Omnibus funding bill taking shape but prospects for substantial tax title still unclear

With funding for federal departments and agencies set to run out at midnight on December 16, top House and Senate appropriators this week announced they had agreed on a "bipartisan framework" for an omnibus appropriations package that would keep the government's doors open for the remainder of fiscal year 2023, prompting lawmakers in both chambers to approve a one-week stopgap bill to give themselves additional time to complete work on the more comprehensive spending pact.

But even though consensus appears to be emerging on federal appropriations in the closing days of the post-election lame duck session, it remains unclear whether the eventual omnibus measure, which is expected to be the final bill to come out of the 117th Congress, will include a robust set of tax provisions.

Staving off a shutdown

Few specific details about the omnibus appropriations framework, which was announced on December 13, have been made public, although it is believed that the eventual funding package will top out at roughly $1.7 trillion. Senate Majority Leader Charles Schumer, D-N.Y., also indicated this week that the omnibus will include at least some extraneous provisions such as emergency spending for aid to Ukraine and reforms to the Electoral Count Act.

One-week stopgap headed to White House: News of the framework cleared the way for House and Senate leaders to advance a one-week continuing resolution (H.R. 1437) that would keep the government funded at fiscal year 2022 levels from midnight on December 16 (when the current continuing resolution funding the government expires) through December 23 while appropriators cast the agreement into legislative language and attempt to move it both chambers. House Appropriations Committee Chairman Rosa DeLauro, D-Conn., stated December 13 that appropriators will "work around the clock" to finish the package and Senate Appropriations Committee ranking member Richard Shelby, R-Ala., stated that "[i]f all goes well, we should be able to finish an omnibus appropriations package by December 23."
URL: https://www.congress.gov/bill/117th-congress/house-bill/1437/text

The continuing resolution was approved in the House on December 14 by a vote of 224-201, with just 9 Republicans—most of whom are leaving Capitol Hill when the 117th Congress adjourns—breaking ranks to join House Democrats in the "aye" column. It cleared the Senate on December 15 by a vote of 71-19. "Aye" votes included 22 Republicans, 47 Democrats, and 2 Independents.

President Biden is expected to quickly sign the stopgap into law.

Headwinds for omnibus: The emerging omnibus measure is still expected to face headwinds in both chambers, however. Most House Republicans are teed up to vote against it, stating that they would instead prefer to adopt another continuing resolution that would punt action on a more durable funding agreement into early next year, when the 118th Congress convenes and the GOP holds the majority in the chamber.

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Speaker Nancy Pelosi, D-Calif., meanwhile, will have little margin for error in moving a year-end measure since Democrats currently hold just 218 House seats compared to 213 for Republicans. (Four seats are vacant.)

Across the Capitol, Democratic leaders will have their own problems shepherding an omnibus package through the Senate, since they'll need to secure at least 10 votes from Republicans in the chamber to avert a possible GOP filibuster. Senate Minority Leader Mitch McConnell, R-Ky., stated several times this week that although he supports the year-end funding measure, he will insist that work be completed by December 22. If action is delayed, he said, he will instead back a continuing resolution that pushes fiscal year 2023 funding decisions into the next Congress.

"We intend to be on the road going home on the 23rd," McConnell said on December 14, alluding to the end of the congressional session and the upcoming holiday recess. "We intend not to be back here between Christmas and New Year's, and if we can't meet that deadline, we would be happy to pass a short-term [continuing resolution] into early next year."

Uncertain prospects for year-end tax package

Adding to the uncertainty surrounding the omnibus is the as-yet-unanswered question of whether the measure will include a significant tax title. Lawmakers came into the post-election lame duck session with a fairly extensive wish list of tax priorities, but in recent weeks the primary focus of the tax policy discussion has been 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. (See separate coverage in this issue for details about recently issued IRS guidance on accounting method changes to comply with the mandatory amortization requirement).
- 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. Both of these measures are generally intended to make 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.
- 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. (Among other things, the American Rescue Plan provision increased the amount of the credit and made it fully refundable.)

A number of other issues—including relief from the tighter limitation on business 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 various constituencies in Congress had hoped to address 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

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Expanded child tax credit complicates tax talks: A persistent sticking point in behind-the-scenes negotiations has been a demand by some Democrats that any business-focused tax relief be paired with an expanded child tax credit.

Democrats would "like to do some tax things," Senate Majority Leader Charles Schumer, D-N.Y., told reporters this week, "but our caucus feels very strongly that the child tax credit should be there as long as there's some corporate tax breaks, and so far we don't have agreement from the Republicans."

But 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. Brady reiterated his position this week, telling reporters that "[t]he country frankly doesn't have the time or the money for the partisan expensive provisions such as the child tax credit."

The Joint Committee on Taxation (JCT) staff has estimated that the one-year extension of the expanded child tax credit included in the Build Back Better legislation that cleared the House last year (but subsequently 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 would 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/

President Biden, meanwhile, signaled early this week that the administration would be open to a compromise on an expanded child tax credit—for example, by including a work requirement (something favored by some congressional Republicans and by West Virginia Democratic Sen. Joe Manchin) or by keeping the dollar amount of the credit at its current level but modifying the eligibility rules to make it available to a broader swath of taxpayers.

One of leading Senate proponents expanding the child tax credit—Finance Committee Democrat Michael Bennet of Colorado—told reporters this week that he could consider an enhanced credit that falls short of the 2021 provision.

"My goal is to cover as many [children] as possible, and I am open-minded about how to do that," Bennet said.

Growing doubts: But these developments apparently have done little to advance the pace of negotiations over the child tax credit specifically or a year-end tax package generally.

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Senate Minority Whip John Thune of South Dakota, said December 12 that he's "certainly not getting good vibes on a tax title" and that the price Democrats want to extract in exchange for their support of additional business tax relief "may be too high."

Finance Committee ranking member Mike Crapo, R-Idaho, acknowledged the impasse over the child tax credit but commented more broadly this week that "there really hasn't been an agreement on anything."

House Majority Leader Steny Hoyer, D-Md., commented December 13 that "discussions are not proceeding quickly. . . [and] it's not resolved at this point in time what can move forward."

Good chance for retirement provisions, Brady says: Ways and Means ranking member Kevin Brady told reporters December 14 that congressional leaders appear to be "leaving open room for a very narrow, tightly focused tax title" and that a bipartisan retirement security package could make its way into the omnibus even if lawmakers can't agree on other tax provisions.

"Our assumption is that it will move with the omnibus," Brady said. "I would say all parties involved are pretty optimistic about where we are at on the bill itself." According to Brady, talks between House and Senate taxwriters to finalize the retirement provisions are "within a foot of the end zone."

Delay action now, regret it later, Wyden cautions: For his part, Senate Finance Committee Chairman Ron Wyden, D-Ore., stressed the importance of passing a tax package this year and cautioned that the prospects for success will only diminish if lawmakers postpone action until the 118th Congress, when Republicans will be in charge of the House and Democrats control the Senate.

"The longer you pass on opportunities to solve problems, the bigger, the deeper the ditch you're in. When you really want to do something, you often can find a way," Wyden said December 12.

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