# Wyden presses his case for bipartisan tax package as Finance Committee debates White House FY 2025 budget blueprint

Warning that "the clock is ticking down," Senate Finance Committee Chairman Ron Wyden, D-Ore., continued his push for Senate action on a $78 billion bipartisan package of business- and family-focused tax relief provisions during a March 12 hearing to discuss President Biden's fiscal year 2025 budget proposal with Treasury Secretary Janet Yellen.

**Tax Relief for American Families and Workers Act**

The Tax Relief for American Families and Workers Act (H.R. 7024), which Wyden negotiated over the course of several months with House Ways and Means Committee Chairman Jason Smith, R-Mo., would, among other things, temporarily reverse (through 2025) 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 (TCJA, P.L. 115-97) but did not take effect until several years after that measure was enacted. It also would enhance the child tax credit and expand the low-income housing tax credit, and would be paid for through new strictures on the pandemic-era employee retention tax credit (ERTC) program.
**URL:** https://www.congress.gov/bill/118th-congress/house-bill/7024/text
**URL:** https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

The measure cleared the House by a vote of 357-70 on January 31, but has since been stuck in the Senate, where a contingent of Republicans, led by Finance Committee ranking member Mike Crapo, R-Idaho, have demanded changes, including, most notably, elimination of a lookback rule in the child tax credit provision that would allow taxpayers to qualify for the expanded credit (for tax years 2024 and 2025) based on their prior-year income—something critics of the provision believe would disconnect the credit from work. Other proposed changes reportedly on the wish list for some Republicans include making the business-focused provisions effective only prospectively instead of retroactively, making technical corrections to the SECURE 2.0 Act (a bipartisan retirement security package that was enacted in 2022), and adding provisions to renew certain expired tax "extenders." Some Republicans also reportedly would prefer to delay action on the legislation until 2025 in the belief that they would be able to strike a better deal if the GOP wins control of the Senate in this November's elections and Mike Crapo takes the gavel at the Finance Committee.

**Child tax credit issues:** In his opening statement at this week's Finance Committee hearing, Wyden acknowledged the objections of some Republican taxwriters to the child tax credit lookback and said he has been—and still is—willing to make a deal.

"While I think the policy is important, I've offered to take it out of the bill if it gets this over the finish line. . . . As of this morning, my offer on the lookback is still on the table," he said.

That offer, which press reports say Wyden made and Crapo rejected late in the week of March 11, involves replacing the lookback provision with expanded refundability rules that, according to Wyden, would be equally



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effective in lifting a significant number of children out of poverty and would have a similar impact on federal receipts.

**Consequences of delay:** Wyden also acknowledged the preference of some Senate Republicans to defer action on the bill until 2025, but he cautioned that “delay will have serious consequences” for businesses depending on Congress to restore the tax incentives—particularly the more favorable treatment of research expenditures—that were phased out under the TCJA.

“A lot of innovative small businesses, for whom the R&D provision in the bill is a lifeline, are telling me they aren’t going to be around in 2025 if the Senate decides to wait,” he said.

In an exchange with Treasury Secretary Yellen, the sole witness at the hearing, Wyden also cautioned that inaction on the measure’s sole revenue offset—which would accelerate the deadline for filing new employee retention tax credit claims, impose new reporting requirements and restrictions on promoters of the credit, and extend the statute of limitations for the IRS to assess penalties on improper ERTC claims—likely would mean a revenue loss for the federal government, given that the credit program is currently “riddled with fraud” due to bogus claims filed by unscrupulous third-party promoters.

Yellen commented that the Biden administration has “serious concerns” about improper ERTC claims made on behalf of certain entities that, in reality, did not have employees—or did not exist at all—during the credit eligibility period and predicted that this type of fraud likely would continue if the Smith-Wyden legislation is not enacted. She called it “a tremendous positive” that the tax relief proposals in the legislation would be paid for through an anti-fraud provision that “protects honest taxpayers.”

**Next steps unclear:** Wyden reiterated that he would continue efforts to reach a compromise with Republicans in the coming days. It’s worth noting that ranking member Crapo and other GOP taxwriters offered no comments in response to Wyden’s remarks during the hearing nor did they address the legislation in their questions to Secretary Yellen. Crapo did, however, tell reporters after the hearing that he is “trying to find a place that can get a majority of our caucus to go forward” and that Republicans “want to see [the bill] move.”

For his part, Senate Majority Charles Schumer, D-N.Y., took preliminary steps this week to put the House-passed legislation on the Senate calendar, which would allow him to bring it directly to the Senate floor—although it still would need to clear certain procedural hurdles that require a 60-vote supermajority before it could come up for a vote on final passage. With both the House and Senate poised to adjourn for a two-week spring recess at the end of this week, any additional action on the measure that Schumer might take would not occur until at least the week of April 8, when Congress is back in session.

**Budget proposals for high-income tax increases**

Turning to the administration’s budget blueprint for the coming fiscal year, Wyden asked Secretary Yellen about the importance of addressing the “buy, borrow, die” strategy employed by some ultrawealthy taxpayers to avoid taxes on appreciating assets by borrowing against the value of those assets to fund their “lavish


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lifestyles" and then passing the assets on to their beneficiaries at death while paying only minimal taxes or, in some cases, no tax at all. ("Buy, borrow, die" was the centerpiece of a Finance Committee hearing last November that examined how affluent individuals can take advantage of certain tax code provisions to minimize their tax bills. For prior coverage, see *Tax News & Views*, Vol. 24, No. 38, Nov. 10, 2023.)
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_2.html

Yellen commented that high-income, high-net-worth individuals often pay very little in taxes since the bulk of their income is derived from capital gains, which are not taxed until the underlying assets are sold and the gains are realized. The Biden administration's budget plan, she explained, would undercut that advantage by imposing a minimum tax of 25 percent on all income—including unrealized gains—for "the wealthiest one-one hundredth of one percent of taxpayers." (As proposed, the minimum tax would fall on taxpayers with wealth of more than $100 million. For additional details on this proposal and the other tax proposals in the administration's FY 2025 budget package, see *Tax News & Views*, Vol. 25, No. 11, Mar. 12, 2024.)
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240312_1.html

Yellen noted that a proposed "Billionaires Income Tax" that Wyden unveiled last year also would address the "buy, borrow, die" strategy, albeit by "a different route." That proposal would impose an annual mark-to-market regime on individuals with $100 million in annual income or more than $1 billion in assets for three consecutive years. (For details, see *Tax News & Views*, Vol. 24, No. 40, Dec. 1, 2023.)
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231201_5.html

**Corporate tax hikes and OECD global tax pact**

Ranking member Crapo and several other Republicans rejected the administration's proposal to increase the corporate tax rate to 28 percent (from its current level of 21 percent). Citing data from the Tax Foundation, Crapo commented that the proposal, if enacted, "would result in the US having the second-highest combined rate among developed countries." He also contended that a rate increase like the one the administration envisions would spark a new round of corporate inversions and force US capital offshore.

Yellen replied that the administration does not want to see an outflow of capital and that preventing such an outcome is a key reason the US should support the global tax pact being advanced through the OECD. That agreement, which nearly 140 countries have signed, seeks to reallocate some of the taxing rights of countries based on where income is earned (Pillar One) and to ensure that certain large multinational corporations are paying a minimum level of tax globally (Pillar Two).

**Pillar Two revenue concerns:** Crapo, citing an estimate from the nonpartisan Joint Committee on Taxation (JCT) staff, decried Pillar Two as "a revenue loser and damaging to our economy."
**URL:** https://www.finance.senate.gov/imo/media/doc/118-0228b_june_2023.pdf

According to the JCT, Pillar Two could cost the US fisc $122 billion in lost revenue over the next decade if the rest of the world moves ahead with the agreement and the US stays on the sidelines, and that even if the US implements the global agreement in 2025 the domestic loss still could amount to $56.5 billion. (For prior coverage, see *Tax News & Views*, Vol 24, No, 25, June 23, 2023.) A JCT analysis of Pillar One issued earlier this


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month indicated that Amount A of Pillar One (that is, the amount of residual profit to be allocated to market jurisdictions) would have resulted in a US revenue loss of $1.4 billion had it been in effect in 2021. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 9, Mar. 8, 2024.)
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230623_1.html
**URL:** https://www.jct.gov/publications/2024/jcx-7-24/
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240308_3.html

Finance Committee member Steve Daines, R-Mont., accused the administration of bypassing Congress in negotiating the tax pact with the OECD and denounced the agreement as “a terrible deal” that would “raise taxes on US companies” and “send that money overseas to Communist China and line the pockets of European bureaucrats.”

Yellen countered that “Pillar Two is an historic agreement that ends the race to the bottom we’ve seen around the world in corporate tax rates” and “levels the playing field.” In terms of revenue, she commented that there are several factors that need to be taken into account when considering the JCT’s estimates and that the Treasury Department’s calculations show that Pillar Two and the associated undertaxed profits rule “results in a big increase in tax revenue for the US.”

**Treatment of nonrefundable tax credits:** Finance Committee member Todd Young, R-Ind., likewise criticized the administration for “undermining Congress’s constitutional role” in negotiating the agreement and “giving the [US] tax base away to Europe.” He specifically slammed Pillar Two for providing more favorable treatment for refundable tax credits, which are more common in jurisdictions outside the US, over nonrefundable credits—including the research credit—which are more prevalent in the US.

Yellen replied that the countries involved in negotiating the OECD agreement understand that the tax treatment of the R&D credit is “a critical issue” for the US and said the administration believes it has “an opening to resolve this [through OECD administrative guidance] in a way that would be favorable” for US-based multinational entities. She added that the Treasury Department would “stay in close touch” with congressional taxwriters to apprise them on how those negotiations are proceeding.

**Questions about implementation:** Taxwriter James Lankford, R-Okla., added his voice to the chorus of Republicans in both chambers who have argued that the Treasury Department left Congress out of the loop in the Pillar One and Pillar Two negotiations. He specifically asked Yellen whether the global tax pact would be implemented through “an executive agreement only” or if it would instead “be able to come through this committee.”

According to Yellen, “a Pillar One agreement would involve congressional action” and is “not something that could be just signed into law and effective with an executive order.” She added that “Pillar Two also needs to be adopted by Congress.”


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**Ending fossil fuel deductions and credits**

Lankford and Finance Committee member John Barrasso, R-Wyo., assailed proposals in the White House budget blueprint that would eliminate a host of tax deductions and credits currently available to fossil fuel companies—something Barrasso referred to as a "whole-of-government assault on the fossil fuel industry."

In an exchange with Barrasso, Secretary Yellen commented that "there have long been tax preferences for oil, gas, and coal that [the administration believes] distort markets by encouraging more investments in fossil fuel than would occur under a [technology-] neutral system." The administration's budget proposals, she said, would "level the playing filed to reduce the advantages fossil fuels have enjoyed and . . . speed the process of reducing greenhouse gas emissions."

She also noted that increasing the US's reliance on clean energy over fossil fuels would promote energy independence and protect the US from the impact of geopolitical disruptions in countries like Russia and China.

Finance Committee member Sheldon Whitehouse, D-R.I., who spoke immediately after Barrasso, commented that "if there is a Biden whole-of-government assault on fossil fuels, the industry seems to be weathering it very well considering that production is now higher than ever, and, indeed, higher than ever in any country."

**Middle-class taxes, Biden's $400,000 bright line**

Ranking member Crapo and other Republicans on the panel questioned whether some of the proposals in President Biden's budget blueprint square with his pledge to not increase taxes on households with income of less than $400,000.

Crapo commented in an exchange with Secretary Yellen that the administration has proposed specific new taxes on upper-income individuals but is silent on whether it intends to preserve the reduced tax rates, the increased standard deduction, and the increased child tax credit amount that were enacted in the Tax Cuts and Jobs Act and are scheduled to expire after 2025.

Yellen replied that "[t]he president has made clear he would oppose raising back the taxes for working people and families making under $400,000."

Finance Committee member Charles Grassley, R-Iowa, argued that the administration's proposal to raise the corporate tax rate to 28 percent amounts to a *de facto* tax increase on working families since corporations would simply pass along their additional tax burden to consumers in the form of higher prices.

Yellen replied that any analysis of a corporate tax increase on households involves "a lot of channels that are speculative." In the administration's view, she said, a tax increase levied on corporations that has no obvious direct connection to households would not be considered a tax hike on individuals.


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"I think if you look at the entire budget, . . . what you will see is a budget that not only reduces the deficit by about $3 trillion, but also invests in our economy in ways that especially benefit low-income workers and the middle class," she said.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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