TaxNewsFlash

United States

No. 2022-394
December 23, 2022

Legislative update: House passes Consolidated Appropriations Act (with revenue provisions)

The U.S. House of Representatives [today] passed H.R. 2617, the "Consolidated Appropriations Act," by a mostly party line vote of 225-201.

The Senate passed the bill on December 22, 2022. The bill now will be enrolled and sent to the president for signature. It is unclear when the president may sign the bill, which will determine the date of enactment and thus the effective dates of certain measures.

Tax provisions—in general

The bill includes tax provisions aimed at expanding and increasing retirement savings as well as a provision limiting the tax deduction for charitable contributions of conservation easements in certain situations. It also includes a tax provision relating to health savings accounts and tele-health.

The bill does not include measures to extend various expired and expiring tax preference provisions or to suspend scheduled tax changes provided in the legislation commonly called the "Tax Cuts and Jobs Act."

Retirement tax savings provisions

Division T of the bill ("Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act of 2022") includes tax measures aimed at expanding and increasing retirement savings that provide a substantial number of modifications to existing retirement plan rules, including:

- The required minimum distribution age will be increased to age 73 in 2023, and increased again to age 75 in 2033.
- Starting in tax years after 2023, mandatory distribution rules will not apply to ROTH accounts before death.
- An increased catch-up contribution to an elective deferral plan such as a 401(k) or 403(b) plan will be allowed for individuals aged 60-63. For tax years starting in 2025, eligible individuals can make an increased catch-up contribution of the greater of $10,000 or 50% more than the regular catch-up amount. The increased catch-up amount is to be indexed annually after 2025.

- IRA catch-up contribution limits will be indexed annually starting after 2023.

- Defined contribution plans will be allowed to provide employees with the option to receive matching contributions and employer nonelective contributions on a ROTH basis.

- Defined contribution plans will be allowed to treat student loan payments as elective deferrals for purposes of matching contributions, effective for plan years beginning after 2023.

- Auto-enrollment for plan years after 2024 will be expanded. Current 401(k) and 403(b) plans would be grandfathered, but new plans would be required to provide auto-enrollment. There is an exception for small employers with 10 or fewer employees, new businesses in business less than three years, church plans, and governmental plans. Initial enrollment contribution must be at least 3%, but not more than 10%. Contributions must be increased annually by 1% until the contribution reaches a minimum of 10%, not to exceed 15%.

- Starting in 2024, an exception to the 10% penalty for early withdrawal from a 401(k) plan or IRA would apply to a distribution for emergency expenses which are unforeseeable or immediate financial needs related to personal or family emergency expenses. Only one distribution is permissible per year of up to $1,000 and the taxpayer has the option to repay the distribution within three years. No further emergency distributions are permitted during the three-year repayment period unless repaid.

- Retirement plan coverage for part-time workers would be increased by requiring employer to allow long-term part-time employees who have provided two years of continuous service to participant in a 401(k) plan. SECURE Act required such participation after three years of part-time service

- Multiple employee 403(b) plans would be allowed starting in 2023.

- Treasury may establish a Retirement Savings Lost and Found to allow individuals to search for individuals plans and plan administrator information. This would require retirement plans to share and consistently update information with the Treasury database and in some cases transfer funds to a trust for distribution to the missing participants.

Conservation easements

Section 605 of Division T includes a provision limiting the tax deduction for charitable contributions of conservation easements in certain situations. Some of the key features of the provision include:

- Partnership deductions for conservation easements are capped at 2.5 times “relevant basis,” subject to three exceptions noted below.

- “Relevant basis” is the basis allocable to the portion of the real property subject to the conservation easement immediately before the contribution, determined under rules similar to section 755 and without regard to section 752.

- Exceptions for:

    - “three-year hold property” - contributions made at least three years after the date the partnership acquired the real property and the last date on which any partnership or partner (direct or indirect) acquired any interest in the property

    - “family partnerships” - substantially all of the partnership interests are held directly or indirectly by members of the family, defined as the spouse and any individual described in section 152(d)(2)(A)-(G)

    - “historic structures” – contributions to preserve any building which is a certified historic structure, as defined in section 170(h)(4)(C).

- Deductions disallowed under this provision are subject to 40% gross valuation misstatement penalties with no reasonable cause exception.

- Transactions disallowed by this provision are considered listed transactions for statute of limitations on assessment purposes.

• Prospective effective date is generally contributions made after date of enactment, with no inference intended as to the treatment of transactions before the effective date or transactions not disallowed by this provision after the effective date.

Documents

- **Bill text** [PDF 6.46 MB] (4,155 pages)
- **Estimated revenue effects by the Joint Committee on Taxation**
- **Full package summary** [PDF 744 KB] (30 pages)
- **SECURE 2.0 Act 2022 section-by-section summary** [PDF 270 KB] (19 pages)

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