

Bipartisan tax package remains stuck in the Senate

Contrary to the hopes of many in the tax community—and despite extensive lobbying efforts—the recently concluded two-week congressional recess does not appear to have broken the weeks-long stalemate in the Senate over a \$78 billion bipartisan package of business- and family-focused tax relief provisions. The top Republican taxwriter in the Senate has remained staunchly opposed to the current language and to the compromises that have been offered thus far, and Senate Majority Leader Charles Schumer, D-N.Y., indicated this week that he is not inclined to force a vote on the proposal if there aren't sufficient vocal supporters within the GOP to ensure its passage. There is no official deadline for action on the legislation, but with the end of the tax filing season fast approaching, many supporters fear that the last best opportunity for passage is slipping away.

The Tax Relief for American Families and Workers Act (H.R. 7024), which Senate Finance Committee Chairman Ron Wyden, D-Ore., negotiated over the course of several months with House Ways and Means Committee Chairman Jason Smith, R-Mo., would, among other things, temporarily and retroactively 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 of 2017 (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. 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 Crapo takes the gavel at the Finance Committee.

Ahead of the recent congressional break, Schumer put the House-passed legislation on the Senate calendar, which would allow him to bypass Finance Committee action and bring it directly to the Senate floor. This led some supporters to think that he might consider forcing a vote with or without the certainty of knowing that there were sufficient Republican supporters to overcome the 60-vote procedural hurdle needed to proceed to final passage. Such a move would force GOP senators to decide between bucking their top taxwriter or voting down legislation containing provisions many of them strongly support. Some supporters also have calculated that members might not want to go on record as opposing the business community's top priorities and measures aimed at shrinking child poverty.

“Let’s have a vote. Let’s see where people are. I think it would pass easily,” Sen. Michael Bennet, D-Colo., told *Politico* this week.

In an April 5 letter to his Senate colleagues outlining the upcoming legislative agenda, however, Schumer made only a brief reference to the tax bill in a paragraph mentioning a dozen or so measures that could be addressed “in the weeks and months ahead”—and that mention only came after he offered more detailed discussions of several other near-term priorities.

URL:
https://www.democrats.senate.gov/imo/media/doc/majority_leader_schumer_dear_colleague_on_senates_busy_agenda1.pdf

Schumer’s remarks to reporters at an April 9 news conference indicated that he is not inclined to force a tax vote that could fail.

“Look, I’m all for the package,” he said. “If there are enough votes to move it forward in the right way, yeah, we’ll try to get it on the floor. But right now, we don’t think—they’re trying to get enough votes. The sponsors are trying to see if there are enough votes.”

As of press time, Schumer has not added consideration of the proposal to the floor schedule for the week of April 15. And as a practical matter, even if Schumer were inclined to bring the bill to the Senate floor, his opportunities to do so by the close of the tax filing season—or even by the end of this month—are at best, extremely limited. The Senate is already looking at a packed calendar the week of April 15 as leaders plan to hold a vote on reauthorizing the Foreign Intelligence Surveillance Act, process a House-passed resolution to impeach Homeland Secretary Alejandro Mayorkas, and consider judicial nominations. Moreover, the Senate as well as the House are scheduled to be in recess the week of April 22 and will not be back in session until the week of April 29.

What’s the problem(s)?

Since the measure cleared the House, Ways and Means Chairman Smith has spent considerable time advocating for the bill to his fellow Republicans across the Capitol, as have a handful of GOP senators at odds with Crapo, including Finance Committee members Todd Young of Indiana and Steve Daines of Montana. But even as Republicans may support many or all of the bill’s provisions, most do not yet appear willing to second-guess the man who could be the next chair of the Finance Committee, and he clearly is not on board.

Crapo told NBC News April 9 that he still has problems with “a number” of provisions, including not just the lookback policy for the child tax credit but also what he described as “a multiplicity of issues” related to the individual-focused tax provisions.

“And until we get at least engagement on the issues, then I can’t make any kind of predictions,” he said.

In what could be a new wrinkle, Crapo also indicated to NBC News that he is now dissatisfied with the sole revenue offset included in the House-passed bill—that is, new proposed restrictions intended to reduce perceived fraud in the employment retention tax credit program.

Finance Committee Republican Sen. Thom Tillis of North Carolina has been a vocal critic of that provision since the bill was rolled out, calling the pay-for “phony” because the ERTC was not offset when it was originally enacted in the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act (P.L. 116-136) in 2020. Tillis also has said that offsetting extensions of current law—something Republicans have long argued against—would set a risky precedent for Congress as it prepares to face the multibillion-dollar fiscal cliff of expiring TCJA provisions next year.

URL: <https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>

During a March 12 hearing with Treasury Secretary Janet Yellen, Finance Committee Chairman Ron Wyden cautioned that inaction on the proposed ERTC restrictions—the bill would accelerate the deadline for filing new 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 claims—likely would mean a revenue loss for the federal government, given that the credit program is currently “riddled with fraud.” (For prior coverage, see *Tax News & Views*, Vol. 25, No. 13, Mar. 22, 2024.)

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240322_1.html

Proposals that *aren't* the solution

Last month, in a bid to address Crapo’s stated concerns with the measure and secure Republican support, Wyden offered to remove the lookback provision in the enhanced child tax credit and instead make the credit’s refundability provisions more generous, but Crapo rejected that proposal.

“In the most recent exchange, I gave them what [has been] individual Republican senators’ top ask, which was to get rid of the lookback. I was given, by them, something that wouldn’t have gotten a single Democratic vote in the Senate. Not one,” Wyden told NBC News this week. “So there you have it. We’re continuing to try to find common ground.”

Crapo also nixed a suggestion from a fellow Republican to attach unrelated legislation that might attract GOP votes. Sen. Josh Hawley, R-Mo., this week proposed adding the reauthorization of the Radiation Exposure Compensation Act (RECA, S. 3853) to the tax bill, arguing that since RECA passed the Senate by a vote of 69-30 in March, its addition could be helpful. RECA would expand the expiring compensation fund for victims of past government uranium mining and atomic bomb testing.

URL: <https://www.congress.gov/bill/118th-congress/senate-bill/3853>

“[The] tax bill looks like, to me, it’s in very serious trouble,” Hawley told reporters April 9. “It’s on life support. So I think if they put those things together, that might unlock support. I know it will get my vote.”

Crapo rejected the idea, though, saying that adding RECA “does not fix the underlying bill.”

“I will support [the tax bill] when we fix the provisions in the bill,” he said.

“I think Crapo wants to make it better,” Sen. Lindsey Graham, R-S.C., told *The Washington Post* this week. “I like to help people raising children with the child tax credit, and there’s a bunch of other business things in there that I hear a lot about from my constituents. But with work requirements, there’s some things that Crapo wants to do, and I sort of trust his judgment.”

Finance Committee member Mike Rounds, R-S.D., similarly told the *Post*, “I have spoken with our ranking member, Mike Crapo, and I don’t think it’s ready for prime time yet. I think they’re still negotiating. But I’ll take my cue right now based on what his analysis is.”

If the Senate were to approve an amended version of the bill, that revised legislation would have to go back to the House for a second vote. Although the original bill passed overwhelmingly in the lower chamber the first time, the outcome of a subsequent vote would depend on just how significant any of those changes are and the extent to which they affect the overall balance of business- and family-focused provisions.

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