

Filing season's over but Wyden's still committed to bipartisan tax package

Senate Finance Committee Chairman Ron Wyden, D-Ore., indicated this week that he remains intent on advancing the Tax Relief for American Families and Workers Act (H.R. 7024)—the bipartisan tax legislation he negotiated with House Ways and Means Committee Chairman Jason Smith, R-Mo.—even though the measure remains stuck in the Senate and the end of the 2024 tax filing season, which was once considered the unofficial target date for getting the bill to President Biden's desk, is now in the rearview mirror.

[URL: https://www.congress.gov/bill/118th-congress/house-bill/7024/text](https://www.congress.gov/bill/118th-congress/house-bill/7024/text)

In comments at an April 16 Finance Committee hearing on the Biden administration's fiscal year 2025 budget request for the IRS, Wyden said he and Smith are "pulling out all the stops" to move the tax bill forward, and he warned his colleagues that failure to get the House-approved measure through the Senate will result in continued fraud in the pandemic-era employee retention tax credit (ERTC) program and the loss of "billions of dollars" in federal revenues. (See separate coverage in this edition for a discussion of the IRS budget issues addressed at the hearing.)

ERTC restrictions pay for business and family tax breaks

The ERTC was enacted in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136) as an emergency measure to help cash-strapped businesses keep employees on their payrolls in the wake of the nationwide economic shutdown brought on by the COVID-19 pandemic. The credit is limited to certain wages paid in 2020 and 2021 but may be claimed through April 15, 2024 (for tax year 2020) and April 15, 2025 (for tax year 2021). Critics of the provision have argued since its enactment that the program has a high potential for fraud, and those concerns have mounted in recent months following reports that some unscrupulous third-party promoters have been marketing the credit to unsuspecting businesses who were not, in fact, eligible to take advantage of it.

[URL: https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf](https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf)

The Smith-Wyden measure would clamp down on improper ERTC claims by accelerating the deadline for filing additional claims for the credit to January 31, 2024, imposing new reporting requirements and restrictions on promoters of the credit, and extending by one year the statute of limitations for the IRS to assess penalties on improper claims.

These provisions, which the nonpartisan Joint Committee on Taxation staff has estimated would raise some \$78.6 billion over 10 years, would offset the cost of various temporary business and family-focused tax relief provisions in the bill that, among other things, would:

[URL: https://www.jct.gov/publications/2024/jcx-5-24/](https://www.jct.gov/publications/2024/jcx-5-24/)

- 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 (P.L. 115-97) but did not take effect until several years after that measure

was enacted;

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

- Enhance the child tax credit; and
- Expand the low-income housing tax credit.

The bill cleared the House by a vote of 357-70 on January 31 but has failed to advance 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 Republicans—including Finance Committee member Thom Tillis of North Carolina—have argued that the ERTC provision is not a legitimate offset since the credit was not paid for when it was enacted in the CARES Act. Some GOP senators 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. Back channel efforts between Wyden and Crapo to negotiate a compromise over the past few weeks have thus far been unsuccessful.

‘Avalanche’ of ERTC fraud

At this week’s Finance Committee hearing, Wyden acknowledged that the ERTC provided a valuable lifeline to businesses during the pandemic, but he stated that based on information he has received from “a whistleblower” there is “an avalanche” of fraudulent claims currently being submitted to the IRS that is “choking” the agency’s resources and delaying the payment of refunds to taxpayers who are legitimately entitled to the benefit.

Wyden asked IRS Commissioner Daniel Werfel—the sole witness at the hearing—to offer his assessment of the likely consequences to the fisc and to the tax system if the Senate does not act on the legislation.

Werfel replied that the IRS issued a moratorium on processing new claims in September of 2023 in response to a rise in “questionable” claims coming into the agency during the preceding summer.

“We were worried, not just about the financial bottom line of the US government,” Werfel said, “but also about honest small businesses that we saw were being taken advantage of by aggressive marketers and promoters convincing these small businesses that they were eligible for a credit they weren’t truly eligible for.”

But even with the moratorium in place, Werfel explained, the IRS is still receiving 20,000 new claims every week “because the [CARES Act] allows these claims to be submitted through 2025 and these promoters are out there still pushing for these claims to be filed.”

The Smith-Wyden bill would give the IRS the tools it needs to crack down on the fraudulent claims, Werfel said, adding that once those claims are weeded out the agency would be better positioned to identify, process, and pay out legitimate claims for the credit filed by tax-compliant businesses.

Crapo: Tax talks still at a ‘standstill’

Finance Committee Republicans did not address any of Wyden’s comments about the tax bill during the hearing, nor did they pose questions to Commissioner Werfel about the IRS’s experiences with improper ERTC claims. Outside of the hearing room, however, they piled on, expressing several concerns about the bill, including some related to its ERTC budget offset.

Sen. Crapo told reporters on April 16 that his negotiations with Sen. Wyden remain “at a standstill” and accused Democrats of “trying to just cram the bill down on the [Senate] floor.”

Crapo also expressed a concern about ERTC provision that has been bubbling up among some segments of the GOP—namely, that proposing an offset for extensions of current law would be setting a risky precedent for Congress as lawmakers face the prospect of addressing the myriad provisions in the Tax Cuts and Jobs Act affecting individuals, estates, and passthrough entities that are scheduled to expire at the end of next year.

When it was enacted in 2017, the TCJA was estimated to cost, on net, about \$1.5 trillion over 10 years. But budget scorekeepers now estimate that making the law’s individual tax changes permanent and preventing the phase-in of certain taxpayer-unfavorable business provisions that are also scheduled to take effect after 2025, would cost between \$3.5 trillion and \$4 trillion.

“I just want to make sure that if the [Wyden-Smith] bill goes, if we [are] able to work out our differences and get something done, I’m trying to be sure that it’s very clear that this is not a precedent,” Crapo said on April 17.

It should be noted, though, the Crapo’s concern in this regard is not necessarily universal among Republicans, with some GOP taxwriters on the other side of the Capitol suggesting this week they were dubious that the ERTC offset would undercut their tax policy arguments next year.

“I don’t know that it sets a precedent or a structure going forward as we look at TCJA,” said House Ways and Means Committee member Ron Estes, R-Kan. “I think there’s a lot of positive things when you do the whole [TCJA] package together. So I think it’s not necessarily a good comparison.”

To be clear, though, Senate Republicans this week continued to put very little daylight between themselves and their lead taxwriter.

“There’s no way they [get] me [to] ‘yes,’” said Finance Committee member Thom Tillis of North Carolina, who, as already noted, is a staunch critic of the bill’s ERTC changes. “They may get Crapo to ‘yes,’ if they negotiate with him.”

“If they don’t then I think Republicans will probably keep it from moving forward.”

No imminent plans for Senate floor action

Senate Majority Leader Charles Schumer, D-N.Y., placed the House-passed bill on the Senate calendar in March, an action that would allow him to bypass the Finance Committee and bring it directly to the floor. Schumer recently conceded, however, that even though the package has support on both sides of the aisle, it still lacks the 60-vote supermajority it would need to overcome procedural hurdles in the chamber and he currently appears reluctant to force a vote that would ultimately fail. In a letter to his Senate colleagues earlier this month outlining his near-term legislative agenda for the chamber, Schumer made only a passing reference to the tax bill as an item that could be considered “in the weeks and months ahead.” (For prior coverage, see *Tax News & Views*, Vol. 25, No. 14, Apr. 12, 2024.)

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

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240412_1.html

Nonetheless, Finance Committee Chairman Ron Wyden suggested that he is not abandoning his quest to find 60 supportive senators and commented that his House GOP counterpart, Ways and Means Chairman Jason Smith, has been conducting outreach efforts of his own.

“I had a long conversation with Chairman Smith last night . . .,” Wyden told reporters April 16. “We talk constantly and he’s been reaching out to a lot of Senate Republicans, and Senate Republicans are coming up to me and asking questions.”

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