



Tax

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Party leadership elections dominate as Congress returns for lame duck session

Action on the unfinished legislative business of 2014 – including the extension of numerous expired temporary tax provisions – took a back seat to the election of party leaders who will set the agenda in each chamber next year as the House and Senate reconvened this week to kick off a lame duck session that will close out the 113th Congress. Nonetheless, comments from congressional leaders provided some insights into how the debates over the future of expired tax “extenders” and the soon-to-expire moratorium on Internet access taxes may advance as the session unfolds.

House leadership elections

The House Republican Conference on November 13 officially nominated Rep. John Boehner of Ohio to continue as speaker in the 114th Congress. Given the GOP’s successes in the recent House midterm elections, Boehner’s nomination went unchallenged and he is expected to be approved as speaker by the full House when the new Congress officially convenes in January. (At the beginning of the current Congress, a small contingent of the more conservative members of the House Republican conference led an unsuccessful attempt to deny Boehner the 218 votes he needed to remain as speaker. Such a challenge could occur again in January, but it is generally believed that any such effort would be insufficient to oust him from his leadership position.)

Majority Leader Kevin McCarthy, R-Calif., Majority Whip Steve Scalise, R-La., and Republican Conference Chair Cathy McMorris Rodgers will retain their positions in the next Congress. Rep. Luke Messer, R-Ind., will join the leadership team as Republican Policy Committee chairman. Messer will replace Rep. James Lankford, R-Okla., who won the Senate seat being vacated by the retirement of Republican Tom Coburn at the end of this Congress. (Unlike the position of speaker, other members of the party’s leadership teams are chosen by the House Republican Conference and are not subject to a vote by the full House.)

House Democrats are expected to hold their leadership elections the week of November 17. Minority Leader Nancy Pelosi, D-Calif., wants to continue in that role for another term, and while some private concerns have been aired about returning her to that post, she currently faces no challengers.

Senate leadership elections

In the Senate, the Republican and Democratic leadership teams for the 114th Congress remain largely the same – but with some significant title changes to reflect the GOP’s new status as the majority party in that chamber.

The Senate Republican Conference on November 13 unanimously selected Sen. Mitch McConnell of Kentucky to be the majority leader of the 114th Congress and Sen. John Cornyn of Texas to serve as majority whip. (McConnell and Cornyn currently serve as the Senate minority leader and minority whip, respectively.)

Senate Republican Conference Chair John Thune of South Dakota, Republican Policy Committee Chair John Barrasso of Wyoming, and Republican Conference Vice Chair Roy Blunt of Missouri all were re-elected to their positions.

Senate Democrats approved Sen. Harry Reid, D-Nev., to lead their caucus in the next Congress as minority leader, although reports indicate that several caucus members expressed frustration with his leadership style and unsuccessfully attempted to delay the vote to allow a challenger to emerge. (Reid serves as majority leader in the current Congress.) Sen. Richard Durbin, D-Ill., the current majority whip, was approved to serve as minority whip in the new Congress.

Sen. Charles Schumer, D-N.Y., will continue as Democratic Conference vice chair and Policy Committee chair, and Sen. Patty Murray, D-Wash., will remain as Democratic Conference secretary. According to published reports, Sen. Elizabeth Warren, D-Mass., and Sen. Amy Klobuchar, D-Minn., will be added to the Democratic leadership team, although their specific roles have not yet been announced.

Taxwriting committees

Organizational changes to the House and Senate taxwriting committees for the 114th Congress are still pending.

Leadership – The House Republican Steering Committee is expected to announce its recommendations for as many as 11 committee leadership spots – including the Ways and Means Committee – early in the week of November 17. Once the steering committee gives its recommendations, the House Republican Conference must approve a list of the new chairmen at a meeting planned for November 19.

The top contenders to succeed retiring Ways and Means Committee Chairman Dave Camp, R-Mich., include committee members Kevin Brady, R-Texas, and Paul Ryan, R-Wis. Although Ryan has slightly less seniority than Brady, most observers believe that Ryan is likely to get the nod to head the taxwriting panel.

A timetable for selecting leaders of Senate committees has not yet been announced; however, Finance Committee ranking Republican Orrin Hatch of Utah is generally expected to take over as the chamber's top taxwriter and current Finance Committee Chairman Ron Wyden, D-Ore., is expected to become the panel's ranking member.

Party ratios – In addition to the leadership changes, the number of seats allocated to Democrats and Republicans on the two taxwriting committees also may be adjusted in the 114th Congress to reflect the GOP's expanded majority in the House and its takeover of the Senate. Based on the latest returns available at press time, the GOP will control 244 House seats in the 114th Congress (a net gain of 12) and Democrats will control 186 (a net loss of 12). Five House races remain undecided. In the Senate, Republicans currently have a lock on 53 seats (a gain of 8), compared to 44 for Democrats (a loss of 8) and 2 for Independents. The two Independents – Sens. Bernie Sanders of Vermont and Angus King of Maine – have indicated that they will continue to caucus with the Democrats next year. One Senate race – in Louisiana – will be decided in a runoff election on December 6. If incumbent Democratic Sen. Mary Landrieu loses, it will bring the final Senate headcount for the 114th Congress to 54 Republicans and 46 Democrats (including the 2 Independents who caucus with the Democrats).

There are currently 22 Republicans and 16 Democrats on the Ways and Means Committee, and 13 Democrats and 11 Republicans on the Finance Committee. Any changes to the party ratios and their implications for the membership rosters on the two panels in the new Congress are likely to be announced in the coming days.

Extenders

Although there was no substantive action on the tax legislative front, taxwriting committee leaders in both chambers indicated this week that they were considering options to reconcile their competing approaches to addressing the future of the research credit, bonus depreciation, and dozens of other temporary tax deductions, credits, and incentives that expired at the end of 2013.

The Senate Finance Committee in April approved a two-year extension (through 2015, retroactive to the end of 2013) of most – but not all – of the expired tax provisions, with an eye toward giving Congress more time to evaluate each provision and determine whether it should be extended permanently or stricken from the tax code as part of a future tax reform effort. Although the legislation was approved in the Finance Committee with bipartisan support, it has not received a vote on the Senate floor due to a dispute between Majority Leader Reid and Senate Republicans over a process for offering amendments.

For their part, House Republican leaders opted to move permanent extensions of discrete extenders provisions rather than another broad temporary package as Congress has done in the past. Since May, the chamber has approved separate bills that would permanently extend the research credit, bonus depreciation and the election to accelerate AMT credits in lieu of first-year bonus depreciation, increased section 179 expensing limits, the reduced recognition period for S corporation built-in gains tax, the above-the-line deduction for qualified tuition and related expenses, tax-free distributions from individual retirement plans by individuals age 70-1/2 and older for charitable purposes, special rules for contributions of capital gain real property made for conservation purposes, the enhanced deduction for charitable contributions of food inventory, and the basis adjustment to stock of S corporations making charitable contributions of property. (All these provisions would take effect retroactively to December 31, 2013.)

Finance Committee Chairman Wyden suggested to reporters on November 12 that he might be open to an extenders bill that includes some permanent provisions.

“The Senate feels strongly about our package, but we know we’re in a negotiation,” he said, adding that “[w]e’re focused on getting a bicameral agreement.”

Senate Majority Whip Durbin likewise told reporters the following day that “there could be some horse trading” on extenders.

Ways and Means Committee Chairman Camp indicated November 13 that House and Senate negotiators are meeting “to see if there’s any common ground,” but noted that he would like to “get as much policy permanent as possible.”

Serious legislative action on an extenders package is not expected until later in the lame duck session – possibly not until after Thanksgiving.

For additional discussion on congressional extenders proposals, see *Policy, politics, and the prospects for tax extenders*, a recent report from Deloitte Tax LLP.

URL: http://www.deloitte.com/view/en_US/us/Services/tax/1a5092a2c7259410VgnVCM2000003356f70aRCRD.htm?id=us:em:na:tnv:eng:tax:111414

Internet access tax moratorium

In other developments, the path to a permanent extension of the Internet Tax Freedom Act (ITFA), which imposes a moratorium on Internet access taxes, appeared to become clearer this week as House Speaker Boehner shot down efforts to link that legislation with an unrelated bill – the Marketplace Fairness Act (MFA) – that would make it easier for states to capture sales and use tax revenue from transactions involving online and other “remote” vendors that do not have an in-state physical presence. (The MFA cleared the Senate in 2013 but has not come to the floor in the House.)

The ITFA, which is set to expire on December 11, imposes a moratorium on state and local Internet access taxes and provides grandfathering protections for Internet access taxes that were levied in certain states before 1998. The House approved legislation (H.R. 3086) on July 15 that would permanently extend the ITFA’s moratorium on taxes on Internet access but allow the grandfathering protections for certain pre-1998 taxes to expire.

Supporters of the Marketplace Fairness Act reportedly had hoped to advance that measure in the House by attaching it to the must-pass extension of the Internet tax moratorium. But a spokesman for Boehner told reporters on November 10 that “[t]he speaker has made clear in the past that he has significant concerns about the [MFA] and it won’t move forward this year. The Judiciary Committee continues to examine the measure and the broader issue. In the meantime, the House and Senate should work together to extend the moratorium on Internet taxation without further delay.”

Senate developments – A similar attempt to yoke the ITFA and the MFA has been playing out in the Senate. Finance Committee Chairman Wyden unveiled legislation in July that would make the Internet tax moratorium permanent and allow

the grandfathering protections to sunset. But Wyden's efforts to move his bill were complicated by the introduction of competing legislation – the Marketplace and Internet Tax Fairness Act (S. 2609) – co-sponsored by Finance Committee member Mike Enzi, R-Wyo., and Senate Majority Whip Durbin, among others, that would couple a 10-year extension (through November 1, 2024) of the Internet access tax moratorium and the grandfather rules with the online sales tax provisions from the MFA. Wyden, who opposes the MFA, has urged his colleagues keep the debate over the Internet access tax moratorium separate from discussions about collecting state and local sales tax on remote transactions.

MFA supporters in the Senate now appear to be rethinking their strategy. Majority Whip Durbin indicated on November 12 that the Senate would not take up the Marketplace and Internet Tax Fairness Act this year but added that interested lawmakers were considering alternatives for advancing online sales tax legislation during the lame duck session.

A tight calendar

Extenders and the Internet tax moratorium could be competing for floor time with nontax issues – such as a continuing resolution to fund the government and action on executive branch and judicial nominations – during what is expected to be a relatively compressed legislative session.

The official House calendar currently indicates that the chamber will remain in session from November 17 through November 20, recess for Thanksgiving from November 21 through November 30, and return on December 1 for another eight working days before adjourning on December 12. (The adjournment date could well change as the substantive business of lawmaking gets under way.)

The Senate has not officially announced its lame duck schedule or target adjournment date, although the chamber is expected to take a one-week recess for Thanksgiving.

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