

## Bipartisan tax deal still sidelined as Congress punts spending deadlines further into March

Potential legislative vehicles that could carry a House-passed, bipartisan tax package to President Biden's desk were deferred this week after the House and Senate approved another short-term continuing resolution (CR) that would avert a partial government shutdown and push the deadlines for funding government operations for fiscal year 2024 further into March. Notwithstanding questions around the availability of legislative vehicles, however, that tax package's fate remained in doubt as the Senate's top GOP taxwriter continued to express major reservations about its contents.

### New appropriations deadlines of March 8 and March 22

This week's continuing resolution (H.R. 7463) to keep the government's doors open cleared the House on February 29 by a vote of 320-99 and was approved in the Senate later that day by a vote of 77-13. President Biden is expected to sign it into law before midnight on March 1, when the current stopgap measure funding one tranche of federal departments and agencies is set to expire.

**URL:** <https://www.congress.gov/bill/118th-congress/house-bill/7463/text>

**Rearranging the rungs on the ladder:** The new CR maintains a "laddered" structure, extending funding at fiscal year 2023 levels for one additional week, through March 8, for the four appropriations measures—colloquially referred to as the Agriculture-FDA, Energy-Water, Military Construction-Veterans Affairs, and Transportation-Housing-Urban Development bills—that otherwise had been scheduled to lapse after March 1. Two other bills—funding the Interior Department and the Departments of Commerce and Justice—would also keep their previously enacted March 8 deadlines.

The remaining six appropriations bills which had previously been extended at last-year's levels through March 8 are now renewed through March 22 instead. Funding measures covered under that extended deadline include: Defense; Financial Services and General Government (which provides appropriations for the Treasury Department and IRS); Homeland Security; Labor, Health and Human Services, and Education; State and Foreign Operations; and the Legislative Branch.

**Some political risk for Johnson:** House passage of the stopgap funding measure came after Speaker Mike Johnson, R-La., once again had to renege on an earlier pledge that he would not consider additional short-term CRs after Congress approved a first "laddered" stopgap last November. (In total, this week's CR is the fourth short-term spending measure of fiscal year 2024, which began on October 1, 2023.)

Furthermore, Johnson has already drawn the ire of conservatives in the House Freedom Caucus, who have insisted on steep spending cuts and believe that he made too many concessions to Senate Majority Leader Charles Schumer, D-N.Y., while negotiating topline appropriations numbers for federal departments and agencies earlier this year. (The Schumer-Johnson agreement, which was announced in January, 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 as part of the Fiscal Responsibility Act (P.L. 118-5). For details on the January agreement, see *Tax News & Views*, Vol. 25, No. 1, Jan. 12, 2024.)

URL: <https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf>

URL: [https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_1.html)

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 forced once again to bypass the Rules Committee and bring this week’s CR straight to the floor under the fast-track process known as “suspension of the rules,” which prohibits amendments, limits debate time, and requires a two-thirds majority for passage (rather than the simple majority threshold which normally prevails in the House).

The suspension process is typically reserved for noncontroversial bills, but has become more commonly employed by Johnson given the razor-thin House GOP majority and 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. (It’s worth noting that with Democratic Rep. Tom Suozzi of New York now officially back in his former congressional seat following his victory in a special election last month to replace expelled GOP Rep. George Santos, the party headcount in the House stands at 219 Republicans and 213 Democrats, with 3 seats still vacant. That means Republicans currently can afford no more than 2 defections among their own members for any bill they hope to pass on the strength of GOP votes alone.)

**‘Poison pills’ are the final hurdle:** Bipartisan congressional leadership and top appropriators expressed confidence this week that both tranches of fiscal 2024 appropriations bills would be enacted prior to their respective March 8 and March 22 deadlines.

“After preparing final text, this package of six full-year Appropriations bills will be voted on and enacted prior to March 8,” the leaders wrote in a statement released February 28. “These bills will adhere to the Fiscal Responsibility Act discretionary spending limits and January’s topline spending agreement.”

With Senate Democrats, House Republican leadership, and the White House in agreement on topline funding levels for each bill, the main sticking point going forward relates to certain “policy riders” that House Republicans had included in their original funding measures for fiscal 2024 (bills that were written to spending levels considerably lower than those agreed to in the Fiscal Responsibility Act). That issue was top of mind for several congressional leaders this week.

“It is no secret: the biggest obstacle right now has been far-right Republican poison pills that were never truly on the table. They were always going to be nonstarters,” said Senate Appropriations Committee Chairman Patty Murray, D-Wash., during a February 27 floor speech.

The Senate’s top Republican, Minority Leader Mitch McConnell, R-Ky., likewise argued in a floor speech on February 26 that the appropriations measures must be free of extraneous policy riders.

“[A]s always, the task at hand will require that everyone rows in the same direction, toward clean appropriations and away from poison pills,” he said.

House Speaker Johnson, for his part, sought to tamp down expectations for the kinds of sweeping policy changes sought by certain ultraconservative House Republicans during a conference call with GOP members on February 23.

“I don’t think anybody on this call thinks that we’re going to be able to use the appropriations process to fundamentally remake major areas of policy,” he said, according to details from a partial transcript of the call reported in *The Washington Post* and *The Hill*. “If you’re expecting a lot of home runs and grand slams here, I admit you’ll be disappointed.” Johnson added, though, that the forthcoming spending bills would be “littered with singles and doubles that [Republicans] should be proud of, especially in our small majority.”

### **Tax bill remains stalled in the Senate**

In theory, pushing the deadline for government funding legislation into late March could buy time for Senate leaders to resolve disagreements in that chamber over the \$78 billion Tax Relief for American Families and Workers Act (H.R. 7024), the bipartisan tax bill negotiated between House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., that was approved in the House by a margin of 357-70 on January 31.

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

Stand-alone tax bills in the Senate have been rare in recent years, so attaching this one to a larger vehicle such as a must-pass government funding bill has been seen as the more likely route to success for tax legislation this year. But with key Republicans in the Senate still holding out against the package and Senate Finance Committee member Mike Crapo, R-Idaho, insisting that the GOP won’t “rubber stamp” the deal, it currently is unclear if work on the tax bill will be completed in time to move it in concert with the appropriations legislation.

As approved in the House, the Tax Relief for American Families and Workers Act would, among other things, temporarily reverse certain business-unfriendly tax provisions related to the treatment of research expenditures, bonus depreciation, and the deduction for business interest expenses that were included in the Tax Cuts and Jobs Act (P.L. 115-97) 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.

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

Wyden and Smith hoped that the bipartisan drafting process and outsized support the measure received on the House floor would facilitate its swift passage in the Senate, but those hopes dimmed after Sen. Crapo made clear that he wanted taxwriters to have the opportunity to make changes in a Finance Committee mark-up and other Republicans pushed for the chance to offer amendments during Senate floor consideration.

**Tell me what you want, what you really, really want:** Wyden, speaking to reporters February 26, said Senate Republicans need to articulate exactly what changes they require in order to support the bill, and by the following day his impatience with Republicans was clear.

“My message is: This is the time to get to yes. Period. End of discussion,” Wyden told reporters. (Ways and Means Committee Chairman Smith echoed Wyden’s call for specifics on February 29, calling on Crapo to detail “reasonable” requests, according to *Punchbowl News*.)

Crapo responded to Wyden’s demand with a lengthy statement February 28, pointedly noting that “efforts to pressure the Senate to ‘take it or leave it’ and categorically dismiss a Senate regular order process have only amplified calls for changes and amendments. This was the risk of announcing a deal without my support and with no near-term path forward in the Senate.”

**URL:** <https://www.finance.senate.gov/ranking-members-news/crapo-statement-on-status-of-tax-negotiations>

He reiterated objections that many GOP senators have raised since the bill’s release, arguing that the refundability element of the child tax credit provides significant benefits to nontaxpayers and that the one-year lookback provision that would allow individuals to claim the credit (for tax years 2024 and 2025) based on their prior-year income disconnects the incentive from work. Wyden and Smith have indicated they see the lookback as a key component of the enhanced credit and noted that they accommodated objections Crapo raised as the bill was being negotiated by making the lookback available for only two years (2024 and 2025) instead of three years (2023, 2024, and 2025) as they had originally planned. Crapo acknowledged that the change was made during earlier discussions he participated in, but said, “I did not agree to [the lookback’s] inclusion then, and I do not support it now.”

Crapo stated this week that the lookback “must be dropped and replaced with actual tax relief,” but he also noted that concerns about the bill among some Senate Republicans extend beyond this specific provision. Speaking to reporters in recent days, he commented that “with each week that has passed, members have strongly voiced additional calls for numerous modifications” and he cited “increasing concerns about making 2023 changes this far into the IRS tax filing season.”

In follow-up comments to reporters, Crapo said he is working to get support from a majority of the Republican conference; however, he noted that there are now “dozens” of examples of problems members have with the bill and that some GOP members would like to attach additional provisions such as technical corrections to the SECURE 2.0 Act (the retirement security package enacted in 2022) and extensions of some traditional tax “extenders” (for example, more generous depreciation schedule for racehorses and an increase in limit on cover over of rum excise tax revenues to Puerto Rico and US Virgin Islands, both of which expired at the end of 2021). He contended that Democrats succeeded in adding enhancements to the low-income housing tax credit to the bill and said that Senate Republicans feel they should be able to similarly address their priorities.

“People are saying, look we’ve got a tax bill moving, there are things that need to be done that we’ve been trying to get fixed in the tax code for a long time,” Crapo said. “There’s just a lot of separate issues that need to get sorted out as well.”

**Offset also under fire:** In addition to certain aspects of the proposed tax incentives, the measure's proposed revenue offsets—provisions intended to address perceived fraud in the pandemic-era employee retention tax credit (ERTC) program—have also prompted objections from some Republicans. Specifically, 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), impose new reporting requirements and restrictions on promoters of the credit, and extend by one year the statute of limitations for the IRS to assess penalties on improper ERTC claims. The nonpartisan Joint Committee on Taxation staff has estimated that these provisions would increase federal receipts by \$77.1 billion between 2024 and 2033.

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

North Carolina Republican Finance Committee member Thom Tillis, who has been a vocal critic of this element of the tax package, argued in a *Wall Street Journal* opinion piece February 29 that curtailing the ERTC program does not yield true savings for the federal government.

“The employee retention tax credit was never paid for to begin with, as it was passed as part of emergency pandemic relief under the [CARES] Act. Its hasty implementation resulted in massive fraud and cost overruns,” he wrote. “How can any fiscal conservative defend using phony savings to pay for more spending? It’s like paying off a credit card balance with another credit card. It’s fiscally irresponsible and unsustainable.”

Tillis argued in his piece that “it’s hard to avoid the impression that House Republicans got played by Senate Democrats doing the bidding of the Biden administration,” and that Republicans will be in a far better negotiating posture next year—when nearly all of individual tax provisions and several international tax provisions in the Tax Cuts and Jobs Act are due to sunset or change—if they reject the current bill.

**Where to go from here?:** A process allowing for amendments that might pass (as opposed to “messaging amendments” that are certain to fail) during either a Finance Committee mark-up or a Senate floor debate risks opening the door to changes not only from Republicans but also from Democrats, and any disruption to the careful balance between business and family tax benefits that Wyden and Smith originally reached could put the bill in jeopardy of losing current supporters. Any changes to the legislation also would mean returning the bill to the House for another vote, presenting a further challenge in getting a completed bill to the president’s desk.

Sen. Markwayne Mullin, R-Okla., one of a handful of Senate Republicans who have stated their support for the House-passed version of the bill, questioned the wisdom of seeking amendments.

“I get the fact that we want to have a say over here, too,” he told Bloomberg Tax February 28. “But are we trying to make it better? Or are we going to open this bill up and make it worse?”

For these reasons, Wyden has held out against a Finance mark-up, and Majority Leader Charles Schumer is considered unlikely to bring the bill to the floor at this time without an agreement with Republicans on permitted amendments, although he could do so at some point as a last-ditch effort to push it through the chamber. Schumer is also viewed as unlikely to attach the tax package to a government funding vehicle

without Republican consent, as he is still hoping for the successful passage of a foreign assistance deal for Ukraine, Israel, and Taiwan and will need the cooperation of GOP senators to reach the necessary 60-vote threshold in the Senate if that bill comes back from the House with changes. (The Senate passed the supplemental aid bill in February, but House Speaker Mike Johnson has said foreign assistance is not a priority for the House until Congress addresses US border security.)

If Senate leaders cannot resolve their differences over the tax package in time to include it in one of the government funding measures that Congress hopes to pass this month, lawmakers may have an opportunity later this spring to attach it to legislation reauthorizing programs overseen by the Federal Aviation Administration (FAA) and the excise taxes on tickets and fuel that are dedicated to the airport and airway trust fund. FAA funding is currently scheduled to expire on March 8, but the House voted 401-19 on February 29 to approve legislation (H.R. 7454) that would extend that deadline to May 11. The measure now heads to the Senate, where it is also expected to pass.

**URL:** <https://www.congress.gov/bill/118th-congress/house-bill/7454/text>

Finance Committee Chairman Wyden this week quelled any speculation that there are behind-the-scenes discussions occurring to negotiate changes to the bill.

“If somebody knows where those negotiations are taking place, or the planet that they’re on, refer me to it, because I’m not up on that,” Wyden said.

Amidst all the pessimism from many of his fellow Republicans and the uncertainty surrounding the bill’s prospects, Ways and Means Chairman Smith continued his full-court press for Senate passage this week, telling reporters that he’s open to “whatever it takes in the Senate process” to pass the bill and that he is answering questions that senators have about the legislation.

“When we pass it? I don’t know,” Smith said. “But we’re going to pass it.”

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