TAX

Tax Extenders Not Included in Funding Package

Key Points:

- Senate lawmakers came to an agreement this week to fund the government but decided not to add on tax extenders for provisions that expired at the end of 2017.
- While Senate Finance Chairman Chuck Grassley (R-IA) was in favor of including the tax extenders in the overall funding package, the House and Senate conference committee were not able to find a compromise.
- One hurdle is the House “Pay-Go” Rule requiring offsets – something the Senate is not likely to accept.

The Senate agreed on a funding package for the Internal Revenue Service (IRS), the Department of the Treasury, and other agencies this week, but chose not to include tax extenders for provisions that expired at the end of 2017. While there was interest among both House and Senate members in adding on a tax extenders package, members of the conference committee had not discussed the matter. One hurdle was the renewed House “Pay-Go” rule requiring offsets for any tax cuts. Extenders have not been offset for about a decade, but waiving the “Pay-Go” rules on the first opportunity would likely have presented a political hurdle for House Democrats.
Several tax extenders expired in 2017 and while Senate Finance Committee Chairman Chuck Grassley (R-IA) supports making permanent the short-line regional railroad track maintenance credit and incentives for biodiesel and renewable diesel fuel, most of the extenders would likely receive one-year retroactive extensions through 2018, though Chairman Grassley supports making some permanent and extending others for as much as two years.

Democrats from New Jersey Offer Bill to Repeal SALT Cap

Key Points:
- Representative Bill Pascrell Jr. (D-NJ) and Senator Robert Menendez (D-NJ) offer legislation that would repeal the $10,000 cap on the state and local tax deduction, and would also restore the 39.6 percent income tax rate on upper-income families.
- Senate Finance Committee Chairman Chuck Grassley (R-IA) stated that the committee’s position has not changed and will reject further consideration of the SALT deduction.

House Ways and Means Committee member Bill Pascrell Jr. (D-NJ) and Senate Finance Committee member Robert Menendez (D-NJ) offered the Stop the Attack on Local Taxpayers (SALT) Act of 2019 on Monday that would repeal the $10,000 cap on the state and local tax (SALT) deduction and restore the 39.6 percent income tax rate on upper-income families. Democrats from high-tax states like New York, New Jersey, and California support the bill and argue that the federal cap on SALT deductions subjects their constituents to being double taxed on the same dollar. Representative Christopher Smith (R-NJ) is the only Republican sponsor of the bill.

House Ways and Means Ranking Member Kevin Brady (R-TX) has stated that repealing the SALT cap will primarily help the wealthiest taxpayers. In regard to restoring the top individual income tax rate to 39.6 percent, Representative Pascrell (D-NJ) said “[T]he same rate stood prior to the tax cut law – no one was asking in the tax bill for a lower tax rate for the wealthy, but a hell of a lot of us were asking to stop and keep the SALT deduction.”

Senate Finance Committee Chairman Grassley (R-IA) and his office have reiterated that the bill’s introduction does not change the committee’s position on the SALT deduction and they will continue to reject any further consideration of the issue. Senator Menendez plans to renew formal holds on the nominations of Michael Desmond to be IRS chief counsel and Michael Faulkender to be Treasury assistant secretary for economic policy. Specifically, Menendez plans to delay Desmond’s nomination due to his uncertain stance over proposed IRS regulations that reject state government workarounds to the SALT cap.

Senate Democrats Propose Excise Tax for Pharmaceutical Companies

Key Points:
- Senators Sherrod Brown (D-OH) and Kristen Gillibrand (D-NY) offered legislation that would place an additional tax on pharmaceutical companies in proportion to a price increase.
- The bill would amend chapter 32 of the IRC and impose a tax on the greater of the annual price spike or cumulative price spike for the prescription drug if the drug has been in circulation for more than two years.

Senate Finance Committee member Sherrod Brown (D-OH) and Senator Kirsten Gillibrand (D-NY) introduced the Stop Price Gouging Act (S. 378) that would place an additional tax
on pharmaceutical companies in proportion to the price increase in drugs. Senator Brown, in a statement, said the legislation would require “drug companies to report and justify their decisions to increase prices and prevent big pharma from price gouging.”

Specifically, the bill would amend chapter 32 of the Internal Revenue Code (IRC) and impose a tax on the greater of the annual price increase or cumulative price increase for the prescription drug if the drug has been in circulation for more than two years. The legislation would also require the company to justify any price increase to the Department of Health and Human Services (HHS). President Trump announced last week in his State of the Union address that lowering the cost of healthcare and prescription drugs would be his “next major priority.”

Treasury Outlines Regulatory Priorities

Key Points:

- Treasury Assistant Secretary for Tax Policy David Kautter said the agency will focus on GILTI, BEAT, 163(j) regulations to finalize by June 22 in order for them to be retroactive.
- After finalizing the regulations, Kautter said the Treasury and the IRS will focus on addressing deregulatory activity and other guidance projects.

On Thursday, Treasury Assistant Secretary for Tax Policy David Kautter stated that he is unsure that Treasury could finalize the section 163(j) regulation on business interest expense deductions by June 22, which would allow the regulations to be retroactive to the date of enactment. The Treasury Department issued proposed regulations in November 2018 that would implement changes to the business interest expense deduction included in the TCJA. Specifically, the law states that deduction is limited to the sum of business interest income, 30 percent of adjusted taxable income, and floor plan financing interest.

In regard to the international provisions, the Treasury and the IRS are working to advance the regulations for global intangible low-taxed income (GILTI), the base erosion and antiavoidance tax (BEAT), and foreign-derived intangible income. After finalizing the proposed regulations, Kautter said the next priority for Treasury and the IRS is to address deregulatory activity – saying that final regulations will be coming soon to revoke roughly 300 deadwood regulations. In addition, Kautter noted that guidance projects are moving forward as well.

House Ways and Means Committee Holds Hearing on Middle Class Families, Infrastructure Hearing Coming

On Wednesday, the House Ways and Means Committee’s Subcommittee on Select Revenue Measures held a hearing entitled “How Middle Class Families are Faring in Today’s Economy.” Witnesses in the hearing included: Mark Zandi, Chief Economist, Moody’s Analytics; Heather Boushey, Executive Director and Chief Economist, Washington Center for Equitable Growth; Sara Collins, Vice President of Health Care Coverage and Access, Commonwealth Fund; Kevin Brown, Former President, California Association of Realtors; Pam Eddinger, President, Bunker Hill Community College; Tatum Tirado, Mathematics and Special Education Teacher, Ballou High School; and Guy Berkebile, Owner, Guy Chemical Company.

Subcommittee Chairman Mike Thompson (D-CA) said the Committee should focus on financial security and prosperity for the middle class while Ranking Member Adrian Smith (R-NE) praised the Tax Cuts and Jobs Act
(TCJA), and argued that the legislation has allowed people to keep more of what they earn.

As far as other hearings that are expected, Full Committee Chairman Richard Neal (D-MA) announced in a speech to State Treasurers that he plans on holding a hearing on the nation’s infrastructure in the near future.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Henry Homans contributed to this section.

FINANCIAL SERVICES

Bank Regulators Issue Final Rule on Private Flood Insurance

Key Point:
- The rule directs regulated lenders to accept policies meeting the statutory definition of private flood insurance.

On February 12, the Federal Reserve Board, the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) issued a joint final rule on “Loans in Areas Having Special Flood Hazards.” The rule had previously been approved by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). The rule implements provisions passed in the Biggert-Waters Flood Insurance Reform Act of 2012. The rule requires regulated lending institutions to accept policies that meet the statutory definition of “private flood insurance” in the Biggert-Waters Act.

The final rule will go into effect on July 1, 2019.

Fed Vice Chairman Quarles Gives First Speech as Financial Stability Board Chairman

Key Point:
- Quarles outlined his principles for the FSB going forward, which included transparency, cutting-edge thinking, and analysis of the effects of regulation.

On February 10, Federal Reserve Vice Chairman for Supervision Randal Quarles gave a speech at a Bank for International Settlements Special Governors Meeting in Hong Kong. The speech was his first as Chair of the Financial Stability Board (FSB). Quarles is serving a three year term as chair of the FSB, concluding on December 2, 2021.

In the speech, Quarles suggested that “post-crisis reform agenda has been largely completed,” noting that “Basel III is final, the largest global banks have substantially more capital and liquidity, over-the-counter derivatives markets are safer, and steps have been taken to address the risks of too-big-to-fail institutions.” He went on to outline his principles for the FSB as it moves forward:

First, engagement: to maintain the legitimacy of our work, to increase understanding of it, and to enhance its effectiveness, we must improve our outreach and transparency—including to our membership, other global authorities, the public, and key stakeholders.

Second, rigor: as we devote more attention to evaluation of new and evolving risks in the financial sector, we must ensure that our assessment of vulnerabilities is based on cutting-edge thinking and a disciplined methodology.

And third, analysis: regulation has evolved rapidly in the last decade, and---if we are doing our jobs right--will continue to evolve with rapid
developments in the financial sector. An important part of our work must be continual, critical analysis of the effects of regulation with an eye to making useful improvements where possible.

House Financial Services Subcommittee Holds Hearing on Banking Services for Cannabis-Related Businesses

Key Point:
- The panel debated a bill to give financial institutions a safe harbor to provide banking services to cannabis-related businesses.

On February 13, the House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions held a hearing entitled “Challenges and Solutions: Access to Banking Services for Cannabis-Related Businesses.” The hearing focused on the discussion draft of the Secure and Fair Enforcement (SAFE) Banking Act of 2019, offered by Representative Ed Perlmutter (D-CO), Representative Denny Heck (D-WA), Representative Steve Stivers (R-OH), and Representative Warren Davidson (R-OH). Perlmutter explained that the bill would create a safe harbor for banks and employees that choose to do business with marijuana companies. He stated that it would protect ancillary businesses like real estate owners, accountants, vendors, and contractors, and that it would also require continued filing of suspicious activity reports (SARs).

A number of Democrats, including Chairman Gregory Meeks (D-NY) and Full Committee Chairwoman Maxine Waters (D-CA) spoke in support of the bill, suggesting that it would provide clarity to banks, aid law enforcement, allow more accurate tax collection from cannabis-related businesses, and help to make communities safer.

Ranking Member Blaine Luetkemeyer (R-MO) asserted that the Committee does not have jurisdiction over drug scheduling. He said it would be very difficult for banks to distinguish legal operators from illegal operators. He stated that until Bank Secrecy Act (BSA) and anti-money laundering (AML) regulations are updated it would be irresponsible to subject banks to another major challenge. He expressed concern that the SAFE Banking Act will create more confusion than it solves.

Full Committee Ranking Member Patrick McHenry (R-NC) said there are conflicting state and federal laws which must be resolved. He said the conflicts create confusion for banks. He stated that the Committee would have to look at AML/BSA requirements, which would need to be adapted for the proposed bill to work. He stressed the need to include law enforcement in the discussion on this issue. He stated that 33 states have taken actions which are expressly counter to federal law. He said the bill would allow financial institutions to operate in violation of federal law.

Senate Banking Committee Holds Hearing on Nominations to the FHFA, NCUA and Treasury

Key Point:
- Several Democratic committee members raised concerns with the nomination of Mark Calabria to be Director of the Federal Housing Finance Agency.

On February 14, the Senate Banking Committee held a hearing to consider the nominations of Mr. Bimal Patel, to be an Assistant Secretary of the Treasury; Mr. Todd Harper, to be a Member of the National Credit Union Administration (NCUA) Board; The Honorable Rodney Hood, to be a Member of the National Credit Union Administration Board; and Dr. Mark Calabria, to be Director.
of the Federal Housing Finance Agency (FHFA).

Several Democratic members of the Committee, including Ranking Member Sherrod Brown (D-OH) and Senators Bob Menendez (D-NJ), Jon Tester (D-MT), Chris Van Hollen (D-MD), Elizabeth Warren (D-MA), Tina Smith (D-MN) and Catherine Cortez-Masto (D-NV) expressed concerns with Calabria’s nomination, pointing to his prior statements and writings on housing finance policy. Brown and Menendez criticized a blog post in which Calabria referred to people seeking principal reductions as “deadbeats.” Warren, Smith and Cortez-Masto raised concerns with Calabria’s writings suggesting that the GSEs’ affordable housing goals were a key cause of the 2008 financial crisis. Calabria responded that the housing goals were not in the top ten causes of the crisis, suggesting that their impacts were modest.

UPCOMING EVENTS
February 26
Credit Bureaus: The House Financial Services Committee will hold a hearing entitled “Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System.”

Monetary Policy: The Senate Banking Committee will hold a hearing to receive the Federal Reserve’s Semiannual Monetary Policy Report to Congress. Federal Reserve Board Chairman Jerome Powell will testify at the hearing.

February 27
Monetary Policy: The House Financial Services Committee will hold a hearing entitled “Monetary Policy and the State of the Economy.” Federal Reserve Board Chairman Jerome Powell will testify at the hearing.

Diversity: The House Financial Services Committee’s Subcommittee on Diversity and Inclusion will hold a hearing entitled “Diversity Trends in the Financial Services Industry.”

For more information about financial services issues you may email or call Joel Oswald at 202-659-8201. Alex Barcham contributed to the articles.

HEALTH

FDA Announces New Draft Guidance on Competitive Generic Therapies

Key Point:
- The Food and Drug Administration (FDA) released a new draft guidance to provide greater clarity to industry on the Competitive Generic Therapies pathway.

On February 15, the Food and Drug Administration (FDA) announced a new draft guidance titled “Competitive Generic Therapies” to provide clarity for companies on the use of this pathway which incentivizes the development of generic versions of drugs with little or no competition. This new pathway was created under the FDA Reauthorization Act of 2017 and allows an applicant to designate a drug as a competitive generic therapy (CGT). The FDA may expedite the development and review of an abbreviated new drug application (ANDA) for drugs designated as a CGT.

As explained in a statement from FDA Commissioner Scott Gottlieb, the CGT designation can provide a number of other benefits to companies including product development meeting with the FDA. This can help reduce the number of application review cycles and decrease the time for approval. If the product receives CGT designation, it may be eligible for a 180-day period of marketing exclusivity so long as the application is the first-approved ANDA for that CGT and meets
other conditions. Gottlieb stressed this new draft guidance supports FDA’s broader efforts to foster generic competition and address the high cost of drugs.

Read the draft guidance here.

FDA Announces New Draft Guidance on Manufacturing

**Key Point:**
- The FDA released a new draft guidance proposing a program to allow stakeholders and the FDA opportunity to propose pharmaceutical quality standards for potential recognition by the FDA.

On February 13, the FDA announced a new draft guidance from the Center for Drug Evaluation and Research (CDER) on its “Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality Guidance for Industry.” The goal of the voluntary program is to promote the development and appropriate use of consensus standards to help expedite pharmaceutical development and streamline the review of drug product applications.

In a statement, FDA Commissioner Scott Gottlieb noted “one of the fundamental elements of overseeing the quality and safety of pharmaceuticals is having a clear understanding of the specific processes and technologies used to manufacture drugs throughout their lifestyle.” CDER anticipates this program will help promote innovation in development and manufacturing as well as streamline assessment of marketing applications for products. Even if an applicant uses one of CDER's informally recognized voluntary standards, it may still be required to submit additional information to support the Investigational New Drug application.

Read the guidance here. Comments are due April 14, 2019.

House Ways and Means Begins Examination of Prescription Drug Prices

**Key Points:**
- The House Ways and Means Committee held a hearing entitled “The Cost of Rising Prescription Drug Prices.”
- Questions focused on Medicare, the drug patent system, pharmacy benefit managers, direct-to-consumer advertising, and international drug prices.

On February 12, the House Ways and Means Committee held a hearing entitled “The Cost of Rising Prescription Drug Prices.” Topics discussed in the hearing included: (1) Recommendations; (2) Medicare Negotiation; (3) Inflation Adjusted/ Flat Fee Rebates; (4) Generics/ Importation; (5) Innovation; (6) Insulin; (7) Competition/ Monopolistic Pricing; (8) Direct-to-Consumer Advertising; (9) Transparency; (10) Trump Administration Blueprint; (11) Step Therapy; (12) Health Savings Accounts; (13) Personal Experiences; (14) Aging Population.

Chairman Richard Neal (D-MA) stated the high cost of medical innovation is often excessively passed on to the consumer. He noted he has already begun discussions with Secretary of Health and Human Services (HHS) Álex Azar and said he plans to keep that line of communication open. Ranking Member Kevin Brady (R-TX) expressed concern that rising out of pocket (OOP) costs, premiums, and deductibles harm middle class families and workers. He said these costs are burdening states and hurting the financial viability of Medicare and Medicaid. He praised Democratic colleagues for their bipartisan approach.
Committee Democrats contended pharmaceutical companies are taking advantage of the patent system and market exclusivity to limit competition and raise prices. They advocated for consolidating bargaining power with the federal government to negotiate lower prices. Representative Lloyd Doggett championed his “Medicare Negotiation and Competitive Licensing Act” (H.R. 1046), which would require the Secretary of Health and Human Service to negotiate drugs under Part D. Other proposals included a cap for out of pocket expenses in Part B and Part D and eliminating the tax credit for direct-to-consumer drug advertising.

Committee Republicans repeatedly cautioned against instituting price controls or consolidating Medicare negotiations. Members advocated for fighting high prices by increasing transparency and encouraging market competition. Representative Drew Ferguson (R-GA) suggested the tax code could better reward manufacturers for research and development expenditures to limit the percentage of these costs passed to consumers.

Upcoming Hearings and Meetings

February 20

Surprise Billing: The Brookings Institution will hold a discussion on “Emerging Policy Solutions to Surprise Medical Bills.”

February 26

Drug Prices: The Senate Finance Committee will hold its second hearing on prescription drug prices.

For more information about healthcare issues you may email or call Nicole Razinski Bertsch or George Olsen at 202-659-8201.

TRADE

U.S.-China Talks to Continue Next Week

Key Points:

- A Chinese delegation will travel to Washington DC next week to continue trade negotiations, as the U.S. is set to raise the tariff rate on $200 billion of Chinese goods from 10 to 25 percent March 2.
- The House Ways & Means Committee will hold a meeting with U.S. Trade Representative (USTR) Robert Lighthizer later this month; some are considering making it a public hearing on U.S.-China negotiations and the U.S.-Mexico-Canada Agreement (USMCA).

High-level negotiations between the U.S. and China wrapped this week, with the White House touting “detailed and intensive discussions [that] led to progress between the two parties.” Treasury Secretary Steven Mnuchin and USTR Lighthizer had “productive meetings” with Vice Premier Liu He; they also met with Xi Jinping. The sides reportedly compiled their offers into a memorandum of understanding, with disagreements included in bracketed text. This modest progress comes amidst the approaching March 2 tariff rate hike, though President Trump suggested during a cabinet meeting Tuesday that he could potentially “[let] that slide for a little while… But generally speaking, I’m not inclined to do that.” China hawks in the Trump Administration, including USTR Lighthizer, were reportedly “irate” that President Trump is contemplating a 60-day extension of the deadline. White House Press Secretary suggested this week that President Trump and Xi could meet at Mar-a-Lago ahead of the deadline.
House Ways & Means Committee members are expected to meet with USTR Lighthizer in late February to discuss the USMCA and China negotiations. Members are pushing for a public hearing on both topics, and Representative Brian Higgins (D-NY) said the meeting or hearing will take place “within the next two weeks upon our return after the district work period.”

**Congress Considering Section 232 Legislation**

**Key Points:**
- **Senator Rob Portman (R-OH)** said his re-introduced legislation, the *Trade Security Act of 2019*, is less likely to be vetoed because of White House input.
- **Senate Finance Chairman Chuck Grassley (R-IA)** said he supports “the concept” of Senator Portman’s (and Senator Toomey’s) legislation and is “sure something’s going to get out of committee.”

Senators Portman, Doug Jones (D-AL), Joni Ernst (R-IA), Lamar Alexander (R-TN), Dianne Feinstein (D-CA), Kyrsten Sinema (D-AZ) and Deb Fischer (R-NE) reintroduced the Trade Security Act last week. The bill was also introduced in the House by Representatives Ron Kind (D-WI), Jackie Walorski (R-IN), Terri Sewell (D-AL) and Darin LaHood (R-IL). The bill would institute congressional checks on the President’s Section 232 tariff power and require the Pentagon to conduct the investigations.

Senator Portman said Tuesday that the “Trump Administration has not come out against our proposal... Now they might, and I’m not saying that they love it, but we did spend a lot of time working with them in addition to a lot of outside experts in the trade policy area before we introduced this.” He noted he has had conversations about the legislation with USTR Lighthizer, Commerce Secretary Wilbur Ross, National Economic Council Director Larry Kudlow, and White House trade adviser Peter Navarro. Portman went on to say that “if the President decides that he is going to issue a veto threat on legislation it’s unlikely to get through the House and Senate. And if it does, obviously the opportunity for an override would be minimal, so we are trying to get something done here.”

Senator Pat Toomey (R-PA) has also introduced a bill that would limit the President’s Section 232 tariff authority, known as the *Bicameral Congressional Trade Authority Act*. This bill would require Congress to pass an approval resolution of any 232 trade action within 60 days of its proposal. It would also allow Congress to remove Section 232 tariffs put in place over the last four years and provide retroactive relief. Senator Portman argued his legislation is superior because it would provide the President with crucial flexibility during a “time of war.” Senator Portman’s legislation does not apply retroactively because of the increased likelihood of President Trump vetoing a bill with that provision. For his part, Senator Toomey noted that “Senator Portman’s bill does not change that the president has unilateral power to impose tariffs under Section 232... One bill restores this responsibility to Congress; one does not.”

Senate Finance Chairman Grassley has said he is supportive of the intent of these bills without offering specifics: “I go to great lengths to see what we can get with the broadest support we can get.” The Senate Finance Committee will likely consider one, both, or a mixture of the bills, as Senator Portman said he is “always open to working with others and broaden[ing] consensus.”
Commerce to Submit Section 232
Automobile Report

Key Points:

- The Commerce Department must submit its Section 232 report on the national security implications of automobile and auto part imports by February 17; President Trump will then have 90 days to act on the recommendations provided.
- Senate Finance Chairman Grassley stated that “if they do recommend [tariffs], I will not think it’s the right thing to do.”

The Commerce Department will reportedly issue an affirmative finding of a national security threat in its 232 investigation of automobiles and auto parts and include three recommended options: (1) 20-25 percent general tariff; (2) tariffs on only automated, connected, electric and shared (ACES) technologies; and (3) a mix of the previous two. It appears likely President Trump will opt for tariffs given his numerous threats to do so in the past. Chairman Grassley has expressed opposition to the expected tariffs, saying “I’ve tried to talk to people within the White House on the subject and my approach has been ‘I want to help the president to get to the endgame -- what can I do to help the president get USMCA passed ... how can we get off of this business of tariffs in general?’”

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Riyad Carey contributed to this section.

This Week in Congress was written by Alex Barcham.