

Senate passes five-year FAA reauthorization measure; House expected to follow suit next week

The Senate this week cleared a bipartisan, bicameral legislative package that would reauthorize the Federal Aviation Administration (FAA) and the related excise taxes that help fund its operations through September 30, 2028, along with a separate, one-week extension that will keep the agency operating through May 17, giving the House additional time to consider the measure. Passage of the reauthorization bill had been bogged down in debate over potential amendment votes, but ultimately, not a single proposed amendment received a vote, including one from Finance Committee Chairman Ron Wyden, D-Ore., to attach the tax-relief package he introduced earlier this year with House Ways and Means Committee Chairman Jason Smith, R-Mo.

FAA Reauthorization Act of 2024

The broader five-year FAA bill—dubbed the FAA Reauthorization Act of 2024 (text, section-by-section summary)—is the result of months of negotiations between Senate Commerce Committee Chair Maria Cantwell, D-Wash., and ranking Republican Ted Cruz of Texas, as well as House Transportation and Infrastructure Committee Chairman Sam Graves, R-Mo., and ranking Democrat Rick Larsen of Washington.

URL: <https://www.commerce.senate.gov/services/files/070A7E5D-A95A-42D8-99D2-60DEA347EE32>

URL: <https://www.commerce.senate.gov/services/files/E4B4E5F6-AA83-4F9E-B21C-0F03F95F5FE0>

It passed the Senate late May 9 on an 88-4 vote. House consideration is expected during the week of May 13.

The sprawling measure is long on policy changes within the aviation space, including making upgrades to the air traffic control system and mandating consumer refunds in certain cases when flights are disrupted, but does not make any substantive changes to existing aviation tax policy. Rather, the legislation would simply extend the current-law excise taxes on fuel and tickets, along with expenditure authority from the airport and airway trust fund, through September 30, 2028.

Dozens of Senate amendments filed: The Senate cleared the first procedural hurdle to proceed to the underlying bill on May 1, voting 89-10 to begin debate on the package. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 16, May 3, 2024.)

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240503_4.html

However, with fiscal year 2024 appropriations and a Ukraine-Israel-Taiwan foreign aid package finally signed into law, a number of senators viewed the FAA bill as one of the last “must-pass” measures before the November 2024 elections and sought to attach other—sometimes unrelated—legislative priorities.

For example, Finance Committee Chairman Ron Wyden on May 7 filed an amendment to attach the Tax Relief for American Families and Workers Act (H.R. 7024), the bipartisan tax package that he negotiated with Ways and Means Chairman Smith and that passed the House on a 357-70 vote in January (more on that below). Bills related to children’s online safety, cannabis banking, credit card competition, and a reauthorization of a

program that compensates victims of nuclear radiation were among the dozens of other issues unrelated to aviation on which certain senators had been pushing for amendment votes.

URL: <https://www.congress.gov/bill/118th-congress/house-bill/7024/text>

The FAA legislation “is, to use the oft-invoked analogy, one of the last trains leaving the station,” Sen. Cruz said recently. “And so everyone’s trying to get on board.”

But not a single amendment vote was taken: Ultimately, however, not a single proposed amendment received a vote on the Senate floor. That outcome was the result of a mix of factors, including a reality that settled in among members pushing to attach assorted—and sometimes extraneous—policy priorities that the internal squabbling could cause the FAA’s authorities to lapse at midnight on May 10, even though the underlying bill maintained broad support among both parties.

“Everybody’s got holds on this right now,” complained Senate Minority Whip John Thune, R-S.D., on May 9, referring to a legislative tactic senators can use to slow down the chamber’s processing of a bill.

Some senators were even opposed to clearing a one-week FAA extension—that is, through May 17—that the House had shuttled through on May 8 prior to departing Washington for the week.

Most prominent among that group were the four senators representing Maryland and Virginia, who vehemently oppose language in the underlying bill that would expand the number of flights at Ronald Reagan National Airport—a provision they argue would exacerbate congestion and pose additional safety concerns at an already-overcrowded facility.

“We can’t in good conscience greenlight that [short-term extension] plan until we have a commitment that there will be an opportunity to put our amendment to a vote, and to persuade our colleagues to prioritize the safety of millions of passengers over a few senators’ desire for a direct flight home,” Virginia Democratic Sens. Tim Kaine and Mark Warner wrote in a statement on May 8.

But ultimately, those four DC-area senators—who represented the lone “nay” votes on the five-year package—relented and allowed both the broader reauthorization and the short-term patch to advance.

“It’s really outrageous,” said Sen. Chris Van Hollen, D-Md., shortly before voting against the FAA bill.

Smith-Wyden tax package left on the tarmac

One notable tax proposal on the no-fly list is the aforementioned Wyden amendment that would have incorporated the House-passed Tax Relief for American Families and Workers Act into the FAA bill.

Among other things, that bipartisan measure would:

- 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](https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf)
- Enhance the child tax credit;
- Expand the low-income housing tax credit; and
- Clamp down on improper employee retention tax credit (ERTC) claims.

Of course, in many ways it comes as little surprise that the Wyden amendment did not make the cut for a vote given the fact that the House-passed tax package has faced a wall of opposition from Finance Committee ranking Republican Mike Crapo of Idaho and other key GOP senators. And without a firm demonstration of GOP support that would ensure the tax bill would garner at least 60 votes to clear procedural hurdles in the chamber, Senate Majority Leader Charles Schumer, D-N.Y., has thus far been reluctant to force a vote on the floor.

Crapo's chief objection to the bill is its inclusion 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 he and other critics believe would disconnect the credit from work.

Crapo has also expressed concern that the bill's roughly \$78 billion cost is almost fully offset from a budget perspective by making changes to the administration of the ERTC. Specifically, Crapo and other GOP senators have argued that offsetting extensions of current law would set a risky precedent next year when lawmakers confront the multi-trillion-dollar expiration of large swaths of the Tax Cuts and Jobs Act. (The Congressional Budget Office this week estimated that the cost of extending various components of the TCJA would, in total, clock-in at roughly \$4.6 trillion over 10 years, an increase of \$1.1 trillion from projections it released in 2023. See separate coverage in this issue for details.)

Smith urges stand-alone Senate floor vote: In related news, Jason Smith, the House's top taxwriter, made some waves this week when he suggested in remarks at a May 8 event hosted by the law firm BakerHostetler that the reluctance among Senate Republicans to advance the bipartisan tax package he developed with Finance Committee Chairman Wyden is fueled more by politics than by policy concerns and that the chamber should vote on the bill as a stand-alone measure.

"Just hold the vote. I believe the votes are there," Smith said. "It should pass the United States [Senate], but unfortunately I think it's for political reasons. It's beyond the policy."

"The longer that we wait for a vote, we only lose votes," Smith cautioned.

(See additional coverage in this issue for comments from Smith at the BakerHostetler event regarding potential offsets for expiring TCJA provisions.)

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