Senate sinks procedural motion on Smith-Wyden tax bill, leaves for August recess

In its last major act before departing Washington for a five-week summer recess, the Senate on August 1 voted down a procedural motion to advance bipartisan tax legislation crafted by House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., that would, among other things, provide temporary tax relief to businesses and short-term enhancements to the child tax credit.

The vote on the measure—which cleared the House in January by a wide bipartisan margin—was teed up earlier this week by Senate Majority Leader Charles Schumer, D-N.Y., in an effort to put a spotlight on the firm and longstanding opposition to the bill by the vast majority of GOP senators, a tactic Democrats feel could be advantageous ahead of this November's presidential and congressional elections.

Tax Relief for American Families and Workers Act

The Smith-Wyden tax package, dubbed the Tax Relief for American Families and Workers Act (H.R. 7024), includes provisions that, at a high level, would:
URL: https://www.congress.gov/bill/118th-congress/house-bill/7024/text

- 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
- Provide tax relief for victims of certain federally declared disasters.

The cost of this tax relief would be offset by provisions that would tighten the rules for claiming the pandemic-era employee retention tax credit (ERTC)—notably, by accelerating the deadline for filing new claims to January 31, 2024 (from the current-law deadlines of April 15, 2024, and April 15, 2025)—and by expanding the IRS's authority to investigate questionable ERTC claims.

Bipartisan political calculations—and finger-pointing

This week's procedural motion on the bill—which required support from 60 senators (three-fifths of all members) to pass under Senate rules—went down in a 48-44 vote that was largely partisan but not entirely so. Three GOP senators supported the motion, while two members aligned with Democrats opposed it.

Republicans who broke ranks to support advancing the bill were Sens. Josh Hawley of Missouri, Markwayne Mullin of Oklahoma, and Rick Scott of Florida.

Dissenters on the majority side were Independent Sens. Bernie Sanders of Vermont and Joe Manchin of West Virginia, both of whom receive their committee assignments from the Democrats. Sanders argued the bill's benefits were too tilted toward businesses at the expense of families. Manchin contended, along with most Republicans, that the child tax credit provision as drafted could discourage recipients from working. (More on that below.)

Wyden, Schumer tie GOP to defeat of family tax relief: In a statement released after the vote, Finance Committee Chairman Wyden blasted Republicans for not getting behind the bill's proposed expansion of the child tax credit.

"Sixteen million kids will be worse off and half a million will remain in poverty because Senate Republicans decided they'd rather wait around and hope Trump wins in November than take a bipartisan victory today," Wyden said.

Senate Majority Leader Schumer, for his part, faulted his GOP colleagues for blocking a measure that came from across the Rotunda with the support of 169 House Republicans.

"This bill should pass—it's a bipartisan bill," Schumer said prior to the vote. "It was put together by [Ways and Means Committee] Chairman Smith, hardly a liberal, from [a] rural area of Missouri."

But Schumer did not try to hide the fact that he also brought the bill to the floor for political reasons—that is, to give a Democratic senators facing difficult re-election campaigns this fall, such as Finance Committee member Sherrod Brown of Ohio, a chance to spotlight their support for (and the GOP's opposition to) family-focused tax relief.

"Our 2024-ers were very excited about having a vote on this bill—win or lose," Schumer said. "They'd rather win, we'd all rather win. But even losing is a benefit."

Crapo and GOP senators betting on more power next year: GOP opposition to the Smith-Wyden package has come chiefly from the Finance Committee's ranking Republican, Sen. Mike Crapo of Idaho, who has criticized the bill for, among other things, including 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 argues would disconnect the credit from work. Republicans also have expressed concerns about the inclusion of a revenue offset—the proposed strictures on ERTC claims—arguing 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 TCJA at the end of 2025. (Many Republicans have argued in the past that, as a matter of principle, extensions of current tax law do not need to be offset.)

Republican senators are also betting that Crapo will become Finance Committee chairman in what they expect will be a GOP-controlled Senate next year, given the relatively difficult path for Democrats to retain their majority in the upper chamber come November. Democrats currently control the Senate by a margin of 51 –

49, but they are defending a number of seats this year in states where former President Trump is leading in the polls, and Republicans are hoping he can carry their down-ballot candidates to victory.

“We’ll get a better deal if we wait than what we’re going to get right now,” said Sen. Roger Marhsall, R-Kan.

Marshall at one point was thought to be a potential ‘aye’ vote for advancing the tax relief package, but he ultimately opposed the motion due to concerns that the bill was being brought to the floor without the opportunity to offer amendments. Other GOP senators shared that concern as well.

“Chuck Schumer . . . has not allowed this bill to go through the regular process, to be marked up or anything like that,” GOP Sen. Pete Ricketts of Nebraska remarked before the vote.

Crapo also argued that Majority Leader Schumer’s decision to hold a vote this week, despite knowing that it was likely to fail, was simply a political move intended to embarrass the GOP before lawmakers went back home for the congressional recess.

“With election politics front of mind, doomed-to-fail ‘show votes’ have become an all-too-frequent occurrence in this chamber,” Crapo said shortly before the vote. “But there is no more obvious ‘show vote’ than the one scheduled to happen today, immediately before August recess.”

Any chance for lame duck action?

This week’s failed vote virtually ensures that further action on the Smith-Wyden package will not come before the November elections. The House and Senate will return to Capitol Hill for just a few weeks in September, but it is doubtful the politics around the bill will change by that time.

Senate Majority Leader Schumer nonetheless expressed some hope that Republicans might come back to the table at a later date.

Republicans “are going to feel a lot of pressure over August recess,” Schumer said. “And maybe they’ll come back to us and say, ‘Okay, we’re willing to negotiate.’”

And, in fact, Schumer switched his vote from “yes” to “no” as the roll call on the procedural vote concluded—a tactic that allows him to quickly call up the measure again should he choose to do so.

Perhaps the more likely outcome, however, is that discrete parts of the Smith-Wyden package are peeled off and moved separately.

In that vein, the House took up and passed a disaster tax relief package (H.R. 5863) in May that mirrors the disaster relief component of the Smith-Wyden package. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 19, May 24, 2024.)
URL: https://www.congress.gov/bill/118th-congress/house-bill/5863/text
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240524_1.html

Finance Committee Chairman Wyden had blocked that measure from advancing through the Senate—arguing that the upper chamber should instead take up the broader bipartisan tax package—but it is at least possible that the politics around this legislative strategy could shift in the months ahead.

The language effectuating a tax agreement between the US and Taiwan is also rumored to be a potential contender for separate action.

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