

WHAT'S NEW IN WASHINGTON



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December 2017

December is often the busiest time in Washington, and this year is no different as Congress races toward the holiday finish line. There is still a multitude of problems to solve before members can head back to their districts, with the two most pressing issues being tax reform and funding the federal government beyond December 22.

On December 5 and 6, the House and Senate, respectively, each voted officially to begin conference negotiations on the Tax Cuts and Jobs Act of 2017 (TCJA). However, there are a number of key differences between the two chambers' proposals that need to be resolved related to the corporate tax rate, individual tax brackets and rates, whether to keep the alternative minimum tax and how to provide tax relief to pass-through entities, to name a few.

All of this must be achieved while remaining under the \$1.5 trillion reconciliation instruction established as part of the Fiscal Year 2018 budget resolution. President Trump has been urging Congress to get a tax bill on his desk before Christmas, and the pressure is especially high in the wake of Republicans' failure to repeal and replace Obamacare.

While Congress managed to pass a stopgap funding measure yesterday to avoid a government shutdown, it will last for only two weeks, leaving a December 22 deadline for a budget cap deal and a number of expiring programs looming on the horizon before the holidays. It is not entirely clear whether Democrats in the minority or frustrated conservatives might thwart or delay a year-end package by using this must-pass deadline as leverage on other pressing matters, such as the Deferred Action for Childhood Arrivals (DACA).

Here are a few things that we believe are worth focusing on since our last issue:

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Tax Reform Leaps Forward

November witnessed quick action on congressional Republicans' efforts to pass the most comprehensive rewrite of the federal tax code in more than three decades using the budget reconciliation process. On November 2, 2017, the House Ways and Means Committee released the TCJA, its much-anticipated plan for reforming the tax code for businesses and individuals. The plan makes significant changes to all aspects of the corporate, pass-through, international and individual sections of the tax code. The Ways and Means Committee advanced the measure on November 13, and the full House passed the measure on November 16 by a vote of 227-205, with 13 Republicans voting with all Democrats to oppose the bill.

The same day the House passed its bill, the Senate Finance Committee successfully finished a markup on its version of TCJA. Additionally, the Senate Energy and Natural Resources Committee, which the Fiscal Year 2018 Budget Resolution instructed to achieve \$1 billion in savings, drafted language that would open portions of the Arctic Natural Wildlife Refuge (ANWR) to energy production. On November 28, following action by Finance, and Energy and Natural Resources, the Senate Budget Committee combined the tax reform and ANWR language into a single reconciliation package for floor consideration.

Given the thin Senate Republican majority, GOP leaders faced significant challenges to secure the necessary votes to pass the reconciliation package; it could lose only two Republican votes and still advance the legislation.

with Vice President Pence breaking a tie vote if needed. The legislation received a jolt of momentum when key swing Sens. John McCain (R-AZ) and Rand Paul (R-KY) announced their support for the bill. Nevertheless, several substantive issues became flashpoints in Republican negotiations over the final text, including:

- adding \$1.5 trillion to the federal deficit over a decade
- increasing the pass-through deduction
- restoring some form of the state and local taxes deduction
- adding a provision effectively repealing the Affordable Care Act's (ACA) individual mandate.

Republican leaders spent the week of November 27 working to secure the votes of undecided Republicans, including increasing the deduction for certain pass-through income from 17.4 percent to 23 percent to earn the support of Sens. Ron Johnson (R-WI) and Steve Daines (R-MT). Sen. Susan Collins (R-ME) added to the momentum by agreeing to vote for the bill after Republican leadership agreed to include the House provision allowing a deduction for up to \$10,000 in property taxes, as well as preserving the deduction for medical expenses at a more generous floor (expenses in excess of 7.5 percent of AGI, versus 10 percent under current law). She also announced that she received assurances from Senate Republican leaders and the White House that Congress would take up legislation before the end of the year to stabilize the health insurance markets dealing with fallout from repealing the individual mandate.

Despite securing support with these and other changes, attempts to assuage deficits hawks by including budget "triggers" to raise the corporate tax rate if economic growth projections not reached in the future were stymied by the Senate Parliamentarian, who ruled that provisions violated Senate reconciliation rules. Ultimately, however, the final text cost the Senate GOP a single vote. Sen. Bob Corker (R-TN), was the lone Republican "no" vote, with all Democrats voting to oppose the bill. The measure passed in the early hours of Saturday, December 2, on a vote of 51-49.

Looking forward, the House and the Senate will now resolve the differences between the two bills in a conference committee. On December 4, the House voted to go to conference and selected its conferees from three separate committees:

- **Ways and Means:**
 - Kevin Brady (R-TX), Diane Black (R-TN), Devin Nunes (R-CA), Peter Roskam (R-IL), Kristi Noem (R-SD), Richie Neal (D-MA), Sandy Levin (D-MI) and Lloyd Doggett (D-TX)
- **Natural Resources:**
 - Rob Bishop (R-UT), Don Young (R-AK) and Raúl Grijalva (D-AZ)
- **Energy and Commerce:**
 - Fred Upton (R-MI), John Shimkus (R-IL) and Kathy Castor (D-FL)

On December 6, the Senate also voted to go to conference, and the Senate Republicans announced their conferees:

- **Republicans:**
 - Orrin Hatch (R-UT), Mike Enzi (R-WY), Lisa Murkowski (R-AK), John Cornyn (R-TX), John Thune (R-SD), Rob Portman (R-OH), Pat Toomey (R-PA) and Tim Scott (R-SC)
- **Democrats:**
 - Ron Wyden (D-OR), Bernie Sanders (I-VT), Patty Murray (D-WA), Maria Cantwell (D-WA), Debbie Stabenow (D-MI), Bob Menendez (D-NJ) and Tom Carper (D-DE).

Members and staff have begun discussions aimed at achieving as much common ground as possible in quick order. Conferees will seek to advance their respective chamber's priorities, and areas of disagreement are likely to include:

- the corporate tax rate and effective date
- fate of the Alternative Minimum Tax for corporations and individuals
- tax rates for individuals, the number of tax brackets and their thresholds
- whether to further improve the ability to deduct any state and local taxes
- permanent or temporary changes to certain tax deductions and credits
- whether to fully repeal the estate tax or only increase the exemption amount
- size of the mortgage interest deduction.

As the informal discussions continue, reports have surfaced indicating that lawmakers may be considering a corporate tax rate above the goal rate of 20 percent in order to make other changes to the bill and remain within the deficit target. The idea recently received a boost from President Trump, who said that he was open to the higher rate.

Republican leaders have stated that they hope to send a final tax reform package to the White House by December 22, which they believe is an achievable goal under the current timeline. However, President Trump has urged congressional Republicans to move faster. A majority of conferees from each house will first need to sign-off on a conference report before the House and Senate can each vote on the final measure.

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Administration Increases Use of Rare Trade Remedy Actions

The Trump administration has focused more on trade remedies than its predecessor, making an incredibly busy year in the field. For the first time in 25 years, the U.S. Department of Commerce (“Commerce”) self-initiated antidumping and countervailing duty investigations on aluminum sheet from the People’s Republic of China. These self-initiated investigations have begun while Commerce is simultaneously considering whether these same imported aluminum products (among others) pose a threat to national security in a separate “Section 232” investigation. Commerce completed its last Section 232 investigation in 2001 and is now working on investigations of both aluminum and steel products.

The U.S. International Trade Commission (ITC) completed its first “Section 201” safeguard investigation in the last 15 years. In mid-November, the ITC issued its full report on whether solar cells and modules are being imported in such increased quantities that they are a substantial cause of serious injury. The four commissioners recommended three different remedies, and the President has until January 26, 2018, to decide whether, and what remedy, to impose. On December 6, 2017, the Office of the U.S. Trade Representative will have a hearing concerning this case.

The longest ongoing “trade war” between Canada and the United States, featuring trade in softwood lumber, came to a close in November at Commerce, with the department making affirmative final determination in the antidumping and countervailing duty investigations. The ITC is scheduled to make its final injury determination on December 7, 2017. Canadian parties have already started appeal proceedings, requesting both a North American Free Trade Agreement panel and consultations at the World Trade Organization.

Finally, in a rare finding, the ITC made a negative preliminary determination on titanium sponge from Japan and Kazakhstan, finding that there was no reasonable indication that the U.S. titanium sponge industry was materially injured, or threatened with material injury, by reason of these imports. In an increasingly politicized environment in the field of trade remedies, the ITC’s negative determination demonstrates the strength of the evidence placed before it.

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House Judiciary Committee Advances Bill on H-1B Visa Restrictions

On November 15, 2017, the House Judiciary Committee advanced by voice vote amendments to the Protect and Grow American Jobs Act, H.R. 170, which makes several changes to the administration of the H-1B program (the most common high-skilled foreign worker program) as it relates to H-1B dependent employers.

Background

Since 1998, employers whose workforces are composed of 15 percent or more of H-1B workers (“H-1B dependent employers”) have been required to recruit U.S. workers before filing petitions for H-1B workers. They were also required not to lay off U.S. workers and replace them with H-1B workers within the 90 days before and after the filing of an H-1B petition. To avoid these requirements, H-1B dependent employers, under current law, can pay their H-1B workers an annual salary of at least \$60,000 or hire H-1B workers with the minimum educational qualification of a master’s degree.

Protect and Grow American Jobs Act, H.R. 170

Rep. Darryl Issa, along with six co-sponsors, introduced H.R. 170 with the stated purpose of “requiring H-1B-dependent employers once again to pay sufficiently high wages to ensure the protection of the workforce in the United States and to remove other impediments to proper H-1B visa enforcement.” The markup to H.R. 170 advanced out of the Judiciary Committee, includes a higher wage requirement for H-1B employees of H-1B

dependent employers and stricter requirements for the recruitment and attrition of U.S. workers, along with increased fees for H-1B petitions and broader investigatory powers to the Department of Labor to ensure compliance with the H-1B program with respect to H-1B dependent employers. The key provisions of the draft legislation include:

- no exceptions for layoff attestation for H-1B dependent employers and a longer period of application
 - H.R. 170 provides that all H-1B dependent employers are prohibited from displacing a U.S. worker in the period beginning 90 days before the filing of the visa petition and continuing through the last day of the H-1B employment, including any extensions. H-1B dependent outsourcing employers must receive written assurances when placing H-1B workers at client sites that the client has not displaced, does not plan to displace or will inform the outsourcing company if the client displaces an equivalent U.S. worker in the 90-day period before the placement and continuing through the end of the placement.
- additional documentation requirements regarding efforts to recruit U.S. workers
 - H-1B dependent employers would be required to submit, along with the H-1B application, documentary evidence of their efforts to recruit U.S. workers, along with the number of applicants, reasons that the position was not offered to each worker, the number of workers who were offered the position and whether offers were accepted.
- higher wage to H-1B workers
 - to escape the requirement to first recruit U.S. workers, under H.R. 170, H-1B dependent employers would be required to pay a minimum of \$90,000. There is no exception for employees with a master's degree or higher.
- increased enforcement measures and higher fees
 - H.R. 170 also imposes several enforcement measures, including empowering the Department of Labor to conduct investigations on a case-by-case basis for individual employers, and annual investigations of at least 5 percent of all H-1B dependent employers. The bill also includes the imposition of an additional \$495 fee on top of the established fees for each initial H-1B petition or authorization for an H-1B employee to change employers.

If passed, H.R. 170 would mean significant changes for employers who employ more than 15 percent of their workforce on the H-1B visa, and it will impose higher filing fees on most employers petitioning for H-1B employees.

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FCC Eliminates Cross-Ownership Rules and Relaxes Local Television Ownership Rules

At its November open meeting, in a 3-2 decision vigorously opposed by the two Democratic commissioners, the Federal Communications Commission (FCC) voted in favor of significant changes to its media ownership rules. Specifically, the Republican-led commission voted to eliminate the newspaper/television and the radio/television cross-ownership rules, as well as to relax the local television ownership rules, finding that the media ownership rules in their current form are antiquated, given the number and variety of news sources in today's media market. As a result of this action, an entity no longer will be restricted from holding attributable ownership interests in both an English-language daily newspaper and a radio or television station in the same market. Similarly, the existing restriction against common ownership of certain combinations of same-market radio and television stations will be lifted.

In addition to eliminating the cross-ownership rules, the FCC also voted to relax its rules governing ownership of local television stations by modifying the local television rule to facilitate ownership of television duopolies in certain circumstances. Specifically, the FCC voted to eliminate the "eight-voices" test, which prohibited ownership of a television duopoly in a market if, once the two stations are under common ownership, the market would be served by fewer than eight independent commercial and noncommercial television stations. The FCC concluded that allowing duopolies without regard to the number of voices in the market would facilitate combinations that could help lower-rated stations better serve their viewers. The ability to own a television duopoly in any market remains subject to the requirement that an entity may not hold attributable interests in two top-four-rated stations in the same market, though the FCC will consider, on a case-by-case basis, whether this restriction should be waived where it is demonstrated that application of the top-four prohibition is not in the public interest.

The FCC further relaxed the rules governing local television station ownership by eliminating its 2016 rule treating certain television joint sales agreements as attributable ownership interests, a rule change that will benefit television stations in small and mid-sized markets in particular, since stations in these markets have historically used these agreements as a means to use limited resources more efficiently in an increasingly competitive marketplace. Of course, it is widely expected that the FCC's actions will be appealed to the courts and that the rules may be stayed prior to becoming effective. If, however, the rules take effect as adopted, increased mergers and acquisitions and investment in the media sector are likely, including increased consolidation and

transactional activity among existing media groups.

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Congress Working to Fund the Government

The House and Senate voted on Thursday, December 7, to extend the Continuing Resolution (CR) funding the federal government for two more weeks, until Friday, December 22. In addition to funding the government, the CR also extends programs attached to the current CR, such as the Flood Insurance Program. An additional provision in the spending measure would permit the Centers for Medicare and Medicaid to extend funding to states that are running low on dollars for the Children's Health Insurance Program (CHIP) to ensure that state CHIP programs remain solvent through the end of 2017.

With only two weeks left before December 22, congressional leaders are working to find an agreement on the budget caps to avoid mandatory "sequestration" cuts before then. If they are successful, appropriators will need some time to work out the details for a Fiscal Year 2018 omnibus appropriations spending bill, which is not likely to come together until sometime in January 2018. The December 22 package is expected to combine the constructs of the budget caps deal with another short-term CR, likely four to six weeks in length. The measure is also expected to include supplemental appropriations for disaster relief and may also include provisions to formally reauthorize CHIP funding and renew a number of expiring Medicare provisions. This could morph into an even bigger year-end package, with talk of including everything from increasing the debt limit to repealing Independent Payment Advisory Board (IPAB) to delaying the Cadillac and medical device taxes.

One challenge facing the budget caps negotiation is the battle over defense spending versus nondefense spending. The House Freedom Caucus is urging House GOP leadership to oppose Democratic demands for increases in spending for nondefense programs. Republican leaders believe that Democrats, including those in the Senate, where at least eight are needed to advance the year-end bill, will oppose any budget caps deal that does not achieve spending increase parity between defense and nondefense programs.

Another issue that could complicate passage is immigration. Congressional Democrats are strongly lobbying for a provision to address the DACA issue. The Trump administration announced in September that the Department of Homeland Security would cease processing DACA applications and that DACA recipients would begin losing their status on March 5, 2018, putting pressure on lawmakers to preserve the program's protections before the deadline expires. Democrats continue to threaten to withhold support from any funding bill that does not address the immigration issue.

Most Republicans, however, maintain that DACA should not be included in the year-end package and are betting that Democrats will relent and vote to extend government funding into the new year without a DACA fix. Republicans argue that, since the DACA expiration date falls in March, it should be addressed in early 2018, allowing lawmakers to use the first weeks in January to wrap up negotiations over the budget caps. Democrats could insist on a DACA fix in the December 22 bill though, raising the prospects for a shutdown. A deal could emerge that allows Democrats to address DACA while allowing Republicans to increase enforcement with measures such as partial funding for the wall and stopping chain migration.

While the year-end bill may seem to be a chaotic jumble of unresolved issues, recess weeks tend to bring a sudden sense of clarity and agreement to Congress, so we believe that it is still more likely than not that members will be able to avoid a shutdown later this month, one way or another.

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Change in the Middle East

Numerous events have transpired in the Middle East over the last month that could have significant implications for the region. On the weekend of November 3, Saudi Arabia's Crown Prince Mohammed bin Salman ordered 11 princes and dozens of officials and businessmen to be arrested under a government anticorruption campaign. However, critics have accused the Crown Prince of jailing potential rivals to cement his own power. This anticorruption effort comes in the wake of news that Saudi Arabia had granted women the right to drive, is taking steps to combat extremism, and has taken other positive efforts to modernize its society and diversify its economy.

Furthermore, on December 6, President Trump announced that he would formally recognize Jerusalem as the capital of Israel and begin the process of moving the U.S. embassy from Tel Aviv. This decision further complicates efforts by the President, and Senior Advisor Jared Kushner, to broker the "ultimate deal" for peace between Israelis and Palestinians. The President insisted that the decision to recognize Jerusalem should not be

perceived as the United States taking a position on how the city might ultimately be shared. Regardless, the decision has largely been met with concern from NATO, EU, Middle East, Chinese and Vatican leadership. In addition, the House passed the Taylor Force Act (H.R. 1164), which would condition U.S. aid to the Palestinian Authority until it stops paying stipends to terrorists and their families, or facilitating such payments from third parties.

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