**In this issue:**

Senate taxwriters look to tax code to battle rising prices ........ 1
Hungary blocks implementation of OECD global minimum tax ........ 5
House Appropriations panel OKs $1 billion FY 2023 budget bump for IRS ........ 6
Ways and Means Republicans renew push to delay implementation of foreign tax credit regs ........ 8
Finance Committee mulls remote sales tax collection compliance issues post-*Wayfair* ........ 9
Rice's primary loss opens up GOP vacancy on Ways and Means in 2023 ........ 11

## Senate taxwriters look to tax code to battle rising prices

Just days after a hearing with Treasury Secretary Janet Yellen that focused in large measure on currently high inflation levels, a handful of Democrats and Republicans on the Senate Finance Committee outlined separate tax proposals this week that they argue would help tame rising prices. But even though the ideas appear unlikely to advance in the evenly divided Senate, they could be indicative of future policymaking efforts on the panel depending on the outcome of this November's mid-term elections.

**Wyden: forthcoming bill will target 'excess profits' of oil companies**

On the Democratic side of the aisle, Finance Committee Chairman Ron Wyden of Oregon told Politico in a statement on June 14 that he will be rolling out a proposal in the coming weeks that would seek to rein in high gasoline prices by levying a 21 percent tax—that is, effectively doubling the top corporate rate—on the "excess" profits of oil and gas companies with over $1 billion in revenue.

As described, the forthcoming legislation would define "excess profits" as profits over and above a 10 percent return on expenses—an approach that differs from other recent legislative proposals in this arena in that it focuses on margins rather than keying excise tax calculations off of oil prices.

According to Wyden, the proposal also will call for:

- Imposing a 25 percent excise tax on stock repurchases by large oil and gas companies—far above the 1 percent buyback tax included in the House-passed version of Democrats' Build Back Better legislation, which is currently stalled in the Senate—and
- Eliminating the last-in-first-out (LIFO) inventory accounting method, which would trim companies' ability to deduct the cost of their most recently added, and highest-cost, inventory prior to older, and often lower-cost, layers.

According to a Wyden spokesperson, the "excess profits" tax and the stock buyback tax would apply only to large oil and gas companies—again, those with annual revenue over $1 billion. At press time, it remained unclear whether the proposed LIFO elimination would apply generally or only to those same large fossil fuel firms.

In his statement, Wyden said the proposal "would help reverse perverse incentives to price gouge by doubling the corporate tax rate on companies' excess profits, eliminating egregious buybacks, and reducing accounting tricks."

**Republicans unveil Middle-Class Savings and Investment Act**

Across the aisle, a quartet of Finance Committee Republicans—Sens. Charles Grassley of Iowa, John Barrasso of Wyoming, James Lankford of Oklahoma, and Steve Daines of Montana—rolled out the Middle-Class Savings and Investment Act (text, summary), which they said would blunt taxpayer incentives to consume (which push up demand and, by extension, prices) by making a series of changes to the tax code that they argue would encourage savings instead.
**URL:** https://www.grassley.senate.gov/imo/media/doc/117s_-_middle-class_savings_and_investment_act_textpdf.pdf
**URL:** https://www.grassley.senate.gov/imo/media/doc/117smiddleclasssavingsandinvestmentactsummary.pdf

"With today's high inflation, many in the middle class could see most, or even all, of their savings and investment gains wiped out by inflation," Grassley said June 14 on the Senate floor. "Yet, even though a middle-class saver may be losing money in real terms, they are still taxed on all gains and interest income as if inflation doesn't exist."

"To help counter the current bias in favor of consumption, I propose subjecting most middle-class savings and investment income to zero tax," Grassley said.

**Notable incentives:** Among other provisions, the bill calls for:

- Expanding the income levels below which capital gain and dividend income is not subject to tax such that taxpayers at or below the 22 percent income tax bracket would not be taxed on such forms of income. (In 2022, this would mean that taxpayers with combined wage and investment income below $83,350 for single filers and $178,150 for joint filers would not be subject to tax on capital gain and dividend income. Those thresholds would increase over time as income thresholds for the 22 percent bracket move higher with inflation).
- Eliminating the marriage penalty under the 3.8 percent net investment income tax (NIIT) by increasing the income threshold at which the NIIT applies to the investment income of joint filers to $400,000 (from $250,000). The income threshold applicable to single filers would remain at $200,000, but both of the thresholds would be indexed for inflation going forward (a feature that does not apply currently).
- Excluding the first $300 ($600 for joint filers) of interest income from taxation.
- Expanding the so-called "Saver's Credit" by raising the income limits for single and joint filers below which the maximum 50 percent credit rate applies and by increasing the amount of retirement plan contributions which may be counted as part of the credit's computation.

**Paid for by SALT cap extension:** According to Grassley, the proposed savings incentives would be fully paid for by extending the $10,000 annual cap on the deduction for state and local income and property taxes (the "SALT cap") through 2028. As enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), the limitation is scheduled to expire after 2025.

**Near-term action unlikely on either proposal**

Although both Democrats and Republicans, at least rhetorically, are united in their feeling that lawmakers should act to address the current historically high inflation levels—a dynamic that was clearly on display when Treasury Secretary Janet Yellen recently appeared before the two congressional taxwriting committees to discuss the Biden administration's proposed budget for fiscal year 2023—the parties remain far apart on their proposed legislative solutions, making near-term action appear unlikely. (For coverage of the two budget-related hearings, see *Tax News & Views*, Vol. 23, No. 20, June 10, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220610_1.html

Although congressional Republicans have offered few public comments to Wyden's announcement of his forthcoming windfall profits tax proposal, they have remained steadfastly opposed to proposals that they argue would single out the oil and gas industry as a means of lowering gas prices.

"On one hand you and the president both say gas prices are too high, to which I agree," said Wyoming Republican Sen. John Barrasso during the June 7 Finance Committee hearing with Secretary Yellen. "[B]ut on the other you are targeting American energy with taxes, and that's going to result in higher costs for Americans."

For their part, some congressional Democrats were quick to criticize Sen. Grassley's proposal to pay for his plan by extending the SALT deduction limitation beyond 2025.

"It's like low-hanging fruit," to the GOP, said House Ways and Means Committee member Bill Pascrell, D-N.J.

Fellow House taxwriter Don Beyer, D-Va., contended that the Senate GOP proposals to tamp down consumption by encouraging savings were poorly targeted, and failed to recognize the tendency of lower-income households to spend more of their income, often by necessity.

"Your marginal propensity to spending is much higher" among lower-income households, Beyer said.

**House taxwriters split on how to improve the economy for women**

Across the Rotunda, meanwhile, Democrats and Republicans on the House Ways and Means Committee offered conflicting policy prescriptions during a June 15 hearing to discuss "the burnout epidemic and what working women need for a stronger economy."

Taxwriters in both parties agreed with the invited witnesses—all working women who have faced some combination of childcare and eldercare issues—that increasing access to affordable childcare and paid family and medical leave is critical to helping women remain in the workforce while addressing family caregiving responsibilities.

**Democrats back federal solution:** Democratic Ways and Means Committee members argued that these concerns should be addressed at the federal level through provisions such as the childcare and paid family leave programs included in the House-passed version of the Build Back Better Act. They also contended that another Build Back Better provision that would permanently extend enhancements to the child tax credit that were enacted on a temporary basis in 2021's American Rescue Plan would provide an important cushion to help families meet day-to-day living expenses. (The child tax credit enhancements expired at the end of last year.) These and other provisions in the Build Back Better legislation would be offset through increased taxes falling primarily on large corporations and wealthy individuals.

According to Democrats, families seeking help with their caregiving needs should not have to wade through what taxwriter Earl Blumenauer, D-Ore., characterized as a "patchwork" of benefits offered by individual states, localities, and employers.

**Republicans seek flexibility:** Republicans on the panel were skeptical of what they characterized as a "one-size-fits-all" approach to expanding access to childcare and paid family and medical leave in the Build Back

Better Act and argued that Congress should instead find ways to encourage private-sector employers to offer their own programs and provide incentives for families to pursue caregiving options that are best targeted to their needs. They also contended that the proposed tax hikes in the Build Back Better Act would be detrimental to small businesses and exacerbate economic stresses facing families, and they criticized the president's economic policies in general as inflationary.

Several Ways and Means Republicans joined ranking member Kevin Brady, R-Texas, in urging passage of the Protecting Worker Paychecks and Family Choice Act, a discussion draft he unveiled last year that, among other things, would enhance current-law tax incentives for employers offering childcare and paid family leave programs to make it easier for smaller employers to provide these benefits. The proposal also calls creating a new tax-preferred family savings account and enhancing the current-law dependent care flexible spending account rules to help families—particularly those at the lower end of the income scale—pay for caregiving and other expenses.
**URL:** https://gop-waysandmeans.house.gov/wp-content/uploads/2021/05/OMNI_001_xml-003-FINAL.pdf

**Don't forget the Fed**

Another factor worth mentioning in the context of the current economic outlook is the Federal Reserve's role in controlling inflation—something Treasury Secretary Yellen emphasized in her remarks at the taxwriting committee hearings to examine the administration's latest budget blueprint. The Fed this week continued its campaign to address rising prices by announcing that it would increase the Federal Funds Rate by 75 basis points.

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## Hungary blocks implementation of OECD global minimum tax

Frustrating efforts by the European Union to implement Pillar 2 of last year's global tax agreement through the OECD, which would impose a 15 percent minimum worldwide tax on large multinational companies, Hungary exercised its veto during a June 17 vote at a meeting of EU finance ministers in Luxembourg. The move was something of a last-minute surprise, with Hungary's opposition emerging after Poland, which vetoed the last attempt to reach EU unanimity over the minimum tax, indicated earlier in the week that it would support the proposal.

EU directives require approval by all 27 member states for implementation, and French Finance Minister Bruno Le Maire had hoped this vote would finally have all on board. (France holds the presidency of the European Council until the end of June, when the Czech Republic will take the gavel.) However, Hungary's finance minister, Mihály Varga, said that passing the minimum tax at this time would only worsen current economic challenges.

"Interest rates and inflation are rapidly increasing, supply chains are also disrupted," Varga said June 17. "All these unfavorable developments call for significant losses for businesses and households. Under such circumstances, introducing the global minimum tax at such an early stage would cause serious damage to the European economies."

The EU's failure so far calls into question the fate of the Pillar 2 exercise and is uniquely problematic for the Biden administration as it seeks to have the US conform to Pillar 2 this year by raising the rate on its current minimum tax—known as the global intangible low-taxed income (GILTI) regime—to 15 percent and applying GILTI on a country-by-country basis, among other international tax changes. (Those provisions are included in the Build Back Better Act, the roughly $1.75 trillion tax-and-spending package that cleared the House last November but remains stalled in the Senate.) Congressional Republicans—and some Democrats—have raised concerns about having the US implement changes intended to achieve Pillar 2 conformity before other countries do so, arguing that this will put US companies at a competitive disadvantage. House and Senate taxwriters recently discussed issues around the OECD agreement with Treasury Secretary Janet Yellen during hearings to examine the Biden administration's budget blueprint for fiscal year 2023. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 20, June 10, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220610_1.html

GOP lawmakers have in recent months argued that they believe the Biden administration should revisit aspects of the global deal, which they say will disadvantage US multinationals. Although more than 140 countries signed on to the agreement last October, these lawmakers have said they believe there is still time to change course because the implementation timeline is already slipping. The June 17 EU vote will likely strengthen that position in Republicans' eyes.

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## House Appropriations panel OKs $1 billion FY 2023 budget bump for IRS

The House Appropriations Financial Services and General Government Subcommittee on June 16 approved by voice vote a fiscal year 2023 budget package for the government departments and agencies under its jurisdiction that would increase topline funding for the Internal Revenue Service by roughly $1 billion over the level enacted for FY 2022.
**URL:** https://docs.house.gov/meetings/AP/AP23/20220616/114911/BILLS-117-SC-AP-FY2023-FServices.pdf

**Program allocations**

The subcommittee's proposal would allocate a total of $13.6 billion to the Service for the coming fiscal year, up from the $12.6 billion that was enacted for FY 2022 this past March. (For details on the final FY 2022 spending agreement, see *Tax News & Views*, Vol. 23, No. 8, Mar. 11, 2022.) But the measure falls short of the $14.1

billion that the Biden administration requested for the agency in its FY 2023 budget blueprint. (For details on the White House budget blueprint for FY 2023, see *Tax News & Views*, Vol. 22, No. 28, May 29, 2021.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220311_1.html
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210529_1.html

Here's how the proposed $13.6 billion in IRS funding in the subcommittee-approved package would be allocated across the agency's four program areas:

- **Enforcement:** $6.1 billion (FY 2022 enacted: $5.4 billion; FY 2023 White House request: $6.3 billion);
- **Taxpayer Services:** $3.4 billion (FY 2022 enacted: $2.8 billion; FY 2023 White House request: $3.7 billion);
- **Operations Support:** $3.8 billion (FY 2022 enacted: $4.1 billion; FY 2023 White House request: $3.8 billion); and
- **Business Systems Modernization:** $310 million (FY 2022 enacted: $275 million; FY 2023 White House request: $310 million).

The appropriations package does not include a policy rider sought by a few House Democrats that would have prohibited the IRS from using its funds to block efforts by states and localities to implement workarounds to the $10,000 annual cap on the deduction for state and local taxes (SALT) that was enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97). Many Democratic lawmakers whose constituents face high state and local income and property taxes have sought to ease the current-law cap or repeal it outright. But House Ways and Means Committee Chairman Richard Neal, D-Mass., told reporters June 16 that he would prefer that Congress address issues related to the cap through tax legislation rather than through the appropriations process. (The Build Back Better Act, which cleared the House last November, would temporarily raise the cap on the deduction to $80,000, but that measure remains stalled in the Senate.)

**Partisan lightning rod**

Issues around the IRS's budget for taxpayer services and business systems modernization have been in the spotlight over the last few months as the agency struggled to complete work on millions of unprocessed paper income tax returns from tax year 2020 in the wake of COVID-related staffing shortages and facilities shutdowns. In recent hearings, Democrats on the two congressional taxwriting committees have contended that the backlog resulted from decades of congressionally mandated cuts to the agency's budget, while Republicans have argued the problem is largely the result of misplaced priorities rather than a lack of money. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 20, June 10, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220610_1.html

The White House and congressional Democrats also have called for boosting the Service's enforcement budget to enhance the agency's efforts to narrow the "tax gap"—that is, the difference between the amount of tax legally owed to the government and the amount actually collected. Specifically, they contend that years of budget cuts left the Service with a dearth of experienced auditors to handle the increasingly complex returns filed by large corporations, passthrough businesses, and wealthy individuals, leading to a spike in foregone revenue.

The most recent official estimate from the IRS (covering 2011-2013) puts the gross annual tax gap at $441 billion and the net annual tax gap at $381 billion. (The net tax gap is the gross amount less any tax eventually collected through enforcement efforts or late payments.) IRS Commissioner Charles Rettig stated in 2021 that the gap may now equal or exceed $1 trillion a year, and he recently told members of the House Ways and Means Oversight Subcommittee that he still stands by that estimate. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 20, Apr. 16, 2021, and *Tax News & Views*, Vol. 23, No. 9, Mar. 18, 2022.) Rettig has indicated that the Service will release an updated estimate later this summer that will cover the period from 2014 through 2016 and will include projections for 2019. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 14, Apr. 8, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210416_3.html
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220318_1.html
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220408_1.html

Addressing the proposed increase in the Service's enforcement budget, Appropriations Committee Chair Rosa DeLauro, D-Conn., stated at the subcommittee mark-up that "[w]e are working to finally crack down on big corporations and the wealthy who are not paying their fair share of taxes."

**Next steps**

The measure now heads to the full Appropriations Committee for consideration. A mark-up by that panel has not yet been scheduled.

Across the Rotunda, members of the Senate Appropriations Financial Services and General Government Subcommittee have not yet released their own proposed top-line spending numbers for the IRS.

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## Ways and Means Republicans renew push to delay implementation of foreign tax credit regs

Republicans on the House Ways and Means Committee sent a letter to Treasury Secretary Janet Yellen on June 16 renewing their call for a delay in implementing foreign tax credit final regulations that were issued late last December and took effect on March 7 of this year.
**URL:** https://gop-waysandmeans.house.gov/wp-content/uploads/2022/06/Letter-to-Sec.-Yellen-on-FTC-Regs-2022.06.1635.pdf

Business organizations have raised numerous concerns with the final regulations since January and have requested a one-year delay in their implementation. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 16, May 6, 2022.) Under questioning from members of the House Ways and Means Committee and the Senate Finance Committee during two recent hearings to examine the Biden administration's FY 2023 budget blueprint, Yellen said she does not expect that Treasury will extend the implementation date; however, she said that some changes to the final regulations could be applied retroactively—a response that left some taxwriters dissatisfied. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 20, June 10, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220506_3.html
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220610_1.html

In their letter, Ways and Means Republicans requested that implementation date be pushed to January 1, 2023, explaining that unresolved questions about the new rules continue to present challenges for taxpayers.

"Treasury's delay in providing necessary clarifying guidance has levied undue burdens on taxpayers attempting to comply with the final regulations. Lack of clarity in the final regulations has undermined the integrity of public financial reporting and affected investment decisions. These problems are compounded each fiscal quarter that guidance is delayed and businesses and financial auditors try to guess Treasury's final landing spot," the letter said.

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## Finance Committee mulls remote sales tax collection compliance issues post-*Wayfair*

Four years after the Supreme Court ruled in *South Dakota v. Wayfair* that states could require remote sellers with no physical nexus to collect and remit sales taxes on in-state transactions, the Senate Finance Committee on June 14 held a hearing looking at the impact the decision has had on small businesses and heard numerous recommendations about ways to limit the complexity and costs associated with complying with the decision.
**URL:** https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf

**'Accounting Houdinis'**

Both Chairman Ron Wyden, D-Ore., and top Republican Mike Crapo of Idaho advocated greater consistency across states—including on thresholds for determining when businesses become responsible for sales tax collection—and sought to understand from the small businesses who testified at the hearing the most costly and burdensome aspects of compliance they have experienced since 2018.

Wyden noted that small-business executives have had to become “accounting Houdinis” to meet the requirements of the District of Columbia and the 45 states that impose sales taxes—not to mention the thousands of individual jurisdictions within states.

**Recommendations**

Witnesses John Hennessey of New Hampshire-based Littleton Coin Company and Michelle Huie of Montana’s VIM & VIGR Compression Legwear agreed that, in addition to uniformity around nexus criteria, a single sales tax rate per state would be a key improvement for small businesses, as would uniform product classifications across and within states, and protection from retroactive tax bills.

**Reducing complexity:** Huie walked the committee through the compliance process she has faced over the past four years—despite operating in a state with no sales tax. That process, she explained, includes (1) determining that her business met the nexus threshold in 22 states (some with hundreds of jurisdictions), (2) registering with the revenue departments of each, (3) collecting taxes from customers, and (4) remitting payment to each state at varying time intervals. To help alleviate the out-of-pocket costs for businesses like hers, including the costs for technology necessary to track and comply with the laws of all the jurisdictions, Huie also recommended a centralized clearinghouse for e-commerce companies to register and pay sales tax across the states.

**Liability protection:** Because of the complexity involved in complying with the decision, Hennessey further recommended that small businesses receive liability protection from state penalties for improper payments if the company has made a good-faith effort to comply with the applicable rules for sales tax collection.

**Streamlined Sales Tax project:** Craig Johnson of the Streamlined Sales Tax Governing Board (SSTGB), which represents 24 member states that have simplified their sales tax systems through conformity with a Streamlined Sales and Use Tax Agreement, told the panel that his organization provides a central registration system, certain liability protections, and common definitions that can alleviate some of the burden for companies and that it is looking at developing a central filing portal. These solutions, of course, do not address compliance issues in the 21 states that have not joined the project.

In response to questions from Crapo and Sen. Ben Cardin, D-Md.—who also chairs the Senate Committee on Small Business and Entrepreneurship—Johnson and Diane Yetter, a board member of the SSTGB’s Business Advisory Council, agreed that it would be helpful for Congress to incentivize states to join the Streamlined Sales Tax project, as this would provide additional consistency for taxpayers but allow states to retain their sovereignty.

**Eliminating retroactive collection requirements:** Chairman Wyden and Senate taxwriter Maggie Hassan, D-N.H., advocated for the Online Sales Simplicity and Small Business Relief Act of 2019 (S. 2350), a proposal they introduced in the last Congress with their delegation colleagues Sens. Jeanne Shaheen, D-N.H., and Jeff Merkley, D-Ore., that sought to prohibit states from retroactively imposing sales tax collection duty on remote sellers. (The senators have not reintroduced the legislation during the current Congress.)

**URL:** https://www.congress.gov/bill/116th-congress/senate-bill/2350/text

**GAO report**

James McTigue Jr., of the Government Accountability Office, which issued a report June 14 titled *Remote Sales Tax: Initial Observations on Effects of States' Expanded Authority* (GAO-22-106016), told the committee that remote sales tax now accounts for about one-third of sales tax revenues in the 45 states and District of Columbia that have a sales tax.
**URL:** https://www.gao.gov/products/gao-22-106016

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## Rice's primary loss opens up GOP vacancy on Ways and Means in 2023

House Ways and Means Committee Republicans are looking at another opening on their roster in 2023 after taxwriter Tom Rice of South Carolina lost his June 14 primary race to state Rep. Russell Fry.

Rice was elected to his first term in Congress in 2012 and joined the Ways and Means Committee in 2015. He became ranking member of the Oversight Subcommittee—his first leadership post on Ways and Means—this past January.

Rice's primary loss creates the second known GOP vacancy on the taxwriting panel when the 118th Congress convenes next January. Ranking member Kevin Brady, R-Texas, announced in April that this would be his final term in office.

Ways and Means Committee Democrats face several changes to their own line-up next year: Democratic taxwriters who have opted not to seek re-election to Congress in 2022 include Reps. Ron Kind of Wisconsin, Tom Suozzi of New York, and Stephanie Murphy of Florida.

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