Bipartisan tax deal clears Ways and Means; March funding bill emerges as possible legislative vehicle

A bipartisan tax agreement between the two top congressional taxwriters that would temporarily reverse certain taxpayer-unfriendly business tax provisions enacted under the Tax Cuts and Jobs Act of 2017 (P.L. 115-97) and temporarily enhance the current-law child tax credit cleared a significant hurdle this week after it won approval in the House Ways and Means Committee, although assorted lawmakers in both parties and both chambers continue to voice reservations about what is—and isn't—included in the proposal.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Meanwhile, the House and Senate approved and sent to President Biden a short-term continuing resolution that would avert a pending partial government shutdown and push the deadline for funding government operations for fiscal year 2024 into early March, so if the tax bill does advance in Congress, a subsequent appropriations package may be available to carry it to the White House.

Tax proposal at a glance

House taxwriters approved the Tax Relief for American Families and Workers Act of 2024 (H.R. 7024) during a committee mark-up on January 19 by a bipartisan vote of 40-3. (Democratic Reps. Lloyd Doggett of Texas, Linda Sanchez of California, and Gwen Moore of Wisconsin were the sole dissenters.) The framework for the measure was unveiled three days earlier by Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., following months of behind-the-scenes negotiations.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf

At a high level, the marquee provisions in the bill would:

- Delay through 2025 mandatory capitalization of research expenditures under section 174—for domestic expenditures only—retroactive to expenses paid or incurred in tax years beginning after December 31, 2021;
- Reinstate 100 percent bonus depreciation through 2025, for qualified property placed in service after December 31, 2022;
- Reinstate through 2025 the allowance for depreciation and amortization for the 30 percent limitation on interest deductions, retroactive to taxable years beginning after December 31, 2023, and, if elected by the taxpayer, retroactive to taxable years beginning after December 31, 2021; and
- Enhance the child tax credit through 2025 by permitting the refundable portion of the credit to be calculated on a per-child basis (for tax years 2023, 2024, and 2025), gradually increasing the overall limit on refundability (for tax years 2023 through 2025), allowing parents to use prior-year income to qualify for the credit (for tax years 2024 and 2025), and indexing the maximum credit amount for inflation (for tax years 2024 and 2025).

Other provisions would alleviate double taxation burdens on Taiwanese companies operating in the United States, temporarily enhance the low-income housing tax credit, increase the small business expensing limit and index it for inflation, provide tax relief for victims of certain federally declared disasters, and increase the dollar threshold that triggers certain information reporting requirements for payments by a business for services performed by an independent contractor or subcontractor.

The measure also includes revenue-raising provisions that are intended to address perceived fraud in the pandemic-era employee retention tax credit (ERTC) program.

A section-by-section summary of the bill is available from the taxwriting committee staff. A description of the legislation as introduced and a description of certain technical modifications to the child tax credit and ERTC provisions that were included in an amendment in the nature of a substitute shortly before the mark-up are available from the nonpartisan Joint Committee on Taxation (JCT) staff.
URL: https://www.finance.senate.gov/imo/media/doc/the_tax_relief_for_american_families_and_workers_act_of_2024_technical_summary.pdf
URL: https://www.jct.gov/publications/2024/jcx-2-24/
URL: https://www.jct.gov/publications/2024/jcx-4-24/

The JCT staff estimates that the amendment in the nature of a substitute would, on net, increase federal deficits by $399 million between 2024 and 2033. The tax relief provisions in the measure would reduce federal receipts by nearly $77.5 billion over the 10-year budget window while the curbs on the ERTC program would increase receipts by $77.1 billion over the same period.
URL: https://www.jct.gov/publications/2024/jcx-5-24/

What happens next?

With House leadership still noncommittal on moving the bill through the chamber, Ways and Means Chairman Smith is undoubtedly hoping that the bipartisan committee support it received at the mark-up will demonstrate the bill's bipartisan bona fides and increase its likelihood of passage in the House under suspension of the rules, an expedited process that provides for limited debate, no amendments, and a two-thirds vote for passage rather than the usual simple majority that is needed to pass legislation under a "rule."

"Today's strong bipartisan vote in the Ways and Means Committee shows there is a path forward for Republicans and Democrats to come together and deliver tax relief for workers, families, farmers, and small businesses," Smith said in a press statement shortly after the vote.

In noting his intent to vote in favor of the bill during the mark-up, New Jersey Democratic Rep. Bill Pascrell seemed to reflect the views of many Democrats on the committee, saying, "I think it's an attempt at fairness. . . . [I]f I was writing the bill, I would've obviously made some changes. . . . But you know that corny saying, the enemy of the good is the perfect."

The quickest timeline the House schedule will allow would put the legislation on the floor the week of January 29, after the chamber is back in session following a previously scheduled district work period; however, even this would not provide for enactment of the law before the filing season for tax year opens on January 29, as Finance Committee Chairman Wyden and others have repeatedly said is their goal.

If leadership were to try to move the bill through the House under so-called "regular order," it could be a more difficult process. Among other concerns, regular order could open the legislation up to amendments (not allowed under the suspension of the rules), which is the hope of some Republicans championing changes to the current cap on state and local tax (SALT) deductions. GOP members from states with high taxes on income and property, such as New York, New Jersey, and Illinois, have been clamoring for repeal of or an increase in the current cap of $10,000 per household.

However, the bill's authors believe opening the legislation to further changes puts at risk the carefully balanced compromise they reached.

"If we continue to allow for additional changes like the state and local tax, it will sink the bill," Smith said on Bloomberg TV January 17, despite a remark to reporters from freshman New York GOP Rep. Mike Lawler claiming that Republicans seeking SALT deduction changes are the majority-makers who "gave Chairman Smith his job."

Democrats from states with higher taxes also have long sought to tackle the SALT cap, and taxwriter Bill Pascrell introduced an amendment during the Ways and Means mark-up that would have increased the cap to $60,000 for single filers and $120,000 for married couples filing jointly. That amendment was defeated on a party-line vote.

Much of the discussion and debate at the mark-up was around the child tax credit, which most Democrats in both the House and Senate have long advocated be made more generous than what is proposed in this new bill. Before voting against the legislation, Rep. Lloyd Doggett, D-Texas, said, "Compromise is good, but compromising children is not," and he argued that the bill lacked equity for working class families while providing "a massive tax cut" to large corporations.

As was the case with Pascrell's proposal to modify the SALT cap, three amendments proposed by Democrats to further enhance the child tax credit were rejected along party lines. Washington Rep. Suzan DelBene's amendment would have fully reinstated the credit as it was enacted on a temporary basis in American Rescue Plan, while other Democrats sought to revive pieces of the enhanced credit from that 2021 legislation. (California Rep. Linda Sanchez proposed to make the credit fully refundable and Alabama Rep. Terri Sewell sought to make the credit payable in advanceable monthly installments.)

Some challenges ahead in the Senate?

In the Senate, however, a polar opposite view on the child tax credit could be a key stumbling block for the bill—if it gets out of the House—as some Finance Committee Republicans have criticized the new structure of the credit and argued that it does not appropriately incentivize taxpayers to work. Earlier in the week, taxwriter Tom Tillis, R-N.C., told reporters, "We've still got work to do on eligibility work requirements."

Other Senate Republican taxwriters have been less specific about changes they would like to see in the legislation but have indicated they don't support the bill as crafted by Wyden and Smith. The committee's top Republican, Sen. Mike Crapo of Idaho, said this week when asked about his support, "There are issues."

Another taxwriter, Sen. John Cornyn, R-Texas, told *Politico* January 17, "This is something that the Finance Committee should take up and mark up here in the Senate separately, not just have these deals sort of cooked up behind closed doors."

The path this legislation could take through the Senate is still an unknown. Stand-alone tax bills are rarely considered on the Senate floor, as they attract a large number of amendments from rank-and-file senators, and it can be hard for leaders to keep control of the process. So while Senate Majority Charles Schumer, D-N.Y., has endorsed the bill, and the supportive taxwriters in both chambers will want the legislation considered quickly, it's not clear how realistic that is.

A large bipartisan House vote in favor of the bill, similar to that at Ways and Means, could be seen by congressional leaders as an indication that this package is safe to include as part of another must-pass bill, such as one of the government funding packages that now will come due in early March. (More on that below.) Those spending bills will be subject to significant political wrangling and are not guaranteed to pass smoothly, however, so there is risk in relying on them for the tax bill's success; nonetheless, they are the next likely opportunities on the congressional horizon, assuming passage on a stand-alone basis is not possible.

White House on board

At the White House, meanwhile, Press Secretary Karine Jean-Pierre said January 19 that while President Biden would have preferred more expansive enhancements to the child tax credit, the Ways and Means-approved bill "is a welcome step forward and we believe Congress should pass it."

"Let's not forget this is for millions of families, millions of families," she said. "It's going to lift hundreds of thousands of children out of poverty and support construction of hundreds of thousands of affordable rental housing as well, in that bipartisan agreement."

Just-approved CR sets up early March government funding deadline

The chances that government funding legislation may be available to provide a vehicle for a tax package grew this week after the House and Senate approved and President Biden signed a continuing resolution (also known as a "CR") that will avert a government shutdown that otherwise would have taken place midnight on January 19, when a tranche of funding under the "laddered" CR that had been keeping the government's doors open was scheduled to lapse. Under the that CR—a construct of Speaker Mike Johnson, R-La., that was enacted late last year—government operations were continued at fiscal year 2023 funding levels through January 19 for some departments and agencies and through February 2 for others.

New deadlines of March 1 and 8: This week's CR (H.R. 2872) cleared the Senate on January 18 by a vote of 77-18 and was approved in the House later that day by a vote of 314-108. President Biden signed it into law on January 19.
URL: https://www.congress.gov/bill/118th-congress/house-bill/2872

The measure maintains a "laddered" structure, extending funding at fiscal 2023 levels through March 1 for the four appropriations measures that had otherwise been scheduled to lapse after January 19, and through March 8 for the remaining eight spending bills.

"It's critical we . . . pass the strongest possible funding bills—and soon," Senate Appropriations Committee Chairman Patty Murray, D-Wash., said on January 17. "But as that work continues, we absolutely have to prevent a harmful government shutdown. . . ."

"So I am really glad there is bipartisan agreement in both chambers on a CR to avert that shutdown so we can get our bills done," Murray continued. "And I certainly hope that it is the last CR that we consider."

Senate passage of the CR was never in much doubt given the broad recognition among party leaders and top appropriators in that chamber that additional time is required to complete action on full-year spending bills for fiscal 2024, which began last October 1.

Passage through the House was a trickier exercise, however, since it meant Speaker Johnson had to renege on an earlier pledge that he would not consider additional short-term CRs after Congress approved the previous laddered stop-gap. Furthermore, Johnson had already drawn the ire of the conservative House Freedom Caucus, who have insisted on steep spending cuts and believe that he made too many concessions to Democrats in negotiating topline appropriations numbers for federal departments and agencies earlier this month. (That agreement largely adheres to the fiscal 2024 appropriations levels that were negotiated by President Biden and then-Speaker Kevin McCarthy, R-Calif., and signed into law last June in the Fiscal Responsibility Act (P.L. 118-5).) And with three Freedom Caucus members effectively holding veto power on the powerful House Rules Committee—the panel that sets the terms for debating bills on the House floor—Johnson was effectively forced to bring this week's CR straight to the floor under the fast-track "suspension of the rules" process.
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The suspension process is normally reserved for noncontroversial bills, but may become more commonly employed by Johnson given the fractures in his caucus—a reality that could further anger conservatives as Republican leaders are forced to rely on significant numbers of Democrats to get even basic legislation through the lower chamber.

Tax package 'under suspension'?: As already noted, there also has been speculation that, should Ways and Means Chairman Smith convince Speaker Johnson to attempt to move the bipartisan tax deal through the House on its own, rather than trying to attach it to appropriations legislation now not due until March, GOP leaders may have to place the tax bill on the suspension calendar in order to sidestep hazards such as demands by members of the so-called SALT caucus to address the $10,000 limit on the itemized deduction for state and local income and property taxes.

But even if House leaders were to move the tax bill under suspension, such an expedited process does not exist in the Senate where—absent a procedural effort by Senate Majority Leader Schumer to block the filing of amendments (a process known as “filling the amendment tree”) the bill would be subject to debate and amendment on the floor and would need the support of at least 60 senators to move toward final passage. The possibility that the measure could become a target for amendment—as tax legislation often is—would weigh heavily on Senate leaders’ decision-making as to legislative process.

We expect to learn more about how these dynamics will play out in the days and weeks ahead.

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