SALT relief fizzles in the House; bipartisan tax relief bill still stuck in the Senate

The bipartisan contingent of lawmakers seeking relief from the cap on the state and local tax (SALT) deduction added a member to their ranks this week following a special election to fill a vacant House seat in New York, but Republicans in the group failed to sway enough of their House colleagues to join them in a vote to double the cap for many married couples, likely signaling defeat for their cause this year.

Meanwhile, the Tax Relief for American Families and Workers Act (H.R. 7024)—the larger House-passed tax bill that omitted any SALT provision—remains in limbo after the Senate adjourned until February 26 for the Presidents Day recess with partisan tensions high and without a clear path for getting it through the chamber.
URL: https://www.congress.gov/118/bills/hr7024/BILLS-118hr7024eh.pdf

Failed procedural vote on expanded SALT deduction cap

House GOP members from jurisdictions with high state and local taxes decried the Tax Relief for American Families and Workers Act approved by the Ways and Means Committee in January for failing to repeal or raise the $10,000 cap on SALT deductions implemented by the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), and they threatened to derail procedural votes on 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 hoped to hold the seat that became vacant after GOP Rep. George Santos was expelled from Congress on December 1 of last year.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Former House Ways and Means Committee member Tom Suozzi, who did not seek re-election to Congress in 2022 and instead mounted an unsuccessful campaign for governor, was the Democratic candidate in the race and emerged victorious this week. Throughout his campaign, Suozzi highlighted the role he previously played in what is informally known as the congressional SALT Caucus—which includes members from both parties from states like New York, New Jersey, California, and Illinois—and said he would continue to fight "the far lefties as well as the far righties" in his pursuit of SALT relief.

"I worked hard in Congress to do my job to pass a restoration of the state and local tax deduction," Suozzi said in a virtual press conference February 2. "I passed it three times with bipartisan support, I built a coalition of Democrats and Republicans in the Congress to support the state and local tax deduction."

As a result of conversations ahead of the House floor vote on the larger tax package January 31, New York Republican SALT advocates secured 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.
URL:
https://rules.house.gov/sites/republicans.rules118.house.gov/files/SALT%20Marriage%20Penalty%20Elimination%20Act.pdf

The House Rules Committee advanced the proposal on February 1, but passing the procedural measure on the floor to allow for a vote on the SALT bill required a majority in the House, and that vote failed 195-225 on February 14 . Eighteen Republicans voted against the rule, including Ways and Means Committee members David Kustoff of Tennessee, Lloyd Smucker of Pennsylvania, and Greg Steube of Florida. This opposition came despite Lawler's argument that the GOP owes its current narrow majority status to the crop of New Yorkers who flipped Democratic seats in the 2022 midterm election.

"This House Republican majority was built by the contributions of New Yorkers, and this legislation would help those same New Yorkers see immediate tax relief," Lawler said on the House floor ahead of the vote.

However, outside conservative groups 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. One member of the ultraconservative House Freedom Caucus, Rep. Chip Roy, R-Texas, told *Politico* after the vote that Lawler and his supporters should have included the SALT relief measure in a broader legislative package that included offsets—a vehicle that, in his words, "would at least give us a win."

On the other side of the aisle, all Democrats—including those in the SALT Caucus—opposed the procedural measure, and even Democrats who have pushed for relief said they consider Lawler's proposal to be inadequate.

"This badly flawed measure is a far cry for the middle-class tax relief, and is really the bare minimum we could do," said Rep. Bill Pascrell, D-N.J., a Ways and Means member. "What we have before us is a fig leaf to paper over that Republicans opposed middle-class tax relief."

Larger tax relief bill still languishing in the Senate

Even after passing the House with an overwhelming bipartisan majority of 357-70 on January 31, the (SALT-free) Tax Relief for American Families and Workers Act remains on the back burner in the Senate, with GOP senators arguing against swift passage. The upper chamber delayed the recess it was scheduled to start February 9, remaining in Washington through the weekend and into this week, but senators spent that time focused on passing emergency supplemental aid for Israel, Ukraine, and Taiwan—and giving contradictory accounts to the press about the extent to which the Senate's top Republican taxwriter was involved in crafting provisions in the tax relief bill.

The $78 billion House-passed tax bill, the product of months of negotiations between House Ways and Means Committee Chair Jason Smith, R-Mo., and Senate Committee Chair Ron Wyden, D-Ore., would, among other things, temporarily revisit three business-unfriendly tax provisions that were included in the Tax Cuts and Jobs Act but did not take effect until several years after that measure was enacted, 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. (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 employee retention credit provisions that were included in an amendment in the nature of a substitute shortly before the bill was marked up in the Ways and Means Committee, and a revenue estimate for the measure as approved in the House are available from the nonpartisan Joint Committee on Taxation 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/
URL: https://www.jct.gov/publications/2024/jcx-5-24/

Wyden and Smith had been optimistic that the strong House vote would help propel it through the Senate, but Finance Committee Republicans have insisted they require changes to the legislation and have pushed for a committee mark-up, which could upset the careful balance of tax benefits for businesses and families in the current version.

Mounting urgency: Businesses continue to emphasize the urgency of retroactively reinstating expensing for research expenditures, 100 percent bonus depreciation, and the allowance for depreciation and amortization for the 30 percent limitation on interest deductions as proposed in the legislation. Advocates for the enhanced child tax credit, for their part, want to see those proposed changes enacted as soon as possible to allow taxpayers to claim the additional benefits when they file their 2023 returns. (The House-passed bill directs the IRS, to the extent practicable, to recalculate the child tax credit on 2023 returns based on the changes in the measure if a taxpayer filed their return before these changes took effect. IRS Commissioner Danny Werfel said at a February 15 House Ways and Means Committee hearing that the agency should be able to process refund adjustments within 6 to 12 weeks after any changes to the credit are enacted into law. See separate coverage of that hearing in this issue for additional discussion.)

On the revenue side, the two taxwriting chairmen managed to identify a rare offset with bipartisan appeal. To address perceived fraud in the pandemic-era employee retention tax credit program, the bill would accelerate the deadline for filing additional claims for the credit to January 31, 2024 (from the current deadlines of April 14, 2024, for tax year 2020, and April 15, 2025, for tax year 2021).

Wyden told reporters February 12 that he has lobbied Majority Leader Charles Schumer, D-N.Y., to bring the tax bill to the floor for a vote when senators reconvene the week of February 26, adding that he hopes those who have objections will discuss them over the recess.

“Delays have costs here,” he said.

GOP objections remain: Sen. Mike Crapo, R-Idaho, the top Republican on the Finance Committee, and a number of his colleagues have indicated they want to see changes to the House-passed bill, though—primarily to the expanded child tax credit—before they will support it. They have requested a committee mark-up, but Wyden has so far declined to schedule one and the fact that he has pushed for a floor vote once the Senate is back in session suggests that he does not intend to. (Any changes to the bill that might be made through amendments in a committee mark-up or on the Senate floor are seen as a threat to its survival, as the bill would then have to go back through the House and likely would not have the same carefully crafted balance.)

Among their objections, GOP senators have argued that the one-year lookback provision that would allow taxpayers to claim the child tax credit based on either current-year or prior-year income disconnects the benefit from work, and that the measure would allow benefits for children born in the US to immigrants who illegally entered the country. (It's worth noting that 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, even if the taxpayer claiming the credit does not.)

In a speech February 5 to the Ripon Society, Ways and Means Chairman Smith acknowledged that he and Wyden reached a point during their months-long negotiations when they felt they needed to release the bill to begin moving it through Congress and that Crapo was not fully on board with the measure when it was unveiled to the public. However, Smith contended that "the Senate Republicans were part of the discussions the whole time" and that the one-year lookback period for the child tax credit in the bill reflects modifications specifically requested by Crapo during those discussions.

Crapo's staff disputes this claim, however: "To be clear, any narrative that Sen. Crapo or his staff signed off on including the lookback provision is factually inaccurate—staff requested that it be removed entirely," a Crapo spokesperson told *Politico* February 8.

Possible paths forward: Senate leaders have a few options for moving the bill through their chamber, although all of them have possible drawbacks.

The measure's strong bipartisan showing in the House could be a signal to congressional leaders that it is "safe" to fold it into one of the government funding bills for fiscal year 2024—which began last October 1—that have to be dealt with immediately after lawmakers return from their recess the week of February 26. Under the current "laddered" continuing resolution keeping the government's doors open (at fiscal year 2023 finding levels), work on four of the twelve appropriations bills that fund federal operations must be completed by March 1, and work on the remaining eight bills has a deadline of March 8. Just how much progress House and Senate appropriators have made in advancing those spending bills is currently unclear, however, so their availability as legislative vehicles for the tax package remains uncertain.

If efforts to attach the tax bill to an appropriations package ultimately are unsuccessful, its supporters in the Senate could ask Majority Leader Schumer to bring it to the floor as a stand-alone measure. But that would require Republicans to reach an agreement with Senate leaders that would allow for a floor debate and a limit on the number of amendments that can be offered. (Without such an agreement, debate on the bill could take a significant amount of time and the amendment process could become unwieldy.) Alternatively, as a last-ditch effort, Schumer could force consideration of the proposal with no amendments through a procedural maneuver called "filling the tree," essentially blocking Republicans from calling up any amendments of their own and then forcing a series of procedural votes to finish consideration of the proposal. This option has its own challenges and would consume a significant amount of Senate floor time, taking a number of days to overcome all the procedural hurdles.

A political unicorn: Ways and Means Chairman Smith told the Ripon Society that the measure represents an opportunity for Congress to notch a bipartisan victory—something that he said is increasingly rare on Capitol Hill in the current political environment.

“It’s the most bipartisan tax package in decades . . . in the most divisive time in our country’s history,” he said. “Plus, it’s an election year, which is even more difficult. Hopefully, we can get it through the Senate, because this is a really, really good bill. Everyone had to give and take.”

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP