

House passes tax package offering relief to disaster victims, but Wyden vows to block quick Senate action

The House of Representatives this week passed by a wide bipartisan margin a \$4.9 billion aid package that would provide tax relief to victims of certain hurricanes, wildfires, and other natural disasters, as well as the East Palestine, Ohio, train derailment. But Senate Finance Committee Chairman Ron Wyden, D-Ore., vowed to block Senate action on that bill as a way to try and force his colleagues to instead take up the more wide-ranging tax measure—including an identical set of disaster relief provisions—that he introduced earlier this year with House Ways and Means Committee Chairman Jason Smith, R-Mo.

Federal Disaster Tax Relief Act

The disaster relief package—dubbed the Federal Disaster Tax Relief Act (H.R. 5863)—passed the House on May 21 by a margin of 382-7 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.

URL: <https://www.congress.gov/bill/118th-congress/house-bill/5863/text>

It came to the House floor after taxwriter Greg Steube, R-Fla., filed a discharge petition with respect to the bill, which he introduced in October of last year. (A discharge petition is a parliamentary mechanism by which 218 members—regardless of party—may force a bill to the House floor, even if that bill was not reported by a committee and/or is not supported by party leadership.) Steube’s discharge petition cleared the 218-signature requirement on May 15 and was supported by a wide swath of Democrats, including Ways and Means Committee ranking member Richard Neal, D-Mass.

In general, H.R. 5863 would provide tax relief for victims of certain federally declared disasters by:

- Extending temporary taxpayer-favorable rules for deducting certain personal casualty losses related to major federally declared disasters that were last renewed in the Consolidated Appropriations Act, 2021 (P.L. 116-260) and are now expired;
URL: <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>
- Providing an exclusion from gross income for amounts received as qualified wildfire relief payments; and
- Treating payments received by individuals incurring damages or losses related to last year’s train derailment in East Palestine, Ohio, as qualified disaster relief payments for purposes of section 139(b) and therefore excludable from gross income.

Mirror language—and more—in Smith-Wyden legislation

All of the provisions in the House-approved disaster relief measure are also included in the Tax Relief for American Families and Workers Act (H.R. 7024)—the broader bipartisan deal negotiated by Finance Committee Chairman Wyden and Ways and Means Committee Chairman Smith. Although the Smith-Wyden

measure easily passed the House in January, it remains stalled in the Senate, where it faces a wall of resistance from that chamber's Republicans.

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

In addition to providing disaster tax relief, H.R. 7024 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 of 2017 (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>
- Enhance the child tax credit;
- Expand the low-income housing tax credit;
- Relieve double-taxation on investments between the US and Taiwan; and
- Tighten the rules for claiming the employee retention tax credit (ERTC) and expand the IRS's authority to investigate questionable ERTC claims.

Wyden threatens to place a 'hold' on disaster bill

Once the disaster relief package cleared the House this week, it came under immediate fire from Sen. Wyden, who vowed to place a "hold" on the bill in the Senate and chided his GOP colleagues in the chamber for refusing to act on those same provisions earlier this year after the House approved his bipartisan deal with Ways and Means Chairman Smith.

"The only reason this disaster relief didn't become law soon after the House passed [the Smith-Wyden measure] months ago is because Senate Republican leaders have blocked it," Wyden said in a statement released May 21. "Senate Republicans will have an opportunity to show whether they in fact support disaster relief when the Tax Relief for American Workers and Families Act comes up for a vote soon."

The next day, Wyden further explained the rationale for his attempted blockade.

"The reason is that there are key Democratic priorities [in the Smith-Wyden legislation]. For example, we couple the child tax credit and R&D," Wyden said. "It would go all asunder if they were to pull something out. I'm not going to reward Senate Republican stalling."

Opposition to the broader tax package comes chiefly 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 proposed strictures on ERTC claims) on the grounds that paying for extensions of current law would set a risky precedent when lawmakers confront the multi-trillion-dollar expiration of large swaths of the Tax Cuts and Jobs Act at the end of 2025.

Eyes on Schumer

In practical terms, Chairman Wyden's hold on the House-passed disaster relief bill prevents the legislation from passing the Senate by "unanimous consent"—a process that allows noncontroversial legislation to bypass procedural hurdles (for example, cloture votes) and move quickly through the chamber.

But Senate Majority Leader Charles Schumer, D-N.Y., could still bring the disaster bill to the floor over Wyden's objections. If Schumer did so, it would take up considerable floor time, but the measure would almost certainly garner the 60 votes it would need to overcome procedural hurdles and clear the way for its eventual passage.

Some Democratic advocates in the House hope that is the approach that Schumer pursues.

"I haven't heard [Sen. Wyden's] rationale for putting a hold on it, but I think that it's shortsighted when we can actually get help to people who need it," said House Democratic taxwriter Jimmy Gomez of California. (Gomez and California Democratic taxwriter Mike Thompson played key roles in advancing the issue of disaster-related tax relief in the Ways and Means Committee last year.)

Ways and Means ranking Democrat Richard Neal suggested he would support alternative methods of getting the disaster bill through the upper chamber, including attaching it to other legislation later this year, although he also suggested that the broader Smith-Wyden deal may not be the appropriate vehicle, given its current gloomy prospects.

"It's a legitimate quest, disaster relief," Neal said. "I don't know what they're going to attach it to [in the Senate], and I would hate to see it die if the other tax bill doesn't look as though it's going to have any legs in the end. And at the moment, it doesn't appear as though it does."

No immediate prospect of stand-alone vote on Smith-Wyden deal

With most "must-pass" legislation for 2024 now in the rear-view mirror—at least until the November elections—eyes are also on Majority Leader Schumer as to whether he will force a stand-alone floor vote in the Senate 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.

But so far, Sen. Wyden is undeterred. He took several opportunities during a May 21 Finance Committee hearing on tax-advantaged savings accounts for low- and moderate-income households to make the case that

the House-passed tax relief bill would foster the kind of economic growth that GOP committee members said the current administration is stifling.

In response to remarks from Sen. Steve Daines, R-Mont., pinning the current inflationary environment and rising federal debt levels on “Bidenomics” and Democratic tax credit proposals, Wyden offered this rejoinder:

“Let us reflect for a quick second on the fact that if the Senate wants to take a pro-growth step quickly, with research and development and bonus depreciation—policies that there is enormous support for—all we’ve [got to] do is pull the bill down from the House of Representatives, [which] got 357 votes, and figure out how to work together to pass something that is pro-growth and paid for.”

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