From the Editor:

Congress Faces Busy Fall

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Although most people will return from their Labor Day holiday September 3, Congress has generously granted itself an extra week. Lawmakers might need the additional rest because they have left themselves a very crowded legislative agenda for the fall. By September 30, Congress must pass another continuing resolution or the government will shut down. And around October 15, the federal government will hit its borrowing limit, necessitating an increase in the debt limit, severe cuts, or, again, a government shutdown.

These mini-crises are nothing new, of course. Congress has been giving itself arbitrary deadlines to pass budget and financial bills for years. The partisan rancor around the debt ceiling is what gave us the sequester and created some of the ill will that exists between Republicans and Democrats. After the collapse of his grand bargain negotiations with House Speaker John Boehner, President Obama doesn't seem inclined to negotiate with Republicans over the debt ceiling (in fact, he has said repeatedly that he will not accept anything other than a clean bill). Senate Democrats agree. But that hasn't stopped Republicans from posturing over both the continuing resolution and the debt ceiling (p. 980).

Sen. Ted Cruz wants to use the continuing resolution debate to defund Obamacare. Other Republicans would like to make tax reform a condition of any debt ceiling increase. For his part, Boehner has warned his party that a government shutdown will not benefit the GOP, but he has promised to have a vigorous fight over an increase in the debt limit. If Republicans are serious about wringing concessions from Democrats before they will vote to fund the government or increase the borrowing limit, then the fall could see yet another increase in partisanship.

Politically, it's hard to see how Republicans can come out ahead this fall. The public has never been very receptive to their arguments that debt ceiling increases should be tied to steep discretionary spending cuts. Shutting down the government has proven to be a disastrous tactic in the past. While it would be surprising if Obama stuck with his resolution of not negotiating with Congress at all (fecklessness is the administration's most consistent trait), it's hard to see how the president doesn't have the upper hand in this debate.

Repatriation

In 2004 Congress passed a law that essentially granted a repatriation holiday for U.S. multinationals with offshore profits. The holiday consisted of an 85 percent dividends received deduction. Companies were quick to take advantage of the holiday, but conventional economic wisdom has been that it failed to stimulate job creation because most of the funds brought home were used on stock buybacks and shareholder distributions. Martin Sullivan writes about a new study by professor Thomas Brennan that debunks that notion (p. 969). Brennan's research shows that the funds were, in fact, mostly used for acquisitions. Sullivan agrees with Brennan's conclusions, but says that doesn't change much about repatriation policy. Even if the profits were used for acquisitions instead of shareholder distributions, that still wouldn't create very many jobs, he writes. Sullivan discusses the chances of repatriation in tax reform and how various proposals would treat foreign profits of U.S. multinationals.

Quality Stores

The Supreme Court has already accepted one tax case for October and might be on the verge of taking another. The Court is weighing whether to grant certiorari in *Quality Stores*, which involves the application of FICA to supplemental unemployment benefits. Marie Sapirie writes that the case could be important because of the large amount of money involved and the recurring nature of the issue (p. 963). She argues that the Court should grant certiorari, but that if it doesn't, the IRS must consider issuing prospective regulations on supplemental unemployment compensation benefits.

Commentary

The Foreign Account Tax Compliance Act has redefined international tax enforcement. It has implications for virtually every financial institution in the world, or at least those that want to do business in the United States. But FATCA's definition is expansive, and so it isn't just financial institutions that should be concerned about compliance. Peter Cotorceanu writes that before FATCA, no one would have considered an offshore trust a financial institution, but most trusts are subject to FATCA (p.

1007). He criticizes the drafters of the FATCA regulations, who seemed to consider trusts to be foreign financial institutions under the statute. He argues that the legislative history does not support that conclusion. By trying to wedge trusts into an ill-fitting category, Treasury has created many unanswered questions that will make FATCA compliance difficult, he concludes.

Tax reform remains an amorphous topic. Democrats continue to agitate for higher revenues as part of any reform effort, while Republicans seem mostly focused on lowering tax rates. Specifics, outside a few drafts from House Ways and Means Chair Dave Camp, are few and far between. Sen. Tom Coburn, however, has actually highlighted several revenue raisers that he would use to pay for tax rate cuts, something that Bruce Bartlett considers praiseworthy (p. 1027). Lowering the top federal corporate and individual rate to 25 percent, as many GOP plans call for, would reduce revenues by 12.6 percent, Bartlett says. Simply reducing tax expenditures cannot make up that loss, but Congress is reluctant to even begin naming which of those provisions could be cut, he writes. Coburn, however, has specifically listed expendable tax expenditures, most of which focus on ending tax breaks for millionaires. Bartlett says Coburn should be commended for taking tax reform seriously and taking the first step toward making it an achievable goal.

Monte Jackel analyzes worthlessness deductions in the partnership context (p. 1031). He addresses the question of whether the portion of basis in a partnership interest represented by allocable debt can be claimed as a worthlessness deduction before reporting income on the debt as cancellation of indebtedness. The issue has not been fully explored by Treasury, he says. He recommends that the government follow up on Rev. Rul. 93-80 and eliminate uncertainty in this area.

Statutes of limitations are much more important than they might initially appear. In tax practice, when a statute is tolled and when it is not can be both complicated and critically important. Robert Wood and Dashiell Shapiro look at whether an improperly filed Tax Court petition can toll the statute of limitations even if the IRS's original notice is invalid (p. 1035). The petition can toll the statute of limitations as long as the IRS is not aware of its prior errors, they write. They point out that these problems happen more often than you think and practitioners need to be aware of what situations can extend the limitations period.

In Of Corporate Interest, Robert Willens analyzes the *Sun Capital* decision, which found that a private equity fund was in an active trade or business for pension purposes (p. 1041). The case has generated a great deal of excitement because of its potential applicability to the tax world. Willens writes that if *Sun Capital* were to apply in a tax context, fund income could be recharacterized as ordinary instead of capital gains. ■