

Bipartisan tax package in limbo in the Senate; SALT relief held up in the House

With the Senate focused this week on debating foreign assistance and US border security and hoping to leave Washington for a scheduled two-week recess, the bipartisan tax package negotiated by the chairmen of the two congressional taxwriting committees and recently passed by the House has been put on the back burner in the upper chamber, and it is still unclear whether it has a path to passage there. In the House, meanwhile, with floor action on some contentious legislative issues consuming the bulk of leadership's time and attention during a truncated work week, plans for a vote on a proposal to relax the current-law cap on the deduction for state and local taxes were scuttled, at least temporarily.

Tax Relief for American Families and Workers Act

The \$78 billion Tax Relief for American Families and Workers Act (H.R. 7024)—which would, among other things, temporarily reinstate several lapsed business-friendly tax provisions originally enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), enhance the child tax credit and the low-income housing tax credit, and impose new strictures on the pandemic-era employee retention tax credit program—passed by an overwhelming bipartisan majority of 357-70 in the House on January 31.

URL: <https://www.congress.gov/118/bills/hr7024/BILLS-118hr7024eh.pdf>

URL: <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>

The unstoppable force that wasn't: Senate Finance Chairman Ron Wyden, D-Ore.—who crafted the bill with House Ways and Means Committee Chairman Jason Smith, R-Mo.—had been optimistic that the strong House vote would help propel it through the Senate. But even though the House-approved measure picked up a couple of endorsements from some Senate Republicans this week, many GOP lawmakers—including some on the Finance Committee—have indicated that they don't see it as an unstoppable force on their side of the Capitol and have demanded an opportunity to offer amendments. According to *Punchbowl News*, the Finance Committee's top Republican, Sen. Mike Crapo of Idaho, formally requested a committee mark-up this week, but Wyden has not committed to holding one.

Crapo and a number of his colleagues have indicated they want to see changes to the House-passed bill—primarily to the expanded child tax credit—before they will support it. However, members on both sides of the aisle recognize that any modifications to the carefully balanced package, which includes business and family tax benefits and is almost entirely offset, are likely to topple it.

"We all know the challenge there is when you start considering amendments on a tax package, anything becomes fair game," Sen. Todd Young, R-Ind., a Finance member, said this week. "And I am not confident that the end product will be something that we have enough support for. But it's a dynamic situation."

Child tax credit expansion a target for GOP arrows: The chief criticisms of the child tax credit provisions from Senate Republicans mirror those of several House Republicans who voted against the bill. They argue, for example, that the measure would allow benefits for children born in the US to immigrants who illegally entered the country. (To be clear, the legislation maintains the current-law requirement enacted in the Tax

Cuts and Jobs Act that credit-eligible children must have a US social security number.) Senate Republican critics also contend that a one-year lookback provision that would allow taxpayers to claim the credit based on either current-year or prior-year income disconnects the incentive from work. (Ways and Means Committee Chairman Jason Smith sought to refute these claims—and touted support for the measure from prominent conservative sources off of Capitol Hill—in press releases issued on February 7 and February 8.)

[URL: https://waysandmeans.house.gov/washington-examiner-sets-the-record-straight-on-a-big-win-for-conservative-tax-policy/](https://waysandmeans.house.gov/washington-examiner-sets-the-record-straight-on-a-big-win-for-conservative-tax-policy/)

[URL: https://waysandmeans.house.gov/icymi-op-ed-the-new-expansion-of-the-child-tax-credit-maintains-strong-work-incentives/](https://waysandmeans.house.gov/icymi-op-ed-the-new-expansion-of-the-child-tax-credit-maintains-strong-work-incentives/)

Sen. Marco Rubio, R-Fla., a chief advocate of the TCJA’s expanded credit, told reporters this week that he remains a supporter of the credit in principle, but added that it has to be “a real child tax credit, not a government check.” He also cited his specific objections to the lookback provision and the proposed acceleration of the credit’s phase-in for larger families.

Ranking member Crapo has stated he would like to see the lookback provision removed from the package and Rubio has said he would offer an amendment to strike that provision if the bill comes to the Senate floor.

Finance Committee member Charles Grassley, R-Iowa, has complained that a provision allowing the IRS to adjust refunds for those taxpayers who would be due a benefit from the expanded credit but filed their taxes before the legislation was enacted would give the Biden administration an opportunity to curry favor with voters by sending out additional refund payments ahead of this November’s presidential election—a contention that Ways and Means Chairman Smith also disputes).

[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/)

An off-putting offset: Senate Finance Committee member Thom Tillis, R-N.C., has criticized the measure’s revenue-raising proposals to curb the employee retention tax credit program, arguing that they are not true offsets, and he has advocated that Republicans hold out for a win in November by former President Donald Trump before they make any decisions on tax policy.

Sen. Mike Braun, R-Ind., told reporters this week that he would oppose the bill “if it’s got any type of fake pay-for,” even if it includes policy provisions that he otherwise would support.

Ranking member Crapo, meanwhile, has not publicly opposed sunseting the credit, but he has stated in the weeks since the bill was unveiled 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.)

Some ‘likes’ from Republicans: The tax bill did attract a couple of GOP champions outside of the Finance Committee this week, with Sen. Roger Marshall of Kansas and Sen. Markwayne Mullin of Oklahoma saying they would be willing to support the package as passed by the House.

“There’s win-win opportunities in this,” Marshall told reporters. “It’s so important for farmers back home, for small businesses back home. And I think Republicans need to lean into the child care issue. This is pro-family.”

However, Marshall also acknowledged that tax policy isn’t a top priority for the Senate right now, as the chamber spent this week embroiled in a debate over legislation that combined emergency aid for Ukraine, Israel, and Taiwan with tougher security protections for the US southern border. (That package was defeated but Senate leaders are currently attempting to advance just the foreign aid provisions.)

“There’s not much oxygen left in any room right now,” Marshall said February 7.

Possible paths forward: The Senate is currently scheduled to be out of session the weeks of February 12 and February 19—although those plans could be modified depending on what happens with the foreign aid package on February 9 and into the coming weekend. Lawmakers also face two deadlines—on March 1 and March 8—to fund the federal government for fiscal year 2024, which began last October 1, so it looks unlikely that the tax bill will get much attention this month. However, the measure’s strong bipartisan showing in the House could be a signal to congressional leaders that it is now “safe” to fold it into one of the “must pass” government funding bills that have to be dealt with in the coming weeks.

Senate Majority Leader Charles Schumer, D-N.Y., also could opt to bring up the bill as a stand-alone measure on the floor; however, without an agreement to limit the number of amendments that can be offered, debate on the bill could take a significant amount of time and the amendment process could become unwieldy, leading many to believe this is a less preferred option.

Minority Whip John Thune, R-S.D., said February 1 that Schumer will not get support from enough GOP senators to overcome the 60-vote procedural hurdle that would limit debate and amendments; however, Crapo acknowledged this week that it is possible Democrats could find enough votes from Republicans who are not on the Finance Committee.

The SALT trade

Back in the House, a provision that did not make it into the Tax Relief for American Families and Workers Act when it emerged from the Ways and Means Committee but has an important bloc of supporters failed to advance as a stand-alone measure this week after falling victim to time constraints and competing legislative priorities.

Newly elected GOP members from jurisdictions with high state and local taxes (SALT) originally decried the tax package for failing to repeal or raise the \$10,000 cap on SALT deductions implemented by the TCJA and threatened to derail unrelated Republican legislation if the cap was not addressed. The members argued that this was an especially critical issue for the February 13 special election in New York’s third congressional district, where Republicans are hoping to hold the seat that became vacant after GOP Rep. George Santos was expelled from Congress on December 1 of last year. (Former Ways and Means member Tom Suozzi, who did not seek re-election to Congress in 2022, is the Democratic candidate in the race.)

As a result of conversations ahead of the House floor vote on the tax package, New York SALT advocates emerged with a commitment from Speaker Mike Johnson, R-La., to quickly begin a process for moving a stand-alone bill (H.R. 7160) from Rep. Mike Lawler, R-N.Y., that would raise the SALT deduction cap for 2023 to \$20,000 for married couples filing jointly with adjusted gross income of up to \$500,000. The House Rules Committee advanced the proposal on February 1, which would have allowed it to move to the House floor this week.

URL:
<https://rules.house.gov/sites/republicans.rules118.house.gov/files/SALT%20Marriage%20Penalty%20Elimination%20Act.pdf>

That vote slipped, though. Officially, the reasons for the delay were the shortened work week in the House due to a previously planned retreat for the chamber's Democrats, and the floor time required for the House to hold votes—which ultimately failed—on impeaching Homeland Security Secretary Alejandro Mayorkas and on providing additional aid to Israel.

However, passing the procedural measure on the floor that would allow for a vote on the SALT bill itself will require a majority in the House, and it is not clear the votes are there, so supporters were likely reluctant to hold a failed vote ahead of the New York special election. Outside conservative groups have lined up against the measure, arguing that SALT relief would help a relatively narrow band of high-earning taxpayers and force lower-tax states to subsidize higher-tax jurisdictions. The question of repealing or raising the SALT cap is something that divided House Democrats when they were in the majority, as well, so Lawler and his supporters may not be able to count on members from across the aisle to provide the votes necessary to secure the bill's passage.

Lawler wrote on X (formerly Twitter) February 5 that the House will debate and vote on the rule the week of February 12.

URL: <https://twitter.com/lawler4ny/status/1754708570996662523>

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