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TCJA, Pillar Two, Inflation Reduction Act dominate discussion at Ways and Means hearing on White House budget plan

Republicans and Democrats on the House Ways and Means Committee stuck to their entrenched partisan positions as they sparred over the future of a host of temporary provisions in the Tax Cuts and Jobs Act of 2017 that are scheduled to expire at the end of 2025, the path forward for the global tax pact being advanced through the OECD, and the economic impact of the Inflation Reduction Act of 2022 during an April 30 hearing to discuss the Biden administration’s fiscal year 2025 budget proposals with Treasury Secretary Janet Yellen.

TCJA: Middle-class taxes and Biden's \$400,000 bright line

Ways and Means Committee Chairman Jason Smith, R-Mo., and most other Republicans on the panel pressed Secretary Yellen—the sole witness at the hearing—about a recent social media post by President Biden in which he stated that the Tax Cuts and Jobs Act (TCJA, P.L. 115-97), the Trump administration's legacy tax package that cleared the House and Senate and was signed into law in 2017 without any Democratic support, "is going to expire" and will "stay expired" if he is re-elected.

URL: <https://twitter.com/JoeBiden/status/1782904787966558608>

URL: <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>

Call and response: The committee's Republicans cast the president's statement as evidence that he intends to let the law's temporary tax relief provisions on the individual side of the code—such as reduced income tax rates, the expanded standard deduction, the increased child tax credit, and the 20 percent deduction for certain passthrough business income—sunset in their entirety after 2025, which would result in a significant tax hike for taxpayers across the income spectrum and would seem to violate the president's pledge not to increase taxes on households with income of less than \$400,000 (although some might argue that since these changes were scheduled to take effect when the original law was passed in 2017, allowing them to expire as enacted is not itself a tax increase).

As GOP taxwriters repeated variations on this argument over the course of the four-hour hearing, Yellen consistently responded with variations on the mantra that President Biden has stated his principles for addressing the expiring TCJA tax provisions and intends to work with Congress to ensure that less affluent taxpayers will be held harmless from tax increases after those provisions lapse.

In what was perhaps her most expansive version of that answer, Yellen explained to Rep. Michelle Fischbach, R-Minn., that "[t]here will be a negotiation" between the president and Congress over what to do when the TCJA temporary tax cuts expire, and in that negotiation, he "will oppose any tax increases on families making less than \$400,000, [while] at the same time, he will oppose keeping in place benefits that went to the wealthy."

Yellen also clarified in an exchange with Rep. Brian Fitzpatrick, R-Pa., that Biden will "work with Congress to determine how to offset the cost of tax relief for low- and middle-income taxpayers."

Some uncertainty over 199A: As part of that back-and-forth between the panel's Republicans and the Treasury secretary, Florida GOP taxwriter Vern Buchanan asked Yellen whether the administration proposes to increase taxes on owners of passthrough businesses.

Yellen replied that President Biden "is committed to ensuring that no families—including those with passthrough businesses—will see their taxes increase if they make less than \$400,000," adding that "as a matter of fairness," the wealthiest individuals and large corporations would see their taxes go up.

Yellen was less definitive, however, when Buchanan asked specifically whether the president would support full repeal of the section 199A deduction for passthrough business income (with no carve-out for middle-class taxpayers) if he is elected to a second term.

“I need to get back to you on that,” she said.

Buchanan called the issue “critically important,” noting that under the TCJA, “[w]e went from corporate rates [of] 35 percent to 21 percent, but you can’t have passthrough rates at 40 percent”—a reference to the pre-TCJA top individual rate of 39.6 percent that congressional Democrats and President Biden would like to see reinstated.

“It makes no sense . . .,” Buchanan said.

Corporate rate increase = Middle-class tax hike?: The TCJA’s 21 percent corporate tax rate was enacted on a permanent basis and thus will not directly be on the menu of expiring provisions that the next Congress and presidential administration will have to address in 2025. President Biden’s fiscal year 2025 budget blueprint, however, proposes to increase the corporate rate to 28 percent—a move that Republican taxwriters Kevin Hern of Oklahoma and Blake Moore of Utah contended would be a *de facto* middle-class tax increase since corporations would pass at least some of that cost on to consumers in the form of higher prices. Moore also alluded to statistics from the nonpartisan Joint Committee on Taxation (JCT) staff that he said show that the economic impact of hiking the corporate rate to 28 percent would be borne primarily by households with income of less than \$500,000.

Yellen rejected that contention, commenting in an exchange with Moore that the economic analyses she has seen show “that the TCJA . . . was a regressive tax cut that disproportionately benefited the wealthy and large corporations, and the corporate tax cut enriched corporate shareholders at the expense . . . of middle-class families.” Moreover, she said, the TCJA “promised an investment boom that never materialized.”

Democrats decry TCJA’s deficit impact: The panel’s Democratic members, meanwhile, agreed with Yellen that the TCJA primarily benefits large corporations and upper-income individuals and they faulted Republicans—who controlled the House, Senate, and the White House in 2017—for passing a largely unpaid-for tax bill.

Democratic taxwriter Lloyd Doggett of Texas argued that the GOP’s current push to extend the Trump-era tax cuts would drive up the federal debt by some \$3.5 trillion, according to the nonpartisan Congressional Budget Office.

Rep. Mike Thompson, D-Calif., noted that the lack of pay-fors in the TCJA—the legislation as enacted was estimated to reduce federal receipts by \$1.5 trillion over 10 years—has had an inflationary effect on the economy. He asked Secretary Yellen to elaborate on “some responsible ways” that Congress could offset the cost of any TCJA extensions in 2025.

Yellen replied that the administration's latest budget proposal includes a number of revenue-raising provisions that would be appropriate. In addition to the proposed increase in the corporate tax rate to 28 percent—a level that she said would still represent a tax cut relative to pre-TCJA law—she noted that the president has called for increasing the excise tax on stock buybacks from the current 1 percent to 4 percent, increasing the corporate alternative minimum tax from 15 percent to 21 percent, imposing a new minimum tax on income and unrealized gains of taxpayers with wealth greater than \$100 million, and enacting tax code changes that would align the US with the OECD's Pillar Two global corporate minimum tax agreement.

No consensus on OECD tax pact

That emerging OECD global tax pact likewise stoked partisan tensions among House taxwriters during the hearing. The agreement, which to date has been signed by nearly 140 countries, seeks to reallocate some of the taxing rights of countries based on where income is earned (Pillar One) and to ensure that certain large multinational corporations are paying a minimum tax rate of 15 percent globally (Pillar Two).

Republicans on the panel were particularly critical of Pillar Two, arguing that it is a revenue loser for the US and amounts to a surrender of US taxing authority to foreign competitors while Democrats, siding with Secretary Yellen, maintained that it is essential in ending a global "race to the bottom" on corporate taxation.

Revenue impact: Rep. Mike Kelly, R-Pa., cited an estimate from the JCT staff showing that Pillar Two could cost the US fisc \$122 billion in lost revenue over the next decade if the rest of the world moves ahead with the agreement and the US stays on the sidelines, and that even if the US implements the global agreement in 2025, the domestic loss still could amount to \$56.5 billion. (For prior coverage of the JCT release, see *Tax News & Views*, Vol 24, No, 25, June 23, 2023.)

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230623_1.html

Kelly asked Yellen to explain how the US would replace the lost revenue attributable to Pillar Two.

Yellen replied that the JCT's projected \$122 billion revenue loss was calculated based on "an extreme negative" scenario. "In the most likely cases," she said, "the outcome in terms of tax collections would be positive, not negative."

Treatment of nonrefundable tax credits: Chairman Smith and other Republican taxwriters also slammed Pillar Two for providing more favorable treatment for refundable tax credits, which are more common in jurisdictions outside the US, over nonrefundable credits—including the research credit—which are more prevalent in the US.

Secretary Yellen commented in an exchange with Smith that the US is engaged in negotiations with other countries participating in the tax pact to ensure favorable treatment for the R&D credit and that she was "hopeful these negotiations will be successful." She also noted that negotiators have already secured favorable tax treatment for the clean energy credits enacted in the Inflation Reduction Act of 2022 and for the low-income housing tax credit.

Dealing with bad actors: Rep. Michelle Steel, R-Calif., asked Yellen how negotiators of the OECD agreement can be sure whether China would sign on to Pillar Two and, if it did, whether it would play by the rules and impose the 15 percent minimum tax on its multinational enterprises.

Yellen explained that Pillar Two includes an enforcement mechanism—the undertaxed profits rule—that allows compliant countries to impose a top-up tax on multinational entities operating in their jurisdictions that are based in countries that are not imposing the minimum tax.

“If China imposes the tax, they can collect the revenue,” Yellen said. If it doesn’t, “we’re going to collect the tax revenue and we’re going to impose the tax on Chinese firms. This works to our advantage—not China’s.”

Oklahoma Republican Kevin Hern asked Yellen if Pillar Two would simply replace international competition over tax rates with “subsidy warfare” in which participating countries adopt the corporate global minimum rate but then enact new incentives to minimize its impact on their taxpayers.

Yellen replied that she was not aware of any “broad-based” effort to circumvent the minimum tax but noted that any such action would be a source of concern.

US implementation: Hern also told Yellen that Pillar Two will never be approved by a Republican-controlled Ways and Means Committee—an assertion that prompted Democratic taxwriter Suzan DelBene of Washington to ask the Treasury secretary to explain the implications for the US if it does not adopt the agreement.

Yellen replied that this is a global agreement, and that the US has “argued from the beginning that Pillar Two is good for the entire world.” Other OECD nations, she said, “would see it as a failure on our part if we don’t adopt it ourselves.”

“It does undermine our ability to exhibit leadership with our allies,” she added.

Inflation Reduction Act tax credits

The notion of US tax policy potentially providing economic advantages to the nation’s adversaries—notably, China—also fueled much of the GOP’s criticism of the Inflation Reduction Act of 2022 (P.L. 117-169), President Biden’s marquee tax legislation which moved through Congress with only Democratic support and includes a host of tax credits for domestic manufacturing and clean energy production that many Republicans in Congress would like to pare back or eliminate.

URL: <https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc>

Republicans poke holes in ‘foreign entities of concern’ rules: Chairman Smith, for example, contended that Treasury Department regulations implementing the Inflation Reduction Act’s \$7,500 tax credit for clean vehicles created “loopholes” related to the sourcing of battery components that will allow those credits to flow to companies with ties to foreign entities of concern, including China. Moreover, he said, the Treasury Department’s standards for what constitutes a foreign entity of concern under the clean vehicle credit rules

are more “China-favorable” than standards adopted by the US Commerce Department for credits related to production of semiconductors under the Chips and Science Act of 2022 (P.L. 117-167).

[URL: https://www.congress.gov/117/plaws/publ167/PLAW-117publ167.pdf](https://www.congress.gov/117/plaws/publ167/PLAW-117publ167.pdf)

Yellen countered that the Treasury and Commerce Department standards are “similar” and said that the clean vehicle rules include “very strong restrictions” that are phasing in this year and next year, which will preclude companies from receiving the credit if certain component parts are sourced in foreign entities of concern. (For its part, the IRS on May 3 announced the release of final regulations that, among other things, provide rules regarding the critical mineral and battery components requirements for the new clean vehicle credit—including standards for qualified manufacturers of new clean vehicles to determine if the battery components and applicable critical minerals contained in a vehicle battery are foreign entity of concern-compliant.)

[URL: https://www.irs.gov/newsroom/irs-releases-final-guidance-for-certain-clean-vehicle-credits-under-the-inflation-reduction-act](https://www.irs.gov/newsroom/irs-releases-final-guidance-for-certain-clean-vehicle-credits-under-the-inflation-reduction-act)

[URL: https://www.federalregister.gov/public-inspection/2024-09094/clean-vehicle-credits-transfer-of-credits-critical-minerals-and-battery-components-and-foreign](https://www.federalregister.gov/public-inspection/2024-09094/clean-vehicle-credits-transfer-of-credits-critical-minerals-and-battery-components-and-foreign)

Smith replied that the Treasury Department “must push back against foreign adversaries” and noted that his panel recently marked up two bills intended to tighten eligibility requirements for the clean vehicle credit to close what he contends are gaps in current law. (The End Chinese Dominance of Electric Vehicles in America Act and the Stop Executive Overreach on Trade Agreements Act both cleared the committee along party lines on April 17. For additional details, see *Tax News & Views*, Vol. 25, No. 16, Apr. 19, 2024.)

[URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7980-Bill-Text.pdf](https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7980-Bill-Text.pdf)

[URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7983-bill-text.pdf](https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7983-bill-text.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240419_4.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240419_4.html)

In a subsequent exchange with Republican taxwriter Carol Miller of West Virginia, who sponsored the End Chinese Dominance on Electric Vehicles in America Act, Yellen said that current restrictions on foreign entities of concern will “surely curtail and almost prevent entirely” participation of Chinese companies in producing credit-eligible clean vehicle battery components.

When Miller asked if Treasury is aware that China is taking advantage of various US tax credits to “deepen its influence on domestic manufacturing industries,” Yellen replied that the department is doing all it can as it implements the Inflation Reduction Act to “strengthen” US supply chains and make them “less vulnerable” to China.

Democrats tout economic benefits: Throughout the hearing, Secretary Yellen and Democratic taxwriters maintained that the Inflation Reduction Act has been a boon to the US economy, citing increased domestic investment stemming from the legislation’s various clean energy tax incentives.

In an exchange with California Democrat Mike Thompson, Yellen stated that the Inflation Reduction Act is “catalyzing investments in clean energy technologies, strengthening supply chains, and creating new jobs.” She added that the prevailing wage and apprenticeship requirements to unlock certain bonus tax credits that are available under the legislation are helping to “ensure that the jobs that are being created are good jobs.”

Yellen also told Thompson and Ways and Means Committee Democrat Danny Davis of Illinois that these clean energy investments are in many cases being made in areas of the US that have not seen a high level of economic activity in recent years—including low-income urban and rural communities as well as communities whose economies had relied on now-shuttered coal mines and fossil fuel plants.

IRS mandatory funding stream

Yellen and the panel's Democrats also touted the increased revenue collections resulting from new IRS enforcement programs and technology enhancements that were made possible with Inflation Reduction Act funding.

As enacted, the Inflation Reduction Act provided for an \$80 billion mandatory funding infusion for the IRS—through 2032—to enhance its compliance programs, modernize its information technology systems, and overhaul its taxpayer services operations. Some \$20 billion of that amount has since been clawed back as part of recent government funding deals that President Biden reached in 2023 with then-House Speaker Kevin McCarthy, R-Calif., and in 2024 with current Speaker Mike Johnson, R-La. The White House budget blueprint proposes to backfill that reduction by making the mandatory funding stream available through 2034—that is, for the additional years covered by the 10-year budget window in the fiscal year 2025 blueprint. In total, the budget proposes that the agency receive \$104.3 billion in mandatory funding through 2034.

Mike Thompson and New Jersey Democratic taxwriter Bill Pascrell of New Jersey asked Yellen about how the IRS plans to deploy the mandatory funding stream it received under the Inflation Reduction Act to crack down on tax-avoidance activities by large corporations, complex partnerships, and wealthy individuals.

Responding to a question from Pascrell, Yellen said the IRS is already using its new funding to hire specialized auditors, lawyers, accountants, and data scientists to unwind complex returns filed by the most sophisticated, high-dollar taxpayers that deliberately are underpaying their taxes—or in some cases, not paying them at all. She noted that one recent enforcement initiative focusing on noncompliance among taxpayers with income greater than \$1 million has captured some \$500 million in what had been forgone revenue.

On the technology front, Yellen note in an exchange with Democrat Suzan DelBene of Washington that the funds are enabling the IRS to launch initiatives using artificial intelligence to help its enforcement team sift through returns of high-wealth individuals and complex partnerships and identify likely candidates for audits.

As she discussed the agency's expanded compliance initiatives and compliance-related technological enhancements, Yellen also pointed out to the panel that audit rates among taxpayers with income of less than \$400,000 have remained unchanged relative to historic levels, in line with a provision in the Inflation Reduction Act that forbids the IRS from using the new funds to increase audit rates among this segment of the tax base.

IRS promises heightened audit focus on corporate, high-wealth taxpayers: In a related development, the IRS on May 2 released an update and a supplement to its Inflation Reduction Act strategic operating plan in which

it highlights how it has deployed the new funding since the legislation was enacted in 2022 and lays out the agency's future plans to enhance its enforcement and compliance activities, modernize its foundational technology, and improve the tools available to aid IRS employees in assisting taxpayers.

URL: <https://www.irs.gov/pub/irs-pdf/p3744b.pdf>

URL: <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>

Notable highlights on the compliance side indicate that the IRS intends to use the mandatory funding stream to:

- Nearly triple audit rates on large corporations with assets over \$250 million to 22.6 percent in tax year 2026, up from 8.8 percent in tax year 2019;
- Increase audit rates by nearly ten-fold on large, complex partnerships with assets over \$10 million, jumping from 0.1 percent in 2019 to 1 percent in tax year 2026; and
- Increase audit rates by more than 50 percent on wealthy individual taxpayers with total positive income over \$10 million, climbing from an 11 percent coverage rate in 2019 to 16.5 percent in tax year 2026.

Audit rates for small businesses and taxpayers with income of less than \$400,000 will remain unchanged relative to historic levels, the IRS confirmed.

Echoing Secretary Yellen's comments to Ways and Means Committee members, the updated plan confirms that the increased audit scrutiny will be powered by ongoing efforts at the IRS to hire and train specialized compliance personnel and modernize its information technology.

On the customer service side, the IRS indicated that it plans to, among other things, enhance its in-person and on-line services, accelerate digitalization of nontax forms, and simplify standard notices, all in an effort to make it easier for taxpayers to interact with the agency.

In a news release accompanying the updated strategic plan, IRS Commissioner Daniel Werfel noted that recissions to the mandatory spending amounts that were enacted this year have created "funding cliffs" for the agency. If the IRS is to maintain its efforts to ensure equal treatment of taxpayers across the income spectrum and transform its customer service culture, he said, Congress needs to approve the extended mandatory funding proposed in the administration's budget blueprint.

"This funding will ensure the IRS can continue its transformation efforts that we have outlined in the updated Strategic Operating Plan," Werfel said. "We need to continue working to make more improvements in taxpayer service, modernize technology, and ensure those with complex returns, including certain high-income individuals, large corporations, and complex partnerships, pay the taxes they owe."

— Michael DeHoff
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Final regulations address transferability of credits

The Treasury Department and the Internal Revenue Service this week issued final regulations (T.D. 9993) under section 6418, which was added to the tax code under the Inflation Reduction Act of 2022 (P.L. 117-169) and provides that “eligible taxpayers” may elect to transfer (*i.e.*, sell) certain credits to unrelated taxpayers rather than using the credits against their federal income tax liabilities.

URL: <https://www.taxnotes.com/research/federal/treasury-decisions/final-regs-provide-guidance-transfer-certain-credits/7jgd4>

URL: <https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc>

The regulations finalize, with limited modifications, regulations proposed under section 6418 (REG-101610-23) and removed the temporary regulations (T.D. 9975) setting forth mandatory information and registration requirements for transfer elections that were released on June 14, 2023.

URL: <https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-provide-guidance-on-transfer-of-certain-credits/7gw63>

URL: <https://www.taxnotes.com/research/federal/treasury-decisions/temporary-regs-provide-prefiling-registration-requirements-for-some-credit-elections/7gw62>

The final regulations are effective on July 1, 2024. Specifically, the final regulations would apply to taxable years ending on or after April 30, 2024, and, except for Treasury Reg. section 1.6418-4 (rules regarding pre-filing instructions and elections), taxpayers may choose to apply the final regulations to taxable years ending before April 30, 2024, provided the taxpayers apply the rules in their entirety and consistently.

URL: <https://www.taxnotes.com/research/federal/cfr26/1.6418-4>

Find out more

A new alert from Deloitte Tax LLP describes the provisions in the final regulations.

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240503_2_suppl.pdf

- Michael DeHoff
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Proposed regulations address stock buyback excise tax

The Treasury Department and the Internal Revenue Service recently issued proposed regulations (REG-115710-22 and REG-118499-23) implementing new section 4501, which imposes an excise tax of 1 percent on repurchases of stock by certain publicly traded corporations beginning after December 31, 2022. The excise tax was enacted under the Inflation Reduction Act of 2022 (P.L. 117-169).

[URL: https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-issued-corporate-stock-buyback-excise-tax/7jds7](https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-issued-corporate-stock-buyback-excise-tax/7jds7)

[URL: https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-outline-reporting-payment-stock-buyback-excise-tax/7jds8](https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-outline-reporting-payment-stock-buyback-excise-tax/7jds8)

[URL: https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc](https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc)

The new guidance largely adopts the provisions in Notice 2023-2 (released in December of 2022), which announced the government’s intention to issue proposed regulations addressing the application of the excise tax and provided taxpayers with interim guidance until those proposed regulations were published.

[URL: https://www.taxnotes.com/research/federal/irs-guidance/notices/interim-guidance-issued-for-stock-buyback-tax/7fhtn](https://www.taxnotes.com/research/federal/irs-guidance/notices/interim-guidance-issued-for-stock-buyback-tax/7fhtn)

The proposed regulations also provide a revised “funding rule” for publicly traded, foreign-parented groups and set a new expected deadline for the information reporting and payment of the excise tax, tied to the later of the date of release of final regulations or taxpayers’ year-ends.

Find out more

A new alert from Deloitte Tax LLP provides an overview of the proposed regulations.

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240503_3_suppl.pdf](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240503_3_suppl.pdf)

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Senate takes up five-year FAA reauthorization ahead of May 10 deadline

The Senate this week began consideration of a bipartisan, bicameral legislative package that would reauthorize the Federal Aviation Administration (FAA) and the related excise taxes that help fund its operations through September 30, 2028; but with a number of senators demanding amendments to the “must-pass” bill—including some that are unrelated to aviation policy—final congressional action on the deal is not expected until closer to (or perhaps even after) May 10, when the agency’s current authorization is scheduled to lapse.

FAA Reauthorization Act of 2024

The FAA Reauthorization Act of 2024 (H.R. 3935: text, section-by-section summary) is the result of months of negotiations between Senate Commerce Committee Chair Maria Cantwell, D-Wash., and ranking Republican Ted Cruz of Texas, as well as House Transportation and Infrastructure Committee Chairman Sam Graves, R-Mo., and ranking Democrat Rick Larsen of Washington.

[URL: https://www.commerce.senate.gov/services/files/070A7E5D-A95A-42D8-99D2-60DEA347EE32](https://www.commerce.senate.gov/services/files/070A7E5D-A95A-42D8-99D2-60DEA347EE32)

[URL: https://www.commerce.senate.gov/services/files/E4B4E5F6-AA83-4F9E-B21C-0F03F95F5FE0](https://www.commerce.senate.gov/services/files/E4B4E5F6-AA83-4F9E-B21C-0F03F95F5FE0)

The sprawling FAA bill is long on changes to aviation policy, including making upgrades to the air traffic control system and mandating consumer refunds in certain cases when flights are disrupted, but does not make any substantive changes to existing aviation tax policy. Rather, the legislation would simply extend the current-law excise taxes on fuel and tickets, along with expenditure authority from the airport and airway trust fund, through September 30, 2028.

Senators seek to attach other legislative priorities

The Senate this week cleared the first procedural hurdles to proceed to the bill, and voted 81-10 on May 2 to begin debate on the package.

However, with fiscal year 2024 appropriations and a Ukraine-Israel-Taiwan foreign aid package finally signed into law, a number of senators are viewing the FAA bill as one of the last “must-pass” measures to move through Congress before the November 2024 elections and are seeking to attach other—sometimes unrelated—legislative priorities.

Bills related to children’s online safety, cannabis banking, credit card competition, and a reauthorization of a program that compensates victims of nuclear radiation are among the more than 20 issues on which certain senators have been pushing for amendment votes. In addition, some aviation-related issues are also proving to be sticking points. Most notably, the four senators representing Maryland and Virginia are pushing hard to strip language from the bill that would expand the number of landing slots at Ronald Reagan National Airport—a provision they contend would exacerbate congestion at an already over-crowded facility, but which Sen. Cruz and others argue is important to facilitate easier air travel to the airport closest to the nation’s capital.

“This is, to use the oft-invoked analogy, one of the last trains leaving the station,” said Sen. Cruz, who is helping to manage the bill on the Senate floor. “And so everyone’s trying to get on board.”

Wyden-Smith tax package not on the passenger list: But absent so far in talks around potential amendments to the FAA package is the Tax Relief for American Families and Workers Act (H.R. 7024)—the bipartisan tax package that was negotiated by Senate Finance Committee Chairman Ron Wyden, D-Ore., and House Ways and Means Committee Chairman Jason Smith, R-Mo., that was unveiled earlier this year.

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

Among other things, the Wyden-Smith deal 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 (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; and
- Clamp down on improper employee retention tax credit (ERTC) claims.

The measure cleared the House on January 31 by a vote of 357-70. It remains stuck in the Senate, however, where the vast majority of GOP lawmakers seem to have aligned with Finance Committee ranking Republican Mike Crapo of Idaho in opposing its 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 critics believe would disconnect the credit from work. (Crapo and his Republican colleagues also have voiced assorted other criticisms of the legislation. For additional details, see *Tax News & Views*, Vol. 25, No. 15, Apr. 19, 2024.)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240419_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240419_1.html)

Without a firm demonstration of GOP support that would ensure the tax bill would garner at least 60 votes to clear procedural hurdles in the chamber, Senate Majority Leader Charles Schumer, D-N.Y., has thus far been reluctant to bring the measure to the floor.

Presumably, those dynamics explain much of the reason that members—so far, at least—have not been clamoring to attempt to attach the Wyden-Smith deal to the Senate FAA package.

A spokesperson for Sen. Wyden announced just before press time that Wyden intends to file an amendment the week of May 6 to attach the House-approved tax bill to the FAA measure. It is unclear, however, if that amendment will receive a floor vote.

Bumping against the deadline

At press time, Senate leaders were still attempting to secure a unanimous consent agreement on a discrete set of amendment votes and a time agreement on debate prior to a vote on final passage. Already, consideration of the measure will bleed into the week of May 6, and there is a real possibility that without an agreement from all 100 senators to expedite consideration, it will be impossible to deliver the bill (which still needs House passage) to President Biden's desk prior to May 10, when the FAA's current short-term authorization is scheduled to lapse. Senate Republican Whip John Thune of South Dakota was among the senators to indicate that the chamber may need to pass a very short-term patch in the coming week to prevent a lapse of FAA authorities.

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IRS releases draft Form 1099-DA

The Internal Revenue Service recently released the first draft of Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, which allows digital asset brokers to report proceeds and basis (where relevant) for dispositions of digital assets.

URL: <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>

Notably, the form has a tax-year date of 2025 (*i.e.*, it is the 2025 Form 1099-DA), indicating 2026 reporting of 2025 transactions, consistent with the proposed section 6045 digital asset reporting regulations. Also consistent with the proposed regulatory effective dates, the form recipient instructions similarly reflect a cost basis tracking date of January 1, 2023, with cost basis reporting required for digital assets sold from January 1, 2026.

URL: <https://www.govinfo.gov/content/pkg/FR-2023-08-29/pdf/2023-17565.pdf>

Find out more

A new alert from Deloitte Tax LLP discusses key details of the draft form.

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240503_5_supplA.pdf

— Michael DeHoff
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GOP House taxwriting leaders announce TCJA ‘tax teams’

House Ways and Means Committee Chairman Jason Smith, R-Mo., and Tax Subcommittee Chairman Mike Kelly, R-Pa., announced April 24 that they have formed 10 “tax teams” of GOP taxwriters to “study key tax provisions from the [Tax Cuts and Jobs Act] that are set to expire in 2025 and identify legislative solutions that will continue to help families, workers, and small businesses. . . .”

Specific areas of tax policy that have been identified for review include: American Manufacturing, Working Families, the American Workforce, Main Street, the New Economy, Rural America, Community Development, Supply Chains, US Innovation, and Global Competitiveness. A complete list of team leaders and membership rosters is available from the Ways and Means Committee.

URL: <https://waysandmeans.house.gov/ways-means-chairman-smith-and-tax-subcommittee-chairman-kelly-announce-tax-teams-to-avert-2025-tax-cliff/>

The announcement did not define the respective purviews the 10 teams, so it is unclear to what extent their inquiries may become duplicative (for example, without clear jurisdictional lines it is not hard to imagine the American Workforce and Working Families teams examining overlapping issues). Also unclear from Smith and Kelly’s announcement is what process the teams are expected to follow (such as soliciting input from

stakeholders, holding private listening sessions, or holding public hearings), whether the teams are charged with producing specific deliverables (such as a report on their findings or recommendations for legislative proposals that Republicans should pursue in 2025), whether there will be any milestone requirements for the teams to provide updates on their progress, and whether any updates and deliverables will be made public.

The TCJA tax teams are likely to serve at least in part as an opportunity for House Republican taxwriters—many of whom were not on the Ways and Means Committee and some of whom were not even in Congress when the legislation was enacted—to familiarize themselves with the intricacies of its provisions.

Crapo hints at mirror effort for Finance Committee Republicans

Across the Capitol, Senate Finance Committee ranking member Mike Crapo, R-Idaho, told reporters May 1 that he is thinking about empaneling a set of working groups on TCJA issues for GOP taxwriters in his chamber.

Crapo declined to provide specifics on how those working groups might be organized, however. When asked for details, his only response was: “More to come.”

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