Tax

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Senate extenders timetable in flux

With the lame duck legislative session winding down, plans for moving a House-approved one-year tax extenders package through the Senate currently remain unclear.

Senate Majority Leader Harry Reid, D-Nev., remarked in a floor statement on the morning of December 12 that the Senate would resume work on a defense reauthorization bill and then take up the $1.1 trillion government spending legislation approved in the House a day earlier. (See separate coverage of the spending legislation in this issue.)

Although the Senate did manage to clear the defense reauthorization bill, it appeared at press time that completing work on the government funding measure by midnight would be a heavy lift. As a result, consideration of the extenders package conceivably could be delayed until December 13 or even spill over into the week of December 15. Timing of the extenders package could also be set back if any senator blocks a motion to move the legislation under an expedited process known as unanimous consent. (Sen. Tom Coburn, R-Okla., had suggested in the past that he might object to a unanimous consent request; but he reportedly indicated on December 12 that he would not block the legislation even though he is opposed to it.)

The Tax Increase Prevention Act of 2014 (H.R. 5771), which was approved in the House on December 3, would retroactively extend for one year (through 2014) the bulk of the temporary tax deductions, credits, and incentives that expired at the end of last year. Those provisions include, among dozens of others, the research and experimentation credit; bonus depreciation and the election to accelerate alternative minimum tax credits in lieu of additional first-year depreciation; increased expensing limits ($500,000/$2 million) for section 179 property and the expanded definition of section 179 property; the subpart F exception for active financing income; and lookthrough treatment of payments between related controlled foreign corporations under the foreign personal holding company rules. All the provisions in the bill

would be extended without modification from prior law. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 37, Dec. 3, 2014. A complete list of the provisions that would be renewed under the bill – and those that would not – is available from Deloitte Tax LLP.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141203_1.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141203_1suppA.pdf

The Joint Committee on Taxation staff has estimated that the measure, which does not include offsets, would decrease federal revenues by nearly $42 billion over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4677

More coverage to come

When the Senate does vote on the extenders bill, Deloitte Tax LLP will report on the results in a special edition of *Tax News & Views*.

House rejects permanent charitable-giving measure

In other extenders news, efforts to move legislation that would permanently extend certain expired tax incentives for charitable giving fell flat December 11 when the House failed to approve a motion to consider the bill under an expedited process known as suspension of the rules. The procedural vote on the Supporting America's Charities Act (H.R. 5806) failed by a vote of 275-149, short of the two-thirds majority that was required for passage.

The legislation, which had been negotiated by Ways and Means Committee Chairman Dave Camp, R-Mich., and Senate Finance Committee Chairman Ron Wyden, D-Ore., would have made permanent incentives that provide for:

- 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; and
- An enhanced charitable deduction for contributions of food inventory.

The House had voted to make these provisions permanent as part of a broader package of charitable-giving incentives (H.R. 4719) it approved on July 18. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 27, July 18, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140718_3.html

Uphill climb: Even if H.R. 5806 had cleared the House, its prospects for enactment were slim. The Senate never took up the House's prior package of permanent charitable-giving incentives; moreover, the Obama administration on December 10 issued a statement of administration policy in which it threatened to veto the measure, citing its lack of revenue offsets and its effect on the deficit. (The larger charitable giving package the House approved in July prompted a similar veto threat.)
URL: http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr5806h_20141210.pdf

The Joint Committee on Taxation staff estimated that H.R. 5806 would decrease federal revenues by $11.1 billion over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4678

One-year extension still on tap: The charitable giving incentives in H.R. 5806 would be renewed for one year under the House-approved extenders measure that is awaiting action in the Senate.

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House approves $1.1 trillion government funding package

The House of Representatives on December 11 approved a $1.1 trillion omnibus spending package for fiscal year 2015 that would, among other provisions, cut funding to the Internal Revenue Service, temporarily extend the moratorium on Internet access taxes, and place narrow limits on the government's authority to award federal contracts to certain former US-incorporated businesses that relocate offshore.

The Consolidated and Further Continuing Appropriations Act, 2015 (H.R. 83), which cleared the House by a vote of 219-206, generally would provide funding for federal government operations through October 1, 2015. Funding specifically for the Department of Homeland Security, however, would expire on February 27, 2015. (House Republicans insisted on the shorter funding window for that agency so that they could revisit, early next year, the president's executive order on immigration.)

The spending package now heads to the Senate, where debate is expected to begin December 12 after lawmakers in that chamber complete work on the National Defense Reauthorization Act. To address the fact that government funding was scheduled to expire at midnight on December 11 – before both chambers of Congress could approve the appropriations package and send it to the president – the House and Senate quickly approved a two-day stop-gap measure to keep the government running through December 13. Shortly before press time, the House approved a second stop-gap measure that would extend government funding until December 16 to give the Senate additional time to consider the larger spending package. The Senate had not yet acted on the second stop-gap measure at press time.

IRS budget

The spending measure provides roughly $10.95 billion to fund the Internal Revenue Service – down $346 million from the amount Congress allocated for fiscal 2014 and $1.5 billion from the amount President Obama proposed in his fiscal year 2015 budget blueprint. Overall, the measure provides for $2.16 billion for taxpayer services, $4.86 billion for enforcement activities, $3.64 billion for operations support, and $290 million for business systems modernization.

Similar to last year, Congress included a number of administrative provisions that, among other things, prohibit the IRS from using funds to "target citizens of the United States for exercising any right guaranteed under the First Amendment to the Constitution of the United

States" and "target groups for regulatory scrutiny based on their ideological beliefs." It also prohibits the IRS from using funds in contravention of the section 6103 rules relating to confidentiality and disclosure of tax returns and return information. It also directs the Service to maintain an employee training program to address "taxpayer rights, dealing courteously with taxpayers, cross-cultural relations, and the impartial application of the tax law."

The legislation also includes provisions that direct the Service to:

- Allocate funds to improve facilities and increase staffing for its toll-free taxpayer help line;
- Make improvements to the taxpayer help line service a priority and "allocate resources necessary to enhance the response time to taxpayer communications, particularly with regard to victims of tax-related crimes; and
- Develop and enforce "policies and procedures that will safeguard the confidentiality of taxpayer information and protect taxpayers against identity theft."

Internet tax moratorium

The spending package extends the Internet Tax Freedom Act (ITFA) through October 1, 2015. The ITFA, which expired December 11, imposes a moratorium on Internet access taxes and on multiple and discriminatory taxes on electronic commerce and provides grandfathering protections for Internet access taxes that were levied in certain states before 1998.

Lawmakers in both chambers had hoped to approve a long-term extension of the ITFA this year. The House passed legislation (H.R. 3086) on July 15 that would permanently extend the moratorium on taxes on electronic commerce but allow the grandfathering protections for certain pre-1998 taxes to expire. It also re-approved that measure as part of an omnibus jobs package (H.R. 4) on September 18. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 27, July 18, 2014, and *Tax News & Views*, Vol. 15, No. 32, Sep. 19, 2014.) In the Senate, Finance Committee Chairman Ron Wyden, D-Ore., introduced his own proposal (S. 1431) on August 1 to make the moratorium permanent and allow the grandfathering protections to sunset, but did not hold a committee mark-up. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 29, Aug. 1, 2015.) Efforts to make the ITFA permanent became bogged down, however, after certain lawmakers in both chambers attempted to link that legislation to an unrelated bill – the Marketplace Fairness Act – 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.
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140718_4.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140919_3.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140801_6.html

Federal contracts for inverted corporations

The legislation includes two narrow provisions aimed at limiting the number of federal contracts that can be awarded to certain companies that have redomiciled overseas through an inversion for tax purposes. These provisions would:

- Prevent certain government agencies from awarding federal contracts to former US-incorporated businesses that subsequently reincorporated in Bermuda or the Cayman Islands. The provision would apply only to agencies funded under the Financial Services and General Government Appropriations portion of the bill. This would include, most notably, the Treasury Department, the Executive Office of the President, and the federal judiciary. The House approved a similar provision as part of the Energy and Water Development and Related Agencies Appropriations Act, 2015 (H.R. 4923) in July. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 26 July 11, 2014.)
  URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140711_3.html
- Prevent all government agencies from awarding federal contracts to "any foreign incorporated entity which is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002…or any subsidiary of such an entity." The legislation provides that "any Secretary" may waive the restriction with respect to any Federal Government contract under the authority of such Secretary if the Secretary determines that the waiver is required in the interest of national security." An exception to the restriction would apply "to any federal government contract entered into before the [bill's] date of the enactment…or to any task order issued pursuant to such contract." Similar temporary restrictions have been included in various spending agreements since 2002.

Senate, White House approval expected

The bill is expected to clear the Senate and be signed into law by the president, although the timetable was unclear at press time. In a tweet posted on his Senate Web site, Majority Leader Reid stated that the bill is "not perfect," but noted that "a longer-term funding is much better for our economy than a short-term one."

The Obama administration indicated in a December 11 statement of administration policy that it supports the spending bill despite the inclusion of what it called "ideological and special interest riders."
URL: http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr83h_20141211.pdf

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Hatch releases tax reform report; Camp introduces tax reform discussion draft as 'H.R. 1'

Senate Finance Committee ranking Republican Orrin Hatch of Utah released a report December 11 that takes a broad look at tax reform issues and provides a first glimpse at what reform policies Hatch may pursue assuming he takes the committee gavel as expected once the 114th Congress convenes in January. Meanwhile, outgoing House Ways and Means Committee Chairman Dave Camp, R-Mich., formally introduced on the House floor the comprehensive tax reform proposal that he unveiled as a discussion draft earlier this year.

Tax reform report

The report Hatch released, *Comprehensive Tax Reform for 2015 and Beyond*, was prepared by the Finance Committee Republican staff. Hatch notes in the introduction that tax reform is his "highest priority" and that the "report is intended to provide background on where we are and where we have been with regard to our tax system as well as some possible direction on where our reform efforts should go in the near future." In a separate press release, Hatch notes that he is "willing to work with anyone – Republican or Democrat – to fix our country's tax code" and urged his colleagues in Congress to view the report "as an invitation to work together on these critical issues."
URL: http://www.finance.senate.gov/newsroom/ranking/download/?id=7798ca64-6955-4c9e-b6f9-9f7954b4e08e
URL: http://www.finance.senate.gov/newsroom/ranking/release/?id=0df91455-c895-49b4-9044-d8fd9873b1dc

The report notes that since the last major tax reform effort in 1986, the US economy has changed drastically while the tax code has not, and that reform is needed "to get America's fiscal house in order" as well as encourage economic growth and job creation. To that end, the report recommends the same principles it says guided the reform effort in the 1980s – "fairness, efficiency, and simplicity" – and provides examples of how the current code is not meeting those goals.

Issues in reform – and possible options: The report details the history of the US tax code and previews the fiscal problems facing the country, but most of the report is dedicated to analyzing the various issues surrounding tax reform and possible approaches to reforming the code. The report generally surveys the issues without making specifically policy recommendations, though there are exceptions. For example, the report rejects the idea of instituting a value added tax (VAT) and endorses a territorial system for taxing international income.

As general propositions, the report says that top rates for corporations and individuals should be reduced substantially and that the system should "be friendly to savings and investments of individuals."

Corporate integration: One noteworthy area of discussion is on the integration of corporate taxes into a single level of taxation (rather than the system of taxing at both the entity and individual level under a classical income tax).

"It makes no sense today to have two levels of taxation of corporate earnings. As a general proposition, if income is to be taxed, it should only be taxed once," the report says. Generally, according to the report, publicly traded entities should be taxed at the entity level, while other business entities should be taxed at the individual level. The report explores ways that this could be achieved through a dividend exemption or deduction system.

Camp proposal

Also on December 11, Ways and Means Chairman Camp officially introduced the Tax Reform Act of 2014 (H.R. 1), which incorporates without modification the tax reform discussion draft that he unveiled on February 26.

As introduced, H.R. 1 would reduce the top income tax rate for corporations and individuals to 25 percent and move the United States toward a territorial system for taxing domestic multinational corporations. But to accomplish those objectives – plus adhere to Camp's goals of producing a revenue neutral proposal that would retain the levels of progressivity in place under the current tax code – the legislation includes an array of base-broadening provisions that would have a significant impact on corporations, passthrough entities, individual taxpayers, and tax-exempt organizations. It also includes a 10 percent surtax on certain higher-income individuals, making their top statutory rate 35 percent. (For details on the provisions in the discussion draft, see *Tax News & Views*, Vol. 15, No. 9, Feb. 27, 2014).
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140227_1.html

No action expected: In 2013, House Speaker John Boehner, R-Ohio, reserved the bill number "H.R. 1" for tax reform legislation to underscore its importance to the House GOP agenda in the 113th Congress. But after Camp released his discussion draft in February of this year, House Republican leaders proved reluctant to allow him to bring it up for a vote, either in the Ways and Means Committee or on the House floor.

The formal introduction of the discussion draft as a legislative proposal now is largely symbolic: the House has no plans to take up Camp's proposal or any other tax reform legislation this year; the bill officially expires as active legislation once the 113th Congress adjourns; and Camp is retiring from Congress at the end of the current legislative session. But in a December 11 floor statement, Camp expressed hope that "the formal introduction of this proposal in the House…will help spur further action on this critical issue in the 114th Congress."

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