Congress reaches agreement on year-end tax legislation

December 17, 2019

In brief

The House today passed FY 2020 funding legislation that includes a significant year-end tax package that was agreed to by Congressional leaders and Trump administration officials. The tax package agreement (the Agreement) includes extensions to more than 30 expired or expiring tax provisions, modifications to certain 2017 tax reform act provisions, retirement savings incentives, disaster relief tax provisions, and repeal of three Affordable Care Act (ACA) tax provisions. The Joint Committee on Taxation (JCT) staff estimates that the Agreement will reduce federal revenues by $426 billion over 10 years.

Congressional leaders and the Trump Administration, however, were unable to reach an agreement on technical corrections to the 2017 tax reform act, expansion of refundable tax credits, and new 'green energy' tax provisions.

The Senate is expected to vote on the FY 2020 funding legislation with its accompanying tax provisions by the end of this week, before the current temporary government funding measure expires at midnight on December 20. The spending measures provide $1.4 trillion to fund federal departments and agencies, including the IRS, for the remainder of FY 2020 (through September 30, 2020). Administration officials have indicated that President Trump will sign the legislation.

The House later this week also is expected to vote on a revised United States-Mexico-Canada Agreement (USMCA), articles of impeachment, and a temporary suspension of the state and local tax (SALT) deduction limitation. The House and Senate will return in January for the second session of the 116th Congress.

In detail

Overview

Under the Agreement, more than 30 expired or expiring tax provisions, including a look-through rule for payments between related controlled foreign corporations (CFCs), will be extended through December 31, 2020.

The Agreement does not include any of the more than 80 known technical corrections to the 2017 tax reform act. The Agreement does include a 'Gold Star Family' tax relief measure modifying a 'kiddie tax' provision of the 2017 act, and also modifies a 2017 act provision affecting the tax-exempt status of certain mutual or cooperative telephone or electric cooperatives. The Agreement repeals retroactively a provision

of the 2017 act that increased the unrelated business taxable income of religious organizations and other tax-exempt organizations that provide qualified parking and qualified transportation fringe benefits (commonly referred to as the 'church parking tax').

The Agreement also includes disaster relief tax provisions and a retirement savings package (the SECURE Act; H.R. 1994) approved by the House earlier this year (H.R. 1994 also addressed the Gold Star Family issue). The Agreement provides relief for certain coal miners pension and healthcare benefit plans, but does not include provisions related to multiemployer pension plan relief that had been approved by the House earlier this year.

The Agreement repeals the excise tax on high-cost employer provided health insurance plans (commonly referred to as the 'Cadillac Tax'), a medical device excise tax, and a health insurance tax. These three tax provisions were enacted in 2010 as part of the ACA but faced bipartisan opposition and had been suspended or delayed previously by Congress.

The Agreement does not include proposals to expand the refundability of the child tax credit and earned income tax credit (EITC) that had been approved by the House Ways and Means Committee earlier this year. In addition, the agreement also does not include new 'green energy' tax proposals, such as a proposal to increase and modify the cap on the current credit for electric automobiles.

Tax extenders

The Agreement generally provides extensions through December 31, 2020 of varying lengths for a number of expired or expiring tax provisions. The railroad track maintenance credit and a biodiesel and renewable diesel tax credit are extended through December 31, 2022.

Provisions that have expired generally are renewed on a retroactive basis, except where noted otherwise below.

Provisions that are set to expire at the end of 2019

The following provisions that are set to expire at the end of 2019 would be renewed through the end of 2020:

- Look-through rule for related controlled foreign corporations
- New markets tax credit
- Work opportunity tax credit
- Employer credit for paid family and medical leave
- Credit for health insurance costs of eligible individuals
- Certain provisions related to beer, wine, and distilled spirits (known as 'craft beverages')

Provisions that expired at the end of 2018

Before 2017, individuals could claim an itemized deduction for unreimbursed medical expenses to the extent such expenses exceeded 10% of adjusted gross income. The Agreement extends the lower threshold of 7.5%, originally enacted for 2017 and 2018, through the end of 2020.

Two excise taxes that expired at the end of 2018 would be renewed through the end of 2020:

- Extension of Oil Spill Liability Trust Fund Rate
- Black Lung Liability Trust Fund Excise Tax.

Note: The reinstatement of these excise tax provisions is effective on the first day of the first calendar month beginning after the date of enactment of the Agreement.

Provisions that expired at the end 2017

The railroad track maintenance credit is renewed through January 1, 2023. The provision provides for a safe harbor rule for the assignment of certain related expenditures that are paid or incurred for a taxable year beginning on or after January 1, 2018 and ending before January 1, 2020.

The $1.00-per-gallon credit for biodiesel and renewable diesel used or sold by the taxpayer or blended with diesel to produce a biodiesel mixture used or sold by the taxpayer is extended through 2022. This provision includes a special one-time submission rule for the Treasury Department to issue guidance for submissions of claims for any refunds or payments attributable to the credit during the period January 1, 2018 through the close of the last calendar quarter beginning before the date of enactment.

The following additional provisions, which generally expired at the end of 2017, would be extended retroactively through the end of 2020:

- Nonbusiness energy property (Section 25C)
- Qualified fuel cell motor vehicles (Section 30B)
- Alternative fuel refueling property credit (Section 30C)
- Two-wheeled plug-in electric vehicle credit (Section 30D)
- Second generation biofuel producer credit (Section 40(b))
- Extension and modification of credit for electricity produced from certain renewable resources (extended one year for wind facilities, for which the credit also is reduced by 40 percent) (Section 45D)
- Production credit for Indian coal facilities (Section 45(e))
- Energy-efficient homes credit (Section 45L)
- Classification of certain race horses as three-year property (Section 168(e))
- Special allowance for second generation biofuel plant property (Section 168(l))
- Energy-efficient commercial buildings deduction (Section 179D)
- Election to expense advanced mine safety equipment (Section 179E)
- Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities (Section 451(k))
- Extension and clarification of excise tax credits relating to alternative fuels (Sections 6426(d) and (e))
- Seven-year recovery period for motorsports entertainment complexes (Section 168(i))
- Accelerated depreciation for business property on Indian reservation (Section 168(j))
- Expensing rules for certain qualified film and television productions and qualified live theatrical productions (Section 181(g))
- Indian employment credit (Section 45A)
- Mine rescue team training credit (Section 45N)
- Exclusion from gross income of discharge of qualified principal residence indebtedness (Section 198(a))
- Treatment of mortgage insurance premiums as qualified residence interest (Section 163(h))
- Deduction of qualified tuition and related expenses (Section 222(e))
- Extension of empowerment zone tax incentives (Section 1391)
- American Samoa economic development credit.

Note: The provision extending and clarifying excise tax credits relating to alternative fuels includes statutory language stating that "nothing contained in this subsection or the amendments made by this subsection shall be construed to create any inference as to a change in law or guidance in effect prior to enactment of this subjection."

Retirement provisions

The Agreement includes a retirement savings incentive package (the SECURE Act; H.R. 1994) approved by the House earlier this year.

The SECURE Act includes provisions to expand retirement savings incentives, modify rules for 401(k) and multiple employer plans, and increase the beginning date for 'required minimum distributions' to age 72. The Agreement retains a SECURE Act revenue offset — commonly referred to as the 'stretch IRA' provision — that modifies required distribution rules for designated beneficiaries to a retirement savings plan.

Modifications to the 2017 tax reform act

The Agreement includes a 'Gold Star Family' tax relief measure modifying a 'kiddie tax' provision of the 2017 act. The Agreement also modifies a 2017 act provision affecting the tax-exempt status of certain mutual or cooperative telephone or electric cooperatives.

The Agreement repeals retroactively a provision of the 2017 act that increased the unrelated business taxable income of religious organizations and other tax-exempt organizations that provide qualified parking and qualified transportation fringe benefits (commonly referred to as the 'church parking tax').

Observation: Unless the IRS establishes a streamlined process to address the retroactive repeal of the Section 512(a)(7) 'church parking tax,' a tax-exempt organization that previously filed Form(s) 990-T and paid tax on amounts determined under the provision may want to consider filing an amended return to seek a refund of the amount previously paid. Likewise, an organization that has been making estimated tax payments may want to consider applying for a refund after the close of its taxable year.

Repeal of certain ACA tax provisions

The Agreement repeals the 'Cadillac' excise tax on high-cost employer provided health insurance plans, effective for taxable years beginning after 2019; a medical device excise tax, effective for sales after 2019; and a health insurance tax, effective for calendar years beginning after 2020. The repeal of these three provisions represents $373 billion of the $426 billion total cost of the Agreement's revenue provisions. These three tax provisions were enacted in 2010 as part of the ACA but had been suspended or delayed previously by Congress.

The House earlier this year voted 419 to 6 to pass legislation (H.R. 748) repealing the 'Cadillac' excise tax on high-cost employer provided health insurance plans.

Disaster tax relief

The Agreement provides disaster tax relief for individuals and businesses affected by natural disasters that have occurred in recent years, including Hurricanes Florence and Michael, Typhoons Mangkhut and Yutu, California fires, Kilauea volcanic eruptions and earthquakes, and Hawaii severe storms, flooding, landslides, and mudslides. The benefits include rules permitting access to retirement funds, temporary suspension of limits on deductions for charitable contributions, allowance of deductions for personal casualty disaster losses, rules for measurement of earned income for purposes of qualification for tax credits, and a credit for employee retention.

Private foundation excise tax rules are modified to encourage private foundations to make larger one-time donations, such as may be needed in the case of disaster relief. Specifically, the Agreement simplifies the Section 4940 excise tax on a private foundation's net investment income by replacing the current 1%/2% rates with a single 1.39% rate.

No technical corrections to the 2017 tax reform act

The Agreement does not include technical corrections to the 2017 tax reform act. In a 'Bluebook' technical explanation of the 2017 tax reform act, the non-partisan JCT staff identified more than 70 tax reform provisions that require some technical corrections. Technical corrections generally are considered to have no revenue effect and would be effective as if included in the original statute. Roughly 80 statutory technical corrections proposals also were proposed in early 2019 by then-Ways and Means Committee Chairman Kevin Brady (R-TX), but were not enacted into law.

Examples of technical corrections identified by JCT staff and Rep. Brady include provisions that deal with qualified improvement property, the effective date for modifications to carryovers and carrybacks of net operating losses (NOLs), settlement fees received by plaintiffs for claims of sexual harassment or sexual abuse, excess 'toll charge' remittance payments, CFC downward attribution rules, and qualified real estate investment trust (REIT) dividends.

Other provisions not included in the agreement

The agreement does not include proposals to temporarily expand the refundability of the child tax credit and earned income tax credit that had been approved by the House Ways and Means Committee earlier this year. These expanded refundable credit provisions, along with changes to dependent care assistance provisions, had been estimated by JCT staff to cost $100 billion over 10 years.

The agreement also does not include new 'green energy' tax proposals, such as a proposal to increase and modify the cap on the current credit for electric automobiles.

SALT deduction limitation tax relief

Separate from the discussions on a year-end tax agreement, the House Ways and Means Committee on December 11 approved, by a 24 to 17 vote along party lines, legislation to temporarily repeal the $10,000 limitation on the state and local tax (SALT) deduction. The legislation would double the SALT deduction limit to $20,000 for married couples filing jointly for 2019 and fully repeal the cap for 2020 and 2021. The SALT deduction limit, which was enacted as part of the 2017 tax reform act, is scheduled to sunset after 2025. The bill also would increase from $250 to $500 above-the-line deductible expenses for educators and would create a comparable deduction for first responders.

To offset the cost of this SALT deduction tax relief, the bill would accelerate the scheduled 2025 sunset of the current 37% top individual income tax rate and reinstate the 39.6% top individual income tax rate after December 31, 2019. JCT staff have estimated that the bill would result in a net $2.4 billion revenue increase over 10 years.

While the House may vote on this bill later this week, Republican Senate leaders have said they do not plan to consider the bill during the current Congress.

The takeaway

The FY 2020 government funding bill has provided a 'must pass' vehicle for a significant year-end tax package that includes tax extenders, three modifications to the 2017 tax reform act, retirement provisions, disaster relief tax measures, and repeal of three ACA tax provisions. Congressional leaders and the Trump Administration, however, were unable to reach an agreement on technical corrections to the 2017 tax reform act, expansion of refundable tax credits, and new 'green energy' tax provisions.

There may be limited opportunities for Congress to enact tax reform technical corrections and other tax proposals during the 2020 election year. With government funding for FY 2020 in place through September 30, 2020 and the federal debt limit previously suspended through July 31, 2021, there are few 'must pass' bills that will require action by the House and the Senate next year. Congress will need to act on new government funding legislation for FY 2021, which begins on October 1, 2020, to avoid a government shutdown shortly before the November 3, 2020 elections.

Additional information

For a JCT revenue estimate of tax provisions included in the FY 2020 funding agreement, click here.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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