed by the Senate in 2023, has not completed his full term at the agency.

The commissioner typically serves a five-year statutory term, regardless of any change-over in presidential administrations. Werfel's term does not expire until 2027 and he stated in a recent interview with *Tax Notes* that he intended to serve his full five years; however, section 7803 of the Internal Revenue Code provides that the commissioner "may be removed at the will of the president."

In announcing his decision to nominate Long for the post, the president-elect stated that "Billy is an extremely hard worker, and respected by all, especially by those who know him in Congress. Taxpayers and the wonderful employees of the IRS will love having Billy at the helm. He is the consummate 'people person,' well respected on both sides of the aisle."
URL: https://truthsocial.com/@realDonaldTrump/posts/113596942661402416

Some Republicans express support, Crapo takes wait-and-see approach

Despite that endorsement from the president-elect, Long still must be vetted by the Senate Finance Committee and his nomination is subject to confirmation by the full Senate.

Senate Finance Committee member Charles Grassley, R-Iowa, said this week that "[he'd] be for" Long, assuming he pledges to modernize the tax-collecting agency's computer systems, protect whistleblowers and taxpayer privacy, while at the same time ensuring transparency, as reported by Bloomberg Tax on December 4.

Grassley added that "the president had such a mandate that I would give preference to him getting his people in there."

Another Finance Committee member, Sen. Todd Young, R-Ind., commented that he "really enjoyed working with [Long] in Congress" and "found him to be thoughtful and very much concerned about people." Long "no doubt will be concerned . . . about customer service and the employees' morale within the IRS during what have been challenging times," according to Young, as reported by *Tax Notes* on December 5.

For his part, incoming Finance Committee Chairman Mike Crapo, R-Idaho, took a wait-and-see approach to Long's nomination in a statement released December 5.
URL: https://www.finance.senate.gov/ranking-members-news/crapo-statement-on-announcement-of-intent-to-nominate-billy-long-to-serve-as-irs-commissioner

"The IRS has experienced myriad problems in recent years, including issues related to the privacy and security of confidential taxpayer information; inefficient use of resources; and an oversized emphasis on enforcement to collect yet more revenue from hardworking taxpayers. Protecting taxpayers and addressing an ever-encroaching IRS is a top priority, and I look forward to learning more about Mr. Long's vision for the agency," he said.

As the Finance Committee Chairman in the next Congress, Crapo will be responsible for convening a hearing early next year to consider Long's nomination.

Democrats express concerns

Democrats, however, voiced their concerns about President-elect Trump's decision to replace Danny Werfel before his term is completed and about what they view as Long's lack of relevant experience for the position, noting that he was not a member of the Ways and Means Committee when he served in the House from 2011 to 2023. Trump's announcement of Long's nomination touts Long's pre-government experience as a real estate professional and auctioneer and states that [s]ince leaving Congress, [Long] has worked as a Business and Tax advisor, helping Small Businesses navigate the complexities of complying with the IRS Rules and Regulations; however, the Trump team has not provided additional details on Long's tax policy background.

Current Senate Finance Committee Chair Ron Wyden, D-Ore., indicated in a statement released December 4 that "if Trump fires Mr. Werfel, it won't be to improve on his work, it'll be to install somebody Trump can control as he meddles with the IRS."
URL: https://www.finance.senate.gov/chairmans-news/wyden-statement-on-trump-nominating-billy-long-for-irs-commissioner

Democratic Finance Committee member Elizabeth Warren, D-Mass., commented in a social media post that Long's lack of relevant experience and the president-elect's decision to replace Werfel before his term expires, "should set off alarm bells about the weaponization of the tax agency."
URL: https://x.com/SenWarren/status/1864481776581665073

Main Treasury gets their two top spots

In other transition news, President-elect Trump announced during the Thanksgiving congressional recess his intention to nominate Scott Bessent to head the Department of the Treasury. A hedge fund executive, Bessent is expected to work closely with Trump overseeing the administration's economic agenda, particularly at a time when Republicans negotiate a bill to extend the expiring provisions in Trump's signature tax legislation, the Tax Cuts and Jobs Act, (P.L. 115-97).
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Bessent has not provided a lot of insight into his tax policy views since his nomination, at least not publicly. However, he is making his rounds on Capitol Hill this week as he prepares for his Senate confirmation, and presumably he will be asked about his views on a variety of issues regarding taxes and tariffs—topics on which he can also expect to be questioned during an eventual Senate Finance Committee hearing to consider his nomination.

Also this week, President-elect Trump tapped Michael Faulkender, a former Treasury official who led the implementation of the Paycheck Protection Program, to be his new deputy Treasury secretary to serve under Bessent.

— Steven Grodnitzky
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Deloitte Tax LLP

Final and proposed regulations address electing out of Subchapter K, direct pay

The Internal Revenue Service on November 20 published final regulations (T.D. 10012) and proposed regulations (REG-116017-24) under section 761(a) that provide administrative requirements for unincorporated organizations to comply with section 6417.
URL: https://www.federalregister.gov/documents/2024/11/20/2024-26944/election-to-exclude-certain-unincorporated-organizations-owned-by-applicable-entities-from
URL: https://www.federalregister.gov/documents/2024/11/20/2024-26962/administrative-requirements-for-an-election-to-exclude-applicable-unincorporated-organizations-from

Background

Section 6417 provides that "applicable entities" (or "electing taxpayers" for credits provided in section 45V, 450, or 4SX) may elect to treat certain credits ("applicable credits") as a direct payment made against their federal income tax liabilities, thereby allowing such entities a federal tax refund of the amount of the direct payment in excess of any tax liability (the "direct-pay election"). Generally, applicable entities include tax-exempt entities and certain other enumerated entities. On March 11, 2024, the IRS and Treasury published final regulations under section 6417 (the "final 6417 regulations" (T.D. 9988)), which provided that a partnership, regardless of whether it is wholly or partially owned by applicable entities, is not an applicable entity and cannot make a direct-pay election. However, the final 6417 regulations allowed a partnership to be treated as an electing taxpayer. In addition, the final 6417 regulations allowed an applicable entity that is a co-owner in an "applicable credit property" (as defined in Treas. Reg. section 1.6417-l(e)) through an organization that has made a valid election under section 761(a) to be excluded from the application of subchapter K of the Code (an "election out of subchapter K") to make a direct-pay election under section 6417 for the applicable credits with respect to its undivided interest in the applicable credit property.

Concurrently with the release of the final 6417 regulations, the IRS issued proposed regulations (the "March 2024 proposed regulations") providing amendments to the election out of subchapter K rules for certain unincorporated organizations.

The latest guidance

The final regulations released on November 20 (the "final regulations") largely adopted the March 2024 proposed regulations with limited modifications, but expanded the scope of activities to which these regulations would potentially apply. The final regulations would generally apply to taxable years ending on or after March 11, 2024.

Additionally, the proposed regulations that were released concurrently with the final regulations (the "November 2024 proposed regulations") provide administrative requirements for unincorporated organizations to comply with section 6417. The November 2024 proposed regulations are generally proposed to apply to taxable years ending on or after November 20, 2024.

Find out more

Details on the newly released final and proposed regulations are available in an alert from Deloitte Tax LLP.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241206_4_suppA.pdf

— Michael DeHoff
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IRS further extends transition period for Form 1099-K reporting threshold

The Internal Revenue Service issued guidance on November 26 announcing that the Form 1099-K reporting threshold for third-party settlement organizations (TPSOs) will be $5,000 for calendar year 2024 and $2,500 for calendar year 2025. Notice 2024-85 provides that tax years 2024 and 2025 will be treated as additional transition periods for purposes of enforcing the Form 1099-K reporting statutory threshold of $600 applicable to TPSOs. From 2026 and beyond, the threshold is expected to be $600, absent further transition delays from the IRS.
URL: https://www.irs.gov/pub/irs-drop/n-24-85.pdf

The American Rescue Plan Act of 2021 (P.L. 117-2) reduced the dollar-threshold triggering the Form 1099-K reporting requirement from $20,000 under prior law to $600 and eliminated the prior-law 200-transaction threshold, effective for reporting for returns filed for calendar years after 2021. Although these new thresholds have come in for bipartisan criticism in Congress, subsequent legislative efforts to delay, relax, or repeal them have been unsuccessful. The IRS provided administrative relief at the end of 2022 with the release of Notice 2023-10, which delayed enforcement of the new rules until after 2023. Additional guidance—Notice 2023-74, issued in November of last year—provided that the IRS will treat calendar year 2023 as an additional transition period with respect to enforcing the American Rescue Plan provision. Notice 2024-85 further extends the transition period and phases in the more stringent reporting thresholds in the legislation.
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf
URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf
URL: https://www.irs.gov/pub/irs-drop/n-23-74.pdf

Find out more

A new alert from Deloitte Tax LLP’s Global Information Reporting group provides a summary of the latest guidance.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241206_5_suppA.pdf

— Michael DeHoff
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