

Five-year FAA reauthorization—with no amendments—heads to the White House

The House 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. House passage of the bill, which was approved by the Senate on May 9 and does not include extraneous amendments, officially dashes any hope that the measure could serve as a vehicle to carry other legislative priorities—such as the House-approved tax relief package negotiated earlier this year by House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore.—to President Biden’s desk.

Biden is expected to sign the FAA measure into law before midnight on May 17, when the current stop-gap measure keeping the FAA in operation is scheduled to expire.

FAA Reauthorization Act of 2024

The 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.congress.gov/bill/118th-congress/house-bill/3935/text>

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

It passed the House on May 15 on a broadly bipartisan 387-26 vote after being considered under “suspension of the rules”—a fast-track procedural tool in that chamber that allows for limited debate, no amendments, and passage upon an affirmative two-thirds vote.

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.

Smith-Wyden tax deal remains grounded

Although the FAA bill’s passage in the House was never in doubt, its relatively smooth flight through that chamber stands in contrast to its more turbulent trip through the Senate, which entailed a prolonged debate around potential amendments.

With fiscal year 2024 appropriations and a Ukraine-Israel-Taiwan foreign aid package finally signed into law, a number of senators had viewed the FAA bill as one of the last “must-pass” measures to move through the

chamber before the November 2024 elections and sought to attach other—sometimes unrelated—legislative priorities.

That effort included an ultimately unsuccessful attempt by Finance Committee Chairman Wyden to include the bipartisan deal he negotiated with Ways and Means Chairman Smith—formally known as the Tax Relief for American Families and Workers Act (H.R. 7024)—as an amendment to the FAA measure.

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

Among other things, the Smith-Wyden legislation, which cleared the House by a broad bipartisan majority in January, 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 (TCJA, 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
- Tighten the rules for claiming the employee retention tax credit (ERTC) and expand the IRS's authority to investigate questionable ERTC claims.

But ultimately, Wyden's amendment—and all of the dozens of other amendments that had been filed—failed to get a vote on the Senate floor and lawmakers approved the FAA legislation with no extraneous provisions.

Child tax credit, ERTC offset remain concerns for Senate GOP: Of course, in many ways it comes as little surprise that Wyden's 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 prominent GOP senators, who have objected to, among other things, the 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 that critics believe would disconnect the credit from work.

Crapo and other GOP senators also have expressed reservations about the inclusion of a revenue offset (the strictures on ERTC claims) on the grounds that paying for 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 at the end of 2025. (The congressional debate over offsets for any TCJA extensions is expected to become even more intense in the coming months now that the Congressional Budget Office has 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. The higher estimated cost is due largely to the fact the latest 10-year budget window has shifted forward by a year, so it now includes another year in which the full cost of an extension would be added to the deficit. For prior coverage, see *Tax News & Views*, Vol. 17, No. 25, May 17, 2024.)

URL: <https://www.cbo.gov/publication/60114>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240510_2.html

Wyden, for his part, commented in remarks at a conference sponsored by the Tax Council Policy Institute (TCPI) on May 18 that Congress’s inability to get a relatively small (\$78 billion), bipartisan tax package to the White House bodes poorly for its chances of reaching a deal on the multitude of TCJA tax cuts that are scheduled to sunset next year.

“It’s pretty hard to build confidence for a significant bill in 2025 if you can’t get a much smaller bill that got 357 votes in the House and is paid for by fighting fraud,” Wyden said.

No immediate prospect of stand-alone vote: With most “must-pass” legislation for 2024 now in the rear-view mirror—at least until the November elections—attention will turn more squarely to Senate Majority Leader Charles Schumer, D-N.Y., and whether he may force a stand-alone floor vote on the Smith-Wyden deal. Up until now, Schumer has been reticent to take such action given the general consensus that the bill would not garner enough GOP support to ensure that it can clear procedural hurdles in the chamber, and he has given no indication—publicly, at least—that his position has changed.

Wyden told the TCPI audience that he is “working with . . . Schumer to get a time schedule for the Senate to bring it up.”

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

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