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Federal Legislative Update

Post-Election Summary and Forecast for the 113th Congress

"After \$4 billion, two dozen presidential primary election days, a pair of national conventions, four general election debates, hundreds of Congressional contests and more television advertisements than anyone would ever want to watch, the two major political parties in America essentially fought to a standstill."

New York Times, November 7, 2012

112 th Congress	113 th Congress
House of Representatives Democrats: 193 Republicans: 242	House of Representatives Democrats: 195 Republicans: 233 Races not yet determined: 7
Senate Democrats: 51 Republicans: 47 Independents: 2	Senate Democrats: 53 Republicans: 45 Independents: 2

In the wake of last week's elections, there is much speculation and chatter about whether the public can expect real "change" in 2013. After all, President Obama was re-elected to a second term, the House of Representatives has retained its Republican majority, and the Senate remains under Democratic control. Considering that the major players will remain the same, the federal legislative agenda could face more partisan gridlock. However, in comments made shortly after the election results were in, House and Senate leaders appeared to strike a more conciliatory (or at least a less combative) tone with respect to how they will approach, consider – and even compromise – on the many issues facing the country. While there are many issues on the legislative agenda, following is a brief summary of a few key issues and a forecast of what may lie ahead.

Impact of the Economy

Exit polling conducted by Politico confirmed that the economy was the top concern for voters. Interestingly, the majority of those questioned assigned blame to former President George W. Bush for the state of the nation's economy, not to President Obama. Politico's exit polling also showed voters felt Governor Romney's policies would favor the wealthy, while President Obama's policies were more likely to help the middle

class. True or not, it is clear that Congress and the President will need to do much more to cut the deficit and improve the economy.

Short-Term: The Lame Duck Session

As the 112th Congress returns for a lame duck session this week, the impending fiscal cliff will dominate the agenda. The “fiscal cliff” is the short-hand term used when referring to the combination of expiring tax provisions and across-the-board spending cuts (sequestration) that are scheduled to take effect on January 2nd and to the unknown consequences that would result. Unless Congress intervenes, the following would occur:

- The Bush-era 2001 and 2003 tax cuts would expire
- Defense and non-defense spending would each be reduced by \$55 billion under the mandated sequestration
- New taxes included in the Affordable Care Act would be implemented
- Extended unemployment insurance benefits would expire
- The Medicare sustainable growth rate formula (i.e., the “doc fix”) would be slashed
- The payroll tax cut would expire
- No retroactive extension of expired provisions – Alternative Minimum Tax (AMT) patch, research and development tax credit, the production tax credit for wind energy, and other “tax extenders”
- Current estate and gift tax rates would increase

Many believe there is simply not enough time to reach a long-term agreement on these issues during the lame duck session, which has led to speculation that Congress will follow one of two strategies: adopt a short-term “fix” and postpone final action by “kicking the can down the street” for six months to a year; or do nothing, let the spending cuts and tax increases take effect and see what happens. Most agree that the latter strategy is reckless at best and catastrophic at worst and would derail the modest economic recovery now underway.

While many are predicting further gridlock, there is some hope for compromise on some outstanding issues. It is believed that the Bush-era tax cuts could be extended temporarily with a push by the Obama Administration to let the Bush tax cut rates expire for those making more than \$1 million a year. To win Republican support for increasing the debt ceiling, which is expected to be reached in mid-January, Democrats would likely need to agree to some cuts to entitlement spending. In regards to sequestration, both parties may delay sequestration for one year, instead of tackling it as part of a larger deficit reduction or tax reform plan. Look for more details to emerge in the weeks ahead.

Tax and Budget at the Center of the Debate

Regardless of the “fix” that Congress and the President agree to in the short run, tax and budget issues will remain at the center of the Congressional agenda in 2013. Continuity in the leadership of the tax writing committees in the 113th Congress will mean that legislative efforts going forward will likely resemble those of the recent past. The leadership of the House Ways and Means Committee and Senate Finance Committee has already done extensive work in preparation for a debate over tax policy. As such, the broad conceptual framework for two approaches for tax reform has been laid. Both Democrats and Republicans broadly agree

on some concepts: lowering the corporate rate and encouraging domestic job growth through corporate tax reform, simplifying the individual tax system, fixing the AMT, and more clearly justifying tax expenditures within the tax code.

Despite these areas of general agreement, the approaches taken by the two parties differ significantly. For example, the parties do not agree on the tax treatment of high-income earners in terms of income as well as capital gains and dividends, establishment of a territorial tax system, modification of preferences and “loopholes” within the code (for example, policies that favor oil and gas and renewable energy), and proper levels of corporate taxation. Legislating in these areas will be an incredibly complex, difficult, and contentious process.

In post-election statements last week, House Speaker John Boehner expressed a desire to compromise on a plan, while reiterating his opposition to raising tax rates. Last Friday, in his first public remarks since the election, President Obama reiterated his stance on letting the Bush-era tax cuts expire for upper-income earners. He also invited Congressional leaders from both parties to the White House on November 16th for talks on how to reduce the deficit and avert the fiscal cliff.

Future of the Affordable Care Act (ACA)

As a result of the elections, many segments of the health care industry, especially those that opposed passage of the ACA, are now resigned to the fact that the law is unlikely to be repealed or significantly altered and that implementation will proceed unencumbered by any legal threats or legislative action. Even so, last week House Majority Leader Eric Cantor vowed to make another run at repealing all or parts of the ACA. However, the odds do not favor the enactment of major changes in the law.

Looking Ahead to the 113th Congress and Second Term of the Obama Administration

President Obama’s second term will see full implementation of signature legislative efforts including the Dodd-Frank financial reform law despite continued Republican opposition. While the economy and the impending fiscal cliff top the legislative agenda, investments in education, a renewed commitment to infrastructure, and immigration reform will also be addressed.

Energy policy will also receive substantial attention, as will global trade considerations. These two issues make relations with Canada and Mexico a significant priority for the President given the importance of cross-border trade flows and the increasing number of joint energy investments.

It is clear that there are many issues facing Congress and the Administration, and if current statements by both parties hold true, Republicans and Democrats will be working hard to reach consensus on these issues and overcome the partisan gridlock of the 112th Congress. And while the public may have voted for the status quo, the country is likely to demand greater cooperation and compromise to solve the many issues facing the nation.

This information is provided as an educational service and is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.