Deloitte.

In this issue:

No apparent progress on near-term tax bill as end of legislative session approaches 1
IRS finalizes updates to Form W-8EXP........ 8
JCT releases federal tax expenditures estimate........ 9

No apparent progress on near-term tax bill as end of legislative session approaches

With lawmakers set to adjourn for the holiday recess in a matter of just days, prospects for near-term congressional action on a modest tax package including a handful of Republican and Democratic priorities remained stuck in limbo this week as House and Senate negotiators from both parties continued their efforts to fine-tune their respective demands and find a suitable legislative vehicle that can carry a tax title.

Meanwhile, members of the House Ways and Means Tax Subcommittee took a somewhat longer view on potential tax code changes as they held a hearing to consider options for family- and worker-focused tax policies that promote economic growth—including the proposed "Fair Tax"—and taxwriting leaders in both

Copyright © 2023 Deloitte Development LLC
All rights reserved.

chambers released a discussion draft of technical corrections and clerical changes to last year's SECURE 2.0 Act.

Tax package still adrift

Although there has been little in the way of public debate between the House and Senate about the contours of a possible tax package this year, taxwriting committee leaders in both chambers reportedly have been working behind the scenes to reach an agreement that, broadly speaking, would provide some $40-50 billion in business-focused tax relief—presumably including provisions to reverse certain changes that have taken effect pursuant to 2017's Tax Cuts and Jobs Act (TCJA, P.L. 115-97) that curtailed deductions for research expenditures and business interest expense and dialed down immediate write-offs for capital investments—along with a similarly-sized package of enhancements to the child tax credit. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 38, Nov. 10, 2023.)
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_1.html

Details, details: Based on comments by Senate Minority Whip and Finance Committee member John Thune, R-S.D., at a *Punchbowl News* event on December 6, however, negotiators have not yet agreed on the overall size of a tax deal. Thune acknowledged that bicameral negotiations are continuing, but he characterized a recent discussion among Finance Committee Republicans about the status of a possible tax package this way:

"If [a deal] happens, what's that [topline] number and is it realistic? And what do Democrats get in exchange for bringing back bonus depreciation or interest deductibility or R&D expensing?"

Thune added that any enhancements to the child tax credit—the Democrats' key demand in the negotiations—would have to be "dialable" to ensure parity with the business-focused provisions. Republicans in both chambers have been adamant that they will not accept a provision that would reinstate the expansive changes to the child tax credit that were enacted on a temporary basis in the American Rescue Plan Act of 2021 (P.L. 117-2) and expired at the end of that year. (The 2021 legislation temporarily increased the credit amount, made the credit fully refundable, and allowed taxpayers to claim it in advanceable monthly installments.)
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf

Still no vehicle: Congressional leaders also have yet to find a substantial piece of ready-to-move "must pass" legislation that could serve as a vehicle for a tax package. In recent years, tax legislation similar in scope to what taxwriters currently envision has often been attached to year-end omnibus appropriations measures. But the appropriations process for fiscal year 2024 is now guided by the so-called "laddered" continuing resolution (CR) put forward by House Speaker Mike Johnson, R-La., and signed into law last month which keeps the government's doors open (at fiscal year 2023 levels) on a staggered schedule into early next year, with funding deadlines of January 19 for some departments and agencies and February 2 for the others. Speaker Johnson has said the dual-deadline approach is intended to avoid a last-minute, year-end omnibus, so the size and scope of the appropriations measures that emerge under this new process remain to be seen.

Copyright © 2023 Deloitte Development LLC
All rights reserved.

Adding to the uncertainty is the fact that spending bills in both chambers are advancing at a glacial pace. To date, the House has completed 7 of the 12 bills required to fund the federal government, the Senate has approved 3, and none have been reconciled in a bicameral conference.

One impediment to the fiscal year 2024 budget process—the months-long dispute between the House and Senate over topline numbers for funding federal departments and agencies—appears to be partially resolved now that Speaker Johnson has declared in a letter to his House GOP colleagues that the funding levels in the Fiscal Responsibility Act (P.L. 118-5), the debt limit deal hammered out between President Biden and then-House Speaker Kevin McCarthy, R-Calif., that was signed into law this past June, are indeed "the law of the land."
URL: https://www.speaker.gov/wp-content/uploads/2023/12/12.7.2023-Speaker-Dear-Colleague.pdf
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The Fiscal Responsibility Act set spending for government operations at fiscal year 2023 levels—roughly $1.59 trillion in total spending—a cap that the Senate has adhered to in its appropriations measures. In the Republican-controlled House, meanwhile, members of the Freedom Caucus had, until recently, been adamant that Congress must cut spending to the levels in effect for fiscal year 2022—roughly $1.47 trillion in total spending—consistent with what they say was a "handshake" agreement they made with Kevin McCarthy this past January when he was campaigning to win the speaker's gavel. (McCarthy's willingness to embrace fiscal year 2023 funding levels in the debt limit agreement and in a subsequent stopgap spending measure enacted in October fueled a rebellion among Freedom Caucus members that culminated in his ouster as speaker. Now out of leadership, McCarthy announced on December 6 that he will retire from Congress at the end of this year.)

Despite Speaker Johnson's concession on spending levels, however, it remains unclear if Freedom Caucus members will accept certain side agreements between President Biden and McCarthy in their negotiations over the Fiscal Responsibility Act—including one that redirects some $20 billion of the mandatory funding allocated to the IRS under the Inflation Reduction Act (P.L. 117-169) to unspecified nondefense discretionary priorities over the next two fiscal years.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Tyranny of the calendar: Just what Congress is able to accomplish legislatively in the coming weeks will also be shaped by an increasingly tight calendar. Between now and the end of this year, the House is scheduled to be in session for only four days and the Senate is set to be in for five. The recently released congressional calendars for 2024 show the House in session for eight days leading up to the first government funding deadline of January 19, compared to nine days for the Senate. House members are then scheduled to recess the week of January 22 and return on January 29—just four working days ahead of the second funding deadline of February 2. The Senate will be in session for 10 days between January 19 and February 2.

Fair Tax in the spotlight

In other developments this week, the "Fair Tax," a national retail sales tax proposal popular among some of the most conservative House Republicans, got its close-up at a December 6 Ways and Means Tax

Copyright © 2023 Deloitte Development LLC
All rights reserved.

Subcommittee hearing to consider options for family-focused tax policies that promote economic growth, although it did not attract overt support from GOP members on the panel and was widely panned by Democrats.

The perennial GOP proposal, which this year was introduced as the Fair Tax Act of 2023 (H.R. 25) by Rep. Earl "Buddy" Carter, R-Ga., would institute a national sales tax of 23 percent (or up to 30 percent, depending on how it is calculated) beginning in 2025 in lieu of the current individual and corporate income taxes, payroll taxes, and estate and gift taxes. Certain exemptions would apply to business purchases, exports, intangible property, and state government functions. The proposal would eliminate funding for the Internal Revenue Service after fiscal year 2027.
URL: https://www.congress.gov/bill/118th-congress/house-bill/25/text

Similar proposals have been introduced multiples times since 1999 and routinely have been relegated to the legislative back burner; but the Fair Tax took on a new level of prominence in the current Congress in the wake of an apparent promise by Kevin McCarthy to certain far-right conservatives in January of this year during his campaign to become Speaker of the House.

As part of his effort to get his Republican colleagues to support his bid for the top spot, McCarthy reportedly made a "handshake" deal to, among other things, provide for some form of consideration of the Fair Tax during the 118th Congress, although the exact mechanism for considering the proposal was never made clear.

House Ways and Means Committee Chairman Jason Smith, R-Mo., said at the start of the new Congress he would hold a hearing on the legislation—a promise he fulfilled this week—but he has been silent on the Fair Tax over the past year and has given no indication that he intends to hold a committee mark-up of the proposal in 2024.

Careful questions: Smith, who waived onto the Tax Subcommittee to participate in the hearing, did not explicitly endorse or criticize the proposal. Instead, he asked witness Steve Hayes of Americans for Fair Taxation, an organization promoting the adoption of the Fair Tax, to explain how the proposal would promote simplicity in the tax code.

Hayes replied that the Fair Tax would eliminate a tax system that requires individuals to determine their income and report it to the IRS and replace it with one in which individuals pay taxes only when they make retail purchases. Such a system, Hayes contended, has the added benefit of giving individuals greater control over how much tax they pay because they have the ultimate say in when and how they spend their money.

In response to a question about how the Fair Tax would change the way in which individuals interact with the IRS, Hayes told Smith that taxpayers would no longer have to deal with the agency since taxes would apply to retail transactions rather than income and would be imposed and collected at the point of sale. Building the tax into the structure of a retail transaction would also make tax evasion more difficult, he added.

Copyright © 2023 Deloitte Development LLC
All rights reserved.

Skeptical reactions from Democrats: The Fair Tax did not generate any additional discussion among Republican members of the subcommittee, but the proposal was flatly rejected by the panel's Democrats and their invited witness, Leonard Burman of the Urban-Brookings Tax Policy Center.

Tax Subcommittee ranking member Mike Thompson, D-Calif., who called the proposal "extreme and unpopular," asked Burman about a claim advanced by Fair Tax supporters that the proposal would be deficit-neutral.

Burman replied that without "a really large cut in government spending," the rate under the Fair Tax system would probably have to be between 30 percent and 40 percent to be revenue neutral, and might have to be even higher assuming there is a moderate level of evasion.

Subcommittee member Linda Sanchez, D-Calif., argued that the Fair Tax is "not a serious proposal," adding that it would make the tax system more regressive and deliver the biggest benefits to the wealthiest individuals.

In exchange with Sanchez, Burman stated that the Fair Tax would amount to "a big tax cut" for affluent individuals, whose annual spending amounts to a fraction of their total income, while lower-income individuals would be held harmless from a significant tax hike because of the exemptions built unto the system. As a result, Burman said, if the Fair Tax is designed to be revenue neutral, the bulk of the tax burden would fall on the middle class.

"I think that was the thing that convinced the [George W.] Bush tax reform panel [in 2005] that [the Fair Tax] really wasn't going anywhere," Burman said, "because the rates would [have to] be really high and it would hit middle-income people."

Responding to a question from taxwriter Suzan DelBene, D-Wash., Burman disputed the contention by Steve Hayes and other Fair Tax supporters that the design of the tax essentially eliminates the risk of evasion. Every state, Burman said, has issues with sales tax compliance, noting that if a retailer does not remit sales tax proceeds then the taxing authority does not collect the revenue. Moreover, if certain purchases such as food or medicine are exempt from tax, there is an incentive for would-be tax evaders to attempt to make taxable purchases look like nontaxable purchases, he said.

Tax policy greatest hits

Issues related to the Fair Tax aside, the bulk of the tax policy discussion at this week's hearing amounted to a recitation of largely familiar partisan talking points from the past year, with Republicans touting the role of the Tax Cuts and Jobs Act in expanding economic growth and Democrats lauding the now-expired provisions in the American Rescue Plan Act of 2021 that delivered tax relief for lower- and middle-class individuals.

TCJA permanence: Subcommittee Chairman Mike Kelly, R-Pa., and other Republicans on the panel pointed to the pending expiration in 2025 of several TCJA provisions on the individual side of the tax code—such as lower

Copyright © 2023 Deloitte Development LLC
All rights reserved.

income tax rates, the 20 percent deduction for passthrough business income under section 199A, and increased exemption amounts under the estate and gift tax rules—and argued that they should be made permanent.

One of the GOP's invited witnesses, Grover Norquist of Americans for Tax Reform, commented in response to a question from Kelly that allowing these provisions to expire would depress new investment and job creation, which in turn would lead to stagnating growth in wages and savings.

In a subsequent exchange with taxwriter Randy Feenstra, R-Iowa, Norquist stated that the expiration of the section 199A deduction would result in tax increases that would make it more difficult for many small businesses to survive.

Norquist also commented that the estate tax is detrimental to family-owned businesses (including small farms) since in many cases heirs have had to liquidate the business in order to pay the tax liability. Ending the estate tax would be a "healthy" thing that Congress can do to preserve small businesses, he said.

Corporate tax rates: On the corporate side of the tax code, taxwriter Drew Ferguson, R-Ga., asked how Congress can promote sustained economic growth and ensure that the US "is the most competitive place in the world to do business."

Norquist replied that the most efficient way to achieve those objectives would be to reduce the corporate tax rate to no more than 14 percent from its TCJA-enacted level of 21 percent—an action he said would thwart efforts by the OECD to advance a 15 percent global corporate minimum tax.

Responding to a subsequent question from subcommittee member Ron Estes, R-Kan., Norquist called the OECD's Pillar Two minimum tax "extremely damaging," and said the US needs to "walk away loudly and clearly from the idea that we are going to let the Europeans or the Japanese or the Chinese or the Russians set our minimum tax rate."

In an earlier exchange with Chairman Kelly, witness Alan Viard of the American Enterprise Institute observed that the TCJA's reduction in the corporate tax rate brought the US into alignment with most of its major trading partners. Viard also noted, though, that the TCJA added to the nation's long-term fiscal imbalance because it was not completely offset—something he called a "major drawback" that Congress needs to consider going forward.

Undoing adverse TCJA changes: Republicans also reiterated their longstanding calls for immediate action to reverse taxpayer-unfavorable TCJA changes related to the treatment of research expenditures, business interest expenses, and capital investments, all of which, as already noted, are likely components of the tax package currently being negotiated by House and Senate taxwriting committee leaders.

Copyright © 2023 Deloitte Development LLC
All rights reserved.

Expanded child tax credit: Democrats on the Tax Subcommittee, who generally dismissed the TCJA as a Republican-sponsored measure that delivered tax cuts to corporations and upper-income individuals, focused their comments on how Congress can better shape tax policy to support children.

In an exchange with ranking member Mike Thompson, the Tax Policy Center's Leonard Burman said the simplest way to achieve that goal would be to reinstate some version of the now-expired enhancements to the child tax credit in the American Rescue Plan. (As already noted, enacting a scaled-down version of the American Rescue Plan provision is the Democrats' key demand in the current negotiations for a near-term tax deal.)

Taxwriter Brad Schneider, D-Ill., was one of several Democrats who noted that the American Rescue Plan provision reduced child poverty by 50 percent in a single year. He asked Burman to discuss the implications of Congress's failure to make further investments in the credit.

Burman called the expiration of the expanded credit "a huge loss." Giving children an added measure of economic stability, he said, promotes better health and higher levels of educational success, which in turn sets them up for greater earning potential as adults and makes them more productive contributors to the larger economy.

SECURE 2.0 technical corrections

In a decidedly bipartisan development this week, Ways and Means Committee Chairman Jason Smith and ranking member Richard Neal, D-Mass., along with Senate Finance Committee Chairman Ron Wyden, D-Ore., and ranking member Mike Crapo, R-Idaho, released a long-awaited discussion draft of legislation that would make technical and clerical corrections to the SECURE 2.0 Act, which was signed into law late last year as Division T of the Consolidated Appropriations Act, 2023 (P.L. 117-328).
URL: https://www.finance.senate.gov/download/secure-20-act-technical-corrections-discussion-draft-legislative-text
URL: https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf

Joining in the release were the chairs and ranking members of the House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor, and Pensions, which also have jurisdiction over the legislation.

Some of the more notable proposed technical corrections in the discussion draft would address:

- The new requirement that retirement plan catch-up contributions be made on an after-tax "Roth" basis if a participant's wages from the employer offering the plan exceed certain thresholds (SECURE 2.0 Act section 603);
- The new phase-in schedule for taking required minimum distributions from qualified retirement accounts (SECURE 2.0 Act section 107);

Copyright © 2023 Deloitte Development LLC
All rights reserved.

- New rules permitting SIMPLE IRA plans and SEP plans to include Roth IRAs (SECURE 2.0 Act section 601); and
- The increased credit for small employer pension plan start-up costs (SECURE 2.0 Act section 102).

The discussion draft is being circulated for public comment and there are no announced plans to mark up the legislation in any of the committees of jurisdiction.

Legislation to address ambiguities in the SECURE Act's language around the "Roth" treatment of retirement plan catch-up contributions had been regarded as a potential driver to compel action on tax legislation this year or early in 2024. That issue was taken off the table this past August, however, when the IRS announced in Notice 2023-62 that it will provide a two-year administrative transition period to implement the new requirement.
URL: https://www.irs.gov/pub/irs-drop/n-23-62.pdf

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

IRS finalizes updates to Form W-8EXP

The Internal Revenue Service on November 20 published a new version of Form W-8EXP, *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting*, and the corresponding instructions. The modifications primarily reflect the finalized sections 897 and 1445 regulations exempting qualified foreign pension funds from withholding on dispositions of US real property interests. Unlike other Forms W-8, the finalized Form W-8EXP permits use of the form both to indicate an entity is exempt from withholding under section 1445 and for other withholding exemption purposes.
URL: https://www.irs.gov/pub/irs-pdf/fw8exp.pdf
URL: https://www.irs.gov/pub/irs-pdf/iw8exp.pdf

The new Form W-8EXP includes a revision month of October 2023. As such, the new version of the Form W-8EXP is mandatory for use for forms signed on or after May 1, 2024.

Find out more

A new alert from Deloitte Tax LLP's Global Information Reporting Group describes the notable changes in the updated form.
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231208_1_suppA.pdf

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Copyright © 2023 Deloitte Development LLC
All rights reserved.

JCT releases federal tax expenditures estimate

The Joint Committee on Taxation (JCT) staff on December 7 released its estimate of federal tax expenditures for fiscal years 2023-2027.
URL: https://www.jct.gov/publications/2023/jcx-59-23/

Tax expenditures are defined under the Congressional Budget and Impoundment Control Act of 1974 as "revenue losses attributable to provisions of the federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." The JCT report provides cost estimates for these provisions to "help policymakers and the public understand the ways in which government revenues are spent, and the tax and economic policy consequences that follow from the implicit or explicit choices made in fashioning legislation."

Among the more sizable expenditures identified in the report are the:

- Net exclusion of contributions to and earnings on tax-preferred retirement plans, including defined contribution plans, defined benefit plans, and sole-proprietor plans ($2.23 trillion);
- Reduced rates of tax on dividends and long-term capital gains ($1.22 trillion);
- Exclusion of employer contributions for health care, health insurance premiums, and long-term care insurance premiums ($1.12 trillion);
- Credit for children and other dependents ($470.8 billion);
- Subsidies for insurance purchased through health benefit exchanges ($447.7 billion);
- Deduction for nonbusiness state and local government taxes ($392.1 billion);
- Earned income tax credit ($378.2 billion);
- Exclusion of capital gains at death ($308.9 billion);
- Deduction for charitable contributions ($284.9 billion);
- Exclusion of untaxed Social Security and railroad retirement benefits ($261.9 billion);
- Deduction for mortgage interest on owner-occupied residences ($257.6 billion);
- Reduced tax rate on active income of controlled foreign corporations ($218.2 billion); and the
- 20 percent deduction for qualified business income ($199 billion);

In addition to providing cost estimates, the JCT report briefly describes new corporate and individual expenditures and modifications to existing expenditures enacted in the Consolidated Appropriations Act, 2023 (P.L. 117-328), which was signed into law late last year. That legislation includes the SECURE 2.0 Act, which provided a host of provisions intended to encourage individuals to save in tax-preferred qualified retirement plans and make it easier for smaller businesses to offer qualified retirement plans to their employees.
URL: https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf

The report also shows the distribution of tax returns by income class, and distributions of selected individual tax expenditures by income class.

Copyright © 2023 Deloitte Development LLC
All rights reserved.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms or their related entities (collectively, the "Deloitte organization") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte's approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.

Copyright © 2023 Deloitte Development LLC
All rights reserved.