Congressional leaders signal low expectations for fall work period, lame duck

Senate leaders this week tamped down already-low expectations that the chamber would move tax extenders legislation before the end of the brief pre-election work period; meanwhile, the speaker of the House expressed doubts about whether Congress and the White House could strike a tax-and-spending deal to prevent the nation from falling over the so-called “fiscal cliff” before the end of the year.

A short session gets shorter

At the start of the current session on September 10, the House and Senate were expected to remain at work until early October. But with the passage of a continuing budget resolution (CR) to fund the government through next March now virtually guaranteed – the measure cleared the House by a vote of 329-91 on September 13 and is on track to win approval in the Senate next week – leaders in both chambers are now said to be eyeing a target adjournment date of September 21. Both chambers regarded the CR as the one “must-pass” item on their pre-election agenda.

Senate extenders bill on hold

Before the August recess, Senate Majority Leader Harry Reid, D-Nev., had indicated interest in holding a vote this month on legislation approved in the Finance Committee (S. 3521) that would extend numerous expired and expiring business, individual, and energy tax incentives through 2013 and patch the individual alternative minimum tax for 2012 and 2013. (A complete list of extenders provisions in the Finance Committee bill is available from Deloitte Tax LLP.)

URL: http://newsletters.usdbriefs.com/2012/Tax/TNV/120910_1suppB.pdf

But any hope of fast action quickly dissipated this week as Reid indicated that the compressed work schedule would make it difficult to hold a vote this month, and Finance Committee member Tom Coburn, R-Okla., who voted against the bill in committee, made it clear that he would offer numerous amendments to the legislation once it reached the floor. Those developments effectively push further Senate action on extenders legislation into the post-election lame duck session. (According to Senate Minority Leader Mitch McConnell, R-Ky., Reid has indicated that the budget CR will be the last item the Senate takes up before lawmakers leave for one final push down the campaign trail in advance of the November 6 elections.)

An eventual Senate extenders bill will still have to be reconciled with as-yet undrafted extenders legislation in the House. Ways and Means Select Revenue Measures Subcommittee Chair Pat Tiberi, R-Ohio, indicated this week that House taxwriters hope to mark up a tax extenders package after the elections; but he offered no details on what provisions would – or would not – be included.

For his part, Ways and Means Committee Chairman Dave Camp, R-Mich., said this week that House taxwriters are taking a different approach to their legislation and will evaluate extenders provisions in the context of overall tax reform.

Fiscal cliff ahead?

In other developments, House Speaker John Boehner, R-Ohio, cast doubts on prospects for a productive lame duck session after the elections, telling reporters at a September 11 press conference that he was “not confident at all” that congressional leaders and President Obama would be able to reach a deal to prevent the scheduled expiration of the Bush-era tax cuts on December 31 and the scheduled imposition of $1.2 trillion in mandatory spending cuts (enacted in last year’s Budget Control Act) on January 1.

Without congressional intervention, under current law, the top ordinary income tax rate will increase next year to 39.6 percent (from 35 percent), the top rate on long-term capital gains will increase to 20 percent (from 15 percent), and the top rate on qualified dividend income will jump to 39.6 percent (from 15 percent) on January 1, 2013. In addition, the top estate tax rate will climb to 55 percent (from 35 percent), the estate tax exemption will fall to $1 million (from $5 million), and limitations on personal exemptions and itemized deductions (the so-called PEP and Pease limitations) will be reinstated. (In addition to these potential rate changes, joint filers earning over $250,000 and single filers earning over $200,000 may be subject to an additional 0.9 percent Medicare Hospital Insurance tax on wages and self-employment income and a 3.8 percent net investment income tax on certain types of investment income. Both of these provisions were enacted in the Patient Protection and Affordable Care Act of 2010 and become effective on January 1, 2013.)
The House last month approved legislation that would extend the Bush tax cuts for all taxpayers through 2013, while the Senate approved a bill that would extend the lower rates through 2013 for low- and middle-class taxpayers only. Neither bill addresses the new taxes taking effect next year that were enacted in the 2010 health care law. (A comparison of the major provisions in the House and Senate bills is available from Deloitte Tax LLP.)

URL: http://newsletters.usdbriefs.com/2012/Tax/TNV/120910_1suppA.pdf

Lawmakers are expected to take up the dueling bills during the lame duck session, but Boehner suggested that a lack of leadership from the White House could prevent a resolution.

"Where’s the president? Where’s the leadership? Absent without leave," Boehner said.

Boehner’s remarks echo comments made by Ways and Means Select Revenue Measures Subcommittee Chairman Tiberi at a GOP convention event last month. Tiberi said it was difficult to imagine a scenario in which both chambers could agree on a temporary extension of current tax policy and that he does not believe President Obama would make the same concessions, such as agreeing to extend all the Bush tax cuts, that he made in 2010.

In response to Boehner’s observation, Senate Majority Leader Reid expressed confidence that lawmakers would reach an agreement during the lame duck session.

— Victoria Glover
Tax Policy Group
Deloitte Tax LLP