Disaster tax relief bill passes Senate, heads to White House

In what could turn out to be the only action on tax legislation in this year's lame duck congressional session, the Senate this week approved and will send to President Biden a $4.9 billion aid package that would provide tax relief to victims of certain hurricanes, wildfires, and other natural disasters, as well as the East Palestine, Ohio, train derailment.

Federal Disaster Tax Relief Act

The Federal Disaster Tax Relief Act (H.R. 5863) cleared the Senate by voice vote on December 4. It was approved in the House on May 21.
URL: https://www.congress.gov/bill/118th-congress/house-bill/5863/text

The package includes provisions that would:

- Extend temporary taxpayer-favorable rules for deducting certain personal casualty losses related to major federally declared disasters that were last renewed in the Consolidated Appropriations Act, 2021 (P.L. 116-260) and are now expired;
  URL: https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf
- Provide an exclusion from gross income for amounts received as qualified wildfire relief payments; and
- Treat payments received by individuals incurring damages or losses related to last year's train derailment in East Palestine, Ohio, as qualified disaster relief payments for purposes of section 139(b) and therefore excludable from gross income.

Mirror language in Tax Relief for American Families and Workers Act: The provisions are identical to those in the Tax Relief for American Families and Workers Act (H.R. 7024), a bipartisan measure negotiated that Senate Finance Committee Ron Wyden, D-Ore., negotiated with House Ways and Means Committee Chairman Jason Smith, R-Mo., that also would temporarily expand the child tax credit and temporarily reverse certain taxpayer-unfavorable changes enacted in the Tax Cuts and Jobs Act of 2017 related to bonus depreciation, the treatment of research and development costs, and the deduction for business interest expenses.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf

The Smith-Wyden measure was approved in the House with a large bipartisan majority early this year but has since been stalled in the Senate, primarily due to opposition from current Finance Committee ranking member Mike Crapo, R-Idaho, who will take the Finance Committee gavel early next year when Republicans assume control of the Senate in the 119th Congress.

Smith-Wyden, RIP?: Passage of the disaster tax relief measure by the House in May came after taxwriter Greg Steube, R-Fla., filed a discharge petition with respect to the bill, which he introduced in October of 2023. (A discharge petition is a parliamentary mechanism by which 218 members—regardless of party—may bring a bill to the House floor and demand its consideration, even if that bill was not reported by a committee or is not supported by party leadership.) Steube's discharge petition cleared the 218-signature requirement on May 15 and was supported by a wide swath of Democrats, including Ways and Means Committee ranking member Richard Neal, D-Mass.

At the time, however, Wyden vowed to place a "hold" on that bill in the Senate in an effort to force Republicans in that chamber to act on the broader tax package he had brokered with Ways and Means Chairman Smith; however, an August 1 procedural vote to advance the Smith-Wyden legislation in the Senate failed. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 26, Aug. 2, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240802_1.html

This week's passage of the stand-alone disaster relief measure in the Senate appears to be a tacit acknowledgment that the Smith-Wyden tax bill has a dim future in this Congress. A provision in the larger bill that would relieve double-taxation on investments between the US and Taiwan conceivably could be attached to upcoming legislation reauthorizing the National Defense Authorization Act; however, any discussion of further action on bonus depreciation, the treatment of research and development costs, and the deduction for business interest expenses is likely to be swept into next year's debate over extending expiring TCJA provisions. (See separate coverage in this issue for details on how Republican congressional leaders may approach tax policy legislation when they have control of the House and Senate in the 119th Congress.)

Another CR likely as December 20 government funding deadline approaches

In other lame duck developments, with Congress back this week from its Thanksgiving recess, it is becoming more evident that efforts to reach agreement on a must-pass measure to fund the federal government for the remainder of fiscal year 2025 will result in a short-term continuing resolution (CR), rather than a full-year funding bill. The CR that emerges is expected to fund federal departments and agencies at fiscal year 2024 levels into 2025; however, the terms of the agreement are still unclear.

Although fiscal year 2025 began on October 1, the House and Senate have not yet approved the 12 full-year appropriations bills required to pay for government operations. To date, the House has approved only 5 of these measures and the Senate has yet to approve any. Congress is currently keeping the government's doors open through a short-term CR, approved in September, which expires on December 20.

The current CR—the Continuing Appropriations and Extensions Act of 2025 (H.R. 9747)—cleared the House and Senate on September 25 under expedited rules, and with bipartisan support, leading the way for President Biden to sign the bill a day later, thus averting the possibility of a partial shutdown of government operations when fiscal year 2025 began on October 1. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 29, Sept. 27, 2024.)
URL: https://docs.house.gov/billsthisweek/20240923/CR1FY25_xml%20-%20FINAL%20FOR%20INTRODUCTION.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240927_3.html

House Speaker Mike Johnson, R-La., anticipates another CR that would continue to fund the government into late March of next year to give lawmakers time to complete a full-year measure; however, he expects the House and Senate to finish their work on the fiscal year 2025 bill "well before the deadline," as reported by *Punchbowl* on December 4.

For his part, Senate Minority Leader Chuck Schumer, D-N.Y., expressed optimism about funding the government for the near term, stating on the House floor on December 2 that "both sides are making progress negotiating a bill that can pass the House and Senate with bipartisan support."

"We need to keep divisive and unnecessary provisions out of any agreement funding extension, or it will get harder to pass a CR in time," he added. "For now, I'm pleased negotiations are on the right track, and I thank appropriators in both chambers for their good work."

Sen. Susan Collins of Maine, who currently is the senior Republican on the Senate Appropriations Committee, suggested that leadership failed to negotiate top-line numbers to fully fund the government, indicating that, as a result, "we've missed the deadlines for getting CBO to score the bill and [the Government Printing Office] to print the bill and us to pass the bill by December 20," as reported by *Politico* on December 3.

While holding out hope for a short stopgap measure rather than the three-month agreement that House Speaker Mike Johnson envisions, Collins raised concerns about provisions in the Fiscal Responsibility Act of 2023 (P.L. 118-5) that she indicated could trigger "across-the-board cuts going into effect" that would "disproportionately affect the Department of Defense" if a CR stretches into next year.
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The Fiscal Responsibility Act was signed into law in June of last year and affirmed this past January in a handshake deal on government funding between current House Speaker Johnson and Senate Majority Leader Schumer. That measure suspended the federal debt limit through January 1, 2025, and made certain fiscal policy changes—including provisions to keep nondefense discretionary spending flat for fiscal year 2024 and to limit annual growth to 1 percent for fiscal years 2025 through 2029. The measure gives Congress a strong incentive to pass all 12 appropriations bills by imposing an automatic, across-the-board 1 percent cut to discretionary spending if a continuing resolution for *any* discretionary budget account remains in place beyond January 1 of next year. (The resulting sequester would not be triggered until next May if all 12 bills are not enacted by the end of April.)

Biden administration officials and congressional Democrats are also anxious to ensure that a year-end stopgap measure does not contain language in the current CR that would appear to reauthorize a $20 billion rescission to certain mandatory funding for the IRS that was agreed to in the Fiscal Responsibility Act. (The agency originally received a 10-year, $80 billion infusion of mandatory funding under the Inflation Reduction Act.)

Senate Democrats hold leadership elections

In other developments this week, Senate Democrats held internal elections to select their leaders for the 119th Congress, choosing outgoing Senate Majority Leader Charles Schumer to continue as their leader in the minority, with Richard Durbin, D-Ill., continuing as the Democratic whip, a position Durbin has held since 2005.

Sen. Amy Klobuchar of Minnesota took the number 3 spot—chair of the Policy and Communications Committee—which opened up in the wake of Sen. Debbie Stabenow's, D-Mich., decision to retire after more than two decades in the Senate.

Now that Senate Democratic elections are settled, the majority and minority leadership rosters on Capitol Hill are complete. House Republicans last month chose current Speaker Mike Johnson as their speaker-designee in the 119th Congress, although he will still have to win an absolute majority of votes on the House floor in January before he officially takes the gavel. Democrats, meanwhile, chose Hakeem Jeffries of New York to continue as minority leader. Senate Republicans elected Sen. John Thune of South Dakota last month as the new majority leader starting in 2025 after Mitch McConnell, R-Ky., announced earlier this year that he would not run for another term as the chamber's top Republican, a post he's held since 2007. (For prior coverage, see *Tax News & Views*, Vol 25, No. 30, Nov. 15, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241115_2.html

House headcount final (for now)

It's been a month since the nation cast its votes in the 2024 presidential and congressional elections, and the roster for the House of Representatives is finally complete, with Republicans securing 220 seats, and Democrats taking 215 seats.

Departing Republican members: But House Republicans are still expected to face three upcoming vacancies early next year as several lawmakers take up posts at the new administration or leave office, diminishing the number of the GOP's working majority from 220 to 217 during the first few months of 2025. Those vacancies will make it even more difficult for Republicans to pass party-line legislation, since they will not be able to afford any internal defections on bills if all members are present and voting.

Now-former Rep. Matt Gaetz of Florida resigned from the 118th Congress and indicated in his resignation notice that he would not take the oath of office when the 119th Congress convenes on January 3, 2025, a move he made shortly after President-elect Trump announced his intention to nominate him as attorney general. Gaetz withdrew his name from consideration for the attorney general post on November 21 but has stated that he does not intend to reclaim his House seat in the new Congress. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 31, Nov. 22, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241122_2.html

President-elect Trump named a second Florida Republican, Rep. Mike Waltz, as his national security adviser, a post he is expected to start on January 20 when Trump takes office. A special election will be held for both of their seats on April 1.

Another likely departure is Republican Rep. Elise Stefanik of New York, who is expected to become part of President-elect Trump's new administration as the US Ambassador to the United Nations. New York Governor Kathy Hochul will set the date for a special election to replace Stefanik once the congresswoman vacates her seat to join the Trump administration.

Another Ways and Means vacancy: In other developments, Republican taxwriter Michele Steel has officially lost her race for California's 45th District by 653 votes, with 99 percent of the votes counted. The Associated Press called the race for Democrat Derek Tran on November 27.

Steel served on the influential House Ways and Means Committee which will be at the heart of tax policy negotiations in next year's 119th Congress. Other Republican rank-and-file members who will not return to the committee next year include Brad Wenstrup of Ohio and Drew Ferguson of Georgia, who did not seek re-election, creating additional open seats on the committee for the GOP.

On the Democratic side, two Ways and Means Committee members—Earl Blumenauer of Oregon and Dan Kildee of Michigan—did not seek re-election this year, creating potential openings on the panel for the minority.

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