Senate clears $3.5 trillion FY 2022 budget resolution

The Senate voted 50-49 in the early hours of August 11 to approve a $3.5 trillion budget resolution that would unlock the process for Democrats to move an expansive tax-and-spending package that could clear the chamber without Republican support.

The resolution (text, one-page summary), which Budget Committee Chairman Bernie Sanders, I-Vt., unveiled on August 9, includes reconciliation instructions designed to facilitate the filibuster-proof passage of a larger-scale "human" infrastructure package that would address many of the Biden administration's social spending priorities, such as expanding access to pre-kindergarten education, affordable housing, child care, and paid family and medical leave, as well as addressing climate change. Those provisions would be offset – in whole or in part – with tax increases primarily targeting corporations and high-income individuals, plus revenue from economic growth and health care savings. Although it is not binding, the resolution as approved carries a deadline of September 15, 2021, for congressional committees to report their respective reconciliation proposals.
URL: https://www.democrats.senate.gov/imo/media/doc/HEN21B52.pdf
URL: https://www.democrats.senate.gov/imo/media/doc/Topline%20Summary%20of%20FY2022%20Budget%20Resolution.pdf

The vote to adopt the budget resolution – which broke along strict party lines – came just hours after the Senate approved the Infrastructure Innovation and Jobs Act, a bipartisan measure that would invest roughly $550 billion in new spending over the next five years on so-called "hard" infrastructure projects (like roads and bridges) and includes limited tax-related incentives and revenue offsets. (For details on the specific parameters of the budget resolution and on the tax provisions in the Infrastructure Innovation and Jobs Act, see *Tax News & Views*, Vol. 22, No. 37, Aug. 10, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210810_1.html

Tax-related amendments offered in 'vote-a-rama'

In the run-up to approving the budget resolution, lawmakers filed hundreds of amendments – and voted on several dozen – during the so-called "vote-a-rama," the process that unfolds after a budget's debate time has lapsed and during which lawmakers may offer an unlimited number of amendments with little or no debate. (Although a budget typically is afforded 50 hours of debate, the timeline for advancing this resolution was significantly truncated under a unanimous consent agreement.)

In many cases, these amendments were structured as so-called "reserve funds" which in theory are designed to shield subsequent conforming legislation from parliamentary points of order related to the budget, but in practical terms are intended mainly for political messaging that allows lawmakers to telegraph their support – or lack of it – for various broadly stated policies.

Tax-related amendments that received floor votes touched on several significant policy priorities that President Biden laid out in his American Jobs Plan and his American Families Plan, both of which he unveiled earlier this year, as well as in the FY 2022 budget blueprint he sent to Congress in May. (For additional details on the American Jobs Plan, see *Tax News & Views*, Vol. 22, No. 19, Apr. 9, 2021. For details on the American Families Plan, see *Tax News & Views*, Vol. 22, No. 23, Apr. 30, 2021. For details on President Biden's FY 2022 budget proposals as described in the Treasury Department's "Green Book," see *Tax News & Views*, Vol. 22, No. 28, May 29, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210409_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210430_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210529_1.html

The close voting margins on several of the tax amendments, along with a few instances of Democratic senators breaking ranks to align with their Republican colleagues, signal some of the challenges that Senate Democratic leaders may face in holding their members together as they attempt to move an eventual reconciliation bill through the chamber, even with the benefit of the procedural protections that the reconciliation process affords. Democrats and Republicans control 50 Senate seats each, but Democrats hold the majority in the chamber since Vice President Kamala Harris can cast a tie-breaking vote in her role as president of the Senate. If Senate Republicans, as expected, remain united in opposing the reconciliation bill, Democrats will have no votes to spare in securing its passage. (Margins are almost as tight for Democrats in the House – more on that below.)

Basis step-up: Lawmakers appeared to support adding carve-outs to a proposal in the Biden administration's budget blueprint that generally would limit the ability to use step-up in basis at death by providing that "the donor or deceased owner" of an appreciated asset would realize "a capital gain" at the time of the transfer.

An amendment offered during the vote-a-rama by Finance Committee Republican John Thune of South Dakota that would allow family-owned businesses and small farms to "continue to transfer ownership or operations to family members or others based upon the same tax principles that existed when they began operations and under which they currently operate, including the full benefit of the step-up in basis" was approved by a vote of 99-0.

A rival amendment offered by Finance Committee Democrat Catherine Cortez Masto of Nevada that called for establishing a reserve fund to protect family farms and businesses "while ensuring that the wealthy pay their fair share" in taxes was defeated on a largely party-line vote of 49-50. Sen. Kyrsten Sinema, D-Ariz., who was the lead Democrat on the bipartisan negotiating team that developed the framework for the Infrastructure Innovation and Jobs Act, broke ranks to join Republicans in defeating the amendment.

Financial account reporting: Support broke along strict party lines for an administration proposal that would require financial institutions to report gross inflows and outflows from customer accounts with a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner, except for those accounts with a gross flow below a threshold of $600. (The proposal was included in the administration's budget blueprint as part of an effort to address the "tax gap" – the difference between the amount of money owed to the government in taxes and the amount actually paid on a timely basis.)

The Senate rejected by a vote of 49-50 an amendment from Finance Committee ranking member Mike Crapo, R-Idaho, that would establish a deficit-neutral reserve fund to prevent “the monitoring and reporting of sensitive American taxpayer information to the Internal Revenue Service by financial institutions about deposits and withdrawals made by any individual or business in savings, checking, or other accounts of as little as $600.”

Lawmakers then approved by a vote of 50-49 an amendment from Finance Committee Chairman Ron Wyden, D-Ore., that would create a reserve fund aimed at “protecting the privacy of American taxpayer and small business tax information while only reporting large financial account balances to the Internal Revenue Service, to ensure those evading the tax system pay what they owe.”

Deductions, credits, and tax code progressivity: Lawmakers also were closely divided (mostly along party lines) on the general issue of tax code progressivity and on specific deductions and credits that, according to some, primarily benefit upper-income taxpayers.

An amendment from Finance Committee member Charles Grassley, R-Iowa, to “prevent changes to the state and local tax (SALT) deduction that mainly benefit the wealthy” was defeated by a vote of 48-51, with Republican Sen. Rand Paul of Kentucky joining Democrats in opposition. (The amendment was aimed at efforts by various lawmakers – primarily Democrats representing jurisdictions with high local income and property taxes – to repeal or relax a provision in 2017’s Tax Cuts and Jobs Act that capped the deduction at $10,000. Republicans and some progressive Democrats have argued that the benefits of the deduction flow chiefly to wealthier taxpayers and that the cap, which is scheduled to expire at the end of 2025, should remain intact as enacted.)

A rival amendment from Finance Committee Chairman Wyden aimed at “increasing progressivity in the tax code” fell by a vote of 47-51. In this case, Democratic Sens. Maggie Hassan and Jeanne Shaheen of New Hampshire, along with Kyrsten Sinema of Arizona, aligned with Republicans in the “no” column.

An amendment from Nebraska Republican Sen. Deb Fischer calling for means testing of tax credits for electric vehicles “to ensure high-income individuals do not get government subsidies to buy expensive cars” was approved by a vote of 51-48. Sen. Sinema and West Virginia Democratic Sen. Joe Manchin backed the proposal, along with the 49 Republicans that cast votes.

Like-kind exchanges: Lawmakers approved by voice vote an amendment offered by Louisiana Republican Sen. John Kennedy that would maintain current-law treatment of like-kind exchanges. (A proposal in the administration’s budget blueprint would limit the deferral of gain from like-kind exchanges of real property to an aggregate amount of $500,000 per taxpayer or $1 million for married individuals filing joint returns each year.)

Taxes on middle-income taxpayers: An amendment by Indiana Republican Sen. Todd Young to prevent tax increases on individuals making less than $400,000 a year was approved by a vote of 98-1. (Democratic Sen. Tom Carper of Delaware was the sole "no" vote.)

Holding the line on tax increases for individuals with income below $400,000 was a central tenet of then-candidate Joe Biden's tax policy platform during the 2020 presidential campaign and has remained so since he moved to the Oval Office this past January. Congressional Republicans, though, could seek to use the vote on this amendment as leverage against Democrats in policy debates over the upcoming reconciliation legislation in the wake of a recent analysis prepared by the Joint Committee on Taxation staff and released by Finance Committee ranking member Crapo and House Ways and Means Committee ranking member Kevin Brady, R-Texas, which shows that the impact of an increase in the corporate tax rate – another of the administration's tax policy goals – would be borne by middle-class taxpayers as well as by upper-income individuals.
URL: https://www.finance.senate.gov/imo/media/doc/jct_analysis_on_corporate_tax_increase.pdf

Research credit, treatment of research expenditures: An amendment from Sen. Maggie Hassan to create a deficit-neutral reserve fund to support US economic competitiveness, including by "expanding the research and development tax credit and preserving full expensing for research expenditures" was approved by voice vote. (Under current law, research expenditures are required to be amortized after December 31, 2021).

Small business taxes: An amendment from Montana Republican Steve Daines that would create a deficit-neutral reserve fund to prevent tax increases on small businesses also was approved by voice vote.

Next steps

The Senate adjourned for its summer recess on August 11 and is scheduled to be back in session the week of September 13, although the chairs of the authorizing committees charged with developing tax and spending legislation under the budget resolution's reconciliation instructions likely will be using this time to advance that effort.

As they head back to their home states and meet with constituents during the extended break, individual members in both parties likely will be offering their thoughts on what they will – or won't – accept in the yet-to-be-developed reconciliation bill.

Sen. Joe Manchin of West Virginia, for example, voted for the budget resolution but nonetheless issued a statement later on August 11 in which he expressed reservations about the price tag of the reconciliation legislation that the resolution authorized.

"I have serious concerns about the grave consequences facing West Virginians and every American family if Congress decides to spend another $3.5 trillion," Manchin said.

Like the messaging implicit in the vote-a-rama amendment process, comments such as these may help Democratic leaders gauge potential difficulties ahead as legislation is developed and moves through the chamber in the fall.

It is worth noting that the $3.5 trillion figure commonly cited with respect to the budget resolution is actually fungible. Democrats could in theory pursue a smaller reconciliation package to address the concerns of moderates like Sen. Manchin or, on the flip side, pursue a larger package so long as the bill contains budget offsets that sufficiently reduce its net cost to about $1.7 trillion, the maximum amount of deficit increases over the next decade provided for in the reconciliation instructions.

House plans becoming (a little) clearer

Both the budget resolution and the Infrastructure Innovation and Jobs Act now await action in the House, which has been in recess since July 30.

Speaker Nancy Pelosi, D-Calif., and Majority Leader Steny Hoyer, D-Md., announced in a "Dear Colleague" letter that the chamber will be back in session the week of August 23 to take up the Senate-approved budget resolution and, possibly, the John Lewis Voting Rights Act. (Once that work is completed, lawmakers are expected to go back into recess until their scheduled return date of September 20.)
URL: https://www.majorityleader.gov/content/dear-colleague-august-work-period

But Pelosi is facing a variety of pressures from within her caucus as lawmakers return for the abbreviated session, and because Democrats hold a narrow majority in the House she can afford few defections in any significant legislative initiative.

Budget and reconciliation bill issues: On the budget front, it is noteworthy that some moderate House Democrats have expressed unease with the scope of Senate Democrats' reconciliation ambitions and may demand changes to the budget resolution – or changes to the size of any follow-on reconciliation package – as a condition of their support. But unlocking budget reconciliation requires both chambers to adopt identical budget resolutions authorizing the process, so any changes that House members might demand to the Senate-passed resolution would have to be ironed out with their counterparts across the Rotunda.

Separately, a group of 11 moderate Democrats – including several on the Ways and Means Committee – is raising concerns about a possible hike in the tax rate on global intangible low-taxed income (GILTI) to pay for new spending in a forthcoming reconciliation bill. (The Biden administration has proposed to increase the GILTI tax rate to 21 percent from its current level of 10.5 percent.)

In a recent letter to Ways and Means Committee Chairman Richard Neal, D-Mass., the group points to progress by the OECD and G20 nations in moving toward an agreement on a global minimum corporate tax and cautions that "proposals to dramatically increase the tax on…GILTI in forthcoming legislation would risk needlessly hampering US economic competitiveness abroad." (The agreement currently before the G20 calls for, among

other things, a global minimum tax of at least 15 percent that would be imposed on a country-by-country basis. Details are available in a tax alert from Deloitte Tax LLP.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210813_1_suppB.pdf
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-06-july-2021.pdf

"GILTI serves as a minimum tax on income American companies earn from their foreign operations, but the US is currently the only country that imposes such a tax," the letter states. "Enacting tax policy in the US that is more burdensome than the eventual OECD implementation would increase the potential for foreign takeovers of US companies and could prompt a resurgence in corporate inversions."

Infrastructure bill issues: On the infrastructure front, Pelosi continues to maintain that she will not bring the Senate-passed Infrastructure Innovation and Jobs Act to the House floor until the Senate also has approved the larger "human" infrastructure reconciliation package (i.e., not the budget resolution but the actual implementing legislation). That position aligns with the progressive members of the Democratic Caucus, who worry enactment of the bipartisan infrastructure bill will sap momentum for the reconciliation bill.

House moderates, however, are urging the speaker to bring the infrastructure bill up for a vote quickly and not let it be held hostage to reconciliation. Indeed, in an August 12 letter to Pelosi, a group of nine moderates, many of them members of the Problem Solvers Caucus, tied their support for the budget resolution to a swift floor vote on the Senate-passed infrastructure bill.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210813_1_suppA.pdf

"With the livelihoods of hardworking American families at stake, we simply can't afford months of unnecessary delays and risk squandering this once-in-a-century, bipartisan infrastructure package. It's time to get shovels in the ground and people to work. We will not consider voting for a budget resolution until the bipartisan Infrastructure Investment and Jobs Act passes the House and is signed into law," the letter said.

Another key issue that bears watching is whether the Senate infrastructure legislation even has sufficient support in the House to be approved. The plan has come under fire from some House committee chairs, who felt they were excluded from its drafting, and from progressives, such as Rep. Alexandria Ocasio-Cortez, D-N.Y., who publicly expressed concerns that the bipartisan bill does not go far enough on the spending side or do enough to address their policy priorities such as mitigating climate change. (For his part, Transportation and Infrastructure Chairman Peter DeFazio, D-Ore., who had publicly criticized the Senate measure, indicated this week that he would be willing to drop his opposition and instead pursue his goals of enacting robust climate change provisions as part of the budget reconciliation bill.)

Converging deadlines ahead

Finally, Congress also faces upcoming deadlines to approve appropriations legislation for fiscal year 2022 (which begins October 1), reauthorize spending on highway and mass transit programs (also due by October 1 if the bipartisan infrastructure deal – which includes such reauthorization language – is not signed into law by that time), and raise or suspend the statutory debt limit. The nonpartisan Congressional Budget Office has estimated that action on the debt limit will be needed by October or November in order to stave off default. (A

group of 46 Republican senators recently announced that they would not support legislation to increase the debt limit, arguing that recent debt increases are the result of new Democratic spending and that Democrats should address the issue as part of their budget reconciliation process. The Senate-approved budget resolution does not include provisions on the debt limit.)
URL: https://www.cbo.gov/publication/57152
URL: https://www.finance.senate.gov/ranking-members-news/crapo-republicans-will-not-raise-debt-ceiling-to-fuel-reckless-spending

Many observers have surmised that some or all of these three issues ultimately may be dealt with on a short-term basis, which could create additional legislative deadlines later this fall and winter that Democratic leaders will have to address at the same time that they may be seeking to send the "hard" infrastructure and reconciliation bills to President Biden's desk.

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