

WNTS Insight



2010 Election Results to Impact Future Tax Legislation

November 3, 2010

Overview

The November 2 elections are expected to have a significant effect on the outlook for tax policy next year when the new 112th Congress convenes. Key issues up for consideration in 2011 will include business and individual tax proposals to be put forth next year in President Barack Obama's FY 2012 federal budget, as well as possible Republican efforts to revisit health care and other recently enacted legislation. Concerns about economic growth, unemployment, budget deficits, and federal spending may dominate policy debates in the next Congress.

The election results also may influence decisions on pending tax legislation during a "lame-duck" session of the current Congress. Critical tax issues up for consideration in the remaining weeks of this year include the 2001 and 2003 individual tax provisions scheduled to expire on December 31, 2010. Congress also may attempt to complete action on "tax extenders" legislation that would renew the research credit and other expired business tax provisions.

While the outcome of several House races is undecided as of this time, Republicans picked up more than 60 seats in the House, the largest net gain by any political party since World War II. With a majority of at least 239 seats in the next House of Representatives, Republicans are expected to select Minority Leader John Boehner (R-OH) as the next Speaker of the House. House Democrats held 255 seats in the current Congress.

While three Senate races are undecided at this writing, Democrats have narrowly retained at least a 51-seat Senate majority (including two Independents), with Republicans winning at least six seats. Senate Majority Leader Harry Reid (D-NV) won re-election and is expected to retain his leadership position. Senator Mitch McConnell (R-KY) also is expected to continue as Senate Minority Leader.

The House and Senate tax committees will feature new leadership next year. Rep. Dave Camp (R-MI) is in line to become chairman of the House Ways and Means Committee, while current acting Ways and Means Chairman Sander Levin (D-MI) is expected to seek the position of Ranking Minority Member. In addition, senior Ways and Means

Republican Rep. Paul Ryan (R-WI) is set to become chairman of the House Budget Committee. Senate Finance Committee Chairman Max Baucus (D-MT) will retain the gavel of the Senate tax-writing committee. Senator Orrin Hatch (R-UT) is expected to become Ranking Minority Member. Current Ranking Member Charles Grassley (R-IA) is subject to a term limit on that position under Senate Republican Conference rules, but will remain on the Finance Committee.

Limited time for tax legislation during lame-duck session

The current Congress is scheduled to return the week of November 15 for new member orientation and Democratic and Republican leadership elections, but is not expected to consider major legislation that week. After a Thanksgiving week recess, Congress will need to address "must-pass" legislation funding the operations of all federal departments and agencies. The House and Senate are expected to adjourn for the year in advance of Christmas.

Thus, there will be only a few weeks during the upcoming lame-duck session in which Congress can attempt to complete work on tax legislation and other pending issues. President Obama has continued to propose permanent extension of the 2001 and 2003 individual tax relief provisions only for taxpayers with incomes below \$250,000. Republican leaders and some Democrats have called for an across-the-board extension of current tax rates for all taxpayers for at least one or two years. Separate action on the estate tax is uncertain during the lame-duck session.

With respect to expired business tax provisions, House and Senate Democratic leaders have continued to express support for action on tax extenders legislation that is fully offset by revenue-raising provisions. Tax extender legislation also could be considered as part of 2001 and 2003 tax rate legislation or some other legislation before the end of the year.

The federal government currently is operating on a continuing resolution ("CR") providing funding through December 3, 2010. Since none of the 12 annual appropriations bills has been enacted, Congress may pass another short-term appropriations measure to fund the government

temporarily or a long-term CR through part or all of the remainder of FY 2011. Additional time-sensitive issues for consideration in the lame-duck session include the November 30 expiration of expanded unemployment benefits and temporary Medicare physician pay rates. Unless Congress acts, payments to doctors for treating Medicare patients will be cut by 23 percent on December 1, 2010, and another 6.5 percent on January 1, 2011.

The President's National Commission on Fiscal Responsibility and Reform is scheduled to issue its report on entitlement reforms, spending reductions, and tax reform on December 1, 2010. The Commission is composed of nine Democrats and nine Republicans; any recommendations to Congress must have the support of at least 14 Commission members. It remains uncertain whether the Commission will issue any formal recommendations. The House and Senate could vote on any formal recommendations of the Commission.

Legislative Calendar Key Dates	
Week of November 15	Lame-duck session begins New Member orientation House and Senate leadership elections expected
Week of November 22	Thanksgiving recess period
November 30	Expiration of extended unemployment benefits and Medicare "doc fix"
December 1	National Commission on Fiscal Responsibility and Reform scheduled release date for deficit reduction recommendations
December 3	Continuing Resolution funding federal government operations expires
December 20	Anticipated adjournment date for current 111th Congress
Week of January 3	New 112th Congress convenes
February 1	Administration expected to propose FY 2012 federal budget

Outlook for the 112th Congress

The new 112th Congress will convene the week of January 3, 2011, when Members will be sworn into office and House and Senate leaders will be formally elected. The federal budget process for FY 2012 will begin the first week of February when President Barack Obama will propose a new federal budget. The Obama Administration may re-propose most (if not all) of the President's current international and domestic revenue-raising proposals. In addition, new or revised tax proposals may be offered as part of the Administration's budget.

The outlook for tax legislation next year is uncertain, and may depend on whether divided government leads to gridlock or compromise on specific issues. The Republican-controlled House may be able to approve tax legislation with a simple 218-vote majority under House rules, but the Senate generally will continue to require 60 votes to approve most legislation. With a reduced majority, Senate Democratic leaders will face a greater need to gain the support of a larger number of Senate Republicans to approve legislation. Most importantly, President Obama will be able to veto legislation he opposes, with a two-thirds majority of the House and Senate required for a veto override. At the same time, Republicans in Congress generally will be in a position to block passage of Obama Administration tax increase proposals affecting businesses and individuals.

Slow economic growth, a high unemployment rate, and federal deficits ultimately may be key factors influencing tax legislation during the next Congress. The U.S. economy grew at a two-percent rate for the third quarter of 2010, which has renewed concern that unemployment will remain near 10 percent for much of 2011. The federal deficit for the fiscal year that ended on September 30 was \$1.29 trillion, or 8.9 percent of GDP, and many newly elected Members of Congress have pledged to reduce spending and seek to balance the budget.

House Ways and Means Committee

The Ways and Means Committee currently is composed of 26 Democrats and 15 Republicans. If the committee size and ratio of majority to minority members remains unchanged, there would be 13

new Republicans on the Ways and Means Committee, and several current Ways and Means Democrats would lose their seats on the House tax-writing panel. Reps. Earl Pomeroy (D-ND) and Bob Etheridge (D-NC) are the only Ways and Means Committee members who lost their races for re-election. Reps. John Tanner (D-TN), Kendrick Meek (D-FL), Artur Davis (D-AL), John Linder (R-GA), and Ginny Brown-Waite (R-FL) retired or ran for other offices.

Rep. Dave Camp (R-MI) is expected to be the next chairman of the House Ways and Means Committee. As Ways and Means Ranking Republican, Rep. Camp has led opposition within the House to many Obama Administration legislative initiatives, including health care legislation and proposals to use business tax increases to offset the cost of various bills. Rep. Camp on several occasions this year has expressed concerns about the high U.S. corporate tax rate and its effect on the competitiveness of American businesses operating globally. Rep. Camp also has endorsed proposals to extend all the 2001 and 2003 individual income tax relief provisions for two years while reducing federal spending to 2008 levels.

Rep. Camp was first elected to the House in 1990, and will begin serving his 11th term in office next year representing the Fourth Congressional District of Michigan. He also is one of six Republican Members of Congress serving on the National Commission on Fiscal Responsibility and Reform.

Senate Finance Committee

The Senate Finance Committee currently is composed of 13 Democrats and 10 Republicans. The only Finance Committee members who will not return in the next Congress are Senator Blanche Lincoln (D-AR), who lost her re-election race, and Senator Jim Bunning (R-KY), who is retiring.

As noted above, Finance Chairman Baucus will continue as chairman of the Senate tax-writing panel, and Senator Orrin Hatch of Utah is expected to succeed Senator Charles Grassley as Finance Committee Ranking Republican. Senator Hatch was first elected to the Senate in 1976. In addition to serving on the Finance Committee, Senator Hatch is

a senior member of the Senate Judiciary Committee, the Senate Health, Education, Labor and Pensions Committee, the Senate Intelligence Committee, and the Senate Aging Committee. Senator Hatch also is one of six Republican Members of Congress serving on the National Commission on Fiscal Responsibility and Reform.

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