

Koskinen Removal Alive in Congress

By Kat Lucero — kat.lucero@taxanalysts.org

Congressional critics of the IRS took a victory lap after new agency oversight measures were enacted December 18 as part of a catchall government spending bill for fiscal 2016, but some conservative lawmakers tell Tax Analysts that they still want more — namely, the removal of the IRS commissioner.

“Those [measures] are all good, but the main thing is to get rid of John Koskinen,” House Oversight Committee member Jim Jordan, R-Ohio, said upon enactment of the Consolidated Appropriations Act, 2016 (P.L. 114-113). The act increases the IRS budget 3 percent compared with the previous fiscal year, with the additional amount designated for fraud prevention and taxpayer service — two areas that have been subject to criticism from congressional Republicans.

However, the sticking point for conservatives is what House Speaker Paul D. Ryan, R-Wis., described as the IRS being used as a “political weapon” against some tax-exempt groups. So negotiators tacked on oversight measures in the appropriations bill, including prohibiting the agency from issuing new rules on the political activities of section 501(c)(4) organizations and disallowing funding for the White House to order the agency to review exempt groups. (Prior coverage: *Tax Notes*, Dec. 21, 2015, p. 1478.)

Other proposed rules would rein in IRS funding for the following: improper disclosure of confidential taxpayer information; preparation of tax returns, with some exceptions; and bonuses or rehiring of former employees, unless their conduct and tax compliance have been reviewed. The agency would also be required to provide additional reporting of spending activities and official time.

Oversight Committee Chair Jason Chaffetz, R-Utah, praised the policy riders, calling them “a huge step forward.” The next move, for Chaffetz, is holding Koskinen accountable for what he considers the IRS chief’s obfuscation when it comes to the exemption application controversy. Koskinen is “unfit for that job,” Chaffetz said, adding that he wants to continue to push for the commissioner’s removal, either by forcing him to resign or through impeachment.

In October, Chaffetz introduced a resolution (H. Res. 494) that would impeach Koskinen for engaging in what he called “a pattern of deception” regarding the investigation into the tax-exempt

targeting scandal that erupted in 2013, including the revelation that the IRS had lost some e-mail correspondence by former IRS official Lois Lerner. (Prior coverage: *Tax Notes*, Nov. 2, 2015, p. 600.) “We’ve already started that process, and we’ll keep it going after the first of the year,” Chaffetz said of impeachment.

Oversight Committee member Mick Mulvaney, R-S.C., said, “Our objections with Mr. Koskinen deal with him personally. We think he’s responsible for the destruction of evidence, which is [an] impeachable [offense] in our minds.”

In June, Oversight Committee members led a campaign against Koskinen, continuing that effort even throughout the shake-up in the chamber’s leadership during much of the fall. For example, a commitment to the removal of the commissioner was part of a conservative group’s wish list for a possible successor to then-Speaker John A. Boehner. The Ohio Republican’s abrupt resignation announcement was influenced by that same group of lawmakers.

‘Our objections with Mr. Koskinen deal with him personally,’ said Mulvaney.

Now, the impeachment case against Koskinen rests in the hands of the House Judiciary Committee, under the helm of Rep. Bob Goodlatte, R-Va. However, observers noted that the process for impeachment is subjective and political and can take a long time. (Prior coverage: *Tax Notes*, July 13, 2015, p. 139.)

Although Goodlatte did not provide an opinion on the matter, an aide told Tax Analysts in December that the committee is still examining the case.

Shortly after the passage of the omnibus appropriations bill, House Ways and Means Committee Chair Kevin Brady, R-Texas, did not directly say he supports or opposes Koskinen’s removal, but the new leader of the taxwriting committee expressed overall support for the IRS policy riders, some of which were included in his tax extenders package.

The creation of those new laws, Brady said, is a “very strong step” toward change within the agency, which has faced scrutiny and drastic funding cuts as a result of the scandal.

“I’m convinced that the IRS can be restored to a truly independent organization with credibility that is not interested in political targeting. That’s what both parties want,” Brady said.

Meanwhile, Koskinen could use the new policy measures to transform the IRS, according to Ways and Means Committee member Patrick Meehan,

R-Pa. “By holding the entirety of the IRS accountable for some of this overreach, he may be able to use that as a rallying cry to get back to what [the agency needs] to do and do it well,” he said.

According to Meehan, the IRS appropriations were indeed balanced — both in the new laws governing the agency’s treatment of its employees and tax-exempt organizations and the \$290 million in additional funding earmarked for taxpayer services in fiscal 2016.

‘Koskinen has disappointed me from time to time, but he is a competent man and has worked well with me,’ said Hatch.

A former prosecutor who has worked with the IRS, Meehan said there is concern over the weak areas within the agency, such as refund fraud and customer service. And Koskinen, he added, is competent enough to continue articulating those issues to Congress.

On the Senate side, at least one senior taxwriter and IRS critic has separated himself from the effort to oust the agency chief. “I’m not part of the movement,” Senate Finance Committee Chair Orrin G. Hatch, R-Utah, said. “Koskinen has disappointed me from time to time, but he is a competent man . . . and has worked well with me.” ■

Extenders Bill Clarifies Tax Court Status

By Nathan J. Richman —
nathan.richman@taxanalysts.org

Several changes regarding the Tax Court, such as a provision declaring that the court is not an agency of the executive branch, were included in the tax extenders bill signed by President Obama on December 18.

In response to uncertainties about the Tax Court’s status raised by the recent decision in *Kuretski v. Commissioner*, 755 F.3d 929 (D.C. Cir. 2014), the bill amends section 7441 to include an additional sentence stating that “the Tax Court is not an agency of, and shall be independent of, the executive branch of the Government.” In *Kuretski*, the D.C. Circuit found no constitutional violation in the president’s right under section 7443(f) to remove Tax Court judges because it found the court is in the executive branch. (Related coverage: p. 52. Prior coverage: *Tax Notes*, June 30, 2014, p. 1478.)

The *Kuretski* decision left some with doubts about the Tax Court’s status (whether it was an agency or a court) for other purposes. For example, Ronald E. Byers is suing the Tax Court under the Freedom of Information Act, which applies to agencies but not to courts. (Prior coverage: *Tax Notes*, Oct. 19, 2015, p. 342.)

The amendment to section 7441, like the rest of the Tax Court provisions in the extenders bill, comes from S. 903, a bill approved by the Senate Finance Committee in May. The American Bar Association Section of Taxation submitted a comment letter on S. 903 supporting many of its provisions, including the Tax Court status clarification, along with a few suggested changes, which were not implemented in the extenders bill. (Prior coverage: *Tax Notes*, June 1, 2015, p. 1002.)

The Tax Court provisions of the extenders bill also change the treatment of interest abatement cases, including allowing the small tax case election if the abatement amount is less than \$50,000. This is the same amount that limits regular liability cases eligible for the small tax case election. A small tax case has relaxed rules of evidence, can be heard in more cities, and cannot be appealed.

Another provision amends section 7482 to state that appeals of Tax Court decisions concerning collection due process or innocent spouse relief must go to the appropriate regional circuit court, rather than all such appeals going to the D.C. Circuit. Last year, Byers won an appeal at the D.C. Circuit (*Byers v. Commissioner*, 740 F.3d 668 (D.C. Cir. 2014)) on the issue of proper appellate venue, and in