

Tax Policy Update

February 6, 2018

CR, Episode V



Photo: REUTERS/Jonathan Ernst

Here We Are Again. Congress is getting ready to vote for its fifth continuing resolution (CR) this week. The current CR expires on Feb. 8, and congressional leaders still have not produced a long-term budget and spending agreement, which means another temporary funding bill is needed to keep the government open.

On Monday evening, House GOP leaders introduced a CR ([H.R. 1892](#)) that would extend most government funding at current levels through March 23. The Department of Defense, however, would be funded through Sept. 30 with an increased budget of \$659 billion. The beefed-up defense spending isn't likely to sit well with Senate Democrats who have been trying to secure parity between defense and domestic spending in the broader budget negotiations. Don't be surprised if the Senate decides to take out the defense funding booster once it gets ahold of the CR. The House is expected to take a vote on the stopgap on Tuesday night.

The House CR also includes various provisions covering health and Medicare extenders. The temporary funding bill does not include disaster assistance as some had hoped. The White House's \$90 million request for the Internal Revenue Service has also been left out.

The CR, as written, is expected to clear the House, but it will undergo changes in the Senate. Some are hoping that the small tax section in the House CR will provide a placeholder for the upper chamber to insert its tax extenders package. But that decision is still up in the air.

Whatever the final form the CR may take, GOP leaders will likely get the votes they need to keep the government open — even though House conservatives are raising a stink about passing another short-term CR. Democrats are expected to support the CR to avoid making another strategic error like last month's melodramatic three-day shutdown.

Given that negotiations on DACA and the two-year budget agreement are ongoing, Congress is unlikely to produce a budget deal until late March, which means the FY 2018 omnibus spending bill won't be fully baked until April.

LEGISLATIVE LANDSCAPE

State of the GOP Tax Law. In his State of the Union address last week, President Donald Trump took a victory lap for “enact[ing] the biggest tax cuts and reforms in American history.” Since the enactment of the tax bill, the administration and GOP leaders in Congress have gone full court press to sell it to the American people, going around the country and putting a national spotlight on every wage bump, bonus, and investment that firms have announced.

The cheerleading campaign appears to be working, as 44 percent of Americans view the overhaul of the tax code favorably according to a [January 2018 poll](#) conducted by Monmouth University — a significant increase given that the approval rating for the law sat at 26 percent back in December.

The president, himself, has seen his job approval numbers trending upwards since the passage of the tax law. In the same Monmouth poll, Trump's job rating came in at 42 percent, and 55 percent of Americans believe that the president has been “somewhat successful” in getting his legislative agenda done.

If these positive numbers continued to tick upwards, Republicans might be able to stave off a midterm massacre this November. In December 2017, Democrats held a double-digit advantage on a generic congressional ballot (51 percent to 36 percent). However, the advantage has narrowed to just two percentage points in the January poll.

Repeal and Replace: Democrats' Revenge. While GOP lawmakers are touting the benefits of the tax law, Democrats and their activists are planning local events to educate voters on the more harmful aspects of the GOP tax law and its impact on middle-class families. Democrats are hoping that the general hostility towards the tax law will sway voters in November and help the party retake the legislative branch.

There's no doubt that the GOP tax law would be an immediate target if the Democrats returned to power in Congress. To be sure, with Trump as president, even if Democrats controlled Congress, they would not be able to push through a repeal of the tax law. After all, Trump can easily veto such an effort.

That said, Democrats probably aren't interested in a wholesale repeal of the law, but they will likely take on the more unpopular provisions such as the cap on the state and local tax deduction and the temporary nature of the individual tax cuts. Some of these targeted efforts may even pick up Republican support. For example, Rep. Rodney Davis (R-IL) and Sen. Ted Cruz (R-TX) have introduced bills to make the individual tax rates permanent.

Member-Day Hearing on Legislation to Improve Tax Administration. On Jan. 30, the House Ways and Means Oversight Subcommittee, chaired by Rep. Lynn Jenkins (R-KS), convened a member-day hearing to discuss various legislation to improve tax administration, IRS operations, and taxpayer services. This hearing is a continuation of the subcommittee's efforts to restructure the IRS.

The hearing came at a difficult time for the IRS, as it is grappling with budgetary constraints, loss of personnel, and an uphill task to implement the GOP's new tax law.

During the hearing, GOP members and one Democrat, subcommittee ranking member John Lewis (D-GA), offered proposals to improve the IRS. Below is a list of key recommendations discussed at the hearing:

- **Oversight Subcommittee Chairman Lynn Jenkins (R-KS):** Focus on the IRS's dispute resolution process, without litigation, by ensuring that taxpayers have access to face-to-face meetings and an independent review of agency assessments.
- **Subcommittee ranking member John Lewis (D-GA):** Eliminate the private debt collection program, which costs about three times more than it collects. Rep. Lewis also asked for better funding of the agency, improvements to the low-income taxpayer clinics, and oversight over paid-return preparers.
- **Rep. Dave Schweikert (R-WA):** Use third-party data verification to speed up refund processing, replacing algorithms, which encourage cybercriminals to design clever workarounds.
- **Rep. Mike Bishop (R-MI):** Find a way to assist the efforts of the IRS Security Summit – Rep. Bishop's office is looking for a list of ideas that outline ways in which they might be helpful, absent legislation.
- **Rep. Tom Reed (R-NY):** Introduce a call-back feature for those who have limited access to IRS centers due to geographic location.

- **Rep. LaHood (R-IL):** Provide for free file permanence (H.R. 3641); and give the Taxpayer Advocate's Office the necessary resources to ensure the IRS commissioner responds to taxpayer concerns in a timely manner.
- **Rep. Jason Smith (R-MO):** Modify the IRS's appeals procedures by restricting the agency's authority to designate cases for litigation without permitting an appeal. (*Preserving Taxpayers' Rights Act* - H.R. 3220).
- **Rep. Jim Renacci (R-OH):** Enact additional measures to prevent tax refund fraud, including the establishment of a centralized point of contact for victims of identity theft and a requirement that the IRS notify victims of identity theft. (*Identity Refund Fraud Prevention Act of 2017* - H.R. 439).
- **Rep. Tom Rice (R-SC):** Require the IRS to provide uniform guidance on the use of electronic signatures, instead of antiquated "wet" signatures. (*Electronic Signature Standards Act of 2017* - H.R. 3153).
- **Rep. Bill Posey (R-FL):** Provide simplified tax forms for individuals 65 and over. (*Seniors' Tax Simplification Act of 2017* - H.R. 2721).

REGULATORY WORLD

Treasury and IRS: More Guidance to Come. Speaking at a Practising Law Institute (PLI) conference, Dana Trier, deputy assistant secretary of tax policy, shed some light on forthcoming regulatory guidance. Trier said that the traditional route of proposing regulations is expected for the BEAT, GILTI, and net interest expense deduction provisions in the GOP tax law.

He also added that regulations are forthcoming on the Section 199A pass-thru business income deduction, which will:

- outline what service income qualifies;
- address how to treat two businesses operating within one entity; and
- include guardrails for companies that try to reclassify employees as partners.

No specific timeline for this guidance was provided, however.

Partnership Audit Regime Proposed Regulations, Part II. The IRS and Treasury issued proposed regulations providing guidance on how to adjust partnership tax attributes to take into account partnership adjustments under the new partnership audit regime. These proposed regulations address the reserved portions of the comprehensive proposed regulations on the partnership audit regime that were released in June 2017.

The supplemental proposed regulations provide guidance to partnerships that elect to pay the underpaid tax at the entity level and on how it affects the partners. The guidance generally provides that the adjustments to specified tax attributes must be made on a "partnership-

adjustment-by-partnership-adjustment basis” (i.e. separately, without regard to their summation as part of the determination of the total net adjustment.)

The IRS has requested comments on various portions of the proposed regulations, but no public hearing has been scheduled yet.

CPAs to the Rescue. Funding shortage is a persistent problem for the IRS, but the tax-collection agency is getting some reinforcements from CPAs. The American Institute of CPAs (AICPA) sent letters last week to House and Senate appropriators, urging them to “dedicate the appropriate resources” to the IRS.

Given that the agency plays a critical role in providing guidance and taxpayer services in light of the recent tax changes, Congress should ensure that the IRS has adequate staffing and a modern technological infrastructure to do its job, the letters say.

The IRS also got an assist from the administration: The White House requested an immediate \$90 million funding injection, so that the agency can update its information technology to implement the new tax law. The administration had hoped to get this funding in the forthcoming CR, but the House did not include such a provision in the stopgap measure unveiled on Monday night.

New Payroll Phishing Scheme. In a new identity theft scheme, cybercriminals pose as executives and send official-looking emails to payroll personnel asking for copies of all employee W-2 forms, including names, addresses, Social Security numbers, income, and withholding. The thieves use the information to file fraudulent tax returns or post it for sale on the dark-web.

The scheme is one of the most dangerous phishing emails in the tax community, according to the IRS. During the last two tax seasons, cybercriminals tricked payroll personnel or people with access to payroll information into disclosing sensitive information for entire workforces. Reports to the IRS about the scam jumped to about 900 last year, up from a little more than 100 in 2016.

It is recommended that all employers educate their payroll staffs about the scam, limit the number of employees who have authority to handle W-2 requests, and require additional verification procedures before emailing sensitive data.

More Losses for English. Judge Paul Gardephe of the U.S. District Court of Southern New York dismissed a lawsuit challenging Mick Mulvaney’s appointment as interim director of the CFPB. The suit was brought against Mulvaney and the Trump administration by the Lower East Side People’s Federal Credit Union (LES) in support of CFPB Deputy Director Leandra English’s claim that she is the rightful acting director of the bureau.

Judge Gardephe dismissed the claim on the grounds that the LES had not demonstrated standing in this case. This case is separate from the ongoing lawsuit filed in District Court in Washington, D.C., against Mulvaney and the administration.

LINE ITEMS

1. Due to the repeal of Section 54C enacted in the *2017 Tax Act*, the IRS issued [Notice 2018-15](#) to announce that new clean renewable energy bonds would not be issued in 2018. The agency will also withdraw its prior solicitation for applications for the unused national limitation.
2. The DC Circuit Court of Appeals, in a 7-3 decision, upheld the constitutionality of the Consumer Financial Protection Bureau's single-director structure.
3. A [discussion draft](#) of the Corker-Warner housing finance reform bill is being circulated by *Bloomberg News*. The draft proposal aims to increase home ownership among lower-income borrowers and provide an explicit guarantee of mortgage-backed securities provided by Ginnie Mae.
4. Rep. Trey Gowdy (R-SC) said he would not be seeking re-election in 2018. Gowdy is the 22nd House Republican to announce his retirement.

COMMANDER-IN-TWEET



Donald J. Trump ✓
@realDonaldTrump

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Any deal on DACA that does not include STRONG border security and the desperately needed WALL is a total waste of time. March 5th is rapidly approaching and the Dems seem not to care about DACA. Make a deal!

6:36 AM - 5 Feb 2018

19,761 Retweets 74,790 Likes



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IN THE QUEUE

Congressional Activity

Tuesday, 2/6

Senate HELP Committee

Subcommittee hearing on the gig economy and the future of retirement savings.

Senate Banking Committee

Hearing on “Virtual Currencies: The Oversight Role of the SEC and the CFTC.” SEC Chairman Jay Clayton and CFTC Chairman Christopher Giancarlo are testifying.

House Ways and Means Committee

Hearing on the opioid crisis, “Removing Barriers to Prevent and Treat Opioid Abuse and Dependence in Medicare.

House Financial Services Committee

Hearing on “The Annual Report of the Financial Stability Oversight Council.” Treasury Secretary Steven Mnuchin is set to testify.

Wednesday, 2/7

House Ways and Means Committee

Subcommittee hearing on “Ensuring Social Security Services America’s Veterans.”

Other Activity

Friday, 2/9

Washington International Trade Association

Discussion on the congressional trade agenda.

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