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2018 Outlook: More Tax Legislation and Possible Supreme Court Ruling.

WASHINGTON – Republicans in Congress expect the wide-ranging tax overhaul law just enacted will be followed by more tax legislation in 2018 that includes extensions for expired tax provisions such as one that would extend qualified zone academy bonds though 2017 and an excise tax on imported rum that benefits Puerto Rico and the Virgin Islands.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, introduced the tax extenders bill the day after the Senate approved tax reform legislation.

The Senate extenders bill would continue for 24 months more than a dozen tax breaks that expired at the end of 2016, including a rum cover-over excise tax that produces revenue for Puerto Rico and the U.S. Virgin Islands to pay for local government operations.The QZAB extension only goes through 2017 because the new tax law terminates tax credit bonds after Dec. 31. Other extenders are energy-related, including a nuclear energy production tax credit.

Congress also will need to enact a technical corrections bill in the coming months to fix drafting errors and loopholes in the new tax law.

“It is inconceivable that Congress will not have to act early in the year on a technical reform bill,” said Frank Shafroth, director of the Center for State and Local Leadership at George Mason University.

Shafroth said the “cataclysmic rush” to enact the legislation bore not even a remote comparison to the outreach and deliberations over the last tax reform bill in 1986.

“Because the legislation will have such a significant impact on increasing the federal deficit and debt, it seems certain that interest rates will rise, thereby increasing the cost of debt issuance for not just state and local governments but also for schools and universities,” Shafroth said.

Meanwhile, the U.S. Supreme Court is expected to decide soon whether to consider a case involving South Dakota that would have nationwide impact on the ability of state and local governments to collect sale taxes on Internet purchases.

In addition, Congress may consider reforming the Internal Revenue Service to make it more customer friendly, according to House Ways and Means Committee Chairman Kevin Brady, R-Texas.

“My sense is that there could be broad bipartisan support for restructuring the IRS,” Brady told reporters on Dec. 18.

Brady said the tax bill left out provisions that were dropped at the last minute because of the Senate’s parliamentary Byrd rule as well as other proposals. Under that rule the Senate cannot include non-germane provisions without revenue implications via the reconciliation process or measures that would add to the federal deficit after the 10th year.

“This is not our last tax reform,” Brady said. “I’m going to recommend that we do have some form of tax reconciliation in future budgets because there are still areas of the tax code I think and we think can be improved whether it’s retirement savings, education, streamlining and we had a number of good ideas from our members we weren’t able to accommodate.”

Further tax legislation could provide an opening for municipal bond market issuers who think Congress left them in the lurch by not giving them a transition period before the termination of advance refundings and tax credit bonds.

Congress also will get pushback in 2018 from state and local governments on its controversial decision to limit to $10,000 per household the federal deduction for property and income or sales state and local taxes.

“Cities will continue to fight to fully restore SALT and the exemption for advance refunding bonds,” said National League of Cities President Mark Stodola, mayor of Little Rock, Ark.

U.S. Conference of Mayors President Mitch Landrieu, the mayor of New Orleans, described the tax legislation as “a full-fledged assault on cities and the families who live in them.”

“This bill will make our cities harder to live in and harder to run effectively –- all for the benefit of wealthy political donors,” Landrieu said.

Because Congress repealed the individual mandate requiring taxpayers to purchase health insurance, “Republican and Democratic mayors, not Washington politicians, will contend with emergency rooms filling up with the sick and the uninsured,” Landrieu said.

But repeal of the health insurance mandate won’t expire until the end of 2018.

The impact of the repeal could be partially offset before then if Congress enacts legislation to establish high-risk insurance pools at the state level and renews federal subsidies for low-income people to purchase health insurance. Republican lawmakers such as Sens. Susan Collins of Maine and Lamar Alexander of Tennessee are hoping Congress will enact bipartisan legislation with those fixes in 2018.

Congress, however, is expected to continue resist calls by state and local governments to enable to them to collect sales tax on Internet purchases.

The obstacle has been House Judiciary Committee Chairman Robert Goodlatte, R-Va., who has refused to consider legislation on Internet sales taxes authored by Rep. Kristi Noem, R-S.D.

Goodlatte has announced he won’t run for re-election in 2018, but relief could come sooner from the Supreme Court.

South Dakota Attorney General Marty Jackley announced Dec. 21 that the state filed its final reply in its request for consideration by the high court.

“Based upon the significant impact this issue has on every Main Street business, it remains my hope that our highest court will let us be heard,” Jackley said. “We have received extraordinary support from the State Attorneys General, the National Governors Association, educational leaders, and the business community in the national fight to bring tax fairness for our local retailers and to help support main street businesses.”

South Dakota is hoping the Supreme Court will decide whether to take the case by the end of

January, setting up the possibility of a ruling by the end of the court's term in late June.

The case is widely viewed as an opportunity for the Supreme Court to take into account technological advances since its 1992 ruling in Quill Corp. v. North Dakota, that sales tax collections for online sales can only be required if a retailer has a physical presence or "nexus" in a state.

South Dakota has no state income tax and is more reliant on sales taxes for its budget than most states.

A 2016 South Dakota law requires out-of-state retailers to collect and remit the sales tax similar to in-state retailers if the remote sellers have more than $100,000 in sales or complete more than 200 sales transactions per year within South Dakota.

After the law was enacted, the state contacted large remote retailers asking them to comply. The state then sued three that refused, resulting in the lawsuit, State of South Dakota v. Wayfair (W), Overstock and Newegg. South Dakota's highest court overturned the law, setting the stage for the appeal.

States and local governments lost an estimated $26 billion in potential sales tax revenue in 2015 because of online retail sales, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

"I think the legislation, the way it is written, is actually a great opportunity for states and localities to address the collection of sales tax," said Emily Brock, director of the Federal Liaison Center for the Government Finance Officer Association.

While online merchandise sales have exploded, much of the sales tax is uncollectible, Brock said. "Local tax systems address local needs and so does the imposition of a sales tax," she said. "It's utilized effectively across the country."

By Brian Tumulty

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