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Third-party payment processors and recipients get extra year of relief from stricter information reporting requirements

The IRS announced November 21 that it will extend for one additional year the transition relief from the enforcement of the more stringent information reporting requirements for third-party payment processors that were enacted in 2021.

The American Rescue Plan Act of 2021 (P.L. 117-2) reduced the dollar-threshold triggering the Form 1099-K reporting requirement from $20,000 to $600 and eliminated the 200-transaction threshold, effective for reporting for returns filed for calendar years after 2021. A number of lawmakers in both parties tried—without success—to include a provision delaying the implementation of the stricter reporting thresholds in the omnibus tax-and-spending legislation that Congress approved in December of 2022; however, the IRS late last year issued Notice 2023-10, in which it delayed enforcement of the new rules until after 2023.
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf
URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf

Notice 2023-74

In its latest round of administrative relief, Notice 2023-74, the IRS indicated that it will treat calendar year 2023 as an additional transition period with respect to enforcing the new 1099-K reporting requirements. The agency explained in a November 21 news release issued in conjunction with the notice that its decision to further delay implementing the American Rescue Plan provision was based on "feedback from taxpayers, tax professionals, and payment processors" and its desire "to reduce taxpayer confusion."
URL: https://www.irs.gov/pub/irs-drop/n-23-74.pdf

Phased-in dollar threshold possible for tax year 2024: The IRS also announced in that news release that it intends to phase-in the implementation of the stricter rules enacted in the American Rescue Plan by setting the dollar-threshold triggering the reporting requirement at $5,000 (instead of $600) for tax year 2024.

"We spent many months gathering feedback from third-party groups and others, and it became increasingly clear we need additional time to effectively implement the new reporting requirements," IRS Commissioner Danny Werfel explained in the release. "Taking this phased-in approach is the right thing to do for the purposes of tax administration, and it prevents unnecessary confusion as we continue to look at changes to the Form 1040. It's clear that an additional delay for tax year 2023 will avoid problems for taxpayers, tax professionals, and others in this area."

In the release, the IRS requested comments from stakeholders on the planned $5,000 threshold for tax year 2024 and on "other elements of the reporting requirement, including how best to focus reporting on taxable transactions."

Find out more: Additional details on Notice 2023-74 are available in a new tax alert from Deloitte Tax LLP's Global Information Reporting Group.
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231201_1_suppA.pdf

Another tax bill 'driver' taken off the table

The IRS's action gives taxpayers and the government more time to prepare for the implementation of the new 1099-K reporting requirements; however, it also deprives Congress of an urgent issue that otherwise might have provided momentum for a possible tax package in the near term.

And it's worth noting that the release of Notice 2023-74 came just three months after the IRS provided administrative relief for another issue that had been regarded as a significant potential driver for tax legislation in 2023: namely, concerns expressed by retirement plan sponsors about their ability to comply with provisions in last year's SECURE 2.0 Act (Division T of the Consolidated Appropriations Act, 2023 (P.L. 117-328)) that require catch-up contributions made by certain higher-income participants in 401(k) and similar retirement plans to be designated as after-tax Roth contributions effective for taxable years beginning after December 31, 2023. In that instance, the IRS announced in Notice 2023-62 that it will provide a two-year administrative transition period to implement the new requirement. The notice also addressed concerns by plan sponsors and participants over perceived ambiguity in the statutory language of the SECURE 2.0 Act by clarifying that eligible plan participants can continue to make catch-up contributions after 2023, regardless of income.
URL: https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf
URL: https://www.irs.gov/pub/irs-drop/n-23-62.pdf

Tax legislation thrives on deadlines: Although there has been little in the way of public debate between the House and Senate this year about the contours of a possible tax package, recent reports have indicated that taxwriting committee leaders in both chambers have been working behind the scenes to reach an agreement that would provide some $40-50 billion in business-focused tax relief—presumably including provisions to reverse certain changes that have taken effect pursuant to 2017's Tax Cuts and Jobs Act (TCJA, P.L. 115-97) that curtailed deductions for research expenditures and business interest expense, and dialed back immediate write-offs for capital investments—along with a similarly-sized package of enhancements to the child tax credit. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 38, Nov. 10, 2023.)
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_1.html

Outside the taxwriting committees, 146 rank-and-file House Republicans signed on to a November 29 letter spearheaded by Rep. Rudy Yakym, R-Ind., that urged Speaker Mike Johnson, R-La., to "support legislative action in any upcoming package by the end of the year to support [extensions of] immediate R&D expensing, full capital expensing, and a pro-growth interest deductibility rule." (The letter notably does not call for an enhanced child tax credit, however.)
URL: https://d12t4t5x3vyizu.cloudfront.net/yakym.house.gov/uploads/2023/11/FINAL-Letter-to-Speaker-Johnson-Regarding-End-of-Year-Tax-Package.pdf

The prospect of Republicans and Democrats targeting tax packages of roughly similar size and the growing support for a tax bill among rank-and-file GOP House members would seem to be good signs for those striving to see enactment of a modest tax measure in the coming weeks. But tax legislation often does not make it through Congress and to the president's desk unless there is also some imminent deadline—such as the pending expiration of key tax incentives or the pending implementation of a new tax provision regarded as problematic for a significant segment of the tax base—that compels Congress to act. With the IRS's actions on the American Rescue Plan's 1099-K reporting requirements and the SECURE 2.0 Act's treatment of retirement plan catch-up contributions now obviating the need for immediate legislative fixes, the lack of significant action-forcing events could prove to be an impediment for a tax bill in the coming weeks.

Suitable legislative vehicle remains elusive: Compelling tax-related deadlines aside, lawmakers also face the continuing challenge of finding a "must pass" legislative vehicle that could carry a tax package. In recent years, tax legislation similar in scope to what taxwriters currently envision has often been attached to year-end omnibus appropriations measures. But the on-going battle in Congress over federal appropriations for fiscal year 2024 took an unconventional turn last month with the passage and enactment a so-called "laddered" continuing resolution (CR) put forward by House Speaker Johnson that keeps the government's doors open (at fiscal year 2023 levels) on a staggered schedule into early next year, with funding deadlines of January 19 for some departments and agencies and February 2 for the others.

According to Johnson, the dual-deadline strategy was intended to *avoid* a year-end omnibus and encourage lawmakers to instead follow a more traditional path on appropriations by approving on a piecemeal basis the 12 spending bills required to fund government operations for fiscal year 2024.

If Johnson's laddered CR approach works as intended and yields a series of single spending bills rather than an omnibus, however, lawmakers may be hard pressed to find another suitable measure to which they could attach a tax title. Alternatively, if negotiations on single spending bills falter and Congress either punts to an omnibus measure or adopts a long-term continuing resolution—Johnson has said he will not accept another short-term stopgap—then tensions arising from that process could sap the energy and political goodwill required for any further dealmaking and leave the prospects for a tax package in doubt.

Appropriations work still largely incomplete: As the fiscal year 2024 appropriations process lurches forward, the volume of unfinished spending measures in both chambers remains daunting. So far, the House has approved 7 of the 12 the spending bills required to fully fund the government, while the Senate has cleared only 3. No bills have been reconciled in bicameral conference negotiations.

Moreover, the House and Senate have been at odds over topline spending numbers for federal departments and agencies. The Democratic-led Senate seems intent on funding government operations at fiscal year 2023 levels—roughly $1.59 trillion in total spending—as agreed to in the Fiscal Responsibility Act (P.L. 118-5), the debt limit deal hammered out between President Biden and then-House Speaker Kevin McCarthy, R-Calif., that was signed into law this past June. In the Republican-controlled House, meanwhile, members of the Freedom Caucus had been adamant that Congress must cut spending to the levels in effect for fiscal year 2022—roughly $1.47 trillion in total spending—consistent with what they say was a "handshake" agreement they made with

Kevin McCarthy this past January when he was campaigning to win the speaker's gavel. (Their contention has been that the topline numbers in the Fiscal Responsibility Act set a ceiling for spending, but not a floor.)
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

But comments by Freedom Caucus Chairman Scott Perry, R-Pa., at a November 29 news conference suggested that the hardline stance among conservative House Republicans may be softening.

"It's still too much for many of us, but what was agreed to during Memorial Day was this [Fiscal Responsibility Act] number of $1.59 trillion. Most of the House voted for it. Most of the Senate voted for it. That's where we have to be. We realize that $1.47 [trillion] is not going to happen."

If a significant segment of Freedom Caucus members share Perry's assessment, it would be a notable about-face for a group whose objections to the spending limits that McCarthy accepted in the Fiscal Responsibility Act—and in a subsequent stopgap spending bill in October—touched off a rebellion that ultimately led to McCarthy's ouster as speaker. (It is unclear, though, if Perry's apparent concession on topline numbers in the Fiscal Responsibility Act means he would also accept certain handshake agreements between President Biden and McCarthy in their negotiations over that legislation—including one that redirects some $20 billion of the mandatory funding allocated to the IRS under the Inflation Reduction Act to unspecified nondefense discretionary priorities over the next two fiscal years.)

A tight calendar that's getting even tighter: Interwoven with all of these concerns is the reality of an extremely tight legislative calendar in the coming weeks. Between now and the end of this year, the House is scheduled to be in session for only 8 days and the Senate is set to be in for 10. The recently released congressional calendars for 2024 show the House in session for 8 days leading up to the first government funding deadline of January 19, compared to 9 days for the Senate. House members are then scheduled to recess the week of January 22 and return on January 29—just 4 working days ahead of the second funding deadline of February 2. The Senate will be in session for 9 days between January 19 and February 2.

Senate Finance Committee ranking member Mike Crapo, R-Idaho, told reporters November 28 that there has been "some movement" on a potential deal among taxwriting committee leaders and added that he is "still working to get something done now."

For his part, Senate taxwriter Sherrod Brown, D-Ohio, commented that there currently is a bit more optimism about the prospects for a tax deal than there was just a few weeks ago; however, he also cautioned that, as a practical matter, the start of the 2023 tax filing season in mid-to-late January leaves Congress with an extremely narrow window to get a package approved and signed into law.

"You can't wait much past December [or] maybe early January because of the tax season. We can't dramatically change tax law February 1 or something," Brown said.

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