Tax News & Views
Capitol Hill briefing.
March 4, 2022

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Biden lays out familiar tax-and-spending agenda; Manchin floats possible compromise

President Joe Biden appears to have retired the “Build Back Better” brand for his signature tax-and-spending plan, but in his State of the Union address this week he unveiled a new label—Building a Better America—for many of those same ideas. And as decades-high inflation becomes an entrenched concern, the president is now pitching his proposals to increase taxes on corporations and wealthy individuals and invest in green energy and social programs as the keys to taming the rising cost of living.

Meanwhile, West Virginia Democratic Sen. Joe Manchin, who is positioned to provide the elusive fiftieth vote that would allow the president’s plan to clear the Senate under fast-track budget reconciliation procedures, offered his own views about what an acceptable bill might look like.

Tax code changes, clean energy investments

President Biden went to Capitol Hill March 1 to deliver his first State of the Union address and, without explicitly referencing it, made a strong pitch for Congress to quickly pass key elements of the House-approved Build Back Better Act (H.R. 5376), focusing especially on investment in clean energy and on tax increases for large corporations and the highest-income individuals. The roughly $1.75 trillion package was approved in the House last November but stalled in the Senate after Sen. Manchin announced he would not support the measure in its current form. (For more on Manchin's concerns, plus details on other issues that have impeded the bill's progress in the Senate, see *Tax News & Views*, Vol. 22, No. 55, Dec. 17, 2021, and *Tax News & Views*, Vol. 22, No. 56, Dec. 20, 2021. A detailed discussion of the tax provisions in the House-approved bill is available from Deloitte Tax LLP.)
URL: https://www.congress.gov/bill/117th-congress/house-bill/5376/text
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211217_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211220_1.html
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-provisions-in-the-build-back-better-act.pdf

During his address, the president largely kept his discussion of tax policy at a high level.

"The one thing all Americans agree on is that the tax system is not fair. We have to fix it," he said. "I'm not looking to punish anyone. But let's make sure corporations and the wealthiest Americans start paying their fair share."

Biden did not mention an increase in the corporate tax rate, something he has endorsed since his presidential campaign but which so far lacks the votes to pass in the Senate due to Arizona Democratic Sen. Kyrsten Sinema's apparent opposition to tax rate hikes. He did, however, express his support for imposing a minimum tax through both the global intangible low-taxed income (GILTI) regime and through a new levy on corporate book income. (The Build Back Better Act does not call for raising the corporate tax rate but does propose to tighten the current-law GILTI rules and impose a 15 percent minimum tax on the book income of certain corporations.)

He likewise refrained from calling for an increase in the top income tax rate for individuals—also something Sen. Sinema has refused to support—and instead advocated "closing loopholes so the very wealthy don't pay a lower tax rate than a teacher or a firefighter." (The Build Back Better Act would not increase income tax rates on wealthier taxpayers but would impose a new surtax on certain upper-income individuals, estates, and trusts; broaden the application of the net investment income tax to include trade or business income of certain upper-income taxpayers; and permanently disallow excess business losses for noncorporate taxpayers.)

Saying that his "top priority is getting prices under control" after the US saw December and January inflation numbers come in at the highest levels since the early 1980s, the president highlighted his proposals to cut the cost of prescription drugs and child care and to reduce energy costs "by combating climate change"—including through significant tax credits and incentives for renewable energy. (The Build Back Better Act proposes production and investment tax credits related to renewable and alternative energy property and for production of certain alternative fuels; business- and consumer-focused incentives for energy-efficient buildings; incentives to promote alternative fuel vehicles for consumer and commercial use; credits to develop a “green” workforce; and direct-pay elections with respect to certain clean energy tax credits, all as part of the Biden administration’s larger effort to mitigate climate change.)

Taken as a whole, “[m]y plan to fight inflation will lower your costs and lower the deficit,” Biden said.

Manchin weighs in

The president may have a challenge repositioning his plan, however. Sen. Manchin, the key Democratic holdout on the Build Back Better legislation in the Senate, has for months cited rising inflation as a key reason to pump the brakes on additional federal spending. When asked by a reporter shortly after the speech whether Biden’s remarks about lowering costs allayed his own concerns about inflation, Manchin replied: “I’ve never found out that you can lower costs by spending more.”

Just one day later, though, Manchin laid out for *Politico* his vision of a plan that could get his vote. Specifically, he noted that he agrees with the president on the need to cut prescription drug prices and change the tax code to ensure that corporations and wealthy individuals pay their fair share. Half of any revenue that can be gained from those measures should be allocated to reducing the federal deficit and lowering inflation, he explained, and the other half should be allocated to climate change mitigation programs and social spending “to the point where it’s sustainable.” (Manchin has argued that the short-term social spending initiatives in the House-passed Build Back Better legislation “camouflage” the real cost of the package since a future Congress likely would try to further extend these temporary provisions or make them permanent.)

“The spending is going to be climate,” Manchin said. “And the social issues, we basically have to deal with those [afterward].”

A path forward?

The fact that Manchin has not ruled out all possibility of advancing some form of a tax-and-spending bill is keeping hope alive for Democrats, who are still eager to take advantage of their ability to use the budget reconciliation process that lets them bypass the usual 60-vote filibuster threshold in the Senate for legislation and send a bill to the president with a simple majority (comprised of the 50 Senate Democrats plus the tie-breaking vote of Vice President Harris).

Ahead of the president’s speech, a diverse group of House Democrats, mostly from the progressive wing of the party but also representing some fiscally conservative moderates, issued a statement urging swift passage of legislation that resembles the House-passed Build Back Better legislation.
URL: https://connolly.house.gov/news/documentsingle.aspx?DocumentID=4486

“It’s not too late to meet this moment,” the statement said. “There is broad consensus on the most critical solutions Americans need to lower costs for families, tackle the climate crisis, and create opportunities and good-paying jobs. It is time to act.”

One of the Democratic leaders who released that statement—Congressional Progressive Caucus Chair Pramila Jayapal of Washington—told *The Washington Post* in an interview published on March 3 that progressives could be amenable to Manchin’s proposed approach.

“Let’s come up with the revenue-producing measures,” Jayapal said, and then “look at it from there,” adding that progressives were “open to putting some [revenue] toward deficit reduction, and then climate.”

“We’d have to see all the details, but [we’re] are absolutely committed to trying to deliver as much as we can,” she said.

Efforts to return focus in the Senate to a tax-and-spending bill are likely to be postponed in the near term while Democrats work through the pending Supreme Court confirmation process for Judge Ketanji Brown Jackson (Biden’s pick to replace retiring Justice Stephen Breyer) and weigh possible legislative responses to Russia’s invasion of Ukraine, but quiet discussions may continue in the background. The sole hard deadline for action is when the fiscal year 2022 budget resolution (which is the vehicle for reconciliation legislation) expires at the end of September.

Manchin said this week that while he has had no “formal” negotiations with the administration, there is “informal back and forth.”

“Different White House people reach out, and we talk from time to time,” he said.

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Spending leaders race to button-up FY 2022 ‘omnibus’ bill before March 11 deadline

Leaders of the House and Senate Appropriations committees are eyeing floor action during the week of March 7 on a sprawling “omnibus” appropriations measure that would fund the government for the remainder of fiscal year 2022. Although the final contours of the bill are not yet agreed to, the package—which may also carry supplemental funding for Ukraine and coronavirus-related assistance programs—currently does not include any changes to the tax code.

Deal appears close

Enactment of the omnibus measure—should it occur next week—would come after lawmakers have resorted to a series of three so-called "continuing resolutions" (CR) to keep the government's doors open during fiscal year 2022, which began on October 1, 2021. The most recent CR was signed into law on February 18 and is scheduled to expire at midnight on March 11. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 6, Feb. 18, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220218_1.html

The top Democrat and Republican on the Senate Appropriations Committee expressed confidence on March 2 that the spending package—which would bundle together 12 fully fleshed-out appropriations bills funding the government for the remainder of fiscal year 2022 (from March 12 through September 30, 2022) while also directing larger outlays to both domestic and defense-related programs during that period—would come together before the impending expiration of the current stop-gap spending measure.

"We worked late last night and again this morning," said Senate Appropriations Committee Chairman Patrick Leahy, D-Vt. "We'll get it done."

The ranking Republican on that same panel—Sen. Richard Shelby of Alabama—also appeared optimistic about the prospects for a deal.

"We haven't sealed anything, but we're moving positively, and if we . . . keep this up, what we [have to] do is find the end game and close this out," Shelby said.

Additional Ukraine, coronavirus cash could hitch a ride: Adding some complication to the late-stage negotiations, however, is a push by the White House and congressional Democrats to add significant supplemental funding for the government's coronavirus response efforts, as well as military and humanitarian aid to Ukraine, to the omnibus spending bill. On March 3, the White House made formal requests of $22.5 billion and $10 billion, respectively, for those efforts.

"I urge the Congress to address these critical and urgent needs as part of a comprehensive government funding bill ahead of the March 11 funding deadline," Office of Management and Budget Acting Director Shalanda Young said in a letter to House Speaker Nancy Pelosi, D-Calif., and other congressional leaders.
URL: https://www.whitehouse.gov/wp-content/uploads/2022/03/COVID-and-Ukraine-Supplemental-Funding-Request-Pelosi.pdf

While congressional Republicans appear receptive to the aid for Ukraine, the coronavirus relief money could face GOP pushback, as Republicans have indicated that there are substantial unspent sums from prior coronavirus relief bills that should be drawn down before an additional appropriation is made. At press time, it remained unclear exactly how these issues would be resolved, both politically and procedurally.

In any event, close observers of the process do not expect there to be a government shutdown if a broader spending package (that is, the omnibus plus the supplemental spending requests) is not sealed before March

11. In that case, it is generally believed that lawmakers would attempt to buy themselves more time by approving another stop-gap continuing resolution.

Brady: Not expecting tax changes in omnibus

To the disappointment of certain stakeholders, hopes appeared to dim this week that Congress would utilize the omnibus spending measure to also reverse, at least temporarily, a change within tax code section 174—originally enacted as part of the Tax Cuts and Jobs Act of 2017 (P.L. 115-97)—that, as of January 1 of this year, requires certain research expenditures to be amortized over a number of years rather than deducted currently.

While acknowledging that the final details of the omnibus are not yet determined and that staving off the section 174 change has “strong support” from both Democrats and Republicans, the ranking Republican on the House Ways and Means Committee, Kevin Brady of Texas, expressed some doubt on March 1 that the omnibus would carry any tax-related provisions.

“To my knowledge, there are no tax provisions at this point; perhaps that changes,” Brady told reporters. (There were indications at press time that congressional leadership and leaders of the taxwriting panels were contemplating the addition of a bipartisan retirement security package.)

In Brady’s view, keeping a section 174 change off of the omnibus spending bill likely also would diminish the prospect of including the clutch of expired and expiring tax provisions known as “tax extenders,” a number of which impact renewable energy and energy-efficiency investments and would be extended and reformed in a more wholesale way in the Democrats’ Build Back Better legislation, which cleared the House last November but remains stalled in the Senate. (See related coverage in this issue for more information on efforts to advance a modified version of that legislation.)

“Tax extenders are the bane of my existence,” Brady noted. “Hopefully we can find some common ground by the end of the year.”

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