

Tax Policy Update

March 20, 2018

NUMBER OF THE WEEK: 2



The number of weeks that Congress will be in recess, starting on March 26. Lawmakers will depart Washington for spring break recess once they conclude their work on the FY 2018 omnibus bill this week.

The legislative agenda after recess won't be too ambitious. The most urgent item will be the long-term reauthorization of the FAA. Lawmakers will continue to jaw about immigration, technical corrections, and infrastructure investment, but these issues aren't expected to go anywhere before the mid-term elections. On the regulatory front, the Treasury and IRS will continue to push out additional guidance and rules related to the implementation of the GOP tax law.

Bottom line: The *Tax Policy Update* team will see you on April 10!

LEGISLATIVE LANDSCAPE

All Aboard the Omnibus. The FY 2018 omnibus spending bill is hogging the spotlight this week, as lawmakers scramble to avoid a government shutdown. The deadline is March 23, and at this writing, the bill text is still baking. Most Capitol Hill observers expected the omnibus to be introduced last night after the House GOP caucus met to go over the bill. Alas, those who stayed up until midnight were left disappointed.

The trillion-dollar-plus spending bill is now expected to drop tonight. It is still unclear whether any riders will actually get hitched to the bill. The provisions that are making the most noise include (1) Rep. Kristi Noem's (R-SD) online sales tax bill; (2) the "grain glitch" fix (Sec. 199A); and (3) a short-term FAA extension.

If the bill actually gets filed tonight, the House vote will take place on Thursday afternoon. This means the Senate will have to quickly pass the measure and get it to the president's desk by Friday.

Again! Again! President Donald Trump stirred the pot last week when he casually called for another round of tax cuts. After the comment was made, House Ways and Means Chairman Kevin Brady (R-TX) said that another tax-cut package is being considered. The proposal would likely address the individual side of the tax code — one that would further extend the individual tax provisions that are set to expire after Dec. 31, 2025.

However, such talks are just that...talks. The idea of doing another round of tax cuts may play well on the campaign trail. However, there's little chance for a bill to pass this year given the political and procedural challenges in the way. First, many lawmakers aren't exactly eager to pile more onto the growing deficit. Second, there's no budget reconciliation vehicle to use for another big tax bill.

Banking Bill Drama. House Financial Services Chairman Jeb Hensarling (R-TX) isn't rolling over for the bipartisan banking bill (S. 2155) that cleared the Senate last week. The Senate Democrats who voted for the measure are opposed to changing the bill further, essentially telling the House to take it or leave it. "If he adds a bunch of crazy shit, it's going to die," Sen. Jon Tester (D-MT) said matter-of-factly.

Hensarling isn't deterred, demanding a sit-down with Senate members to get [a series of House-passed provisions](#) added to S. 2155. The House GOP leadership, backing Hensarling, is willing to hold off on bringing the bill to the floor. Senate Banking Chairman Mike Crapo (R-ID) indicated that there are ongoing discussions with Hensarling.

It remains to be seen which side will win this battle. But don't be surprised if the Senate ultimately gets its way. Smaller financial institutions that benefit from the bill are pressuring Hensarling to relent. In their view, it's better to get something rather than nothing, and it has taken a while for Congress to get this close to passing a narrowly-tailored relief package. In addition, the White House has signaled that the president is willing to sign the Senate bill as written.

REGULATORY WORLD

Energy Companies Take Hit After FERC MLP Decision. In a March 15 decision, the Federal Energy Regulatory Commission (FERC) disallowed certain tax benefits for master limited partnerships (MLPs), the predominant corporate structure for several energy companies.

Specifically, FERC voted to reverse a policy that allowed interstate natural gas and oil pipelines set up as pass-through companies to collect corporate income-tax expenses from customers. According to previous litigation, critics claimed that this resulted in the double recovery of costs for master limited partnerships.

It is unclear how these companies will adapt to the new ruling. Immediately after FERC's decision, pipeline stocks plummeted. As master limited partnerships consider their options, the decision may push these entities to convert to corporations.

Futuristic Appeals. With a shrinking pot of funding and workforce constraints, the IRS may have difficulties offering in-person appeals conferences at the taxpayer's preferred location. As a result, the IRS appeals office is evaluating two pilot programs:

(1) Virtual appeals conferences: The virtual conference pilot program gives taxpayers and practitioners the option to remotely attend IRS appeals conferences through a web-based screen-sharing platform. So far, the program has received favorable feedback, though the IRS acknowledges that the conferences are not for everyone.

(2) Compliance-staff attendance at Appeals Team Case Leader (ATCL) conferences: This program allows IRS compliance officials who have historically not been present for appeals conferences to attend with technical employees.

The two programs were launched last year and the agency will be seeking external and internal feedback as it works on fine-tuning the pilots.

LINE ITEMS

1. The U.S. Court of Appeals for the Fifth Circuit [voided](#) the Department of Labor's fiduciary rule in a 2-1 decision, siding with the financial services industry's objections to the conflict-of-interest rule. SEC Commissioner Jay Clayton said that the court decision would have no impact on the commission's intent to propose a fiduciary duty rule. Although Clayton has been vague on the timing of the rule, Commissioner Hester Peirce said last week that the rule is expected "soon."
2. The Department of the Treasury announced [new Russia sanctions against 19 individuals and five entities](#) who have been accused of interfering with the 2016 U.S. elections and conducting malicious cyber-attacks.

COMMANDER-IN-TWEET

President Trump on the Mueller investigation:



Donald J. Trump

@realDonaldTrump

Follow



A total WITCH HUNT with massive conflicts of interest!

6:07 AM - 19 Mar 2018

14,537 Retweets 59,381 Likes



43K 15K 59K

IN THE QUEUE

Congressional Activity

Tuesday, 3/20

House Appropriations Committee

Subcommittee hearing on the FY 2019 Department Housing and Urban Development budget.

House Financial Services Committee

Subcommittee hearing on “Exploring the Financial Nexus of Terrorism, Drug Trafficking, and Organized Crime.”

Wednesday, 3/21

House Ways and Means Committee

Full committee hearing on the U.S. trade policy agenda with USTR Robert Lighthizer.

Joint Economic Committee

Full committee hearing on unleashing America’s economic potential.

Senate Budget Committee

Full committee hearing on the president’s economic report with CEA Chairman Kevin Hassett testifying.

Thursday, 3/22

Senate Finance Committee

Hearing on the 2018 trade agenda with USTR Robert Lighthizer.

Senate Banking Committee

Full committee hearing to discuss the oversight of HUD with Secretary Ben Carson testifying.

House Ways and Means Committee

Full committee hearing on the administration's trade agenda with Commerce Secretary Wilbur Ross.

Other Activity

Thursday, 3/22

American Enterprise Institute

Discussion on the future of infrastructure under the Trump Administration with remarks from Transportation Under Secretary Derek Kan.

McGuireWoods Tax Policy Group:

Russell Sullivan

Partner

rsullivan@mcguirewoods.com

Rosemary Becchi

Partner

rbecchi@mcguirewoods.com

Harold Hancock

Partner

hhancock@mcguirewoods.com

Charlie Iovino

Vice President

ciovino@mwcllc.com

Lai King Lam

Assistant Vice President

llam@mwcllc.com

Radha Mohan

Assistant Vice President

rmohan@mwcllc.com

Anne C. Starke

Research Associate

astarke@mwcllc.com

Daniel Chung

Associate

dchung@mcguirewoods.com

McGuireWoods marketing communications are intended to provide information of general interest to the public. Marketing communications are not intended to offer legal advice about specific situations or problems. McGuireWoods does not intend to create an attorney-client relationship by offering general interest information, and reliance on information presented in marketing communications does not create such a relationship. You should consult a lawyer if you need legal advice regarding a specific situation or problem. Contents © 2018 McGuireWoods LLP. All rights reserved. Reproduction of the content of marketing communications is prohibited without the prior written consent of the [Digital Marketing Manager](#), McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, VA 23219-3916.