Lapse in Appropriations a/k/a Partial Government Shutdown

- On Saturday, December 22, Congress and the President failed to agree on an appropriations bill or temporary continuing resolution ("CR") to fund the operations of the federal government for the 2019 fiscal year or extend the deadline for passing a bill.

- This is the longest government shutdown in U.S. history, surpassing the 21 day shutdown of 1995-1996.

- Approximately 800,000 federal employees have been furloughed.

- In September 2018, Congress passed two “minibus” appropriations bills for the 2019 federal budget, which included five of 12 appropriations bills and fund 77% of federal discretionary funding. Agencies funded by these minibus bills are unaffected by the shutdown.

- Funded agencies include Defense (aside from the US Coast Guard), Veterans Affairs, Labor, Education, and Health and Human Services.

- Agencies that are affected by the shut down include the EPA, the IRS, and the departments of State, Housing and Urban Development, Treasury, Agriculture, Commerce, Interior, Justice, and Homeland Security.
The Antideficiency Act provides that federal departments or agencies may not conduct “non-essential” operations without appropriations legislation in place.

Category A. Excepted activities include those authorized by law and those funded by advance appropriations not affected by a lapse in annual appropriation.

Category B. Under the Budget Enforcement Act of 1990, “regular, ongoing functions whose suspension would not pose an imminent threat to life and property” do not qualify as excepted activities during a lapse in appropriations. The risk to life or property must be near at hand and demand an immediate response. This requires agencies with lapsed funding to conduct regular meetings during the lapse to identify actual imminent threats and activate excepted personnel only as required to perform excepted activities.
• The IRS published its “Lapsed Appropriations Contingency Plan” on January 15.

• It states that “activities to implement the Tax Cuts and Jobs Act” are excepted from the shutdown because they have funding other than annual appropriations.

• There are 24 employees in TEGE who have Category B exemption. They include:
  
  o Commissioner TE/GE and Senior Technical Advisor to oversee the TCJA Implementation Office to coordinate implementation of the TCJA
  
  o Acting Commissioner TE/GE and Executive Assistant to oversee TE/GE operations and shutdown activities
  
  o Director of Employee Plans, EP Exam Director, and Manager EP Examinations Mandatory Review to ensure statute protection and processing of remittances (as needed)
Director of Exempt Organizations, Director EO Examinations, Manager EO Examinations FSL/ET, Manager EO R&A Processing and Support, Manager EO R&A Adjustment Unit, and Senior Tax Analyst EO Mandatory Review detailed to W&I TCJA Surge Team in order to ensure statute protection and processing of remittances (as needed)

Director of Government Entities/Shared Services, Director GE/SS ITG/TEB, Director GE/SS CP&C, Manager CP&C Classification Group, Manager CP&C Closing Group, Tax Specialist ITG/TEB Technical, Director Business Systems Planning, Tax Examining Technicians CP&C Closing Group, and Program Analyst GE/SS BSP in order to ensure statute protection and processing of remittances (as needed)

Director of Human and Capital Resources to provide HR planning and guidance, oversee shutdown notification procedures and recall activities, and liaise with IRS Human Capital Office and Facilities Management and Security Services
House Committee on Ways and Means
Leadership


• Other Democrats on the committee include: John Lewis (GA), Lloyd Doggett (TX), Mike Thompson (CA), John Larson (CT), Earl Blumenauer (OR), Ron Kind (WI), Bill Pascrell (NJ), Danny Davis (IL), Linda Sánchez (CA), Brian Higgins (NY), Terri Sewell (AL), Suzan DelBene (WA), Judy Chu (CA), Gwen Moore (WI), Dan Kildee (MI), Brendan Boyle (PA), Don Beyer (VA), Dwight Evans (PA), Brad Schneider (IL), Tom Suozzi (NY), Jimmy Panetta (CA), Stephanie Murphy (FL), Jimmy Gomez (CA), Steven Horsford (NV)

• Republican committee members have not been announced.

• Andrew Grossman, formerly legislation counsel with Joint Committee on Taxation, joins Ways and Means majority staff as chief tax counsel.
Senator Chuck Grassley (R-IA) replaces retired Senator Orrin Hatch (R-UT) as Chairman of the Senate Finance Committee.

In addition to Senator Grassley, the Republican majority includes: Mike Crapo (ID), Pat Roberts (KS), Mike Enzi (WY), John Cornyn (TX), John Thune (SD), Richard Burr (NC), Johnny Isakson (GA), Rob Portman (OH), Pat Toomey (PA), Tim Scott (SC), Bill Cassidy (LA), James Lankford (OK), Steve Daines (MT), Todd Young (IN),

Democrats include Ranking Member Ron Wyden (OR), Debbie Stabenow (MI), Maria Cantwell (WA), Bob Menendez (NJ), Tom Carper (DE), Ben Cardin (MD), Sherrod Brown (OH), Michael Bennet (CO), Bob Casey (PA), Mark Warner (VA), Sheldon Whitehouse (RI), Maggie Hassan (NH), Catherine Cortez Masto (NV)
Senate Finance Committee Leadership (cont’d)

• Mark Warren has been appointed chief tax counsel for the Finance Committee majority staff.
  o He previously served as senior tax counsel to Senator John Thune (sponsor of the bipartisan CHARITY Act) and
  o He also previously served as tax counsel to Ways and Means under Chairman Dave Camp (sponsor of the Tax Reform Act of 2014, which included numerous charitable provisions)

• Chris Allen continues to cover the exempt organizations portfolio for the Committee, as he has for the past year.

• DeLisa Ragsdale will serve as Chief Investigative Counsel, and Joshua Flynn-Brown as Senior Investigative Counsel for the Finance Committee majority staff.

• John Schoenecker joins the Finance Committee staff as investigative counsel. John was previously with the majority staff of House Ways and Means and covered tax-exempt organizations.
Senate Finance Committee Priorities

• Senator Grassley’s January 9 statement about the priorities of the Finance Committee under his leadership:

  “I’ll continue to hold the IRS accountable for top-quality taxpayer service, respect for taxpayer rights and protection of taxpayer information, and will review the practices and compliance of the tax-exempt sector, ensure tax whistleblowers are treated fairly for exposing tax evasion and abuse, and monitor the Treasury Department’s implementation of the recent tax reforms included in the Tax Cuts and Jobs Act to inform legislative efforts to build on the law’s success.”

• On January 15 he said, “I assume one of the first things we’ll try to do on taxes is the extenders.”
Prospects for Tax Legislation in the 116th Congress

• Much to be done; no political margin to do it.

• Unfinished business from 115th includes:
  o Technical corrections needed to improve the Tax Cuts and Jobs Act
  o Tax extenders, require retroactive extension
  o Various bipartisan, uncontroversial tax policy, including repeal of the “nonprofit parking tax” (i.e. § 512(a)(7)).

• In the absence of bi-cameral legislative power, House and Senate are likely to use their unilateral power to conduct hearings and investigations
Tax Clerical and Technical Corrections Bill

- At the end of the 115th Congress, the House passed H.R. 88, the “Tax Technical and Clerical Corrections Act” which included $54 billion of tax policy modifications as well as technical corrections, which have no cost because they are considered part of the original legislation.

- Repeal of Section 512(a)(7) is treated as a change in policy rather than a technical correction, and it has a cost of $1.776 billion over 10 years.

- Repeal of the Johnson Amendment (i.e., allowing 501(c)(3) organizations to make statements relating to political campaign in ordinary course of carrying out its tax exempt purpose) is a change in policy with a cost of $7.686 billion over 10 years.

- The bill was made up of two component pieces of tax legislation that are likely to be considered in the 116th Congress as well:
  - Retirement, Savings, and Other Tax Relief Act of 2018, which included certain tax extenders and technical corrections
  - Taxpayer First Act of 2018, which addresses IRS restructuring and modernization
The Joint Committee on Taxation published a comprehensive technical explanation of the Tax Cuts and Jobs Act (Bluebook) on December 20, 2018.

The explanation clarifies certain ambiguities in the text and flags the need for technical corrections in more than 75 places.

The Bluebook is nonbinding but instructive to Treasury when writing implementing regulations and is often cited in legal opinions.

Ambiguities that can’t be clarified through technical explanations may be added to the list of technical corrections for inclusion in future tax legislation.

Technical corrections require agreement by and among majority and minority staff of the House and Senate tax writing committees as well as the tax policy staff of the Treasury Department.
Update on Developments Under the Tax Cuts and Jobs Act

• For information about recent guidance on implementation of the Tax Cuts and Jobs Act, including a detailed description of the Bluebook provisions affecting exempt organizations, see materials for the panel Update on Developments under the Tax Cuts and Jobs Act.