

Johnson preps for post-recess House vote on Smith-Wyden tax package

House Speaker Mike Johnson, R-La., took preliminary steps this week to hold a floor vote after lawmakers return from recess on January 29 on bipartisan legislation negotiated by House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., that would, among other provisions, temporarily reinstate some now-expired business tax incentives and make assorted temporary enhancements to the child tax credit.

Meanwhile, Republicans in the Senate spent the past week eyeing potential changes to the measure, although they generally acknowledged that any action on their side of the Capitol is likely to be shaped by how it fares in any House vote.

Tax Relief for American Families and Workers Act

The Tax Relief for American Families and Workers Act of 2024 (H.R. 7024), the product of months of behind-the-scenes talks between the top two congressional taxwriters, was approved in the House Ways and Means Committee January 19 by an overwhelmingly bipartisan vote of 40-3.

URL: <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf>

At a high level, the measure includes provisions that 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 in determining the 30 percent limitation on business interest deductions under section 163(j), 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—for example, by accelerating the deadline for filing new claims, imposing new reporting requirements and restrictions on promoters of the credit, and extending the statute of limitations for the IRS to assess penalties on improper ERTC claims.

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 Ways and Means 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 legislation would, on net, increase federal deficits by \$399 million between 2024 and 2033, through the combined effect of \$77.5 billion in reduced receipts and increases in spending from the tax relief provisions and \$77.1 billion in new receipts from the curbs on the ERTC program. A macroeconomic analysis that the JCT staff released January 24 indicates that the bill's effects on the larger economy “do not additionally increase or decrease this estimate.”

URL: <https://www.jct.gov/publications/2024/jcx-5-24/>

URL: <https://www.jct.gov/publications/2024/jcx-6-24/>

House developments

House Republican leaders, who have been preoccupied with not-yet-completed government funding legislation for fiscal year 2024 (which began last October 1) as well as supplemental spending requests from the Biden administration for aid to Israel and Ukraine and for border security, did not cite the tax package among their top legislative priorities as it was being negotiated by Ways and Means Committee Chairman Smith and Finance Committee Chairman Wyden. And even after the proposal cleared the House taxwriting panel Speaker Johnson remained noncommittal on when—or if—he intended to bring it to the floor for a vote.

A spot on the calendar: That changed this week when the bill was added to the leadership's calendar of items that “may be considered” during the week of January 29. As of press time, however, the calendar entry did not explicitly indicate whether Johnson intends for the bill to move under what's known as “regular order” or if, as is generally expected, it will be brought up under “suspension of the rules,” an expedited process that provides for limited debate, no amendments, and a two-thirds vote for passage rather than a simple majority.

The Ways and Means Committee's Jason Smith reportedly supports moving the measure under suspension, since regular order could open the legislation up to amendments—particularly from some Republicans who want changes to the current cap on state and local tax (SALT) deductions. GOP members who represent jurisdictions 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. (At the Ways and Means

Committee mark-up, an amendment from Democratic taxwriter Bill Pascrell of New Jersey that would have increased the cap to \$60,000 for single filers and \$120,000 for married couples filing jointly was rejected along strict party lines; however, Pascrell, reflecting the views of many other Democrats on the panel, stated that he would support the measure on the House floor and characterized it as “an attempt at fairness.”)

Smith, for his part, has cautioned that opening the legislation to amendments on politically divisive issues such as the SALT deduction could unravel the carefully balanced compromise he reached with the Finance Committee’s Ron Wyden.

“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.

Scheduling decisions not yet final: As the House prepares to return to session on January 29, two things are worth bearing in mind. First, the tax bill’s status on the House calendar remains provisional. (The current notice from leadership states only that it “may be considered.”) Second, in the days since the legislation was introduced and marked up by the Ways and Means Committee, Republicans in the House Freedom Caucus generally have refrained from commenting publicly on its provisions. This week, however, two Washington-based two think tanks aligned with that wing of the party—the Heritage Foundation and Advancing American Freedom (founded by former Vice President Mike Pence)—have issued statements opposing the measure, arguing, among other things, that the proposed child tax credit enhancements are essentially an expansion of welfare benefits and that the proposed changes to the ERTC program are dubious pay-fors. It is currently unclear how, if at all, the objections voiced by groups such as these may influence Speaker Johnson’s final decision to schedule a floor vote on the package.

Senate watching and waiting

Assuming the package does indeed receive a vote in the House and clears the chamber—either with or without amendments—Republicans in the Senate are citing specific concerns of their own that they would like to address. (The measure will require at least some level of bipartisan support since under Senate rules it would almost certainly need to garner 60 votes to overcome procedural hurdles and advance through the chamber.)

Child tax credit: In separate comments to reporters this week, Senate Finance Committee ranking member Mike Crapo, R-Idaho, along with GOP taxwriters Thom Tillis, R-N.C., and Todd Young, R-Ind., objected to the proposed “lookback” rule for the child tax credit that would allow taxpayers to qualify for the credit (for tax years 2024 and 2025) based on their prior-year income—a provision that they and other Republicans claim could discourage taxpayers from seeking employment.

Ways and Means Chairman Smith pushed back against this and similar claims, noting in a January 22 news release that the GOP-sponsored Tax Cuts and Jobs Act (P.L. 115-97) “doubled the credit, increased the refundable portion to \$1,400, and adjusted the refundable portion of the credit for inflation, while keeping in place work requirements to claim the credit” with “no [subsequent] drop in labor force participation rates.”

URL: <https://waysandmeans.house.gov/child-tax-credit-reforms-in-tax-relief-for-american-families-and-workers-act-are-proven-conservative-pro-family-policy/>

[URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf](https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf)

The JCT staff also addressed that concern in its just-released macroeconomic analysis, noting that while the proposed enhancements to the credit would increase labor supply, those effects largely would be offset by an increase in after-tax household income for certain taxpayers. As a result, “the increase in aggregate effective labor supply relative to the baseline forecast is too small to be significant,” the report states.

On a more granular level, reports circulating in Washington suggest that some Republican senators also have complained in private about a provision in the bill that would allow the Treasury Department to automatically redetermine child tax credit amounts on returns filed by eligible taxpayers who did not take into account the per-child calculation of the refundable portion of the credit and the increase in the refundable portion of the credit—a change they claim could result in the Biden Treasury Department delivering “bonus” refunds to taxpayers just ahead of this November’s presidential election. The Ways and Means chairman has been working to reassure these lawmakers that the provisions at issue would apply only to a small subset of taxpayers and that the legislation includes guardrails that would prevent Treasury from manipulating the timing of additional refund payments to gain a political advantage.

[URL: https://waysandmeans.house.gov/correcting-the-record-tax-relief-for-american-families-and-workers-act-protects-taxpayers-and-prevents-attempts-to-politicize-americans-tax-refunds/](https://waysandmeans.house.gov/correcting-the-record-tax-relief-for-american-families-and-workers-act-protects-taxpayers-and-prevents-attempts-to-politicize-americans-tax-refunds/)

Any GOP push to change the child tax credit provisions likely would, of course, prompt immediate opposition from Senate Democrats, who have long insisted on a more generous credit in exchange for their support for the business-friendly tax code changes and who in many cases had hoped for a more expansive set of enhancements than those included in the current legislation.

ERTC: North Carolina’s Thom Tillis also has criticized the measure’s revenue-raising proposals to curb the employee retention tax credit program, arguing that they are not true offsets.

“We created [the ERTC] program that did not have a pay-for at the time. We knew it was going to be adding to the debt,” Tillis told reporters shortly after the text of the legislation was released on January 16. “Now, all of a sudden, it’s becoming a pay-for. I call it pay-for laundering.”

Ranking member Mike Crapo, meanwhile, has not taken issue with the proposed ERTC modifications, but he did tell reporters this week that he is wary about including offsets in legislation that extends previously enacted tax provisions. (As a policy matter, Republicans have historically believed that such extensions do not require offsets.)

“I just want to make it clear that I don’t believe including it in this bill should be a precedent for having to include offsets in the future,” Crapo told *Punchbowl News* this week.

A Finance Committee mark-up?: Some Republicans in the upper chamber have stated that they need a forum—such as a Finance Committee mark-up—that would allow them to lay out their specific objections to the measure in its current form and discuss changes they would like to see incorporated into a Senate version.

Senate Minority Whip and Finance Committee member John Thune, R-S.D., told Bloomberg Tax this week that the GOP “would like to have a process that allows us to potentially amend a couple of pieces of [the bill], namely, the [child tax credit provisions]. If we can get an opportunity to do that, and that could be a Finance Committee mark-up, it could be on the floor, but hopefully we’ll get a chance to weigh in.”

Finance Committee Chairman Ron Wyden has indicated that talks with Republican taxwriters—including ranking member Crapo—are ongoing, but he has not given any indication that he intends to hold a mark-up.

Following the House’s lead: Both Wyden and Crapo told reporters this week that what happens to the bill in the House will likely be a strong predictor of its prospects in the Senate.

“We’re just watching what happens in the House,” Crapo said. “We’ve got to see how that plays out. Definitely, the type of vote they have in the House will have an impact over here. I can’t tell you what that is until I see what the vote is.”

Wyden reminded reporters that the measure received a substantial show of support in the Ways and Means Committee. If it generates a similar level of enthusiasm on the House floor, he said, “it seems to me you change the discussion about this” in the Senate.

“That would be two big signals,” he added.

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