Sweeping tax code changes less likely in 118th Congress as voters split control of House, Senate

After several days of uncertainty following the November 8 midterm congressional elections, enough of the cliffhanger House and Senate races have been resolved to give us a clear idea of who will be shaping the legislative agenda—including for tax policy—in the upcoming 118th Congress that convenes in January.

As of press time, Republicans have regained leverage on Capitol Hill after securing a majority in the House of Representatives and will be in a position to advance tax policy priorities in that chamber that had been largely relegated to the sidelines over the past two years. Democrats, for their part, have retained control of the Senate and, of course, still hold the White House. But with both parties advancing tax policy platforms that are fundamentally at odds with each other, sweeping changes to the Internal Revenue Code proposed by either party in the next Congress appear unlikely to be enacted into law, although targeted measures that can attract bipartisan support may have a better chance for legislative success.

This special edition of *Tax News & Views* updates a report on the post-election tax policy outlook released on November 12 after Democrats secured a majority in the Senate.

Results at a glance

According to results reported by C-SPAN (based on data from the Associated Press) Republicans will hold at least 218 House seats in the next Congress—enough for a majority in the 435-seat chamber—and Democrats will hold at least 210. This tally will change in the coming days as votes are counted and results are finalized in the seven races that remain undecided.

In the Senate, Democrats prevailed in what had been an undecided contest in Nevada on November 12, which gave them control of at least 50 seats—enough to eke out a majority with the tiebreaking vote of Vice President Harris. Republicans currently have a lock on at least 49 seats.

The Georgia Senate race remains undecided and the winner will be determined in a runoff election on December 6 between Democratic incumbent Sen. Raphael Warnock and Republican challenger Herschel Walker. (None of the three candidates in Georgia's Senate contest received at least 50 percent of the vote in the November 8 general election and state law requires a runoff between the top two vote-getters in those circumstances.) If Democrats win that contest, their majority will expand to 51 seats. A Republican victory would give the GOP 50 seats next year (the same margin they have in the current Congress), but the balance of power still would tip toward the Democrats because of the vice president's power to break party-line deadlocks.

The Alaska Senate race also remains undecided, but the top two candidates in that contest—incumbent Sen. Lisa Murkowski and challenger Kelly Tshibaka—are both Republicans, so that seat is expected to remain with the GOP regardless of who is declared the winner.

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Reshaping the taxwriting committees

The Republican takeover of the House means that the House Ways and Means Committee will also come under GOP control in the 118th Congress while the Senate Finance Committee will remain in Democratic hands. Both panels will see changes to their membership rosters as a result of some previously announced departures.

Ways and Means: As Republicans prepare to take the Ways and Means Committee gavel, the question of who will chair the panel remains unanswered. Rep. Kevin Brady, R-Texas, the current ranking member, did not seek re-election this year. (Under House GOP rules, Brady was term-limited in his committee leadership position and would have been ineligible to continue in a top role on Ways and Means even if he had sought and won another term in Congress.) With Brady not a factor in the leadership race, three GOP taxwriters—Reps. Vern Buchanan of Florida, Adrian Smith of Nebraska, and Jason Smith of Missouri—are now vying to become the committee's next chairman. The House Republican Steering Committee, which is responsible for recommending GOP lawmakers for leadership positions on House committees and for membership on those panels, will meet to consider who it will recommend to serve as the new Ways and Means chairman. (The full Republican Conference will vote to accept or reject the Steering Committee's recommendations, but that is often little more than a formality.) The steering committee's meeting has not yet been scheduled, although reports indicate it could occur the week after Thanksgiving.

Across the aisle, Rep. Richard Neal, D-Mass., who currently chairs the committee, is expected to lead Democratic taxwriters as the ranking member of the panel in the next Congress. (House Democrats do not have term limits for committee leadership posts.)

Among the panel's rank-and-file membership, Republicans will need to fill the slots being vacated by Brady and Rep. Tom Rice of South Carolina, who lost his primary race earlier this year, as well as the seat that had been held by Rep. Jackie Walorski of Indiana, who died on August 3.

Democratic taxwriters who will not be returning for the 118th Congress include Reps. Ron Kind of Wisconsin and Stephanie Murphy of Florida, who did not seek re-election, and Rep. Tom Suozzi of New York, who made an unsuccessful bid to become that state's governor.

Finance: In the Senate, leadership on the Finance Committee is expected to remain stable, with Sen. Ron Wyden, D-Ore., staying on as chairman and Sen. Mike Crapo, R-Idaho, continuing as ranking member.

The Finance Committee's Republican line-up will see several changes in the new Congress, however, as taxwriters Richard Burr of North Carolina, Rob Portman of Ohio, and Patrick Toomey of Pennsylvania opted not to seek re-election this year. Another Republican committee member—Sen. Ben Sasse of Nebraska—is expected to resign from Congress to become president of the University of Florida, although he has not yet announced when his resignation will become effective.

There are no impending departures among the panel's Democratic members.

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Committee rosters so far: A complete list of lawmakers who will—and won't—be returning to their taxwriting posts next year (based on races that were decided as of press time) is available from Deloitte Tax LLP.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/221115_1_suppA.pdf

Committee headcounts and party allocations: As additional election results are reported and party headcounts in the two chambers are certified, House and Senate leaders will determine the number of seats on their respective standing committees in the 118th Congress and how those seats will be allocated to members of the majority and minority parties based on each party's overall share of seats in that chamber.

There are 43 seats on the Ways and Means Committee in the current Congress, with 25 allocated to the Democratic majority and 18 to the Republican minority. The Senate Finance Committee currently has 28 seats, evenly divided between Democrats and Republicans to reflect what has been a 50-50 party split in that chamber.

Looking ahead to the potential composition of the taxwriting committees for the next two years, it's worth noting that in each of the 10 most recent Congresses, the majority party's share of Ways and Means Committee seats has exceeded its overall share of seats in the House by a range of roughly 3.9 to 7.8 percentage points. Based on that pattern, if the size of the Ways and Means Committee remains at its current level of 43 seats and the GOP's margin of control in the House remains at 218 seats (about 50.1 percent of the total chamber) as currently reported, Republicans could expect to hold between 23 and 25 seats on the panel when the 118th Congress convenes and would be in a position to add as many as 7 new members. Democrats, on the other hand, would need to remove several current members from their roster in addition to the three who did not run for re-election.

In the Senate, however, data from the 10 most recent Congresses indicate that party ratios on the Finance Committee generally have mirrored party ratios in the chamber as a whole, with the majority party's representation in the committee room typically exceeding its share of seats on the chamber floor by less than 1 percentage point. If Democrats lose the runoff Senate race in Georgia and the Senate party headcount remains tied at 50-50, we can once again expect to see an equal allocation of Finance Committee seats in the next Congress. If Democrats win the Georgia race and expand their majority in the chamber to 51 sears in the new Congress, they are likely to insist on having a majority of seats on the taxwriting panel and therefore might either add a seat of their own or tell Republicans they may not fill one or more of the vacancies on their roster resulting from pending GOP retirements.

A table comparing majority-party margins in the House and Senate with majority-party allocations of taxwriting committee seats in the last 10 Congresses is available from Deloitte Tax LLP.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/221115_1_suppB.pdf

Tax policy implications

The fact that Republicans will be controlling the House, Democrats will be running the Senate, and both parties are putting forward largely irreconcilable visions of tax policy points to dim prospects for the enactment of broad, substantial tax code changes over the coming two years.

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House Republicans doubling down on TCJA: The Commitment to America platform that House Minority Leader (and likely incoming Speaker) Kevin McCarthy, R-Calif., released on behalf of his Republican colleagues September 16 addresses tax only at a very high level; however, it appears to suggest that the GOP intends to double down on the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97)—the massive tax bill that a Republican-controlled House and Senate moved through Congress under budget reconciliation procedures without any support from Democrats—and seek permanent extensions of the tax relief provisions for individuals that are scheduled to expire at the end of 2025, as well as enhancements to some of that measure's business-focused tax breaks, such as bonus depreciation.
URL: https://www.republicanleader.gov/commitment

In conjunction with that blueprint, GOP taxwriter Vern Buchanan of Florida—one of the contenders to take over as Ways and Means Committee chairman in the next Congress—unveiled legislation that would permanently extend the TCJA's tax breaks for individuals, such as the reduced income tax rates, the increased exemption for estate and gift taxes, the increased standard deduction, and the increased child tax credit. Buchanan's proposal also would make permanent the TCJA's $10,000 cap of the deduction for state and local income and property taxes, which, like the tax cuts for individuals, is set to expire at the end of 2025.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220923_1_suppA.pdf

On the business side of the tax code, the House GOP's Task Force on Jobs and the Economy (one of the seven task forces that developed recommendations for the Commitment to America platform) signaled likely GOP tax priorities in a September 22 fact sheet highlighting Republican proposals introduced in the 117th Congress that would, among other things:
URL: https://republicanleader.house.gov/wp-content/uploads/2022/09/JETF-Growth-Through-Innovation-3-pager-v.2.pdf

- Expand start-up business tax incentives;
- Reverse a TCJA provision that, starting 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);
- Double the research and development tax credit;
- Permanently extend the expensing of research and development costs; and
- "Provide new incentives to bring valuable intellectual property and related jobs back to the United States."

Some lawmakers hope that Congress will not wait for next year and will instead address the expensing of research costs and the switch from EBIT to EBITDA for calculating net income for purposes of the limitation on deductions of net interest expense during the post-election lame duck session that began November 14 and is expected to run through at least mid-December. (More on the lame duck session below.)

Republicans also may be eyeing a rollback of some of the provisions that were signed into law in the Inflation Reduction Act (P.L. 117-169)—the roughly $740 billion budget reconciliation package that the current

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Democratic-controlled House and Senate approved and sent to the White House this past August without any GOP support. In a September 16 speech unveiling the Commitment to America agenda, Minority Leader McCarthy announced that the first bill to be introduced in a GOP-controlled House next year would be to "repeal 87,000 IRS agents"—a reference to the roughly $80 billion in mandatory funding (over 10 years) that the Inflation Reduction Act has allocated to the Internal Revenue Service to strengthen its compliance and enforcement programs as well as modernize its information systems and overhaul its customer service operations.

Just two weeks after McCarthy's remarks, Ways and Means Committee Republican Adrian Smith of Nebraska—another candidate for the top spot on the taxwriting panel—unveiled legislation that would rescind the portion of the new IRS funding allocated to beefing up enforcement resources.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2022/09/SMITNE_024_xml1-1.pdf

Senate Democrats doubling down on Inflation Reduction Act: In the Senate, the agenda for the Democratic majority likely will align with the policies laid out, albeit at a very high level, in the economic blueprint that President Biden released on September 9.
URL: https://www.whitehouse.gov/wp-content/uploads/2022/09/Biden-Economic-Blueprint-Report-720PM-MASTER-DOC.pdf

Among its tax proposals, the blueprint calls for revisiting many of the revenue-raising provisions targeting businesses and upper-income individuals that were left out of the recently enacted Inflation Reduction Act because they did not have the support of all 50 Senate Democrats. (The Inflation Reduction Act moved under fast-track budget reconciliation procedures and Republicans in both chambers were in lockstep against it, so Senate Democratic leaders had to eliminate certain provisions and modify others to ensure that their caucus was unified and that the measure would clear the chamber.)

Biden's agenda also calls for rescinding certain tax cuts for those taxpayers enacted in the TCJA.

Key tax proposals in the White House plan would:

- Make unspecified changes to the corporate tax rules to "correct . . . the failures" of the TCJA—a reference that appears to leave open the possibility of an increase in the corporate tax rate although the blueprint does not explicitly mention such a proposal or a target rate;
- Impose a 15 percent minimum tax rate on certain large US-based multinational corporations to bring the US into alignment with the Pillar II global minimum tax agreement being advanced by the OECD;
- Make other unspecified "structural changes to our tax code to remove incentives to offshore jobs and profits";
- Return individual income tax rates for taxpayers with income over $400,000 to the levels in effect before the enactment of the TCJA;
- Enact a "billionaire minimum tax" (presumably following the contours of a proposal in the administration's fiscal year 2023 budget blueprint for a tax of 20 percent on total income, generally

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inclusive of unrealized capital gains, for all taxpayers with wealth—generally calculated by subtracting liabilities from assets—greater than $100 million);

- Eliminate the "carried interest tax loophole" and make additional unspecified changes to the treatment of capital gain income;
- Eliminate stepped-up basis at death for "taxpayers at the top";
- Eliminate the "Medicare tax loophole" (presumably by treating earnings distributed to shareholders of an S corporation as self-employment income for purposes of Medicare payroll taxes); and
- Repeal other unspecified "loopholes" in the tax code.

Revenue generated by these proposed tax increases would offset the cost of proposals to permanently extend enhancements to the earned income tax credit (EITC) and the child tax credit that were enacted in the American Rescue Plan on a temporary basis and expired at the end of 2021.

The Build Back Better legislation that cleared the House last November called for extending the enhanced EITC through 2022. It also called for renewing the enhanced child tax credit through 2022 and proposed additional modifications to make it more generous. But those provisions drew criticism from Senate Republicans—as well as from Democratic Sen. Joe Manchin of West Virginia—and became one of many points of contention that kept the House-passed measure from advancing in the upper chamber. The enhanced credits were subsequently left out of the Inflation Reduction Act—the successor to Build Back Better—when that measure was unveiled this summer. (Democrats may attempt to reach a deal on an expanded child tax credit in the year-end lame duck legislative session.)

Senate Democrats also can be expected to defend the additional mandatory funding authorized in the Inflation Reduction Act to enhance the IRS's audit and enforcement resources. The White House and congressional Democrats have argued that deploying highly specialized audit teams to focus on top-tier corporations, large partnerships, and ultrawealthy individuals will help the agency in its efforts to reduce the "tax gap"—that is, the difference between the dollar amount of taxes legally owed to the federal government and the amount actually paid and collected on a timely basis. An estimate from the IRS released on October 28, which covers tax years 2014 through 2016, puts the gross annual tax gap at $496 billion, an increase of $58 billion from the prior estimate (which covered tax years 2011 through 2013), and the net annual tax gap (reflecting late payments and collections through enforcement activities) at $428 billion.
URL: https://www.irs.gov/pub/irs-pdf/p1415.pdf

Beyond the provisions in the Inflation Reduction Act and the White House economic blueprint, many Senate Democrats also are likely to embrace a proposal President Biden announced on October 31 that would impose a new tax and unspecified additional "restrictions" on major oil companies that do not use a portion of their profits—which Biden argued have reached "historic" levels as a result of higher fuel prices driven by the war between Russia and Ukraine—to increase production and refining capacity, actions that he said would lead to lower prices at the pump for consumers. The president did not provide details on how such a tax would operate, saying only that his administration would "work with Congress to look at . . . options that are available to us and others."

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URL: https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/10/31/remarks-by-president-biden-on-recent-reports-of-major-oil-companies-making-record-setting-profits/

Recipe for a stalemate?

Looking ahead to 2023, neither party appears well positioned to transform its broad tax policy platform into a substantial legislative package that can clear both chambers and be signed into law, and with the two parties staking out diametrically opposed positions on tax policy there do not appear to be any obvious paths to a compromise.

House Republicans conceivably could move a partisan bill through that chamber that enhances the TCJA—for example, by permanently extending tax cuts for individuals—and rolls back what they see as objectionable provisions in the Inflation Reduction Act such as the new mandatory funding for IRS enforcement efforts; however, such a measure likely would be dead-on-arrival in a Democratic-controlled Senate.

Senate Democrats, for their part, could attempt to advance a bill that builds on the Inflation Reduction Act—for example, by proposing new taxes on large businesses and certain upper-income individuals—and undo portions of the TCJA. But without the requisite three-fifths supermajority (typically, 60 votes) to avert a near-certain GOP filibuster and with no Republicans likely to break ranks to support the Democratic tax agenda, the prospects that such a measure could even reach the floor for a vote appear remote. Moreover, because the House will be under Republican leadership in the next Congress, Democrats will not have the option to bypass Senate procedural hurdles and move a bill under fast-track budget reconciliation procedures. (Moving a bill under budget reconciliation requires the House and Senate to first adopt a unified budget resolution, an outcome that is highly unlikely when each chamber is held by a different party.)

It remains possible, though, that lawmakers might be able to reach consensus on a handful of narrower tax provisions, to the extent they are not addressed during the lame duck session currently underway (see additional discussion on the lame duck below). That outcome, however, likely would depend in large part upon the broader political dynamics surrounding other legislation moving through Congress (such as a government funding package or a measure to increase the federal debt ceiling) that could serve as vehicles for certain of these policies.

Proposals falling into this category could include legislation that would repeal or defer research expense amortization (a policy that maintains broad bipartisan support in both chambers), the new stricter limits on the deduction for net interest expense, and the scheduled phase-down in the bonus depreciation percentage. Other non-TCJA related policies that have been percolating in Congress—such as relief from last-in-first-out (LIFO) inventory recapture for automobile dealers affected by supply chain issues and relief from stricter reporting requirements for third-party payment processors that took effect this year—could also fall into this bucket, as could another round of retirement security legislation.

Moreover, other narrow tax issues that are not currently on the radar of either party could emerge in the next Congress and generate enough bipartisan support to clear both chambers and become law, although at this point they fall into the realm of “unknown unknowns.” But again, at this time it is difficult to state with

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certainty the relative prospects for these items as the political ramifications of the midterms continue to be absorbed.

But even if the prospect of a large-scale legislative success in the 118th Congress proves to be elusive, the coming two years nonetheless could provide messaging opportunities for each party to tout its respective tax proposals and make the case for why voters should give it unified control of Capitol Hill and the White House in the 2024 elections—and, along with that, leadership over how to address the sunset, just a bit more than 12 months later, of key pieces of the Tax Cuts and Jobs Act.

Much of the action on the messaging front might come at the committee level as taxwriters in both chambers highlight their tax priorities—for example, through hearings and mark-ups held by the majority side plus high-profile legislative proposals and discussion drafts advanced by taxwriters in both parties. Senate Finance Committee Chairman Ron Wyden, for example, has sought over the past several years to advance innovative tax policy ideas by releasing discussion drafts on difficult issues such as the tax treatment of multinational corporations and partnership income, as well as a white paper proposing an annual mark-to-market regime for high-income households, and he may view that practice as a valuable messaging tool going forward.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210825_1_suppA.pdf
URL: https://www.finance.senate.gov/imo/media/doc/Pass-through%20Changes%20Discussion%20Draft%20Legislative%20Text.pdf
URL: https://www.finance.senate.gov/imo/media/doc/Treat%20Wealth%20Like%20Wages%20RM%20Wyden.pdf

Don’t sleep on tax regulatory action

The fact that Congress will be narrowly divided and unlikely to produce major tax legislation does not mean that federal action on tax policy will descend into a state of dormancy for the next two years, however. We can expect that the Treasury Department (and other federal agencies) will be active in writing regulations that will have a major impact on businesses and individuals. Indeed, this has been the norm for recent presidencies: when the Congress is unable to produce legislation, policymaking by regulation becomes a major focus. Although Treasury can’t administratively raise tax rates, decisions around how to implement previously enacted laws, especially the Inflation Reduction Act, will have major implications for affected taxpayers.

Hope for a lame duck tax package?

More immediately, there are lawmakers in both parties who see the post-election lame duck legislative session that began November 14 as an opportunity to reach consensus on an assortment of tax-related provisions as the 117th Congress winds down. Under the current schedule the House and Senate will be in session through November 18, adjourn the week of November 21 for the Thanksgiving recess, then reconvene the week of November 28 and remain in session through at least mid-December.

Topping the lame duck legislative agenda will be funding federal government operations. Lawmakers have not yet agreed on a spending measure for fiscal year 2023, which began on October 1, and are currently keeping the government’s doors open through a short-term continuing resolution (approved in September) that funds federal departments and agencies at fiscal year 2022 levels through December 16. Once the lame duck session

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begins, Congress will be under pressure to clinch a funding deal for the remainder of this fiscal year or, alternatively, to adopt another continuing resolution that likely would extend into 2023. Any funding measure that clears the House and Senate also may include supplemental emergency spending for additional aid to Ukraine and disaster relief related to Hurricane Ian and Hurricane Fiona.

A host of other issues also will be clamoring for lawmakers' attention before the end of the year—for example, several new and proposed tax code changes (more on those below), Electoral Count Act reforms, and marriage equality codification—but action on any of these items likely will depend on the extent to which the two parties are in a mood to compromise as they come back from the campaign trail.

Although there is no comprehensive tax bill currently moving through either chamber, there are varying degrees of bipartisan support for priorities such as reversing or deferring certain base-broadening provisions enacted in the Tax Cuts and Jobs Act, passing certain family-focused tax incentives that were left out of the Inflation Reduction Act, renewing expired and expiring tax "extenders" provisions, and advancing another round of retirement security legislation.

Any tax items that can win consensus among lawmakers during the lame duck session may be packaged into an omnibus bill with a long- or short-term government funding measure. (As already noted, certain items that have bipartisan support may resurface on the legislative agenda in the next Congress if they are not addressed in the lame duck.)

Tax treatment of research expenses: There has been strong 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 immediately.

A provision in the Build Back Better Act that cleared the House last November would have allowed expensing for an additional four years before again returning to required amortization. That measure subsequently stalled in the Senate, however, and the proposed section 174 provision was not incorporated into the Inflation Reduction Act. According to an estimate by the Joint Committee on Taxation (JCT) staff, the provision in the House-passed legislation would have increased the deficit by about $4 billion over the 10-year budget window.
URL: https://www.jct.gov/publications/2021/jcx-46-21/

Business interest expense limitation, bonus depreciation: In addition to the section 174 modification, lawmakers also might seek to reverse two other changes enacted in the TCJA.

The first change, which took effect at the beginning of this year, generally requires companies to calculate their adjusted taxable income based on earnings before interest and taxes as opposed to earnings before interest, taxes, depreciation, depletion, and amortization for purposes of applying the limitation on deductions of net business interest expense.

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The second change generally calls for the bonus depreciation rate for most qualified property to be reduced from 100 percent to 80 percent beginning in 2023, with additional reductions of 20 percentage points in each successive year until the bonus rate reaches 20 percent in 2026 and falls to zero thereafter.

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. House Democrats included a one-year extension of the enhanced credit (through 2022) in their Build Back Better legislation; however, Senate Democratic leaders left that provision out of the Inflation Reduction Act to help ensure the measure's passage in that chamber. As part of their lame duck negotiations, Democrats hoping to provide tax relief for low- and moderate-income taxpayers this year may seek to use a more generous child tax credit as a bargaining chip in exchange for their support of certain business-focused tax provisions sought by Republicans.

The JCT staff has estimated that the one-year extension of the enhanced credit in the House-approved Build Back Better legislation would have reduced federal receipts by nearly $185 billion over the 10-year budget window, and that a permanent extension would reduce federal receipts by more than $1.2 trillion under conventional scoring methods and nearly $1.4 trillion under "dynamic" scoring methods (which take into account certain macroeconomic effects of the provision) over the same period. Lawmakers could seek to reach agreement on a compromise proposal that expands the credit but at a lower cost to the fisc, although at this point neither side has signaled an interest in moving to the middle on this issue.
URL: https://www.jct.gov/publications/2021/jcx-46-21/
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2022/11/117-1113.pdf

SALT deduction cap: 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. Members of what has become known as the "SALT Caucus" had vowed to block the passage of any reconciliation bill 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 version of the Inflation Reduction Act. Congressional Republicans, for their part, generally appear intent on making the cap permanent.

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 enacted in the Inflation Reduction Act—is available from the JCT staff.)
URL: https://www.jct.gov/publications/2022/jcx-1-22/

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Additional miscellaneous tax items: A handful of other items that have constituencies arguing for their enactment as part of a potential year-end tax package 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 LIFO inventory recapture rules for car dealers impacted by recent supply chain issues, and various tax "technical corrections" to both the Tax Cuts and Jobs Act and the Inflation Reduction Act.

Retirement security: There is 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 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 (H.R. 2954) 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 and ranking member Mike Crapo formally introduced that proposal (S. 4808) in the Senate on September 8.
URL: https://www.congress.gov/bill/117th-congress/house-bill/2954/text/eh
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.congress.gov/bill/117th-congress/senate-bill/4808/text

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 new IRS commissioner?: Another potential item on the lame duck agenda is consideration of Danny Werfel to replace IRS Commissioner Charles Rettig, whose statutory five-year term expired on November 12. The White House announced on November 10 that the president intends to nominate Werfel to that post. (For additional details, see *Tax News & Views*, Vol. 23, No. 36, Nov. 11, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/221111_2.html

Once he is formally nominated, Werfel will have to be vetted by the Senate Finance Committee and confirmed by the full Senate. Wrapping up the process by the end of this year likely would be an ambitious undertaking and it is highly possible that action could spill over into the new Congress. (The fact that Democrats will still control the Senate next year—and oversee the process of confirming White House nominees for judicial and administrative positions—could reduce the pressure on Majority Leader Charles Schumer, D-N.Y., to get Werfel confirmed during the lame duck session.)

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Doug O'Donnell, who is currently the IRS deputy commissioner for services and enforcement, is serving as acting IRS commissioner following Rettig's departure on November 12 .

Debt ceiling: There has been some talk of using the lame duck session to enact another extension of the federal debt ceiling. The most recent such extension (S.J. Res. 33), which was signed into law late last year, increased the federal statutory borrowing cap to roughly $31 trillion, an amount that according to the latest estimates is likely sufficient to ensure the nation can continue to pay its bills into at least the second half of 2023. A more precise projection of when the government would risk defaulting on its debt absent further congressional action on the debt ceiling is not currently available.
URL: https://www.congress.gov/bill/117th-congress/senate-joint-resolution/33/text

As a practical matter, however, time is a valuable commodity in a lame duck session and lawmakers may be reluctant to devote a great deal of it to the debt ceiling. If Congress does not address the debt ceiling during the lame duck session, some congressional Republicans have indicated that they intend to use that issue as leverage next year and seek to gain concessions from the White House on certain fiscal issues, such as cutting spending to address inflation, in exchange for their support of a debt ceiling increase. They could also seek to link it to action on nonfiscal issues, such as an expansion of energy exploration and production on federal lands. Any attempt by Democrats to raise the debt ceiling this year likely could be viewed, at least in part, as an effort to prevent Republicans from leveraging the issue to try to force other policy changes in 2023.

Action on tax priorities not guaranteed: Despite the wide range of tax priorities that lawmakers might address in the wake of the midterms, it's important to keep in mind that the breadth of an eventual lame duck bill—and whether that package will include any tax provisions—is not yet clear since each party's appetite for striking a deal may increase—or diminish—based 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 sheer volume 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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