

Tax Policy Update

January 17, 2018

DRAMA OF THE WEEK: GOVERNMENT SHUTDOWN



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New Year, Same Drama. Lawmakers are facing yet another potential government shutdown — the current continuing resolution (“CR”) is set to expire on Jan. 19. Congress must pass another short-term funding bill to avert a shutdown. Despite weeks of negotiations, a long-term spending deal is still out of reach. The sticking points remain the same: discretionary spending levels, DACA, and border security.

Republican leaders are considering a [CR](#) through Feb. 16 with a six-year reauthorization for the Children’s Health Insurance Program or “CHIP.” Based on the House bill released last night, the new CR will also include a two-year delay of the medical device tax and Cadillac tax as well as a one-year delay of the health insurance tax. The bill may get a vote in the House as early as Thursday.

It is unclear, however, whether Senate Democrats will help pass another temporary funding patch without a fix for Dreamers whose legal status has been in limbo since the Trump Administration

announced that it was ending the DACA program. Republicans would rather address the issue in a separate bill.

LEGISLATIVE LANDSCAPE

Do Not Pass Go. The FY 2019 budget is shaping up to be nothing more than a messaging vehicle for the GOP. Republican leaders have been openly talking about foregoing a formal budget resolution for this year. This means that rather than engaging in another budget fight, leaders may look to “deem” top-line spending levels for fiscal year 2019. This “deeming” process is nothing new — it’s been used in the past to set spending allocations for the appropriations committees whenever Congress has failed to pass an annual budget resolution.

However, failing to pass a FY 2019 budget will have significant implications for the Republican agenda this year. Without a budget resolution in place, Republicans cannot unlock reconciliation procedures to pass big legislation in 2018 — consequently, it would be almost impossible to enact entitlement reform or repeal Obamacare. It would also make it tough for the president to push an infrastructure bill through Congress without the help of Democrats.

The prospect of not doing a FY 2019 budget does not sit well with fiscal conservatives in the House, who are often forced to accept whatever budget numbers that come out of the Senate. To appease the conservative faction, the House may end up putting together a budget blueprint for messaging purposes only with the understanding that it is not expected to go anywhere.

New Committee Membership Rosters. Senate Finance Committee Democrats welcomed Sen. Sheldon Whitehouse (D-RI) to the tax-writing committee last week, which brings the GOP majority on the panel to 14-13.

The House Ways and Means Committee also got a face lift when Chairman Kevin Brady (R-TX) announced the addition of Rep. Darin LaHood (R-IL) to the panel. LaHood replaced former Rep. Pat Tiberi (R-OH) who left Congress on Jan. 15 to take over as the head of the Ohio Business Roundtable.

In addition to LaHood, Brady announced the following new subcommittee chairmanships:

- **Rep. Vern Buchanan** (R-FL) – chairman of the Tax Policy Subcommittee
- **Rep. Peter Roskam** (R-IL) – chairman of the Health Subcommittee
- **Rep. Lynn Jenkins** (R-KS) – chair of the Oversight Subcommittee.

A complete list of subcommittee assignments can be viewed [here](#).

Ways and Means Democrats: Hold Off on Tax Law Fixes. Democrats of the House Ways and Means Committee sent a Dear Colleague letter on Jan. 10, urging fellow lawmakers to hold off on

introducing legislative fixes to the GOP tax law. Because the tax law was enacted in a rushed manner, lawmakers should “approach any technical or substantive changes in a thoughtful and responsible manner” with hearings on proposed changes so to avoid potential unintended consequences, the letter says.

Since the passage of the GOP tax bill, a handful of lawmakers have already introduced legislation to fix or improve the law. For example, Reps. Pete King (R-NY) and Nita Lowey (D-NY) released a [bill](#) that would restore the state and local tax deduction in full.

REGULATORY WORLD

IRS Selects New Advisory Council Members. On Jan. 11, the IRS announced the appointment of seven new members to the Internal Revenue Service Advisory Council (“IRSAC”).

Established in 1953, the IRSAC examines various issues in tax administration; provides the IRS commissioner with relevant feedback, observations, and recommendations; and publishes an annual report to the agency at a public meeting in November.

The following individuals were appointed to serve three-year terms on the council beginning in 2018:

1. **Ben Deneka** is an industry operations liaison with H&R Block in Pittsburgh, PA.
2. **Diana Erbsen** is a tax partner at DLA Piper in New York, NY.
3. **Antonio Gonzalez** is a certified public accountant and is founder and co-owner of Sydel Corporation in Coral Gables, FL., which is both an accounting and information technology consulting firm for multiple organizations.
4. **Charles Read** is a certified public accountant and the founder and CEO of Custom Payroll Associates Inc. in Lewisville, TX, where he has been preparing business and individual tax returns since 1991.
5. **Martin Rule** is a certified public accountant and senior manager with Deloitte Tax LLP in Chicago.
6. **Jeffrey Schneider** is an enrolled agent and a vice president with SFS Tax & Accounting Services in Port St. Lucie, FL.
7. **Patricia Thompson** is a certified public accountant and tax partner with Piccerelli, Gilstein & Company, LLP in Providence, RI.

Ready, Set, File! On Jan. 4, the IRS announced that the 2018 filing season begins on Jan. 29, with returns due by April 17. The agency also reminded taxpayers that refunds won’t be available

before late February for those claiming the Earned Income Tax Credit (EITC) and the Additional Child Tax Credit (ACTC).

Many software companies and tax professionals are already accepting tax returns. Although the IRS will begin accepting both electronic and paper tax returns on Jan. 29, paper returns will be processed in mid-February as system updates continue. In a notice, the IRS encouraged people to file their tax returns electronically for faster refunds.

The agency also reminded taxpayers who are using a tax software product for the first time that they will need their adjusted gross income from their 2016 tax return to file electronically. Taxpayers who are using the same tax software they used last year will not need to enter prior-year information to electronically sign their 2017 tax return. Using an electronic PTIN is no longer an option.

Playing Paycheck Politics. After the hurried passage of the tax reform bill, the GOP is feeling the pressure to show taxpayers that its signature legislation will result in tax decreases. The 2018 tax withholding tables are key to that effort, which has fueled speculation that the administration may be pushing the IRS to tinker with the numbers.

To that end, Senate Finance Committee Ranking Member Sen. Ron Wyden (D-OR) and House Ways and Means Ranking Member Rep. Richard Neal (D-MA) wrote a letter to Acting IRS Commissioner and Assistant Secretary for Tax Policy David Kautter, to voice their concerns. Specifically, the letter questioned whether the administration purposefully pressured the IRS to produce 2018 withholding tables that will result in under-withholding of federal taxes from employee paychecks, to artificially inflate take home pay and exaggerate the effects of tax reform. If taxes are under-withheld by employers now, millions of Americans will owe taxes next April instead of receiving a tax refund.

Wyden and Neal sent a separate letter to the Government Accountability Office's Comptroller General Gene Dodaro requesting that the agency serve as an independent arbiter and watchdog to determine whether the 2018 withholding tables will result in under-withholding.

The Democrats' letter comes after Wyden last month raised concerns that Kautter's dual role as acting IRS commissioner, a traditionally non-partisan role, and as assistant secretary, a politically appointed position, may create conflicts of interest for the agency.

NTA Releases Annual Report to Congress. National Taxpayer Advocate ("NTA") Nina Olson released her annual report to Congress, focusing on the implementation of the new GOP tax law. In her report, Olson warned that a 20 percent reduction in the agency's budget in FY 2010 has challenged the agency's ability to perform the basic tasks of administering the tax system.

"As the National Taxpayer Advocate, I see daily the consequences of reduced funding," Olson wrote. Budget reductions have rendered the IRS unable to: (1) provide acceptable levels of taxpayer service; (2) update its technology to improve its efficiency and effectiveness; and (3) maintain compliance programs that protect taxpayer rights. Olson concluded that "shortcuts" have become the norm, and this is incompatible with high-quality tax administration.

Despite pushing for additional funds for the IRS, Olson also expressed concerns that the agency at times has been too quick to cite funding constraints as a basis for inaction. “Limited resources cannot be used as an all-purpose excuse for mediocrity,” Olson noted. Despite the agency’s limitations, there are still steps it can take to improve taxpayer service through creativity and innovation.

In the coming months, the IRS will face major tax reform-related implementation challenges. This includes:

- programming and systems updates;
- answering taxpayer phone calls and providing other taxpayer services;
- drafting and publishing new forms and publications;
- revising regulations and issuing other guidance;
- training employees on the new law and guidance; and
- developing systems to verify compliance with new eligibility and documentation requirements.

The IRS has initially estimated that implementing the new tax law will require an extra \$495 million in funding for 2018 and 2019. At the time it developed this preliminary cost estimate, the IRS had identified 131 filing season systems that will be impacted by the new tax law. Specifically, the systems must be modified to reflect:

- new individual and business tax rates;
- inflation-indexing changes for deductions and credits;
- phase-out changes for certain tax benefits;
- repeal of certain tax benefits; and
- changes that will require updates to the IRS’s fraud-detection filters.

It remains unclear as to whether the GOP will adequately fund the IRS in FY 2018. Several former GOP lawmakers have joined the chorus of voices warning Congress that if it doesn’t increase funding, the IRS may be in dire straits.

One Book, Two Book, Red Book, Purple Book. In conjunction with its annual report to Congress, the National Taxpayer Advocate released a new document – the “Purple Book” –

containing 50 legislative recommendations to improve taxpayer rights and tax administration. The Purple Book, modeled after the Treasury Department's "Green Book" of revenue proposals, is intended to help steer Congress as it considers IRS reform legislation in 2018.

Key suggestions from the purple book include the following:

- Codify both the Taxpayer Bill of Rights and the IRS mission statement as Section 1 of the Internal Revenue Code.
- Provide an annual report from the IRS to taxpayers with a receipt of how their tax dollars are being spent.
- Authorize the income tax assistance grant program.
- Establish minimum competency standards for federal income tax return preparers.
- Extend the time limit for taxpayers to sue for damages for improper collection actions.
- Require at least one appeals officer and one settlement officer to be located permanently in each state, D.C., and Puerto Rico.
- Limit re-disclosures and unauthorized uses of tax returns and tax return information.

The Purple Book also examines a range of other tax administration issues, including the IRS's private debt collection program, its implementation of a recent law that would revoke or deny passports of taxpayers with delinquent tax obligations, and its move towards online services.

IRS Restructure may be a Political Landmine for GOP. Rep. Vern Buchanan (R-FL), chair of the Ways and Means Subcommittee on Tax Policy, wants an IRS restructuring bill released in the first part of 2018. This is a culmination of the committee's bipartisan efforts to institute changes at the tax collection agency. However, Ways and Means Chairman Kevin Brady (R-TX) wouldn't commit to a timetable. The question of restructuring comes at a sensitive time, as the IRS gears up to implement the new tax law. As a result, the GOP will likely tiptoe carefully before committing to a major reorganization.

Continued Legal Uncertainty at the CFPB. The legal uncertainty over the directorship of the Consumer Financial Protection Bureau ("CFPB") continues as a federal judge denied Deputy Director Leandra English's request for a preliminary injunction to remove the current Acting Director Mick Mulvaney and install herself as director. English brought the lawsuit against Trump and Mulvaney, noting that she is the rightful acting director under the *Dodd-Frank Act* – the law that created the bureau in 2010.

English was former CFPB Director Richard Cordray's pick to succeed his post. On Jan. 10, U.S. District Judge Timothy Kelly ruled that English's argument for an injunction is unlikely to succeed. This is the second time Kelly has denied English's claim to lead the CFPB. Last month, Kelly denied English a temporary restraining order to prevent Mulvaney from assuming his duties. On Jan. 12, English appealed the decision. The case will now be heard by the DC Circuit of the U.S. Court of Appeals.

Though it is possible that a higher court may side with English, Trump is likely to win the final battle. Even if the courts eventually decide that English, and not Mulvaney, is the CFPB's lawful

acting director, Trump can still fill Cordray's job by nominating a replacement who is confirmed by the Senate.

LINE ITEMS

1. Senate Banking Committee added Sens. Doug Jones (D-AL) and Jerry Moran (R-KS) to its committee roster.
2. On Jan. 16, the House unanimously passed H.R. 4318, the [Miscellaneous Tariff Bill Act of 2017](#), which would modify certain rates of duty temporarily.

COMMANDER-IN-TWEET



Donald J. Trump ✓
@realDonaldTrump

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The Democrats want to shut down the Government over Amnesty for all and Border Security. The biggest loser will be our rapidly rebuilding Military, at a time we need it more than ever. We need a merit based system of immigration, and we need it now! No more dangerous Lottery.

6:07 AM - 16 Jan 2018

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7.1K 6.6K 25K

IN THE QUEUE

Congressional Activity

Tuesday, 1/16

Senate Energy Committee

Committee hearing on “The Domestic and Global Energy Outlook.”

Senate HELP Committee

Committee to hold a vote on the nominations of retired Army Brig. Gen. Mitchell Zais to be deputy Education secretary; Kenneth Marcus to be assistant Education secretary for civil rights; James Blew to be assistant Education secretary for planning, evaluation and policy development; Patrick Pizzella to be deputy Labor secretary; Scott Mugno to be assistant Labor secretary for occupational safety and health; Cheryl Stanton to be administrator of the Labor Department's Wage and Hour Division; William Beach to be Labor Department commissioner of labor statistics; and Brett Giroir to be assistant HHS secretary for health.

Wednesday, 1/17

House Financial Services Committee

Markup of [a series of financial regulatory bills](#) including measures related to FSOC, the Volcker Rule, and consumer data protection.

Senate Banking Committee

Committee to hold a vote on the nominations of Jay Powell to be Federal Reserve chairman and Randal Quarles to be Fed vice chairman of supervision.

Senate Finance Committee

Committee hearing to consider the nomination of Dennis Shea to be deputy USTR (Geneva); CJ Mahoney to be deputy USTR (Investment, Services, Labor, Environment, Africa, China, and the Western Hemisphere). The committee will also vote on the nomination of Alex Azar to be the next HHS secretary.

Agency Activity

Friday, 1/19

SEC

SEC-NYU dialogue on securities markets – the focus is on shareholder engagement.

Other Activity

Tuesday, 1/16

Heritage Foundation

Discussion panel on NAFTA and energy trade.

Thursday, 1/18

U.S. Chamber of Commerce

The chamber hosts “America’s Infrastructure Summit: Time to Modernize.”

Software & Information Industry Association

Event with the Congressional Blockchain Caucus on “Mainstreaming Blockchain in Business and Government: Separating Hype from Reality” with special guests Reps. David Schweikert (R-AZ) and Jared Polis (D-CO).

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