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# Tax still on the sidelines as lawmakers struggle to clinch government funding accord

Discussions of a potential year-end tax bill stayed largely sidelined this week as appropriators and congressional leaders continued to struggle in their effort to strike a bipartisan accord on government funding for the remainder of fiscal year 2023.

**December 16 deadline looms, short-term funding patch appears likely**

Although fiscal year 2023 began on October 1, the House and Senate have not yet approved any of the 12 annual appropriations bills required to pay for government operations. Congress is currently keeping the government's doors open through a short-term continuing resolution, approved in September, that expires after December 16. That deadline puts pressure on lawmakers to enact some type of government-wide appropriations measure to avoid a partial government shutdown, a worst-case scenario that most observers still deem unlikely.

Congressional appropriators, however, are becoming more candid about the reality that lawmakers may not have an agreement in place by December 16 and will have to pass an additional one-week—or maybe even two-week—stopgap bill to buy themselves time to finalize a more durable appropriations measure.

Sen. Richard Shelby of Alabama, the top Republican on the Senate Appropriations Committee, acknowledged this possibility on December 7 when he told reporters that there has been "no movement" in terms of bipartisan agreement on topline spending for a 12-bill "omnibus" funding measure and that such a deal may not come until "right before Christmas" or "right after Christmas."

Recent reports have suggested that if talks remain at a standstill early in the week of December 12, congressional Democrats may attempt to move their own funding measure, drafted without input from Republicans—a bill that could likely make it through the House, but would almost certainly fall well short of the 60 votes needed to advance through the Senate.

Although Democratic negotiators appear to have acceded to a GOP-demanded boost in defense funding above what President Biden requested in his fiscal year 2023 budget proposal, hang-ups remain on the nondefense side, with Democrats demanding roughly $25 billion more in spending than Republicans are currently willing to accept. GOP negotiators, meanwhile, contend that domestic accounts already saw sizable increases as part of previously enacted COVID-relief legislation and the Inflation Reduction Act.

The alternatives to an omnibus funding measure would generally not be regarded as a good outcome by either party. For example, a year-long continuing resolution (CR) that simply extends fiscal year 2022 spending levels from December 17 through the end of fiscal year 2023 on September 30, 2023, would severely limit the ability of federal departments and agencies to make decisions around how they dedicate their federal resources. The Defense Department, for its part, has never had to operate under a "same-as-last-year" funding scenario for an entire fiscal year, and Defense Secretary Lloyd Austin has warned lawmakers that doing so would undermine national security.

Another alternative under at least some discussion is a medium-term CR that keeps the government open until sometime in early 2023—something Senate Minority Leader Mitch McConnell, R-Ky., floated this week. Choosing that option would settle the funding issue for the current lame duck session but would push the fiscal year 2023 appropriations process into the incoming 118th Congress and could set up fractious negotiations between Senate Democrats, President Biden, and the new House Republican majority, which will be seated on January 3.

**Murky prospects for year-end tax package**

With a deal clinched this week on another "must-pass" piece of the legislation—the annual National Defense Authorization Act, which was approved in the House on December 8 and is expected to clear the Senate during the week of December 12—a larger-scale funding bill that emerges from the lame-duck session is likely to be the last major legislation in the 117th Congress and could serve as the vehicle for a tax package if lawmakers can agree on which provisions to include. But with appropriations talks still at a standstill, the outlook for any tax title hitching a ride on a spending measure remains murky at best.

Generally speaking, the primary focus of the tax policy discussion continues to be on:

- Deferring or repealing a provision under section 174 that took effect in 2022 and requires certain research expenditures be amortized rather than deducted currently;
- Adopting bipartisan retirement security legislation that merges the House-passed "SECURE 2.0" bill and a similar measure reported out of the Senate Finance Committee earlier this year; and
- Reinstating the more generous child tax credit benefits that were enacted as part of the American Rescue Plan in 2021 and expired at the end of that year.

A number of other issues—including relief from the tighter limitation on interest deductibility under section 163(j) that took effect this year, and addressing the pending phase-out of 100 percent bonus depreciation—also are on the table. (For a more detailed look at these and other tax issues that may be in play during lame duck negotiations, see *Tax News & Views*, Vol. 23, No. 38, Nov. 16, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/221115_1.html

A familiar sticking point between the parties—that is, a Democratic demand that any relief from research amortization under section 174 be accompanied by an expansion of the child tax credit—continues to vex the tax negotiations. Prominent backers of the expanded child tax credit, including Senate Finance Committee Chairman Ron Wyden, D-Ore., and Finance Committee member Sherrod Brown, D-Ohio., continue to take a hard line in favor of linking the two policies.

"No corporate tax cuts without the child tax credit," Brown said at a December 7 press conference to promote the issue. "It's the deal that's on the table for Republicans to take."

Speaking at the same press conference, Senate Democratic taxwriter Michael Bennet of Colorado concurred, telling reporters that “before we go home, we should pass the biggest tax cut for working people in America.”

For her part, Rep. Rosa DeLauro, D-Conn., who chairs the House Appropriations Committee and is thus a key player in year-end spending negotiations, also appeared at the event and backed up Bennet’s and Brown’s stance in direct terms.

“Our task is clear. No R&D without CTC,” DeLauro said.

Some congressional Republicans—notably, House Ways and Means Committee ranking member Kevin Brady, R-Texas, have been reluctant to embrace that deal, citing the disparity in cost between an enhanced child tax credit and delayed implementation of mandatory amortization of research expenditures. The Joint Committee on Taxation (JCT) staff has estimated that the one-year extension of the expanded child tax credit in the Build Back Better legislation that cleared the House last year (but stalled in the Senate) would have increased the deficit by nearly $185 billion over the 10-year budget window, and that a permanent extension would hike the deficit by between $1.2 trillion and $1.4 trillion over the same period (depending on whether the estimated cost is calculated under conventional scoring methods or “dynamic” scoring methods which take into account certain macroeconomic effects of the provision). In contrast, deferring mandatory amortization of R&D expenses for four years (a provision included in an iteration of Build Back Better legislation approved by the House Ways and Means Committee last year but omitted from the House-passed measure) would have cost the fisc just over $4 billion, according to the JCT.
**URL:** https://www.jct.gov/publications/2021/jcx-46-21/
**URL:** https://gop-waysandmeans.house.gov/wp-content/uploads/2022/11/117-1113.pdf
**URL:** https://www.jct.gov/publications/2021/jcx-45-21/

House Republican taxwriter Jason Smith of Missouri, meanwhile, stated at a December 7 event sponsored by *Punchbowl News* that he could envision a compromise with Democrats on expanding the child tax credit if he wins the Ways and Means gavel when Republicans take over the House majority in the 118th Congress.

“I think that we can find some common ground. For example: work requirements. What happened in the American Rescue Plan with the child tax credit was a disaster because they eliminated the work requirement,” Smith said. “Work requirements to the child tax credit would make a huge impact. That’s something Republicans and I care greatly about.”

Smith is one of three contenders—along with House GOP taxwriters Vern Buchanan of Florida and Adrian Smith of Nebraska—to become Ways and Means Committee chairman next year. It is not yet clear when the House Republican Steering Committee will make its recommendation for the top spot on the taxwriting panel.

**Senate Democrats expand majority in 118th Congress**

In other Capitol Hill developments, what appeared to be the final data point for the Senate’s party headcount in the upcoming 118th Congress fell into place this week when incumbent Democratic Sen. Raphael Warnock of Georgia defeated Republican challenger Herschel Walker in that state’s December 6 runoff election.

Warnock's victory gave Democrats control of 51 Senate seats next year compared to 49 for Republicans. In the current Congress, both parties control 50 seats but Democrats hold the majority with the tie-breaking vote of Vice President Kamala Harris. A Walker victory in this week's runoff would have meant a continuation of that power dynamic in the next Congress.

**Sinema announces party switch:** The prospect of an expanded Democratic majority came into question at the end of the week, however, after Arizona Sen. Kyrsten Sinema announced she intends to leave the party and register as an Independent. Sinema stated in an interview published in *Politico* December 9 that her decision was motivated by a feeling that she "never really fit into a box of any political party."

"[R]egistering as an Independent is what I believe is right for my state. It's right for me. I think it's right for the country," she said.

But despite Sinema's party switch, Democrats are still expected to retain a functional majority of 51 seats in the chamber. Sinema told *Politico* that she intends to keep her current committee assignments—which were given to her by Democratic leadership—and that she does not intend to caucus with the chamber's Republicans.

"I don't anticipate that anything will change about the Senate structure," Sinema said. ". . . I intend to show up to work, do the same work that I always do. I just intend to show up to work as an Independent."

It's worth noting that two other senators who are included in the Democratic headcount—Bernie Sanders of Vermont and Angus King of Maine—are also registered as Independents.

**Implications for Senate operations:** As a practical matter, the expanded majority likely will do little to help Senate Democratic leaders advance highly partisan measures in the next Congress—such as tax legislation with revenue-raising provisions targeting large businesses and high-wealth individuals that were left out of the Inflation Reduction Act—since the party remains well short of the requisite three-fifths supermajority (typically, 60 votes) to avert a near-certain GOP filibuster. 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 for the coming two years, it is extremely unlikely that Democrats will have the option to bypass Senate procedural hurdles and move such a bill under fast-track budget reconciliation procedures as they did in the current Congress with the Inflation Reduction Act. Invoking budget reconciliation requires the House and Senate to first adopt a unified budget resolution, an outcome that is highly improbable when each chamber is led by different parties with conflicting tax-and-spending priorities. (For additional discussion of the tax policy implications of a divided 118th Congress, see *Tax News & Views*, Vol. 23, No. 38, Nov. 16, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/221115_1.html

The advantages of a fifty-first Senate seat will perhaps be most noticeable for initiatives that can be approved by a simple majority vote, such as White House nominations for judicial and administrative posts. This includes the upcoming confirmation of Danny Werfel to serve as IRS commissioner (succeeding former Commissioner

Charles Rettig, who stepped down last month at the end of his term) as well as votes on individuals to fill high-level vacancies at the IRS, Treasury Department, and other agencies that may arise in the next two years. (The fact that the House will be controlled by Republicans in the new Congress will not be an issue here as confirmation of White House nominees is purely a Senate function.)

Breaking the 50-50 deadlock on the chamber floor also ensures Democrats will have a clear majority on Senate committees. In the current Congress, committee membership rosters are evenly split between Democrats and Republicans. The Senate Finance Committee, for example, now has 28 members—14 from each party—so if the committee roster remains at 28 in the next the Congress, Democrats likely would gain seat on the panel—or, alternatively, Republicans might lose one. (GOP taxwriters Richard Burr of North Carolina, Rob Portman of Ohio, and Patrick Toomey of Pennsylvania did not seek re-election this year, and Sen. Ben Sasse of Nebraska is resigning from Congress to become president of the University of Florida, so Republicans could absorb a lost seat by not filling one of these pending vacancies.) Democratic leaders have not yet announced details about the size of Senate committees or party allocations for the next Congress.

Under the power-sharing rules currently in effect for Senate committees, Democrats chair the panels and can advance legislation and White House nominations under their respective jurisdictions to the Senate floor in the event of a tie vote, subject to some additional procedural steps. Adjusting the membership rosters to give Democrats a numerical advantage on Senate committees in the next Congress is expected to reduce the likelihood of tie votes and simplify the process of getting legislation and nominations through the committee process and placed on the Senate calendar.

**Senate Democrats re-elect leadership team:** Also this week, Senate Democrats, as expected, voted to keep their current leadership team in place for the 118th Congress, topped by Majority Leader Charles Schumer of New York. In the wake of the party's successful defense of their Senate majority in the midterm elections—all the Democratic incumbents up for re-election won their races and the party flipped what had been a Republican seat in Pennsylvania—Schumer and his team did not face any opposition, and the only key change to the caucus' lineup is Washington Sen. Patty Murray's move from assistant Democratic leader to president pro tempore of the Senate.

Among those elected December 8 to return to their roles in the next Congress are Sens. Dick Durbin of Illinois as majority whip, Debbie Stabenow of Michigan as chair of the party's Policy and Communications Committee, Amy Klobuchar of Minnesota as chair of the Steering Committee, Elizabeth Warren of Massachusetts and Mark Warner of Virginia as vice chairs of the conference, Bernie Sanders of Vermont as chair of outreach, and Tammy Baldwin as conference secretary.

Murray is stepping down from her role as assistant leader—currently the number three leadership post in the chamber—and that position will be eliminated in the new Congress. The position of president pro tempore, third in line to the presidency after the vice president and the House speaker, is traditionally held by the most senior senator in the majority party. Although Sen. Dianne Feinstein of California will be the most senior Democrat once Vermont Sen. Patrick Leahy retires at the end of this year, she chose not to take the role of president pro tempore.

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