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## Tax Legislation Update: What to Expect in 2023

JANUARY 30, 2023

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# Meet the Presenters



**Travis Lucas**

Managing Partner, Lucas I Compton



**Yelena Sheremeta**

Senior Manager, **FORVIS** National Tax  
Professional Standards Group

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# Agenda

- What you need to know about how Congress works
- A look back at 2022
- 2023 & beyond
- Regulatory priorities for 2023
- Public policy movements in 2023
- 2024 elections

# What You Need to Know About How Congress Works

- Two numbers everyone should know about Washington policymaking
  - **218** votes in the House
  - **60** votes in the Senate (except for budget reconciliation, judges, & presidential appointments)
- How a bill becomes a law
  1. Members of the House or Senate draft, sponsor, & introduce bills
  2. Committee action
  3. Floor action
  4. Voting
  5. Conference committee action
  6. President signs the bill
  7. Bill becomes a law

# A Look Back at 2022

- Democrats controlled the House, Senate, & White House
- The Inflation Reduction Act of 2022 was passed
  - New corporate alternative minimum tax on large corporations
  - New stock buyback excise tax on public companies
  - Lots of new green energy & climate tax initiatives
- Lame-duck session: FY 2023 appropriations
  - For tax policy, final bill only included SECURE 2.0 retirement legislation
  - What didn't make it in: Sec. 174 R&D expensing, 100% bonus depreciation extension, extension of expiring 163(j) provisions

# A Look Back at 2022

- 2022 Congressional mid-term elections
  - Republicans gain control of the House by a narrow margin
  - Democrats retain control of the Senate by a narrow margin
  - Why was there no “red wave” for Republicans?
    - General rule is that the opposition party adds an average of 25+ new House seats during mid-term elections
    - 2022 was not supposed to be a year for Republicans to win Senate seats (2024 is)
    - Effects of redistricting?
    - Early voting?
    - Poor quality of (Senate) candidate(s)?
    - Trump effect on independent voters?



# 2023 & Beyond: The Lay of the Land

- **Slim majorities**
  - House: 222 Rs & 212 Ds
  - Senate: 48 Ds & 49 Rs (3 Independents but they generally vote D)
- **Factions within both major parties**
  - Republicans: “Traditional Conservatives” vs. “Freedom Caucus Types”
  - Democrats: “Progressives” vs. “Moderates”
- **New House & Senate leadership**
  - House
    - Speaker: Kevin McCarthy (R-CA)
    - Majority Whip: Steve Scalise (R-LA)
    - Minority Leader: Hakeem Jeffries (D-NY)
  - Senate
    - Majority Leader: Chuck Schumer (D-NY)
    - Minority Leader: Mitch McConnell (R-KY)
- **Committees relevant to tax policy**
  - Senate Finance Committee
  - House Ways & Means Committee
  - House Energy & Commerce Committee
  - Senate & House Agriculture Committees
  - Senate Energy & Natural Resources Committee
  - House Natural Resources Committee
  - Senate Commerce, Science, & Transportation Committee
  - House Transportation & Infrastructure Committee

# 2023 & Beyond: Timing

- Timing for 2023
  - January
  - February – March
  - April – May
  - June – July
  - September
  - Late November – Mid-December
- 2024: Elections!

# Regulatory Priorities for 2023

- Changing of the guard
  - Doug O'Donnell acting as acting IRS commissioner since November 2022
  - President Biden nominated Daniel Werfel (Senate confirmation pending)
- Treasury & IRS Priorities for 2023 (over 200 projects outlined in the IRS' 2022-2023 Priority Guidance Plan)
  - Guidance on the tax provisions in the Inflation Reduction Act: stock buyback excise tax, corporate alternative minimum tax, energy tax credits
    - New office within IRS dedicated to overseeing the agency's implementation of the IRS-related provisions in the Inflation Reduction Act
  - Rules for the new advanced manufacturing investment credit under the CHIPS Act
  - Guidance on digital assets
  - International tax guidance related to the foreign tax credit, transfer pricing, & previously taxed income & profits

# Public Policy Movements in 2023

- Divided government will make for a slower year on tax policy in 2023
- Debt limit
- AP & NORC Center for Public Affairs Research polled top priorities for government to work on in 2023

## Democrats' Top 5

- Environment/climate change
- Gun issues
- Economy (general)
- Inflation
- Education

## Independents' Top 5

- Inflation
- Economy (general)
- Unemployment/jobs
- Immigration
- Healthcare reform

## Republicans' Top 5

- Immigration
- Inflation
- Economy (general)
- Crime/violence
- Gas prices/oil/energy costs

# Potential Bipartisan Tax Provisions

- Undoing the capitalization & amortization requirement under Sec. 174 for R&D expenses
- Delaying 100% bonus depreciation phaseout
- Business interest payment relief (Sec. 163(j))

# IRS Funding

- After two years of tax policy being at the center of major legislative vehicles, the focus in 2023 may turn to how the IRS uses \$80 billion in new funding from the Inflation Reduction Act
  - The IRA earmarks this IRS funding into four general categories
    - Taxpayer services
    - Tax enforcement activities
    - Operations support
    - Business systems modernization
- Both Ds & Rs have said that taxpayer service at the IRS needs a big improvement

# Expanded Child Tax Credit

- The top priority for Democrats is a beefed-up child tax credit (CTC), which was expanded during the pandemic before being allowed to expire
- Democrats have been pitching a deal on the CTC in exchange for credits favored by big business, including write-offs for research & development as well as interest payments
- This policy will continued to be worked on as a negotiating tactic

# Energy Policy

- **Democrats & the White House** will continue the same policies they pursued the last two years: (1) expansion of “green energy” resources & (2) limiting fossil fuel usage
- **Republicans** intend to enact policies that: (1) stimulate oil & gas production, (2) ease permitting regulations, & (3) seek to reduce reliance on China & Russia for critical materials
  - Two major areas where Republicans could have an impact as they control the House this session
    - De-risking energy projects
    - Ensuring energy independence
- **Both parties** may be able to agree on faster approvals for low-carbon energy sources like renewable power, small nuclear reactors, & hydrogen
- However, any legislation passed by a Republican-controlled house would still need to pass a Senate controlled by Democrats & would also be subject to veto by President Biden. So, although Republicans are certain to hold hearings about energy policy, **the most likely outcome over the next two years is a stalemate on energy issues**



# Digital Asset Oversight & Regulation

- Collapse of FTX
- Cryptocurrency legislation introduced (but not enacted) in the last Congress
  - The Digital Commodities Consumer Protection Act of 2022, which proposes to give the Commodity Futures Trading Commission (CFTC) new tools & authorities to regulate digital commodities
  - Legislation to clarify the digital assets reporting requirements signed into law as part of the Infrastructure Investment & Jobs Act
  - The Virtual Currency Tax Fairness Act, which proposes to exempt crypto owners from reporting personal transactions under \$50 or when there is less than \$50 in gain
  - The Responsible Financial Innovation Act, which would create clear definitions of digital assets, assign regulatory authority over digital asset spot markets to the CFTC, & create a structure for taxation of digital assets
  - Legislation to prohibit the U.S. Labor Department from limiting investment options for workplace retirement savers
  - The Digital Asset Anti-Money Laundering Act of 2022, which proposes to address the risk cryptocurrency & other digital assets pose to U.S. national security

# LIFO Relief for Dealerships

- Senate passed the Supply Chain Disruptions Relief Act before the end of the last session
- House did not vote, so process begins again in this session
- Proposes to make available to new vehicle dealers the potential for LIFO relief related to a qualified liquidation of inventory, which generally results in the recognition of income, absent such relief

# 2024 Elections

- Presidential elections
- Congressional elections
  - 2024 is “the year” for Senate Republicans
  - Republicans need to defend 11 seats, while Democrats need to defend 23, some of which are in red states

# Questions?

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