Some bipartisan consensus on tax-preferred bonds – but little else – as taxwriters weigh infrastructure funding options

There were glimpses of bipartisan accord on the merits of certain tax-preferred bonds as financing vehicles for infrastructure projects as the two congressional taxwriting committees held separate hearings this week to explore the role of tax policy in paying for infrastructure legislation. But when it came to possible offsets – or to questions about expanding the definition of "infrastructure" beyond items such as roads, bridges, airports, inland waterways, water systems, and broadband – Democrats and Republicans struggled to find common ground.

President Biden's American Jobs Plan calls for investing an estimated $2.7 trillion (over eight years) in so-called "hard" infrastructure and infrastructure-adjacent spending that would be paid for largely through increased taxes on corporations. (For details, see *Tax News & Views*, Vol. 22, No. 19, Apr. 9, 2021.) His American Families Plan calls for an additional $1.8 trillion over 10 years in what the administration has called "human infrastructure" and would be paid for primarily with tax increases on taxpayers with taxable income higher than $400,000 per year. (For details, see *Tax News & Views*, Vol. 22, No. 23, Apr. 30, 2021.) Many of the administration's proposed offsets in both plans would repeal or roll back provisions in 2017's Tax Cuts and Jobs Act (TCJA, P.L. 115-97).
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Republicans on the House Ways and Means Committee and Senate Finance Committee insisted that revisiting the TCJA is a "non-starter" and that an infrastructure bill should be paid for by imposing user fees on electric vehicles, repurposing unused COVID relief funds that have already been allocated to states and localities, and measures to promote public-private partnerships. Democrats on both panels generally contended that infrastructure improvements should not be funded on the backs of low- and middle-income taxpayers and that there is public support for making large corporations shoulder "their fair share" of the costs since businesses stand to gain significant benefits from infrastructure improvements.

Bonding over bonds

The prospect of consensus at the Senate Finance Committee hearing on May 18 appeared so tenuous that when ranking member Mike Crapo, R-Idaho, agreed with Chairman Ron Wyden, D-Ore., that Congress should revive the now-expired Build America Bonds program (originally enacted in the 2009 American Recovery and Reinvestment Act) for infrastructure financing, Wyden declared it "a major outbreak of bipartisanship."

Sen. Michael Bennet, D-Colo., touted legislation (S. 1308) he recently introduced with Sen. Roger Wicker, R-Miss., that would provide a tax credit to issuers of "American Infrastructure Bonds." Bennet said the proposal would improve upon Build America Bonds, in part by keeping them exempt from sequestration.

Crapo also endorsed an expansion of private activity bonds for transportation projects, noting in his opening statement that they "have proven so attractive that the program is oversubscribed, with the $15 billion cap having been met and additional applications outstanding." Congress, he said, should "consider how [these] and other bond programs can be used to help states and localities move their infrastructure projects forward."

Sen. Todd Young, R-Ind., noted that public buildings do not currently qualify for private activity bonds but that the Public Buildings Renewal Act (S. 1299) he has introduced would remedy this.

Across the Rotunda, House Ways and Means Committee Chairman Richard Neal, D-Mass., noted in his opening statement at that panel's hearing on May 19 that the House passed legislation in the 116th Congress that would permanently reinstate the Build America Bonds program, restore the tax-exempt status of interest on advance refunding bonds, and expand private activity bonds. He vowed to "secure the inclusion of a similar suite of provisions in any infrastructure financing legislation that comes to the floor."

In other remarks at the hearing, Neal referred to bonds as "a concise and efficient way to do public finance."

Michigan State Treasurer Rachel Eubanks, one of the Democrats' invited witnesses, called for similar enhancements to tax-preferred bonds and said that municipal bonds "should be protected at all costs." In an exchange with Neal, she attributed the success of the Build America Bonds program to the fact that it "brought a completely different class of investors" into the municipal bond process.

In a separate exchange with Alabama Democratic Rep. Terri Sewell, Eubanks also noted that restoring the tax exemption for advance refunding bonds would allow smaller communities to have greater access to capital and would be the single most important change Congress could make when it comes to financing infrastructure investments.

Across the aisle, House Republican taxwriter Jackie Walorski of Indiana touted the Move America Act, a bill she introduced in a previous Congress with Democratic Rep. Earl Blumenauer of Oregon that would allow states to issue tax-exempt private activity bonds for infrastructure and permit smaller states to trade in some or all of their bond allocation for tax credits.

Mixed feelings on user fees

The Highway Trust Fund (HTF) generally gets its money from federal fuel taxes, but these have not been increased since 1993, and the increase in fuel efficiency of gasoline-powered vehicles over the years, combined with the growing popularity of hybrid and electric vehicles (EVs), has resulted in revenue shortfalls for the trust fund and necessitated transfers from Treasury's general fund in recent years to make up the difference.

Raising gas taxes has proved unpopular with many lawmakers from both parties, although it was recommended by two witnesses at the Finance Committee hearing – Victoria Sheehan, representing the American Association of State Highway and Transportation Officials, and Heather Buch of the National Association of Counties.

Republicans have argued that other potential solutions are to impose a fee on drivers of EVs, who do not pay gas taxes, or replace the gas tax with a vehicle-miles-traveled (VMT) tax for all drivers. At this week's Finance Committee hearing, a number of Democrats conceded that these are longer-term considerations. Sen. Tom Carper, D-Del., declared a VMT tax is "where the future is," but acknowledged that EV numbers are too low to make a practical difference at this point.

In response to a question from Chairman Wyden, Joseph Kile of the Congressional Budget Office (CBO) told the committee that a fee of $100 per EV implemented in October of this year would raise about $200 million per year for fiscal years 2022 through 2026, or 1.6 percent of the projected HTF shortfall over that period. He said EVs are currently about 1 percent of the vehicles in use and 2 percent of sales. At the current pace of growth, Kile said, EVs "wouldn't be a huge share of the vehicle fleet" even in 10 years.

Kile also said CBO estimates a VMT tax on commercial trucks would raise approximately $2.6 billion for each one-cent of tax, but he noted that implementing a VMT tax would entail costs for creating collection and enforcement mechanisms.

Sen. John Barrasso, R-Wyo., nonetheless said it is a priority for him to see EV drivers pay for their use of the nation's roads and noted that he plans to introduce legislation along these lines. He also argued that the EV tax credit currently in place "subsidizes the wealthy" and that the savings from repealing it could be used for infrastructure improvement – a position that stands in broad contrast with a proposal in Wyden's Clean Energy for America Act (S. 1298) that would expand the credit and keep it in place until EVs are more than 50 percent of annual vehicle sales.

At the Ways and Means hearing, several taxwriters from both parties acknowledged declining revenues from the gas tax – something Rep. Lloyd Smucker, R-Pa., suggested could be addressed by increasing it and then indexing it to inflation going forward as Pennsylvania did with its state-level tax.

GOP Rep. Ray LaHood of Illinois commented that a bipartisan approach to infrastructure financing would involve considering a VMT and other (unspecified) user fees. He also argued that any user fees the government collects should go into a "lockbox" to ensure that they are used only to pay for traditional infrastructure projects.

Republican Rep. Ron Estes of Kansas questioned the wisdom of using money allocated to the Highway Trust Fund to pay for non-highway costs such as mass transit projects and bike paths. In an exchange with Estes, the Reason Foundation's Adrian Moore – the GOP's sole invited witness – commented that there is "no justification" for such a practice.

Democratic taxwriters did not directly criticize user fees, although one of their witnesses, Khalil Shahyd, senior policy advisor at the National Defense Resource Council, commented in response to a question from Rep. Lloyd Doggett, D-Texas, that a flat user fee imposed on EVs would be regressive because, unlike other vehicle registration fees, it would not decline with the value of the vehicle. As a result, someone who purchases a new EV would have to pay the same fee as someone who purchases a used EV, which would put lower-income taxpayers at a disadvantage since they typically spend a disproportionate share of their income on transportation costs.

Public-private partnerships

A number Republicans on both panels spoke in favor of expanding public-private partnerships (P3s), as a way to attract private financing for infrastructure projects and stretch federal dollars further.

Finance Committee ranking member Mike Crapo cited the Transportation Infrastructure Finance and Innovation Act, the Railroad Rehabilitation and Improvement Financing Act, and Water Infrastructure Finance and Innovation Act as “good examples of financing tools that can leverage federal resources,” and urged Congress to “consider ways those programs should be improved and expanded.”

Sen. Maggie Hassan, D-N.H., spoke to the broader definition of infrastructure in endorsing the Broadband Financing Flexibility Act, a bill she reintroduced this week with GOP Sen. Shelly Moore Capito of West Virginia that would give state and local governments new tools to leverage private investment.

Although most Democrats backed President Biden’s proposed corporate tax increases as the primary offset for infrastructure spending, Sen. Mark Warner, D-Va., also spoke favorably about P3s and touted his Reinventing Economic Partnerships and Infrastructure Redevelopment (REPAIR) Act (S. 1499) – legislation he introduced with GOP Sen. Roy Blunt of Missouri – which would establish an Infrastructure Financing Authority to provide loans and loan guarantees.

Witnesses Victoria Sheehan and Heather Buch said states and localities appreciate any tools available to them and are always in favor of increased options and flexibility.

Several Republicans on the Ways and Means Committee – including ranking member Kevin Brady, R-Texas – were strong proponents of P-3s and asked why the US lags behind other nations in its ability to leverage private investments for infrastructure projects.

In an exchange with Rep. Vern Buchanan, R-Fla., Adrian Moore explained that Congress needs to change the way it thinks about financing infrastructure. Instead of automatically looking to the federal government as the primary funding source, lawmakers should instead look at all available options and determine which one would be the most cost-effective.

P3s also received an endorsement from Ways and Means Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., who commented that they “need to be part of whatever [the committee does] going forward.”

Incentives

On the incentive side, House taxwriters were split along party lines over the administration's proposals for tax deductions and credits that would promote a green energy economy. Republicans generally argued that these provisions would primarily benefit niche industries and affluent individuals, and they objected to the president's plan to offset those benefits by rolling back tax provisions they say are aimed at the fossil fuel industry. Democrats countered that encouraging green energy would spur job creation, help address the long-term effects of climate change, and reduce energy costs for consumers.

Taxwriters in both parties, however, saw a place for enhanced versions economic development incentives such as the new markets tax credit, the low-income housing tax credit, and the historic tax credit as part of an eventual infrastructure bill.

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