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

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

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

Tax Relief for American Families and Workers Act

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

- Reverse (through 2025) certain business-unfriendly tax provisions related to the treatment of research expenditures, bonus depreciation, and the deduction for business interest expenses that were included in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) but did not take effect until several years after that measure was enacted;
  URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf
- Enhance the child tax credit;
- Expand the low-income housing tax credit;
- Relieve double-taxation on investments between the US and Taiwan; and
- Provide tax relief for victims of certain federally declared disasters.

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

Bipartisan political calculations—and finger-pointing

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

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

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

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

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

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

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

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

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

Crapo and GOP senators betting on more power next year: GOP opposition to the Smith-Wyden package has come chiefly from the Finance Committee's ranking Republican, Sen. Mike Crapo of Idaho, who has criticized the bill for, among other things, including a lookback rule in the child tax credit provision that would allow taxpayers to qualify for the expanded credit (for tax years 2024 and 2025) based on their prior-year income—something he argues would disconnect the credit from work. Republicans also have expressed concerns about the inclusion of a revenue offset—the proposed strictures on ERTC claims—arguing that paying for extensions of current law would set a risky precedent when lawmakers confront the multi-trillion-dollar expiration of large swaths of the TCJA at the end of 2025. (Many Republicans have argued in the past that, as a matter of principle, extensions of current tax law do not need to be offset.)

Republican senators are also betting that Crapo will become Finance Committee chairman in what they expect will be a GOP-controlled Senate next year, given the relatively difficult path for Democrats to retain their majority in the upper chamber come November. Democrats currently control the Senate by a margin of 51 – 49, but they are defending a number of seats this year in states where former President Trump is leading in the polls, and Republicans are hoping he can carry their down-ballot candidates to victory.

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

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

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

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

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

Any chance for lame duck action?

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

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

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

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

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

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

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

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

— Alex Brosseau
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Senate appropriators OK $12.3 billion FY 2025 IRS budget, setting up funding fight with House

The contours of the Internal Revenue Service budget debate for the coming fiscal year became clearer this week as the Senate Appropriations Committee approved a Financial Services and General Government funding measure that would provide the IRS a discretionary budget of $12.3 billion for FY 2025—an amount that's unchanged from the current funding level and equal to the Biden administration's request for the agency in the tax-and-spending blueprint it sent to Congress in March, but $2.2 billion more than what House appropriators agreed to in funding legislation that they approved in June.

The topline spending number for the IRS in the measure advanced by the Senate panel by a bipartisan vote of 27-0 on August 1 conforms with the spending caps that President Biden and then-House Speaker Kevin McCarthy, R-Calif., agreed to in the Fiscal Responsibility Act (P.L. 118-5), which was signed into law in June of last year. That measure, which suspended the federal debt limit through January 1, 2025, also made certain fiscal policy changes—including provisions to keep nondefense discretionary spending flat for FY 2024 and limit annual growth to 1 percent for FY 2025 through 2029.
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The lower IRS topline number—$10.1 billion—approved by House appropriators in a 33-24 party-line vote on June 13 reflects demands by a bloc of Republicans in the House Freedom Caucus that Congress ignore the negotiated spending caps in the Fiscal Responsibility Act and instead hold nondefense discretionary spending for the coming fiscal year at the levels in place for FY 2022.

Program allocations and other IRS provisions

Here's how the $12.3 billion allocated to the IRS in this week's Senate Appropriations Committee bill would be parceled out across the Service's four program areas and how those proposed allocations compare to the amounts approved by House appropriators and with those requested by the White House in its FY 2025 budget blueprint in March and the enacted levels in effect for FY 2024:

- **Enforcement:** Senate Appropriations Committee: $5.4 billion; House Appropriations Committee: $3.44 billion (FY 2024 enacted/FY 2025 White House request: $5.4 billion);
- **Taxpayer Services:** Senate Appropriations Committee: $2.8 billion; House Appropriations Committee: $2.78 billion (FY 2024 enacted/FY 2025 White House request: $2.8 billion);

- **Operations Support:** Senate Appropriations Committee: $4.1 billion; House Appropriations Committee: $3.75 billion (FY 2024 enacted/FY 2025 White House request: $4.1 billion); and
- **Business Systems Modernization:** Senate Appropriations Committee: Zero; House Appropriations Committee: $150 million (FY 2024 enacted/FY 2025 White House request: Zero).

No additional cuts to Inflation Reduction Act mandatory funding: The Senate Appropriations Committee-approved bill, like its House counterpart, does not include cuts to the 10-year mandatory funding allocated to the IRS under the Inflation Reduction Act of 2022 (P.L. 117-169) beyond the $20 billion in rescissions that were put in place as part of the agency's funding package for FY 2024.
URL: https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-p.l-117-169/7dybc

The Inflation Reduction Act as originally enacted in 2022 provided $80 billion in mandatory funding for the IRS through 2032 to beef up the agency's compliance, information systems, and taxpayer services operations; however, a handshake agreement between the president and then-Speaker McCarthy during negotiations for the Fiscal Responsibility Act called for rescinding $10 billion of that amount in each of fiscal years 2024 and 2025 and reallocating it toward other (unspecified) domestic accounts. Ultimately, though, the entire $20 billion was rescinded and reallocated as part of the FY 2024 appropriations process. Republicans in both chambers have been vocal about wanting to claw back that funding even further, however.

Senate Appropriations Committee ranking member Susan Collins, R-Maine, and Financial Services and General Government Subcommittee ranking member Bill Hagerty, R-Tenn., who both voted for the financial services package, called for further cuts to the mandatory funding at the August 1 mark-up and noted that they hoped to revisit the issue in eventual negotiations with the House.

The Biden administration, for its part, proposed in its latest budget to backfill the $20 billion reduction in the FY 2024 spending deal by making the mandatory funding stream available through 2034—that is, for the additional years covered by the latest 10-year budget window in its FY 2025 blueprint. In total, the Biden budget calls for the agency to receive $104.3 billion in mandatory funding through 2034, with about half of that dedicated to enforcement, and lesser amounts dedicated to technology and operations support, taxpayer services, and business systems modernization.

Chambers split on Direct File restrictions: Unlike the Financial Services and General Government funding bill making its way through the House, the measure approved by Senate appropriators this week does not include a policy rider that would prohibit the IRS from using any of its allocated funding on its Direct File initiative without first getting approval from the appropriations committees and the taxwriting committees in both chambers.

Direct File is an on-line platform the agency developed using its Inflation Reduction Act funding to allow taxpayers with relatively simple returns to file their taxes directly with the IRS at no cost. It was launched as a limited pilot program (available to taxpayers in 12 states) for the 2024 filing season, but the IRS announced in

May that it intends to make the program available as a permanent option for taxpayers in all 50 states beginning in 2025, and gradually expand the range of tax-return issues that the platform can support.
URL: https://www.irs.gov/newsroom/irs-makes-direct-file-a-permanent-option-to-file-federal-tax-returns-expanded-access-for-more-taxpayers-planned-for-the-2025-filing-season

Republican lawmakers generally have been wary of Direct File, arguing that the initiative requires congressional authorization and that allowing the nation's tax collector to also be involved in the filing process gives the IRS too much power. (Those arguments were advanced most recently in a July 31 letter to IRS Commissioner Danny Werfel from Senate Finance Committee ranking member Mike Crapo, R-Idaho, and taxwriter John Barrasso, R-Wyo., that was co-signed by 17 additional GOP senators, including several Finance Committee members.) For the most part, Democrats have countered that halting the program would rob taxpayers of a free and convenient way of filing their returns.
URL: https://www.finance.senate.gov/ranking-members-news/crapo-barrasso-blast-irs-power-grab

Commissioner Werfel has argued in appearances before various congressional committees this year that launching Direct File falls within the agency's general authority to administer the tax system in ways that promote taxpayer convenience, that the Direct File does not put the IRS into the role of a tax return preparer since taxpayers are responsible for entering their own data into the system, and that the program is just one in an array of options available to taxpayers when they file their returns.

No further action until September

With the Senate now adjourned for an extended summer recess—House members left Washington on July 26—further action on government spending legislation is on hold until the week of September 9, when both chambers resume operations for what is expected to be an abbreviated pre-election legislative session. The House and Senate are expected to adjourn once again by early October to give lawmakers facing re-election a chance to make one final trek down the campaign trail.

To date, the full Senate has approved none of the 12 appropriations bills required to fund the government for FY 2025, which begins on October 1, although 11 of those measures have now been cleared by the Appropriations Committee with bipartisan support.

The Republican-controlled House, meanwhile, has approved five spending bills along party lines. The remaining seven have been cleared by appropriators and are ready for floor votes; however, GOP lawmakers have struggled to unite around several of these measures. Indeed, House GOP leaders actually began their summer recess a week early after they had to pull a vote on their own Financial Services and General Government funding package because of objections by Republican moderates to a policy rider that would block the District of Columbia from using federal funds for abortion-related services. They also had to scrap a vote on legislation funding the Department of Energy and the Army Corps of Engineers due to conservative opposition.

The sheer volume of appropriations work awaiting lawmakers in September—coupled with the significant gap emerging between House Republicans and Senate Democrats on topline spending numbers for federal department and agencies plus differences over various policy riders demanded by some GOP conservatives in the House—make it almost certain that Congress will be unable to agree on a set of measures to fully fund the government for the coming fiscal year by the October 1 deadline and will instead have to adopt a continuing resolution at current-year spending levels to keep the government's doors open when FY 2024 draws to a close at midnight on September 30.

It remains unclear, however, whether lawmakers will seek to punt the funding discussion into a post-election "lame duck" session or instead seek a longer-term stopgap into 2025.

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Another Tax Court nominee heads to the bench

The Senate voted 73-13 on July 29 to confirm Adam Landy for a 15-year term as a judge on the US Tax Court.

Landy, who has been serving as a special trial judge for the Tax Court since 2021, was tapped for the post by the White House in February and his nomination cleared the Senate Finance Committee by a vote of 26-1 in June. His confirmation by the full Senate came just four days after lawmakers in that chamber confirmed Kashi Way for his own seat on the bench.

Four nominees still on deck

With Landy and Way confirmed as judges, there are now four remaining nominees who, if cleared by the Senate, would fill the last of the current vacancies on the 19-seat Tax Court.

Rose Jenkins, who was advanced by the Finance Committee in June (along with Landy and Way) is currently an attorney in the office of the IRS Associate Chief Counsel (Procedure and Administration).

Jeffrey Arbeit, Cathy Fung, and Benjamin Guider III were cleared by the Finance Committee on July 25. Arbeit has spent the past nine years as a staff lawyer at the Joint Committee on Taxation and previously clerked for a Tax Court judge; Fung, who has worked in the IRS Office of Chief Counsel since 2009 and currently is a deputy counsel, began her legal career as an attorney-advisor at the court; and Guider is an affordable housing lawyer, currently with Longwell Riess.

Senate votes on these nominees have not yet been scheduled. With lawmakers now adjourned for a five-week summer recess, floor action is on hold until sometime in September, at the earliest.

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Senate taxwriters mull economic development tax incentives ahead of pending expirations

Ahead of the significant debate expected in the next Congress as many of the tax code changes enacted in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) are due to sunset, members of the Senate Finance Committee held a hearing this week to consider the most effective ways to use the code to promote economic development. And while the new markets tax credit, tax-exempt bonds, and the historic rehabilitation credit received bipartisan support, the Opportunity Zone incentives enacted in the Republican-drafted TCJA came in for criticism from the committee's top Democrat.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

The new markets tax credit, which is taken as a direct credit for seven years on the taxes of investors putting money into certain economically distressed communities, was originally enacted in 2000, has been extended multiple times since then on a bipartisan basis, and is currently scheduled to sunset at the end of 2025.

The end of 2026 will bring the sunset of a key benefit for those investing in the more than 8,700 neighborhoods designated as Opportunity Zones: tax deferral on prior capital gains rolled into a Qualified Opportunity Fund. (New investments that are made in a Qualified Opportunity Fund before the end of 2026 and are held for at least 10 years will still be eligible for capital gains tax deferral, however.) But Finance Committee Chairman Ron Wyden, D-Ore., made clear at the July 30 hearing that he does not believe that the Opportunity Zone program is driving enough investment to the communities that most need it.

"There have been some success stories, but for every affordable housing development it seems like there's a casino or a crypto mining facility going up," Wyden said at the hearing, positing that the program "has helped a lot of high-wealth individuals opt out of paying taxes on investments they probably would have made with or without" the tax incentives.

Wyden also focused on the price tag of extending the Opportunity Zone provisions—something that could be a significant factor as members of both parties face the reality that extending all the expiring TCJA provisions is now estimated to cost more than $4.6 trillion, according to the nonpartisan Congressional Budget Office.

The Opportunity Zone program was estimated to cost $1.6 billion per year when it was originally enacted, Wyden said, but "going forward, it would cost $70 billion to extend." Cost concerns will require Congress to make some "tough choices" in the coming years as lawmakers determine which expiring provisions to extend, he noted.

Wyden argued that under the current Opportunity Zone program "the eligibility rules were too loose and the safeguards against waste were too lax," and even those lawmakers who support the incentive have acknowledged that improvements could be made. Advocates for the program have endorsed bipartisan legislation that would implement reporting requirements, enabling Treasury to better track the impact of Opportunity Zone investments and provide Congress insights into how it could revise the program's rules to

make it more effective. (For coverage of a similar discussion at a recent House Ways and Means Committee hearing, see *Tax News & Views*, Vol. 25, No. 19, May 24, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240524_2.html

For his part, the top Republican on the committee, Sen. Mike Crapo of Idaho, said that along with the new markets tax credit, the historic rehabilitation tax credit, tax-exempt bonds, and the low-income housing tax credit, Opportunity Zones have helped “spur local economic development,” and that as a result of the Opportunity Zone program, “private capital has flowed into areas that did not receive such levels of investment before the TCJA was enacted.” At the same time, Crapo acknowledged that “there is still more to be done” and pointed to proposed legislation on reporting requirements from Sen. Tim Scott, R-S.C.—the original sponsor of Opportunity Zone provisions in 2017—and Sen. Cory Booker, D-N.J., as a potential improvement.

Crapo also raised the issue of ensuring various economic development tax incentives are streamlined and well-coordinated, leading hearing witness Michael Novogradac to recommend legislative or regulatory changes that would allow the new markets tax credit and low-income housing tax credit to work together seamlessly. Novogradac also recommended eliminating basis adjustments required for the new markets credit, the rehabilitation credit, and the low-income housing credit.

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