Government funding dominates fall congressional agenda, but year-end action on taxes remains a possibility

With the Inflation Reduction Act (P.L. 117-169) now signed into law, Congress is returning from its August recess to face a formidable to-do list that likely will be dominated by efforts to keep the government's doors open for fiscal year 2023, which begins on October 1. Tax policy will also be on the agenda, though, as lawmakers seek to advance assorted tax-relief proposals that fell through the legislative cracks over the past year, renew a handful of expired and expiring tax "extenders" provisions, and possibly enact an additional round of retirement security reforms.

But with the legislative calendar compressed because of the upcoming midterm congressional elections, it appears likely that Congress will opt for a short-term government funding patch this month and defer action on a more durable funding measure, as well as any tax items on which the two chambers can reach an agreement, until a post-election lame duck legislative session.

The Senate came back into session on September 6. House lawmakers return to Capitol Hill on September 13.

Short-term continuing resolution appears likely

The start of fiscal year 2023 may be just three weeks away, but the House and Senate have made only limited progress on their respective versions of the 12 appropriations bills required to fund federal departments and agencies.

The House so far has approved only six spending measures, including a Financial Services and General Government package that proposes a $1 billion boost in IRS funding for the coming fiscal year. (The proposed IRS funding increase would be on top of the special 10-year, $80 billion allocation for the agency that was enacted in the Inflation Reduction Act.) The timeline for considering the remaining six House spending measures has not been announced, however. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 24, July 22, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220722_3.html

Senate Democratic appropriators have released 12 proposed spending measures of their own—and are eyeing an IRS budget increase similar to the one approved in the House—but the path forward for those proposals is not yet clear. To date, none have been taken up in the Appropriations Committee or brought to the Senate floor for consideration. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 27, Aug. 5, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220805_2.html

If the House and Senate can't agree on a unified spending plan for the upcoming fiscal year by the October 1 deadline—an outcome that appears highly likely given the volume of appropriations work that is yet to be completed in both chambers—then they'll almost certainly pivot to a continuing resolution that keeps the government's doors open by funding federal departments and agencies at fiscal year 2022 levels.

House Democrats are said to be preparing a funding patch that would last through December 16, which, if enacted, would require lawmakers to revisit the issue during a lame duck legislative session after the upcoming midterm congressional elections. A continuing resolution could come to the House floor for a vote as early as the week of September 13 and then be sent to the Senate for consideration. But the process of moving a funding patch through Congress and getting it to President Biden's desk could become complicated if lawmakers attempt to add extraneous—and potentially divisive—provisions to the "must pass" measure, such as additional funds for COVID relief, disaster relief, and aid to Ukraine that were recently requested by the White House, or changes to the permitting rules for energy pipelines and exports that are part of a deal that Senate Majority Leader Charles Schumer, D-N.Y., cut with West Virginia Democratic Sen. Joe Manchin last month to secure Manchin's support for the Inflation Reduction Act.

Republican leaders in the House and Senate are said to prefer a "clean" bill that addresses government funding and steers clear of unrelated provisions.

Targeted tax code changes

Although there is no comprehensive tax bill on the fall agenda, lawmakers in both parties see the closing days of the 117th Congress as an opportunity to reverse certain discrete provisions enacted in the Tax Cuts and Jobs Act of 2017 (TCJA), secure passage of certain provisions that were left out of Inflation Reduction Act, and renew expired and expiring tax "extenders" provisions.

Tax treatment of research expenses: There has been bipartisan support in both chambers for repealing or deferring a change within tax code section 174—originally enacted as part of the TCJA—that, as of January 1 of this year, requires certain research expenditures to be amortized over a number of years rather than deducted currently.

A provision in the Build Back Better legislation that cleared the House last November would have allowed expensing for an additional four years before requiring amortization; however, it was not incorporated into the recently enacted Inflation Reduction Act. According to an estimate by the Joint Committee on Taxation (JCT) staff, the provision would have increased the deficit by about $4 billion over the 10-year budget window.

Interest expense limitation, bonus depreciation: Lawmakers also might seek to reverse two other TCJA-related tax code changes (in addition to the section 174 provision). The first change, which took effect at the beginning of this year, requires companies to calculate their adjusted taxable income, for purposes of the limitation on deductions of net interest expense, based on earnings before interest and taxes (EBIT) as opposed to earnings before interest, taxes, depreciation, depletion, and amortization (EBITDA).

The second change calls for the bonus depreciation rate for most qualified property to be reduced to 80 percent beginning in 2023, with additional reductions in each successive year until it reaches 20 percent in 2026 and falls to zero thereafter. (A slightly different phase-out schedule applies to certain property.)

SALT cap redux: Congressional Democrats representing jurisdictions with high local income and property taxes may well resume their longstanding efforts to eliminate or relax the current-law $10,000 cap on the deduction for state and local taxes (SALT), which was enacted in the TCJA and is scheduled to expire after 2025.

The House-passed version of the Build Back Better Act called for temporarily increasing the cap on the deduction to $80,000, and members of what has become known as the "SALT Caucus" had vowed to block the Inflation Reduction Act if it did not include a similar provision, although they ultimately backed down from that position and SALT relief was left out of the enacted measure.

Enhanced child tax credit: Many congressional Democrats are expected to continue their push for a long-term extension of enhancements to the child tax credit that were enacted in 2021 as part of the American Rescue Plan and expired at the end of last year.

The House-approved Build Back Better legislation called for extending the enhanced credit through 2025 and proposed additional modifications to make it more generous. But that provision drew criticism from Senate Republicans—as well as from Democratic Sen. Joe Manchin—and was one of many points of contention that kept Build Back Better legislation from advancing in that chamber. The provision was left out of the Inflation Reduction Act; however, Democrats hoping to provide tax relief for low- and moderate-income taxpayers this year may seek to use an enhanced child tax credit as a bargaining chip in exchange for their support of certain business-focused tax provisions.

Traditional extenders: Congress also faces decisions about a variety of expired and expiring temporary tax "extenders" provisions benefiting businesses and individuals. While the Inflation Reduction Act addressed a host of temporary provisions related to renewable energy and energy efficiency, other extenders have been expired since the end of 2021 or are set to lapse at the end of this year. (A complete list of temporary provisions—which does not reflect changes resulting from the recently enacted Inflation Reduction Act—is available from the JCT staff.)
URL: https://www.jct.gov/publications/2022/jcx-1-22/

Other miscellaneous tax items: A handful of other items that have constituencies arguing for their enactment as part of a potential year-end bill also could come into play. These provisions include relief from more stringent 1099 reporting requirements for so-called third-party payment processors that were enacted in the American Rescue Plan and took effect this year, relief from last-in-first out (LIFO) inventory recapture rules for car dealers impacted by recent supply chain issues, and so-called tax "technical corrections" potentially related to both the Tax Cuts and Jobs Act and the Inflation Reduction Act.

Retirement security

There is also bipartisan, bicameral support for enacting another round of retirement security protections that would build on 2019's SECURE Act, particularly in light of the fact that two prominent boosters of retirement legislation—House Ways and Means Committee ranking member Kevin Brady, R-Texas, and Senate Finance

Committee member Rob Portman, R-Ohio—did not seek re-election this year and will leave Capitol Hill when the 117th Congress expires.

The House overwhelmingly approved a bipartisan "SECURE 2.0" bill this past March. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 13, Apr. 1, 2022.) The Senate Finance Committee unanimously cleared its version of a SECURE 2.0 measure in June. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 22, June 24, 2022.) Finance Committee Chairman Ron Wyden, D-Ore., and ranking member Mike Crapo, R-Idaho, formally introduced that proposal on September 8. Legislative text and a section-by-section summary are available from the Finance Committee staff.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220401_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220624_1.html
URL: https://www.finance.senate.gov/download/earn-act-bill-text-9822
URL: https://www.finance.senate.gov/download/earn-act-section-by-section

Both bills include provisions that, broadly speaking, are aimed at making it easier for businesses to offer tax-qualified retirement savings plans to their employees and for individuals to participate in retirement plans and grow their tax-preferred savings. The JCT estimates that both bills would generate relatively modest increases in federal receipts over the 10-year budget window, primarily by offsetting forgone revenue with provisions that would make certain retirement accounts and retirement account contributions subject to after-tax "Roth" treatment.

A lame duck omnibus in the offing?

It is unclear just how much Congress can accomplish on tax issues in September and October with the midterm elections looming and lawmakers eager to hit the campaign trail. The current calendars call for the House to recess for the election season on September 30 and the Senate to leave October 21. That means there is a distinct possibility that any tax priorities on which lawmakers might reach consensus in the remaining months of 2022 could be considered, along with a longer-term government funding agreement, as part of an omnibus legislative package during the post-election lame duck legislative session.

It's worth noting, though, that the breadth of a potential lame duck bill is currently unclear. The election results will play a significant role in setting expectations for what can happen in a year-end legislative session since each party's appetite for striking a deal will depend in large part on how they perceive their relative power both before and after the 118th Congress officially convenes next January.

Moreover, to the extent a deal is possible, the wide range of issues in play could make for complex and difficult negotiations, and lawmakers would need to be careful to avoid producing a bill so big that it collapses under its own weight.

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