House clears path for budget reconciliation, infrastructure bills

In a break from the typical sleepy August in Washington, the House this week interrupted its summer recess and passed a $3.5 trillion fiscal year 2022 budget resolution and agreed on a deadline for a vote on a physical infrastructure bill, setting up a busy – and likely contentious – work period when lawmakers return to Capitol Hill in September.

The budget resolution, which was approved in the Senate on August 11, 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 mitigating 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. (For additional details, see *Tax News & Views*, Vol. 22, No. 38, Aug. 13, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210813_1.html

The Infrastructure Innovation and Jobs Act – the physical infrastructure package that cleared the Senate on August 10 with bipartisan support – would invest roughly $550 billion in new spending over the next five years on projects such as roads, bridges, transit, and broadband, and includes limited tax-related incentives and revenue offsets. (For additional details, 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

A difficult path to 'yes'

Reaching an agreement on how to proceed with the budget resolution and the infrastructure bill turned out to be more challenging than Democratic leaders originally anticipated.

In an effort to ensure that the Democrats' more progressive priorities do not get sidelined, House Speaker Nancy Pelosi, D-Calif., has been insistent that the chamber would not vote on the Infrastructure Innovation and Jobs Act until the Senate *also* passes its full reconciliation package. (Under the reconciliation instructions, the relevant committees – 12 in the Senate and 13 in the House – are due to complete their respective portions of the bill by September 15, although this date is not binding and the timeline is extremely ambitious for such a large bill.)

But Pelosi's "two-track" strategy was threatened after a group of nine moderate Democrats recently demanded a vote on the Senate-passed infrastructure package before they would support the budget resolution funding President Biden's larger "Build Back Better" plan. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 38, Aug. 13, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210813_1.html

Those calls became more insistent as Pelosi announced plans to bring lawmakers back to Washington this week to vote on the resolution.

Copyright © 2021 Deloitte Development LLC
All rights reserved.

“We have the votes to pass this legislation right now,” said Rep. Josh Gottheimer, D-N.J., August 20, “which is why I believe we should first vote immediately on the bipartisan infrastructure package, send it to the president’s desk, and then quickly consider the budget resolution, which I intend to support.”

Democratic taxwriter Stephanie Murphy of Florida, who aligned herself with the nine original moderate holdouts this week, contended in an August 23 op-ed that “[t]he two legislative efforts are distinct. Blurring them is confusing to the public. Plus, the reconciliation process won’t be – and shouldn’t be – quick or easy. Democrats will need to make tough, thoughtful decisions about how much to spend given the state of the economy, how much to raise in revenue given the state of the national debt, and which priorities to include and exclude. As we work through these challenges, the infrastructure bill will sit there, stagnant. It makes no sense.”

With the Democrats’ majority razor thin – Pelosi can afford to lose no more than three Democrats on any vote if no Republicans cross the aisle – finding a path that would satisfy both centrists and progressives posed a significant challenge. Ongoing disagreements between the moderate contingent and Democratic leadership delayed a vote on the budget resolution that had been planned for August 23. But after much negotiation every Democrat voted on August 24 in favor of a combined rule (H. Res. 601) that passed the budget resolution and provides that the House will consider the Infrastructure Innovation and Jobs Act no later than September 27. The final vote tally was 220-212, with all House Republicans in the “no” column. (Notably, the rule calls for the House to consider the Senate-passed infrastructure bill without offering amendments, thus eliminating the chance for House members to modify the definition of “broker” in a provision that would expand current-law information reporting requirements for financial accounts to apply to “digital assets” such as cryptocurrency. During floor consideration in the Senate, lawmakers in both parties contended that the term “broker” as defined in the legislation is overly broad, but efforts to amend the bill with a more limited definition were unsuccessful.)
URL: https://www.congress.gov/bill/117th-congress/house-resolution/601/text

Another standoff in September?

But while the agreement smoothed the path this week and allowed both sides to claim a win, there’s a good chance the caucus will end up revisiting the debate over the order of the bills again in September.

“I have assured people, in my view, both are going to pass,” said House Majority Leader Steny Hoyer, D-Md., after the vote on the combined rule. “Whatever the sequence, both are going to pass.”

However, some centrists in both the House and Senate insist that a $3.5 trillion social spending bill is too large to support, even though that price tag has shrunk from the initial target of $6 trillion envisioned by Senate Budget Committee Chairman Bernie Sanders, I-Vt. Progressives, for their part, are concerned that passing the infrastructure bill first might free some moderate Democrats to vote against the reconciliation bill. Both sides have suggested that the bills could be considered on the same day, one after the other – but they both feel strongly about the sequencing of the two votes.

Copyright © 2021 Deloitte Development LLC
All rights reserved.

"Rebuilding our crumbling physical infrastructure is very important," Sanders said August 22. "Rebuilding our human infrastructure, the needs of working families, the children, the elderly, and the sick, is more important. No bipartisan infrastructure bill without the reconciliation bill. They go together."

Hammering out the details

The budget resolution unlocked the reconciliation process, which will allow Democrats to pass legislation with no Republican support in either chamber. (In the Senate, reconciliation protections circumvent the three-fifths supermajority typically required to overcome procedural hurdles in that chamber, which means Democrats can rely on their 50 members, including two Independents who caucus with them, plus the tie-breaking vote of Vice President Kamala Harris to reach a simple majority.)

The next step is for the individual House committees that have received instructions under the resolution to draft and pass those portions of the larger bill that fall under their respective jurisdictions. It is not clear whether the Senate's committees, which are divided evenly between Democratic and Republican members, will consider these measures or whether they will proceed directly to the full Senate.

With the bulk of the spending proposals expected to be offset by tax increases primarily targeting corporations and high-income individuals, a major focus in the coming weeks will be on the legislation emerging from the two congressional taxwriting committees.

The House does not return to session for votes until September 20, but the two weeks after Labor Day are designated as "committee work weeks," and House Ways and Means Committee Chairman Richard Neal, D-Mass., indicated this week that his panel will likely begin to mark up its portion of the bill on September 9. He told reporters he expects the mark-up to take "four or five days, with a weekend interruption." (An official mark-up schedule has not been announced as of press time.)

Democratic committee staff members are hard at work drafting the language for consideration, but the drafts remain closely held.

Senate Finance Committee Chairman Ron Wyden, D-Ore., has not yet announced mark-up plans for his panel, although in recent weeks he has unveiled a series of proposals that lay out many of his revenue-raising priorities. (See separate coverage in this issue for additional details.)

After floating myriad tax proposals during his presidential campaign, President Biden formally laid out his current tax plan earlier this year in his FY 2022 budget blueprint, which calls for, among other things, increasing the corporate tax rate to 28 percent, doubling the tax rate on global intangible low-taxed income (GILTI), imposing a minimum tax on the book income of large corporations, increasing the top rate on capital gains for the wealthiest taxpayers, and repealing stepped-up basis at death. (For additional details on the tax proposals in the administrations FY 2022 budget, see *Tax News & Views*, Vol. 22, No. 28, May 29, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210529_1.html

Copyright © 2021 Deloitte Development LLC
All rights reserved.

Congressional Democrats generally support the president's tax agenda but are expected to make modifications to some of these targets. For example, there does not appear to be sufficient appetite for a corporate tax rate higher than 25 percent, and the treatment of both capital gains and stepped-up basis have been subjects of debate within the caucus. Democrats have pledged, however, not to raise taxes on households earning less than $400,000 per year, one of Biden's signature tax policy priorities.

It is worth noting that the $3.5 trillion figure commonly cited with respect to the budget resolution is actually fungible and could be dialed up or down. Democrats could in theory pursue a smaller reconciliation package to address the concerns of moderates like Sen. Joe Manchin of West Virginia 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. It is also worth noting that although the instructions allow for $1.7 trillion in deficit increases, some centrists are wary of any further deficit spending and would prefer for legislation to be revenue neutral, as would President Biden.

Ways and Means Chairman Neal told reporters this week that he intends for the bill marked up at Ways and Means to be fully offset.

"I intend, as the president requested, to pay for it," he said.

For her part, Speaker Pelosi told reporters August 25 that she would like to have the legislation fully offset but added, "We'll see what is possible. The Ways and Means Committee under [Chairman] Neal has been working with the Senate and others. …Members are making their views known, what the pay-fors can be. Some are new, some are pretty standard fare, but it's a question of how much."

Greasing the wheels

While the reconciliation process dictates that the House must pass its bill first – as revenue measures must originate in the House – House Democrats recognize their bill has to be something the Senate's 50 Democrats can accept, so the two chambers are expected to work closely on the drafting in the next couple of weeks.

"We [will] write a bill with the Senate, because there's no use of doing a bill that's not going to pass the Senate," Pelosi said.

Senate Majority Leader Charles Schumer, D-N.Y., reportedly has been speaking weekly to his chamber's committee leaders throughout August about the reconciliation package and is targeting September 15 for the Senate Budget Committee to compile a comprehensive bill.

With the Senate scheduled to be in session just 12 days in September and the House just 9 days, the month is certain to be exceedingly busy. In addition to the deadlines set up by the most recent votes, September 30 also brings the end of the fiscal year and the need for agreements to fund the entire federal government, renew surface transportation funding authority (which would be taken care of if the House approves the bipartisan

Copyright © 2021 Deloitte Development LLC
All rights reserved.

infrastructure bill by its self-imposed September 27 deadline), and address the pending expiration of the national flood insurance program.

In addition, the most recent suspension of the nation's debt limit expired July 31. The Treasury Department is now using "extraordinary measures" to stave off default, but the Congressional Budget Office has projected that government could run out of cash as early as October or November if Congress does not act quicky to either increase the debt limit or further suspend it. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 34, July 23, 2021.)
URL: https://www.cbo.gov/publication/57152
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210723_1.html

Congressional Democratic leaders have indicated they expect to attach a debt limit suspension to a short-term continuing resolution (CR) that would maintain FY 2021 funding levels and policy for now, while they continue to work on the FY 2022 appropriations bills. It is not clear at this point how long the CR and debt limit suspension will be drafted to last, but such measures are often timed to expire in December and force congressional action before the year-end holidays.

Speaker Pelosi and Senate Majority Leader Schumer have both said they would like to see the infrastructure and reconciliation bills completed by the end of September but meeting that goal will require compromise and efficiency among their members.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the "Deloitte" name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.

Copyright © 2021 Deloitte Development LLC
All rights reserved.