In this issue:

Uncertain path forward as House Democratic leaders decouple infrastructure, budget reconciliation bills........ 1
Deloitte Tax budget reconciliation materials available........................................................................................... 6
Senate confirms Batchelder for tax policy post at Treasury ................................................................................... 7
Tax News & Views Podcasts: Tax policy and its impact on private business and its owners ................................. 8

Uncertain path forward as House Democratic leaders decouple infrastructure, budget reconciliation bills

House Democratic leaders announced this week they would bring the Senate-approved Infrastructure Innovation and Jobs Act to the floor on September 27 and hold a vote shortly thereafter, a decision that fulfills a promise to the party’s moderate members but has prompted pushback from progressive Democrats, who have insisted that the so-called “hard” infrastructure bill move in tandem with the Build Back Better Act, the expansive tax-and-spending package that party leaders intend to advance through Congress under fast-track budget reconciliation protections.
Meanwhile, with the end of the current fiscal year just days away, the House approved legislation that would combine a short-term extension of government funding with a further suspension of the nation’s debt limit. But that proposal is likely to be blocked in the Senate as Republicans insist that responsibility for addressing the debt limit should fall to Democrats alone.

Infrastructure and budget reconciliation

Moving infrastructure and budget reconciliation legislation has required House Speaker Nancy Pelosi, D-Calif., to balance the sometimes conflicting policy priorities of moderates and progressives within her caucus – a task made even more challenging by the fact that Democrats hold a narrow majority in the House and the speaker can afford to lose no more than three votes on any legislation that is unlikely to gain support from Republicans. (It’s worth noting that even though the Infrastructure Innovation and Jobs Act cleared the Senate with the support of 19 Republicans, House Minority Leader Kevin McCarthy, R-Calif., told reporters September 23 that he is urging his members to vote against the legislation. And Republicans in both chambers thus far have been unified in their opposition to a budget reconciliation bill with increased social spending paid for with significant tax increases.)

Dueling promises: During a short special session late last month that interrupted the chamber’s August recess, Pelosi agreed to the September 27 deadline for the chamber to consider the infrastructure bill as a way to secure support from moderate House Democrats for a fiscal year 2022 budget resolution that had just been approved in the Senate. That resolution includes reconciliation instructions designed to facilitate the filibuster-proof passage of key elements of President Biden’s “Build Back Better” agenda, such as expanded access to pre-kindergarten education, affordable housing, child care, and paid family and medical leave, as well as programs to mitigate climate change, which would be paid for through tax increases primarily targeting corporations and high-income individuals, plus revenue from economic growth and health care savings.

Progressive Democrats had long been concerned that getting the infrastructure bill enacted into law ahead of budget reconciliation legislation might make it easier for some moderate Democrats in both chambers to vote against a large package of tax increases and new social spending and they had previously secured a commitment from Pelosi to move the two measures in tandem. (The Infrastructure Innovation and Jobs Act, which cleared the Senate on August 10, would invest roughly $550 billion in new spending over the next five years on projects such as roads, bridges, transit, and broadband, and includes limited tax-related incentives and revenue offsets. For additional details, see Tax News & Views, Vol. 22, No. 37, Aug. 10, 2021.)

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210810_1.html

In the run-up to the House vote on the budget resolution, however, several moderate Democrats expressed reservations about the potential size of the reconciliation bill authorized under the blueprint and sought to notch a quick policy win by passing the Infrastructure Innovation and Jobs Act and sending it on to the White House for President Biden’s signature. To that end, they wanted Pelosi to commit to a date for a floor vote on the infrastructure bill in exchange for their “yes” votes on the budget resolution.
Pelosi accommodated the moderates, but to reassure progressives that their priorities would not get sidelined, she reiterated that she was not abandoning the dual-track strategy and that the chamber would plan to contemporaneously consider the broader reconciliation package. (Under the reconciliation instructions, the relevant committees – 12 in the Senate and 13 in the House – were charged with completing their respective portions of the bill by a nonbinding deadline of September 15.)

More work to do on reconciliation bills: But with September 27 approaching, neither chamber has a completed budget reconciliation bill ready for consideration. House committees – including Ways and Means – have marked up proposals addressing issues within their respective jurisdictions, but Democrats are still negotiating changes to those measures. (Among the possible changes on the tax side is the addition of a provision to relax or suspend the current-law $10,000 cap on the deduction for state and local taxes, something that some moderate House Democrats have said is key to their support for the larger reconciliation bill. For details on the tax title as approved by Ways and Means, see Tax News & Views, Vol. 22, No. 43, Sep. 17, 2021.)

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210917_1.html

The proposals as reported out of the committees of jurisdiction will be consolidated into one package by the House Budget Committee in a mark-up scheduled for September 25. But the Budget Committee mark-up is largely a ministerial and not substantive step since the panel is not authorized to make changes to the text. Any modifications to the consolidated package will be made when it is taken up by the House Rules Committee. Exactly when the Rules Committee will consider the legislation is not yet clear.

Across the Rotunda, Senate Democratic leaders – who control only 50 seats and cannot afford to lose a single vote within their own ranks – are expected to bypass mark-ups in the individual committees of jurisdiction and bring a completed reconciliation package directly to the floor, but details remain under wraps as leadership negotiates with moderate Sens. Joe Manchin, D-W.Va., and Kyrsten Sinema, D-Ariz., to address their concerns over the size and scope of the package.

Moreover, House and Senate Democratic leaders have expressed a desire to iron out potential disagreements by “pre-conferencing” their respective proposals – a process that could become protracted to the extent there are major differences between the two chambers. On the tax side, for example, Senate Finance Committee Chairman Ron Wyden, D-Ore., has indicated he would like to include proposals that are not in the Ways and Means-approved tax package, such as a corporate excise tax on stock buybacks, a corporate minimum tax, carbon pricing, mark-to-market treatment of certain assets held by wealthy individuals, and additional IRS enforcement tools. Wyden also may push for more aggressive changes to the tax treatment of multinational corporations than those included in the Ways and Means-approved bill.

Progressive pushback, White House meetings: The decision to decouple the infrastructure and reconciliation proposals and proceed with the Infrastructure Innovation and Jobs Act, which Pelosi and House Majority Leader Steny Hoyer, D-Md., announced earlier this week, drew immediate criticism from House progressive Democrats.
Rep. Pramila Jayapal, D-Wash., who chairs the Congressional Progressive Caucus (CPC), told reporters on September 21 that up to half of the 95 House members who belong to the CPC were prepared to vote against the infrastructure proposal if leaders follow through with their plans to bring it to the floor without an agreement on budget reconciliation in hand. Such a large number of Democratic defections likely would be more than enough to derail the measure since it is not expected to draw significant GOP support.

The intra-party divisions prompted President Biden to hold a string of meetings at the White House – with Democratic leaders, moderate Democrats, and progressive Democrats from both chambers – on September 22, which the administration characterized in a subsequent readout as “an important opportunity for the president to engage with members and hear their perspectives.” The readout also indicated – without offering specific details – that “progress was made toward finding the pathway forward for lowering costs for hardworking people and ensuring that our economic growth strategy is based on investing in families, not more giveaways to big corporations and the wealthiest taxpayers.”

White House Press Secretary Jen Psaki told reporters during a September 23 press briefing that the president “felt encouraged by how constructive the conversations were” and that “[h]e’s going to have his sleeves rolled up, and he’ll be very engaged moving forward.”

Another framework?: One possible sign of progress came when Speaker Pelosi and Senate Majority Leader Charles Schumer, D-N.Y., announced September 23 that they had reached an agreement on what they termed a “framework” of potential offsets to pay for spending (and tax cut) proposals in a budget reconciliation package. The announcement came after Pelosi and Schumer met with Treasury Secretary Janet Yellen, White House economic advisor Brian Deese, House Ways and Means Committee Chairman Richard Neal, D-Mass., and Senate Finance Committee Chairman Ron Wyden.

Details on specific offsets remain scarce, however, and it appeared at press time that the principals had not agreed on a topline spending number for a reconciliation bill but instead had simply reached consensus on a finite set of revenue options they would choose from once they had set a spending cap. In making the announcement, Schumer spoke of a “menu of options” that would “pay for whatever the agreement on the investments is. . . .”

Pelosi commented that “we’re finalizing on the outlay side, so if we need more [revenue or] if we need less, that will impact the choices we make.”

It was unclear at press time, however, whether the agreement and the planned weekend Budget Committee mark-up would convince House progressives that there is sufficient progress being made on reconciliation to ease their concerns about voting for the infrastructure proposal.

Government funding and debt ceiling

As Democratic leaders seek a way to advance the infrastructure and budget reconciliation bills, Congress also faces imminent deadlines on other critical legislative items. September 30 brings the end of the current fiscal
year and the need for agreements to fund the federal government, renew surface transportation spending authority (which is included in the Infrastructure Innovation and Jobs Act and thus would be taken care of if the House approves the measure by September 30), and address the pending expiration of the national flood insurance program.

Also on the near-term punch list is legislation to address the federal debt ceiling. The most recent suspension of the debt ceiling expired on July 31 and Treasury Department is now using “extraordinary measures” to stave off default. The nonpartisan Congressional Budget Office has projected that government could run out of cash as early as October or November if Congress does not act quickly to either increase the debt limit or further suspend it. Treasury Secretary Janet Yellen has underscored the sense of urgency, stating in a letter sent to Democratic and Republican congressional leaders earlier this month that “based on our best and most recent information, the most likely outcome is that cash and extraordinary measures will be exhausted during the month of October.” Yellen urged lawmakers to “protect the full faith and credit of the United States by acting as soon as possible.”

URL: https://www.cbo.gov/publication/57152

**House proposal faces Senate GOP filibuster:** The House on September 21 voted 220-211 – along strict party lines – to approve legislation (H.R. 5305) that would fund the federal government at current levels through December 3 of this year and further suspend the federal debt ceiling through December 16, 2022. (The measure also includes supplemental funds to aid victims of recent US natural disasters and assist in the resettlement of Afghan refugees.)

URL: https://www.congress.gov/117/bills/hr5305/BILLS-117hr5305eh.pdf

That bill now heads to the Senate, where Majority Leader Schumer likely will attempt to bring it to the floor on September 27; but that effort is expected to fail in the face of a promised filibuster from Senate Republicans. (Breaking a filibuster requires a three-fifths supermajority – typically 60 votes – and the prospect that Democrats can convince 10 of their GOP colleagues to break ranks and vote to advance the House measure currently appears dim.)

Senator Minority Leader Mitch McConnell, R-Ky., has maintained in recent weeks that Republicans in his chamber would not support legislation to increase or further suspend the debt limit and has argued that Democrats can handle the issue on their own by including it in the reconciliation package, which would not be subject to the same procedural hurdles. He reiterated that position in Senate floor remarks the day before the House vote.

“Since Democrats decided to go it alone, they will not get Senate Republicans’ help with raising the debt limit. . . They have every tool to address the debt limit on their own – the same party-line process they used to ram through inflationary spending in March [to pass the $1.9 trillion American Rescue Plan] and already plan to use once again this fall.” He noted that “Senate Republicans would support a clean continuing resolution that includes appropriate disaster relief and targeted Afghan assistance” but would “not support legislation that raises the debt limit.”
Speaker Pelosi, for her part, maintained in a floor speech shortly before the House vote that responsibility for addressing the debt limit falls to both parties.

“This is not about future spending. . . . [T]his is about paying bills already incurred, including the Social Security recipients, . . . veterans, and millions who have benefited from the bipartisan COVID relief legislation passed last December. . . . Since 2011, each of the seven times that the debt limit has been needed to be addressed, Congress has done so on a bipartisan basis, including three times during the Trump administration, when the debt . . . rose by $7.8 trillion.”

Pelosi stated earlier this month that she does not intend to address the debt limit through the budget reconciliation process. (For prior coverage, see Tax News & Views, Vol. 22, No. 41, Sep. 10, 2021.) There has been no sign in recent days that she has retreated from that position.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210910_1.html

It is also worth bearing in mind that, in order for Democrats to address the debt ceiling through reconciliation, they first would have to amend the already adopted fiscal year 2022 budget resolution to include reconciliation instructions calling for such a policy – an outcome that House Budget Committee Chairman John Yarmuth, D-Ky., suggested this week may be unlikely for both political and procedural reasons, not the least of which being that such a path would likely entail at least one additional marathon “vote-a-rama” session in the Senate in which unlimited amendments may be offered to a budget resolution with little or no debate.

— Alex Brosseau, Michael DeHoff, and Storme Sixeas
  Tax Policy Group
  Deloitte Tax LLP

Deloitte Tax budget reconciliation materials available

New resources from Deloitte Tax LLP look at various provisions in the tax title to the Build Back Better Act that was recently approved by the House Ways and Means Committee.

Deferral of losses in certain taxable liquidations: A tax alert prepared by the Subchapter C group considers a provision in the Ways and Means package that would defer losses recognized by certain related corporate shareholders of a liquidating corporation where the liquidation is governed by section 331. The alert provides an overview of certain loss planning transactions involving taxable liquidations under section 331 (so-called Granite Trust transactions) and how the Ways and Means provision would, if enacted, effectively eliminate the benefit of such transactions.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210924_2_suppA.pdf

Partnership provisions: A summary prepared by the Passthroughs group looks at certain provisions in the Ways and Means package that affect partnerships and their partners.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210924_2_suppB.pdf
Real estate provisions: A separate summary from the Passthroughs group offers an overview of selected provisions in the Ways and Means package that affect real estate.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210924_2_suppC.pdf

Find out more

For details on all the provisions in the Ways and Means-approved tax title and links to other recently released Deloitte Tax resources addressing the current round of budget reconciliation proposals, see Tax News & Views, Vol. 22, No. 43, Sep. 17, 2021.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210917_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210917_2.html

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Senate confirms Batchelder for tax policy post at Treasury

The Senate voted 64-34 on September 22 to confirm Lily Batchelder to serve as Treasury assistant secretary for tax policy.

Batchelder comes to the Treasury Department from New York University, where she was a tax law professor focusing on personal income taxes, wealth transfer taxes, business tax reform, retirement savings, social insurance, and the effects of fiscal policy on economic insecurity, income disparities, and intergenerational mobility.

After time in tax law practice at Skadden, Arps, Slate, Meagher & Flom and a previous stint at NYU, Batchelder spent 2010 to 2015 in Washington first as the Democrats’ chief tax counsel at the Senate Finance Committee under then-Chairman Max Baucus, D-Mont., and then as deputy director of the White House National Economic Council and deputy assistant to President Obama.

President Biden nominated her to the tax policy position at Treasury in March. She appeared before the Senate Finance Committee for a confirmation hearing in May and the panel formally approved her nomination and sent it on to the Senate in June.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210528_3.html
Tax News & Views Podcasts:

Tax policy and its impact on private business and its owners

As the legislative process to determine the size and scope of a budget reconciliation package plays out in Washington, where do private business owners need to focus in anticipation of increasing tax rates? In this latest episode of the Tax News and Views Podcast, Wendy Diamond, Deloitte Private US family enterprise leader and the national tax leader for private wealth, joins Jeff Kummer from Deloitte’s Tax Policy Group. Together, they walk through the likely progress of the spending legislation currently being debated, the possible tax implications for private business owners, and estate planning.