Senate sends three-week funding measure to Biden's desk as appropriators race to lock down larger spending deal

After voting down a handful of amendments demanded by certain Republicans, the Senate on February 17 cleared a short-term continuing resolution (CR) that will keep the government's doors open past midnight on February 18 when the current stopgap appropriations measure funding government operations is otherwise set to lapse. The new CR—which will fund the government for three additional weeks through March 11—was approved on a bipartisan vote of 65-27. It cleared the House on February 9, also with bipartisan support.

President Biden signed the measure into law on February 18, making it the third short-term appropriations patch enacted in fiscal year 2022, which began on October 1 of last year.

Appropriators race to conclude 'omnibus' spending deal

Passage of the stopgap—which has been widely expected and relatively noncontroversial (aside from a handful of GOP-demanded amendment votes touching on various issues such as vaccine mandates and a balanced federal budget, all of which were successfully turned away by Democrats)—comes as Democrats and Republicans on the Senate and House Appropriations Committees race to put the finishing touches on an "omnibus" package of 12 fully fleshed-out appropriations bills that would fund the government for the remainder of fiscal year 2022 (from March 12 through September 30, 2022) while also directing larger outlays to both domestic and defense-related programs during that period.

While the top Democrat and Republican on each of those two spending committees (the so-called "four corners" negotiators) announced on February 9 that they had reached an agreement in principle on a "framework" for an omnibus funding measure, details of that framework—including the top-line spending level agreed to and the exact breakdown of that number among the 12 subcommittees charged with drafting detailed legislation—remained murky this week. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 5, Feb. 11, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220211_1.html

Still, negotiators remained confident that an omnibus package could be drafted and enacted in the next few weeks.

"This gives us some time," Senate Appropriations Committee ranking member Richard Shelby, R-Ala., said on February 16 of the three-week CR. "Within our framework, we're moving. Nothing's final until we get there. But we're making good progress at the moment."

No tax provisions in CR, but what about the omnibus?

While the short-term continuing resolution is free of any tax-related provisions, it has not been uncommon in recent years for lawmakers to include certain discrete tax changes within larger-scale spending packages, such as an omnibus funding bill.

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Section 174 delay in the mix?: It currently remains unclear whether policymakers will attempt to move any tax-related provisions in the omnibus spending package currently being negotiated, although certain stakeholders have expressed hope that Congress could act to reverse, at least temporarily, a change within tax code section 174—originally enacted as part of the 2017 Tax Cuts and Jobs Act (P.L. 115-97)—that, as of January 1 of this year, requires certain research expenditures to be amortized over a number of years rather than deducted currently.

But even an effort to delay any required amortization under section 174, which has attracted bipartisan support in both the House and Senate, could face political headwinds in the context of an omnibus spending measure if it is perceived by enough congressional Democrats as a recognition that their broader tax-and-spending initiative—the Build Back Better Act—is foundering. The Build Back Better legislation (H.R. 5376), which cleared that House last November but remains stalled in the Senate, contains language that would delay section 174 amortization through 2025. (For additional discussion about the status of the legislation and its prospects for reaching the White House in the near term, see *Tax News & Views*, Vol. 23, No. 4, Feb. 4, 2022.)
URL: https://www.congress.gov/bill/117th-congress/house-bill/5376/text
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220204_1.html

Any chance for extenders?: While less discussed publicly, a similar dynamic could put a damper on any efforts to use an omnibus as a vehicle to address expired and expiring tax “extenders,” a number of which impact renewable energy and energy-efficiency investments and would be extended and reformed in a more wholesale way by Democrats’ Build Back Better legislation.

Gas tax reprieve appears unlikely: In related news this week, Senate Finance Committee member Maggie Hassan, D-N.H., and Sen. Mark Kelly, D-Ariz., both of whom are generally thought to face difficult re-election races this fall, put forward legislation that would suspend the 18.4 cents per gallon tax on gasoline through the remainder of 2022.

“People are feeling a real pinch on everyday goods, and we must do more to help address rising costs, particularly the price of gas,” Hassan said.

Several House Democrats introduced similar legislation on February 18.

But prospects for a gas tax holiday currently appear dubious at best, due to opposition from GOP leaders and even from some Democrats. If attached to the forthcoming omnibus appropriations bill, any proposed Democratic gas tax cut would require the support of at least 10 Senate Republicans to be successful—an outcome that seems unlikely.

In a February 17 floor speech, Senate Minority Leader Mitch McConnell, R-Ky., contended that “Democrats want to blow a $20 billion hole in highway funding so they can try to mask the effects of their own liberal policies on working Americans.”

Across the aisle, Senate Environment and Public Works Committee Chairman Tom Carper, D-Del., expressed “real concerns about pausing something that plays such an important role in paying for our infrastructure.”

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(Carper also sits on the Senate Finance Committee.) Even House Transportation and Infrastructure Committee Chairman Peter DeFazio, D-Ore., criticized the idea, effectively echoing McConnell's comments by saying it would "blow a $26 billion hole in the Highway Trust Fund."

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