No tax provisions in government funding, debt-limit deal

The House and Senate this week approved and President Obama signed legislation that ended the nearly three-week partial shutdown of the federal government and averted the immediate threat of default on the nation’s debt obligations. But the agreement did not include provisions that had been floated in recent days to repeal or delay specific taxes enacted in the Patient Protection and Affordable Care Act (PPACA) nor does it provide specific instructions for Congress to move tax reform legislation.

The Senate passed the Continuing Appropriations Act (H.R. 2775) the evening of October 16 by a vote of 81-18 and the House followed suit shortly before midnight, approving the measure by a vote of 285-144. President Obama signed it into law in the early hours of October 17 – the day on which Treasury Secretary Jack Lew had stated that the government would exhaust all available “extraordinary measures” for avoiding default under the prior debt-ceiling agreement.

The path to ‘yes’

Passage of the Continuing Appropriations Act ended, at least temporarily, a standoff between congressional Republicans (who had sought to link continued funding of government operations to major changes in the PPACA and an increase in the debt limit to other policy changes and spending cuts) and President Obama and congressional Democrats, who insisted on extending government funding and increasing the debt limit without any extraneous provisions.

The final agreement is a compromise forged earlier in the week between Senate Majority Leader Harry Reid, D-Nev., and Minority Leader Mitch McConnell, R-Ky. In the last few weeks, House-passed bills that tied government funding and a debt-limit extension to defunding or delaying implementation of the PPACA fizzled in the Democratic-controlled Senate, as did a series of “clean” bills aimed at reopening specific parts of the government. A proposal late last week by House GOP leaders for a short-term hike in the debt ceiling in exchange for a commitment from the administration to negotiate a longer-term budget plan that would also result in the reopening of the government was rejected by President Obama.

In the past week, other proposals floated by House Republican leaders that called for reopening the government and lifting the debt limit while making only minor, targeted changes to the PPACA drew criticism from the more conservative element in the House GOP conference and were never brought up for a vote on the House floor. With the deadline for addressing the debt ceiling drawing closer and House Republicans unable to coalesce around a new plan of their own, Speaker John Boehner, R-Ohio, opted to allow a vote on the Senate proposal in his chamber and secure its passage by relying on Democratic support to gain a majority. (In the end, 87 House Republicans and 198 Democrats voted for the bill; 144 Republicans – but no Democrats – voted against it.)

Major provisions – Among its major provisions, the new law:

- Provides government agencies with funding at sequestration levels through January 15, 2014.
- Gives the president authority, through February 7, 2014, to request an increase in the federal debt limit. That request would be approved automatically unless Congress adopts a “resolution of disapproval.” The House and Senate would be able to pass a disapproval resolution by a simple majority vote; but as a practical matter, lawmakers would have to muster a two-thirds majority in each chamber to ensure they could override an almost certain presidential veto. The Treasury Department retains the ability to use “extraordinary measures” to avert default beyond February 7, 2014.
- Requires the Secretary of Health and Human Services to verify the eligibility of individuals applying for premium tax credits under section 36B and reductions in cost-sharing under the PPACA.

Budget conference – In addition, as part of the agreement to move the legislation, House and Senate leaders agreed to appoint negotiators to a conference committee to hammer out a concurrent budget resolution for fiscal year 2014. Conferees were instructed to complete their work by December 13, 2013.

Tax provisions considered, but not included – The new law leaves intact the 2.3 percent medical device excise tax that was enacted in the PPACA. (Lawmakers in both chambers had put forward proposals to either repeal or delay implementation of the medical device tax over the last few weeks.)
The new law also omits a proposal floated by Reid and McConnell earlier this week that would have delayed for one year the implementation of an annual fee on health insurance plans that was enacted in the PPACA to fund a transitional reinsurance program under the health insurance exchange that compensates insurers for taking on additional high-risk individuals and pays for other medical costs.

**Budget conference: A foot in the door for tax reform?**

Last month, before the debate over lifting the debt ceiling became fused with the debate over legislation to extend government funding, House GOP leaders indicated that a House debt-ceiling bill would include instructions for moving tax reform legislation through Congress. Although tax reform instructions were not ultimately included in the Continuing Appropriations Act, they could become part of the discussion if House and Senate conferees complete work on a budget conference agreement for fiscal 2014.

House Budget Committee Chairman Paul Ryan, R-Wis., and Senate Budget Committee Chairman Patty Murray, D-Wash., who will lead the conference negotiations, met on October 17 to discuss a path forward, but the entire committee is not expected to meet until the week of October 28, when the Senate returns from recess.

When the committee does convene, however, the deep divide between the House and Senate over tax and spending issues that is likely to complicate negotiations on a fiscal 2014 budget also could stymie conferees if they attempt to address parameters of what tax reform ought to look like or an expedited process for moving it through Congress.

The House budget resolution, which was approved on March 21, calls for an estimated $4.6 trillion in federal spending cuts (based on current policy) from 2014-2023 and provides for no additional tax revenue. It claims that it would bring the budget into balance in 10 years — with a $7 billion surplus in 2023 — due in part to the additional federal receipts stemming from the enactment earlier this year of the American Taxpayer Relief Act of 2012. It also calls for floor consideration of a revenue-neutral corporate and individual tax reform package modeled on a framework put forward by House Ways and Means Committee Chairman Dave Camp, R-Mich., that, among other things, would reduce the corporate tax rate to 25 percent, transition the tax code to a more competitive system of international taxation, and substantially lower tax rates for individuals, with a goal of achieving a top individual rate of 25 percent.

In contrast, the Senate budget resolution, which was passed on March 23 of this year, calls for $1.85 trillion in deficit reduction over 10 years split evenly between new tax revenue and spending cuts. The blueprint also calls for comprehensive tax reform to “eliminate or modify tax breaks that disproportionately benefit the wealthiest Americans, aggressively address the tax gap and offshore tax abuse, and eliminate unfair and inefficient business tax loopholes.”

**No enforcement mechanism** — Another potential impediment to the conference committee process is the fact that the Continuing Appropriations Act does not include an enforcement mechanism that metes out a penalty if conferees fail to agree on a budget blueprint or if Congress does not adopt a long-term budget based on the conference committee’s recommendations. (Notable examples of such enforcement “triggers” include the sequestration spending cuts in the Budget Control Act of 2011, which took effect after the “Supercommittee” failed to approve a deficit reduction package, and a provision in this year’s No Budget, No Pay Act, which called for suspending pay for members of either chamber of Congress if that chamber did not approve a fiscal year 2014 budget resolution by April 15.)

**Taxwriters on the conference committee** — All told, the conference committee is comprised of 12 Democrats and 10 Republicans in the Senate and 4 Republicans and 3 Democrats in the House. Although the conference committee roster is drawn from the House and Senate Budget panels, a number of conferees also serve on one of the two congressional taxwriting committees. Senate taxwriters that will serve on the conference committee include Ron Wyden, D-Ore., Bill Nelson, D-Fla., Debbie Stabenow, D-Mich., Charles Grassley, R-Iowa, Mike Crapo, R-Idaho, Rob Portman, R-Ohio, and Pat Toomey, R-Pa. House taxwriters on the conference committee — in addition to Paul Ryan — include Tom Price, R-Ga., and Diane Black, R-Tenn.

**Taxwriting chairmen weigh in** — Ways and Means Committee Chairman Camp told reporters October 16 that a budget conference potentially could produce “either instructions for tax reform or some other agreements that make it easier for us to do tax reform”; but he added that “if a budget conference isn’t successful, we can always fall back on regular order.” Camp also noted that he remains on track to mark up tax reform legislation in his committee by the end of the year.
For his part, Senate Finance Committee Chairman Max Baucus, D-Mont., told reporters that his panel will release a “very meaningful document” this fall, but cautioned that it was “too early to know” if the committee would mark up a bill by the end of the year.

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