Congress passes FY 2020 funding bill with tax benefits for energy, health care, and retirement plans

20 December 2019

In a rare display of bipartisanship, after intense last minute negotiations between congressional leadership and the Executive Branch, President Donald Trump today signed into law legislation passed this week by Congress to appropriate US$1.4 trillion in spending for Fiscal Year 2020.

Included along with the funding legislation was a package of tax provisions that represented wins for the health care industry, retirement planners and energy companies. Among the items in the tax package were:

- **Complete repeal of three health care taxes** from the 2010 Affordable Care Act:
  - The Medical Device Tax (which had been deferred through the end of 2019)
  - The "Cadillac" Health Plan Tax (which also had been deferred through the end of 2019)
  - The Health Insurance Industry Fee (repeal effective in 2021)
- **The Secure Act**, including many changes to retirement related tax laws, such as:
  - Changes to the minimum distribution rules, including limits on "stretch" IRAs
  - Enhanced ability to offer annuities in 401(k) plans
  - Repeal of the maximum age for traditional IRA contributions
  - Allowing long-term part-time workers to participate in 401(k) plans
- **A tax extenders package**, extending a host of tax incentives – in particular for alternative energy technologies – that had expired in 2017 or are expiring in 2019. These included (extensions to the end of 2020 unless otherwise noted):
  - Biodiesel and renewable diesel credits (extended to 2022)
  - Alternative vehicle fuels – excise tax credits
  - Refueling/Recharging property credit
  - Wind PTC – One additional year (to end of 2020) to begin construction and qualify for 10 years of the production tax credit at 60 percent of full credit value (under construction in 2019 is at 40 percent of full credit value)
  - Production Tax Credits for electricity produced from:

    - Biomass
    - Geothermal
    - Landfill gas
    - Municipal waste
    - Hydropower, and
    - Marine and hydrokinetic
  - Short line rail maintenance credit (extended to 2022)
  - Empowerment zone tax incentives
  - New markets tax credits
  - Work opportunity credit
  - Reduction in beer, wine excise taxes
  - CFC look-through
- Two corrections to mistakes in the Tax Cut and Jobs Act: a fix to benefit electric cooperatives and a repeal of the taxability of fringe benefits for 501(c)(3) organizations (the so called 'church parking tax')

Among notable items that did not make it into the final bill:

- No expansions for solar electricity credits
- No expansions for electric vehicle credits
- No technical corrections to the Tax Cut and Jobs Act, other than the two mentioned above
- No new investment tax credit for energy storage

For medical device manufacturers, health insurance companies and employers with self-insured plans, the repeal of the three major ACA taxes represent major victories as this eliminates the risk of significant future taxes on them. We do not expect these taxes to re-enacted any time in the near future.

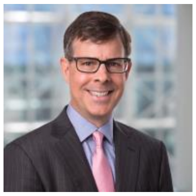
For the retirement industry and retirement savers, the Secure Act is also significant in providing – for the most part – greater flexibility of retirement options.

For alternative energy technologies, in particular the biodiesel and renewable diesel industry, and wind and other renewable electricity providers benefitting from the production tax credit (other than solar), this bill represents a positive holiday surprise, as many in Washington doubted the ability of Congress to compromise and pass the extensions of these incentives (notably, in many cases reinstated retroactive to the beginning of 2018).

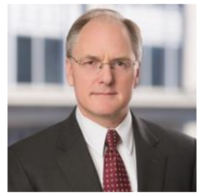
The enactment of this bill also makes clear that even in the midst of what could be called the most polarized U.S. Government since the Civil War, compromise is still possible, and tax extenders can still find their way to enactment, year after year.

As many tax items were left on the cutting room floor, however, we expect a strong push by many in Washington to move yet another tax bill in early 2020. Stay tuned.

Contacts



Jamie Wickett
Partner, Washington, D.C.
T +1 202 637 6422
james.wickett@hoganlovells.com



Kurt Lawson
Partner, Washington, D.C.
T +1 202 637 5660
kurt.lawson@hoganlovells.com

www.hoganlovells.com