More fault lines appear as lawmakers continue infrastructure negotiations

Even as President Biden invited a handful of Republican lawmakers to the White House this week in an effort to jump-start bipartisan talks on his sweeping $2 trillion infrastructure package, divisions between the parties – and within the Democratic caucus itself – continued to cloud the initiative's path forward.

White House meeting

President Biden kicked off the week by inviting a handful of congressional Democrats and Republicans – including Senate Environment and Public Works Committee member Roger Wicker, R-Miss., and former House Transportation and Infrastructure Committee Chairman Don Young, R-Alaska – to the White House for an April 12 meeting to discuss Biden's infrastructure plan, which includes a spending component (dubbed the American Jobs Plan) and a financing component (the Made in America Tax Plan) that relies on tax changes affecting corporations and multinational enterprises. (For prior coverage of the plan's initial rollout, see *Tax News & Views*, Vol. 22, No. 16, Apr. 2, 2021; for more detail on its proposed tax changes, including raising the corporate rate and reforming or repealing certain international tax provisions put in place by 2017 Tax Cuts and Jobs Act, see *Tax News & Views*, Vol. 22, No. 19, Apr. 9, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210402_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210409_1.html

Going into the meeting, the president struck a conciliatory tone, indicating he was flexible on the plan's details, including its financing structure.

"I'm prepared to negotiate as to the extent of my infrastructure project as well as how we pay for it," Biden said.

After the meeting, Sen. Wicker acknowledged the discussion was cordial, but also seemed to indicate the two sides remained far apart.

"I view the 2017 tax bill as one of my signature achievements in my entire career," Wicker said. "It would be an almost impossible sell from the president to come to a bipartisan agreement that included the undoing of that. …I did tell [President Biden] that."

Senate Minority Leader Mitch McConnell, R-Ky, meanwhile, argued from the Senate floor later on April 12 that the president's plan was too expensive, included policies that could not reasonably be categorized as "infrastructure," and would put the economy at risk due to its tax increases.

"The White House has lumped together a motley assortment of the left's priciest priorities," McConnell said. "This plan would impose of one the biggest tax hikes in a generation, when workers need an economic recovery."

GOP alternative in the works

Although Republicans remain opposed to the president's infrastructure plan, a few GOP senators reportedly are preparing a more narrowly constructed counteroffer that may cost less than half of Biden's proposal – "probably…$600 or $800 billion" according to Sen. Shelly Moore Capito of West Virginia, ranking Republican on the Senate Environment and Public Works Committee.

"What I'd like to do is get back to what I consider the regular definition of infrastructure…," Capito said in an April 14 interview on CNBC. "So that's roads, bridges, ports, airports, including broadband…, [and] water infrastructure."

Whether the GOP plan will be fully paid for is unclear, but it does appear as if Republicans intend to adhere to the traditional "user-fee" construct – that is, emphasizing fuel and other excise taxes collected from users – in any counteroffer they roll out.

Utah Republican Sen. Mitt Romney told reporters on April 14 that "[t]he pay-for ought to come from the people who are using it."

Though hiking excise taxes on gas and diesel fuel may be political nonstarters, concepts such as a vehicle miles traveled (VMT) fee and public-private partnerships have some appeal among Republicans. Public private partnerships (or "P3s") would leverage private capital and tolling in the construction and maintenance of physical infrastructure.

A VMT fee is attractive to some GOP members as it would ensure that drivers of electric cars – who do not pay gas taxes – also contribute to federal highway coffers.

"Clearly by bringing in additional revenue from actual miles driven is going to create some additional revenue," Romney continued.

Still, it seems unlikely that a package of the size and substance that Republicans are considering could garner enough Democratic support – particularly among progressives – to be enacted into law.

"We have a major crisis in terms of roads, bridges, water systems, affordable housing, you name it," Senate Budget Committee Chairman Bernie Sanders, I-Vt., told reporters April 14. According to Sanders, the GOP proposal – which has not yet been unveiled – "is nowhere near what we need. Not to mention, of course, we've got to address the existential threat of climate change."

For his part, though, Delaware Democratic Sen. Chris Coons said in an April 15 interview on CNN that he would be willing to negotiate with Republicans on a traditional infrastructure package in the range of $800 billion-$1 trillion and move some of the less traditional elements in the president's plan (those related to child care and elder care, for example) in a separate package under budget reconciliation protections.

It was unclear at press time exactly when Republicans will formally release their counteroffer.

SALT cap opponents lay down more markers

As the president tested the waters on a bipartisan agreement on infrastructure, he and congressional Democratic leaders also contended with an increasingly vocal group of lawmakers within their own ranks who want any forthcoming economic recovery legislation with a significant tax title to also repeal the $10,000 annual limit on the deduction for state and local taxes (SALT) put in place by the Tax Cuts and Jobs Act.

This week saw a pair of developments on that front.

(Most) New York Dems call for repeal: First, in an April 13 letter led by Democratic Reps. Tom Suozzi and Jerrold Nadler of New York and sent to House Speaker Nancy Pelosi, D-Calif., and House Majority Leader Steny Hoyer, D-Md., 17 of New York's 19 Democratic House members said that they "reserve[d] the right to oppose any tax legislation that does not include a full repeal of the SALT limitation."
URL: https://nadler.house.gov/uploadedfiles/04.13.21_salt_delegation_letter.pdf

Assuming those lawmakers remain united, a voting bloc of that size would be more than large enough to derail any partisan infrastructure package that Democrats may attempt to move through the House, given the party's narrow margin of control in that chamber. After the swearing in of GOP Rep. Julia Letlow, R-La., on April 14, Democrats hold 218 House seats, Republicans hold 212, and 5 seats remain vacant. That means Democratic leaders can afford to lose only two votes within their conference if they wish to pass legislation without GOP support.

SALT caucus: The second SALT-related development came April 15, when a group of roughly one dozen lawmakers including Suozzi, as well as Reps. Josh Gottheimer, D-N.J., and Andrew Garbarino, R-N.Y., held a press conference to announce the formation of a bipartisan "SALT caucus" that will work to advocate for the SALT cap's repeal in the weeks and months ahead. (The newly formed caucus is co-chaired by Suozzi and Gottheimer, and its membership roster currently includes 32 House lawmakers from both sides of the aisle.)
URL: https://suozzi.house.gov/media/press-releases/suozzi-gottheimer-young-garbarino-announce-new-bipartisan-salt-caucus-fight-tax

The White House, for its part, has remained relatively quiet on the matter thus far, other than to note that changes to the cap might be in play going forward if budgetary and political factors allow.

"The SALT deduction would not be a revenue raiser, so they may come with proposals and ideas on that…," White House press secretary Jen Psaki said April 14. "But we're certainly happy to hear more from them on the impact and why they think this is so important to their states and communities."

Alienating progressives?: But any serious effort to include an outright repeal of the cap in an infrastructure package likely would spark opposition from progressive Democrats, who argue that doing so would primarily benefit higher-income households.

“I don’t think that we should be holding the infrastructure package captive for a 100 percent full repeal of SALT,” Rep. Alexandria Ocasio-Cortez, D-N.Y., told reporters April 15. “I think that it’s one thing to talk about the actual cap because there are absolutely communities that are really feeling this in New York City, California, etc. But when we actually look at the breakdown of SALT, the vast majority of the benefit of a full repeal with no cap – you know, just abolishing this cap – is just unequivocally a benefit of the richest people.”

Regular order versus reconciliation

These political dynamics continue to be critical to Democratic leaders’ decisions around whether to pursue a bipartisan package that can garner at least 10 Senate Republican votes to overcome a potential filibuster or whether, instead, to again invoke the budget reconciliation process – as they did with the $1.9 trillion American Rescue Plan earlier this year – to bypass the GOP and pass a bill with all 50 Senate Democrats plus the tie-breaking vote of Vice President Kamala Harris.

Any attempt to use reconciliation, however, will require congressional Democrats to either adopt a budget resolution for upcoming fiscal year 2022 (which is set to begin October 1), or, potentially, seek to revise the fiscal 2021 budget resolution that Democrats adopted to move the American Rescue Plan in a way that recharges the reconciliation process teed up in that blueprint. That latter option – which has not been leveraged before by either party – recently became available when a spokesperson to Senate Majority Leader Charles Schumer, D-N.Y., indicated the Senate parliamentarian had given Schumer a favorable ruling in that regard. However, questions persist about just what that ruling said – it has not been made public – and whether it includes any process- or policy-related constraints. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 19, Apr. 9, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210409_2.html

Democrats’ procedural intentions should become clearer in the coming weeks after President Biden unveils his next economic package – dubbed the American Families Plan – which is expected to focus on new spending for health care, child care, and education, and likely will be paid for with tax increases on upper-income individuals. Bipartisan cooperation would likely be even more difficult to achieve should Democratic leaders attempt to package together elements of both his infrastructure package and the American Families Plan into a single bill – an approach that also could create divisions among rank-and-file Democrats.

Biden is likely to elaborate on his policy proposals when he delivers an address to a joint session of Congress scheduled for April 28.

Timing

One potential signal of when an infrastructure package might see floor action came this week from House Transportation and Infrastructure Chairman Peter DeFazio, D-Ore., who said on April 15 that his panel would mark up a surface transportation bill during the last two weeks of May. (Regardless of the specific legislative process Democrats employ, the mark up by DeFazio’s panel would not necessarily implicate tax code provisions, which are under the jurisdiction of the House Ways and Means Committee.)

"My bill will, as much as possible, reflect the priorities of the president," DeFazio said.

For her part, Speaker Pelosi has indicated she would like to see an infrastructure package passed through the House prior to July 4.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP