In this issue:

Potential tax accord punted to 2024 as House adjourns for the holiday, Senate poised to follow suit 1
Ways and Means panel looks at links between tax-exempt organizations and foreign influence in US politics ... 5
Ferguson nixes 2024 re-election bid 7

Potential tax accord punted to 2024 as House adjourns for the holiday, Senate poised to follow suit

With the House now adjourned for a weeks-long holiday recess and the Senate poised to follow suit in a matter of days, congressional action on a potential modest tax package including a handful of Republican and Democratic priorities seems fated to remain on hold until next year, when Congress will quickly face a crush of fiscal deadlines—one of which tax negotiators hope can serve as a forcing mechanism to carry a tax title to President Biden's desk.

At press time, the Senate remains in session as negotiators in that chamber attempt to clinch a deal on a supplemental spending package that combines emergency aid to Ukraine and Israel with immigration policy changes that are intended to secure the US southern border, but it is expected to adjourn for the year

Copyright © 2023 Deloitte Development LLC
All rights reserved.

sometime during the week of December 18. The House gaveled out after concluding its business on December 14 and is not expected to reconvene until January 9 (although some senators hope Speaker Mike Johnson, R-La., could be persuaded to bring his colleagues back to Capitol Hill if a deal is reached on the supplemental spending bill). The Senate is expected to return on January 8.

Legislative 'trains' for possible tax package delayed until next year

Taxwriting committee leaders in both chambers have been homing in over the past several months on an agreement that, broadly speaking, would provide some $40-50 billion in business-focused tax relief—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

Although the principal negotiators had been eyeing a year-end "omnibus" spending measure—that is, a bill that would have funded the federal government for the remainder of fiscal year 2024 (through September 30, 2024) by wrapping together all 12 annual appropriations bills into one—as a legislative "train" on which a tax package could hitch a ride, that possibility was foreclosed when Speaker Johnson shuttled through Congress last month a so-called "laddered" continuing resolution (CR) which will keep 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. The laddered CR—which President Biden signed into law on November 16—ensured that the government did not shut down on November 17 when the prior continuing resolution keeping the government's doors open had been set to lapse.

Thus, given the near certainty that House or Senate leaders will not attempt to process a stand-alone tax measure, attention now turns to those next two appropriations deadlines as possible drivers to get a tax bill signed into law prior to the November 2024 presidential and congressional elections.

Slow-going on spending bills: But the prospects for a combined appropriations-and-tax package are far from certain given that government funding measures 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 and signed into law. And if Democrats and Republicans do not make substantial progress on appropriations measures and are again forced to rely on one or more temporary patches to fund government operations, the odds of a tax title catching a ride would substantially diminish.

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 (FRA, P.L. 118-5), the debt limit deal hammered out between President Biden and

Copyright © 2023 Deloitte Development LLC
All rights reserved.

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 FRA set a statutory cap on annual appropriations for fiscal year 2024 at roughly $1.59 trillion—a level 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 promise made by Kevin McCarthy this past January when he was campaigning to win the speaker’s gavel.

Despite Speaker Johnson’s apparent concession on an overall spending level, however, it remains uncertain whether House conservatives will accept it. It is even more uncertain whether they will go along with certain side agreements between President Biden and McCarthy in their negotiations over the FRA—so-called “handshake” deals that would have boosted the $1.59 trillion cap until it reached parity with what was appropriated last year—including one that would redirect 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. Those handshake deals were critical to getting Democrats to support the FRA, in large part because, based on the relative break-out between defense and nondefense spending under the statutory cap, nondefense spending as a whole would face a reduction without them. Moreover, some conservatives in the House insist that any supplemental spending for Ukraine and Israel count towards those caps, while the Senate is expected to take the position that as “emergency spending,” those amounts do not count toward the overall spending limits from the FRA.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

For his part, House Rules Committee Chairman Tom Cole, R-Okla., thinks Congress should stick with the $1.59 trillion topline, which effectively would amount to a cut relative to last year (a tough pill for Democrats to swallow) but an increase relative to the fiscal year 2022 spending level that the House Freedom Caucus has been demanding.

“I’m very supportive of the [$1.59 trillion] deal, and very leery of anything that’s added on top of it, either as designated emergency spending, or side deals, or whatever,” Cole told reporters this week.

FAA programs and excise taxes set to be punted to March 8: It should be noted that programs overseen by the Federal Aviation Administration (FAA), and the excise taxes on tickets and fuel that are dedicated to the airport and airway trust fund, had been scheduled to expire after December 31 of this year, but are poised to be extended through March 8 of next year. That extension—the Airport and Airway Extension Act of 2023 (H.R. 6503)—cleared the House December 11 by a broadly bipartisan vote of 376-15 and is expected to be approved in the Senate before lawmakers in that chamber adjourn for the holidays.
URL: https://www.congress.gov/bill/118th-congress/house-bill/6503

Copyright © 2023 Deloitte Development LLC
All rights reserved.

In the meantime, House and Senate negotiators will continue trying to coalesce around a more durable, five-year reauthorization of the FAA. Such a bill also has been discussed—albeit with a bit less promise—as a potential vehicle to carry a tax package.

Senate taxwriters express optimism: Senate Finance Committee Chairman Ron Wyden, D-Ore., who has been working behind the scenes to negotiate the parameters of a tax deal with House Ways and Means Committee Chairman Jason Smith, R-Mo., sounded positive this week about the prospects for a legislative package.

"We've made a lot of progress, and good staff work over the last couple of days as well," Wyden told reporters on December 12. "We've got to run the numbers and scrub them."

For his part, Democratic Finance Committee member Sherrod Brown of Ohio also told reporters that Democrats and Republicans were making good progress and that he hopes a deal can come together by mid-January.

Have to act fast

Just what Congress is able to accomplish legislatively in the coming weeks will also be shaped by a tight calendar that leaves little time for further negotiating. Upon their return to Washington next year, lawmakers will have to make substantial—and fast—progress on appropriations if they hope to avoid another continuing resolution or, worse, a government shutdown.

The recently released congressional calendars for 2024 show the House in session for only eight days leading up to the first government funding deadline of January 19, compared to just 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 nine days between January 19 and February 2. (Leaders in the two chambers can always adjust their calendars as circumstances warrant.)

Find out more

A table from Deloitte Tax LLP provides a snapshot of the current status of the 12 fiscal year 2024 appropriations bills in the House and Senate ahead of the upcoming government funding deadlines and lays out the tight timeline that lawmakers will be working under after the recess if they hope to avoid another stopgap funding patch and reach a durable agreement on fiscal year 2024 appropriations measures that also could provide a suitable vehicle for a tax title.
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231215_1_suppA.pdf

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

Copyright © 2023 Deloitte Development LLC
All rights reserved.

Ways and Means panel looks at links between tax-exempt organizations and foreign influence in US politics

Despite some mutual finger-pointing over which party may have benefited more from the current state of affairs, Republicans and Democrats on the House Ways and Means Oversight Subcommittee agreed this week that Congress needs to tighten rules that indirectly allow foreign individuals and entities to influence US elections by making donations to certain tax-exempt organizations—particularly those that receive their exemptions under sections 501(c)(3) and 501(c)(4)—which can then be passed along by those organizations in the form of contributions to overtly political causes.

The discussion arose during a December 13 hearing on "the growth of the tax-exempt sector and the impact on the American political landscape" that was convened in part as a response to reports that large donations by wealthy foreign nationals to section 501(c)(3) and 501(c)(4) organizations are being funneled to US political campaigns, political action committees and "Super PACs," issue-advocacy groups, and get-out-the-vote efforts. Subcommittee Chairman Dave Schweikert, R-Ariz., issued a request for information this past August in which he asked stakeholders and the general public to weigh in on a range of issues related to impermissible political activity on the part of tax-exempt organizations and what Congress might do to address it.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/09/UPDATED-RFI-on-501c3-and-c4-Activities-FINAL.docx87.pdf

Schweikert commented in his opening statement at the hearing that he was "alarmed to read of several public accounts of large sums of money, to the tune of millions of dollars, flowing from foreign nationals into US-based 501(c)(3)s and 501(c)(4)s, which then have directed these funds into influencing American politics." He noted that although it is illegal under US law for foreign individuals and organizations to contribute directly to US election campaigns, "it seems that these actors have found a loophole."

Ranking member Bill Pascrell, D-N.J., decried what he called a "tidal wave of dark money into politics" in the wake of the Supreme Court's decision in *Citizens United v. Federal Elections Commission*. Since that decision was handed down, he said, "we've seen political 501(c)(4) organizations pour over $1 billion into federal elections—every dollar without any requirement to disclose their funding source." (Under final regulations issued by the Treasury Department in 2020, tax-exempt entities—other than those organized under section 501(c)(3) or section 527—are no longer required to disclose on their annual Form 990 the names and addresses of donors who contribute $5,000 or more.)
URL: https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-11465.pdf

How to fix it?

Several members of the panel asked witnesses for their thoughts on how Congress could recalibrate existing rules around tax-exempt organizations to keep foreign actors out of the electoral process.

Copyright © 2023 Deloitte Development LLC
All rights reserved.

Restrictions on 501(c)(4)s: In an exchange with Ways and Means Committee Chairman Jason Smith, R-Mo., who waived on to the subcommittee so he could participate in the hearing, Scott Walter of the Capital Research Center stated that 501(c)(4) organizations are a "critical part" of US politics so it would be "reasonable" to impose limits on their involvement in electoral politics if they receive money from foreign individuals and organizations. Congress could, for example, prohibit a 501(c)(4) organization that receives foreign donations from contributing to US Super PACs for several years, he said. Walter also suggested in his opening statement that Congress could prohibit 501(c)(3) foundations and charities from funding or executing voter registration drives and voter turn-out efforts.

Form 990 changes: Subcommittee Chairman Schweikert asked whether the IRS should consider revising Form 990—the annual information return filed by section 501 tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations—so that the government is better positioned to detect impermissible or questionable political activity.

All of the witnesses agreed that changes would be helpful, although they stopped short of offering detailed recommendations. (Justin Chung of the Congressional Research Service commented that the information required to be provided on the Form 990 varies depending on the type of organization making the filing.) But Philip Hackney of the University of Pittsburgh School of Law suggested that the IRS should provide uniform definitions of commonly used terms—such as "community benefit"—so that organizations filing the form have a clearer understanding of the information they are expected to provide.

Better data analysis: Ranking member Pascrell suggested to Hackney that the Form 1023 EZ, the Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, does not capture enough data to ensure that organizations applying for tax-exempt status have a legitimate exempt purpose.

Hackney, who worked in the IRS Office of Chief Counsel on issues related to exempt organizations from 2006-2011, replied that the agency needs to make better use of the data it has so it can enforce existing rules. He noted, for example, that the IRS needs to do a more thorough job of cross-checking the information that 501(c)(4) organizations provide about their political activity on their Form 990 filings against the data those organizations submit to the Federal Elections Commission about their political contributions.

Hackney also noted that the proliferation of 501(c)(4) organizations roughly coincides with a decade of congressional budget cuts to the IRS that left the agency ill-prepared to conduct rigorous audits. (Hackney commented elsewhere during the hearing that between 2010 and 2018, as applications for 501(c)(4) status were skyrocketing, the IRS's budget declined by 20 percent, and that between 2010 and 2019 the Exempt Organizations division shrank from 889 employees to 559.) Pascrell and Hackney also defended the mandatory funding for IRS enforcement efforts and information technology modernization that was enacted in the Inflation Reduction Act of 2022 (P.L. 117-169).
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Copyright © 2023 Deloitte Development LLC
All rights reserved.

More legal clarity: The Capital Research Center's Scott Walter commented in response to a question from subcommittee member Beth Van Duyne, R-Texas, that the "worst abuses" related to political activity among exempt organizations are attributable to areas where there is no law—for example, there currently is no prohibition on foreign entities contributing to US nonprofits—and areas where the law is "murky," such as the extent to which it is permissible for 501(c)(3) organizations to participate in voter registration drives.

Appreciated stock donations to 501(c)(4) organizations

Also at the hearing, Oversight Subcommittee member Judy Chu, D-Calif., touted a proposal she is developing with Senate taxwriter Sheldon Whitehouse, D-R.I., that would close what she says is a loophole in the tax code that allows high-wealth individuals to donate appreciated stock to section 501(c)(4) organizations without paying tax on the underlying gain.

Witness Philip Hackney explained in an exchange with Chu that donors who contribute appreciated stock to a section 501(c)(4) organization are not subject to capital gains taxes and the donations are not subject to the gift tax. In contrast, he said, section 84 provides that donors who contribute appreciated stock to a section 527 political organization are taxed on their gains.

Hackney called the more favorable treatment of stock donations to section 501(c)(4) organizations "a nice way, if you're wealthy, to [make] tax-advantaged contributions and accomplish political purposes." He commented that the government should be politically neutral in the way it treats charitable donations and that taxing the gain on appreciated stock donated to section 501(c)(4) organizations would ensure parity in the treatment of contributions to those entities and section 527 organizations.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Ferguson nixes 2024 re-election bid

The list of House Ways and Means Committee members eyeing the exit door got a bit longer this week as Republican taxwriter Drew Ferguson of Georgia announced he will not run for another term in office next year and will retire from government after the 118th Congress formally adjourns in January of 2025.

Ferguson, a dentist, was first elected to the House in 2016 and joined the Ways and Means Committee in 2019. He currently is chairman of the Ways and Means Social Security Subcommittee and has a seat on the Tax Subcommittee. He did not elaborate on his post-government plans other than to say in a written statement that he intends to spend more time with his family "while continuing to work to keep Georgia the best state in America to live and do business."

Copyright © 2023 Deloitte Development LLC
All rights reserved.

Ferguson's announcement brings to five the number of Ways and Means Committee members who in recent weeks have revealed plans to wrap up their time on Capitol Hill. Democrat Brian Higgins of New York will resign his congressional seat in February of next year to take a position as head of a Buffalo-area arts organization. Democratic taxwriters Dan Kildee of Michigan and Earl Blumenauer of Oregon, along with Republican Brad Wenstrup of Ohio have all announced that they will not seek re-election in 2024 and will return to private life at the end of their respective terms.

— 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.