Ways and Means approves budget reconciliation tax title

The House Ways and Means Committee approved, almost entirely along party lines, a tax package that calls for significant revenue-raising provisions targeting large corporations and high-income individuals to pay for lower- and middle-class tax relief, bankroll tax breaks and new spending on traditional physical infrastructure projects and "human" infrastructure initiatives, and to address climate change.

House Democrats intend to incorporate the proposals into the Build Back Better Act, the massive tax-and-spending budget reconciliation bill that they hope to move through the chamber in the coming weeks.

Highlights

The bill as approved largely hews to President Biden's position that many of the benefits of 2017's Tax Cuts and Jobs Act (TCJA) are skewed to large corporations and wealthy individuals and that the federal income tax system needs to be retooled to ensure that these taxpayers are contributing "their fair share."

Among the headline provisions on the revenue-raising side are proposals to:

- Increase the top corporate tax rate to 26.5 percent;
- Overhaul the rules for taxing multinational corporations – for example, by increasing the rate on global intangible low-taxed income (GILTI) and requiring GILTI calculation on a country-by-country basis, as well as increasing the rate on the base erosion and anti-abuse tax (BEAT);
- Increase the top individual income tax rate (to 39.6 percent) and impose a new surtax on the highest-income taxpayers;
- Increase the top capital gains rate to 25 percent and modify the carried interest rules to increase the holding period – generally to five years – for assets to qualify for capital gains treatment;
- Limit the section 199A deduction for certain owners of certain passthrough entities;
- Impose new restrictions aimed at preventing certain high-income individuals from accumulating excessive balances in tax-preferred retirement accounts; and
- Provide additional funds for the IRS to expand its compliance and enforcement efforts, with a focus on identifying and addressing sophisticated tax strategies among high-wealth individuals.

Business-focused offsets would pay for proposals to extend and enhance current-law "green" energy incentives for alternative fuels, energy-efficient residential and commercial buildings, and electric vehicles; provide incentives for revitalizing economically distressed communities; and expand availability of tax-preferred bonds to finance certain types of infrastructure projects.

The proposed revenue raisers on the individual side of the tax code would fund Biden administration priorities such as enhancements to the child tax credit, child and dependent care tax credit, and earned income tax credit; tax relief for family caregivers; and an expansion of premium credits to make health care coverage more affordable for lower-income taxpayers.

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Familiar proposals – and some surprises: The Ways and Means-approved measure incorporates – albeit with modifications – a number of the proposals laid out in the fiscal year 2022 budget blueprint the Biden administration released in May. (For details on the White House budget proposal, see *Tax News & Views*, Vol. 22, No. 28, May 29, 2021.) Other proposals from the blueprint – notably, a corporate minimum tax based on book income, a financial account information reporting requirement, and repeal of the step-up in basis for certain inherited assets – are left out.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210529_1.html

The measure also includes a few surprises, such as:

- An accelerated effective date for new limitations on the deduction for excessive employee remuneration under section 162(m) that was not in the budget blueprint and had not been floated publicly by Democratic taxwriters as a revenue option as the bill was being discussed and drafted and
- A delayed effective date for a current-law provision that generally requires research and experimentation expenses to be capitalized and amortized after 2021.

Net revenue raiser: According to a revenue estimate from the Joint Committee on Taxation (JCT) staff, the measure as approved by the Ways and Means Committee provides for roughly $1.2 trillion in tax relief over the 10-year budget window (2022-2031) and $2.1 trillion in revenue offsets. On net, the package would increase federal receipts by more than $871 billion over 10 years. A distributional analysis from the JCT staff (covering calendar years 2023, 2025, 2027, 2029, and 2031) indicates that taxpayers earning more than $1 million would see their tax bill rise 10.6 percent in 2023, while those making less than $200,000 would receive a tax cut. It is worth noting that the analysis is not comprehensive and does not include, for example, proposed changes in the estate and gift tax area. Moreover, the tables show that taxpayers further down the income stream would experience a net tax increase over time, as many of the tax cuts and incentives are temporary.
URL: https://www.jct.gov/publications/2021/jcx-42-21/
URL: https://www.jct.gov/publications/2021/jcx-44-21/

This report looks at the key details in the measure and discusses the potential obstacles Democratic leaders may face in getting them enacted into law.

Notable corporate and business tax provisions

The legislation reported by the Ways and Means Committee this week includes a number of provisions designed to raise revenue from corporations and multinational enterprises. According to the JCT, these provisions would increase tax receipts by about $964 billion over the next 10 years – roughly half of the bill's total gross tax increases.

Top corporate rate of 26.5 percent: As widely expected, the legislation proposes to lift the top corporate tax rate from its current level of 21 percent. The new top rate – 26.5 percent – would apply in taxable years beginning after 2021 and be imposed on corporate taxable income in excess of $5 million.

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The legislation would move away from the current flat corporate rate structure by imposing an 18 percent rate on income up to $400,000; beyond that threshold, the current 21 percent rate would apply on corporate income up to $5 million, at which point the 26.5 percent rate would attach. Benefits from the graduated rate structure would begin to phase out as taxable income exceeds $10 million.

Changes to the corporate rate structure are projected by the JCT to raise about $540 billion over the next 10 years, making it the single biggest revenue raiser within the Ways and Means-reported plan.

It is important to note that it remains unclear whether the 26.5 percent top corporate rate will hold as the legislative process moves forward, as certain moderate Democrats – including Sen. Joe Manchin of West Virginia – have maintained they may not support moving the rate higher than 25 percent.

Limitation on deductible interest expense: In addition to the existing limitation on business interest deductions under section 163(j), the legislation would add an additional limitation under new section 163(n) designed to limit interest deductions for a domestic corporation that is a member of an international reporting group to the extent its reported net interest expense exceeds its allocable share of the group's net interest expense by more than 110 percent. A domestic corporation's allocable share of the group's net interest expense would be determined on the basis of that corporation's share of the group's total EBITDA (that is, earnings before interest, taxes, depreciation, and amortization).

Only domestic corporations whose three-year average net interest expense exceeds $12 million would be subject to the new limitation.

The limitation would apply beginning in 2022 and would allow a five-year carryforward of disallowed deductions.

Accelerated effective date for American Rescue Plan changes to section 162(m) deduction limitation: The legislation would accelerate the effective date of a provision in American Rescue Plan (enacted this past March) that expanded the roster of "covered employees" under the section 162(m) limitation on the deduction for excessive employee remuneration.

Currently, public companies are prohibited from deducting more than $1 million in compensation paid to the CEO, CFO, the next three highest-paid officers, and certain other covered employees after 2016. The American Rescue Plan expanded this list to include the next five highest-paid employees, but delayed implementation of that provision until taxable years beginning after December 31, 2026.

The Ways and Means-approved legislation would make this change effective for taxable years beginning after December 31, 2021. It also would further modify the limitation to apply the section 414 aggregation rules for covered health insurance providers to the general rule under section 162(m) and expand the IRS's regulatory authority under the general rule.

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In addition, it generally would expand the definition of applicable employee renumeration to include the aggregate amount allowable as a deduction for such taxable year for remuneration for services by the covered employee, including performance-based compensation, commissions, post-termination compensation, and beneficiary payments, whether or not such remuneration is paid directly by the publicly held corporation.

Tax provisions affecting multinationals

The legislation includes proposals to tighten a number of current-law tax provisions that the White House and congressional Democrats argue provide incentives for companies to locate investment in foreign jurisdictions and move US-based jobs and production activities offshore. (The Ways and Means proposals represent one of several competing approaches to international tax reform. See separate coverage in this issue for a side-by-side table from Deloitte Tax LLP comparing the approaches put forward in the Biden administration's FY 2022 budget package, a discussion draft proposal from Senate Finance Committee Chairman Ron Wyden, D-Ore., and the OECD's "Pillar Two" blueprint.)

Tightening of GILTI rules: The Ways and Means-reported bill would take steps to tighten the GILTI regime put in place by the TCJA, albeit not quite to the extent proposed by some other Democratic lawmakers.

Specifically, the legislation would reduce the section 250 deduction from 50 percent to 37.5 percent – yielding a headline GILTI rate (given the proposed 26.5 percent top corporate rate) of about 16.5 percent, up from the current headline rate of 10.5 percent. (Under current law, the GILTI deduction is already scheduled to fall to 37.5 percent, but not until 2026.)

Additionally, the Ways and Means bill proposes to modify the formula for calculating GILTI to reduce – from 10 percent to 5 percent – the allowable return on foreign tangible investment (so-called "qualified business asset investment" or QBAI), though the change would not apply to income earned in a US territory, such as Puerto Rico. The measure also would require GILTI to be calculated on a country-by-country basis, which generally would prevent taxpayers from offsetting GILTI amounts between high-tax and low-tax jurisdictions.

Further, the measure would relax the current GILTI rules by reducing the "haircut" on foreign tax credits attributable to GILTI such that taxpayers would receive 95 percent of the value of their credits rather than 80 percent as under current law. And, in a related change, the bill provides that the foreign tax credit limitation with respect to GILTI would be determined by allocating only deductions directly allocable to GILTI, such as the section 250 deduction. The legislation also would repeal the exemption for foreign oil and gas extraction income (FOGEI) and expand the definition of FOGEI to include oil shale and tar sands.

As already noted, some of these changes are less stringent than comparable GILTI proposals put forward by other prominent Democrats. For example, the draft bill Senate Finance Committee Chairman Ron Wyden released August 25 with fellow Democratic taxwriters Sherrod Brown of Ohio and Mark Warner of Virginia proposes to fully repeal the so-called QBAI election. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 40, Aug. 27, 2021.) And President Biden, in his fiscal year 2022 budget blueprint, called for a 21 percent

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headline rate on GILTI and for maintaining current rules which provide that only 80 percent of related foreign tax credits can be used to offset GILTI tax.
URL:
https://www.finance.senate.gov/imo/media/doc/WBW%20Framework%20discussion%20draft%20leg%20text%20FINAL%208.24.21.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210827_2.html

FDII deduction less generous: Under current law, a deduction (also under section 250) that helps determine the effective rate on foreign-derived intangible income – another regime enacted under the TCJA – is scheduled to fall from 37.5 percent to 21.875 percent in tax years beginning after 2025. The Ways and Means-reported bill would essentially accelerate this change, shifting to the 21.875 deduction percentage in taxable years beginning after 2021.

Importantly, the legislation would retain the FDII's concept of a tax-free return on QBAI – at the TCJA-enacted 10 percent level, not the 5 percent level as proposed for the GILTI regime. In this way, the House bill compares favorably to the Wyden-Brown-Warner legislation, which proposes to fully repeal the QBAI concept for both GILTI and FDII.

BEAT regime reformed: Another TCJA construct – the BEAT, which applies most often to inbound multinational enterprises – would also come in for changes under the House Democratic taxwriters' legislation.

In particular, the bill would amend the BEAT rate structure such that a 10 percent rate would apply in taxable years beginning before 2024, a 12.5 percent rate would apply in taxable years beginning after 2023 and before 2026, and a 15 percent rate would apply in taxable years beginning after 2025.

The legislation would also make a number of changes related to how modified taxable income is computed under the BEAT regime and, in a move designed to incorporate aspects of the Biden administration's proposed Stop Harmful Inversions and Ending Low-Tax Developments (SHIELD) proposal, would provide that outbound payments subject to US tax, as well as payments subject to an effective rate of tax in the destination jurisdiction not less than the applicable BEAT rate, would not be subject to additional tax under the BEAT.

Tightened rules for 'dual capacity' taxpayers: The legislation would implement stricter rules for so-called "dual capacity" taxpayers – that is, taxpayers that are both subject to tax or levy in, and receive certain benefits from (for example, extraction rights on government land), a foreign country. In particular, the bill would provide that – for amounts paid or accrued in taxable years beginning after the date of enactment – an amount paid by a dual capacity taxpayer to a foreign country will not be considered a creditable foreign tax for US tax purposes to the extent it exceeds the generally applicable income tax of that country.

Repeal of election for one-month deferral in determination of taxable year of specified foreign corporations: The legislation would strike section 898(c)(2), which previously allowed the choice of a taxable year beginning one month earlier than the majority US shareholder year. The amendments made by this section would apply to taxable years of specified foreign corporations beginning after November 30, 2021.

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Modifications to foreign tax credit limitation: This provision would amend section 904 to require foreign tax credit determinations on a country-by-country basis for purposes of sections 904, 907, and 960. These foreign tax credit computations entail assigning each item of income and loss to a taxable unit of the taxpayer which is a tax resident of a country (or, in the case of a branch, has a taxable presence in such country).

The proposal defines taxable units of the taxpayer as: (1) the person that is the taxpayer, (2) controlled foreign corporations (CFC), (3) interests held by the taxpayer or any CFCs in a passthrough entity if the passthrough entity is a tax resident of a country other than the country of the taxpayer or the CFC, and (4) each branch whose activities are carried on by the taxpayer or any CFC, and which give rise to a taxable presence in the country where it is located. Additionally, this provision would repeal the foreign branch income basket.

The provision would limit the carryforward of excess foreign tax credit limitation to five succeeding taxable years (compared with 10 years under current law). The carryback of such foreign tax credit limitation would be repealed (compared with the one-year carryback under current law).

Section 904(b) would be amended to provide that, for the purpose of determining the foreign tax credit limitation with respect to the GILTI basket, the taxpayer's foreign-source income is determined by allocating only such deductions that are directly allocable to such income (i.e., section 250 deduction).

Section 904(b) also would be amended to provide that in the case of any covered asset dispositions, the principle of section 338(h)(16) shall apply in determining the source and character of any item for purposes of this part. A covered asset disposition means any transaction which, among other things, is treated as a disposition of stock of a corporation for purposes of the tax laws of the relevant foreign country.

This provision would apply to taxable years beginning after December 31, 2021.

Deduction for foreign-source portion of dividends limited to controlled foreign corporations, etc.: Currently, section 245A provides a 100 percent participation exemption for foreign portions of any dividends received from a specified 10 percent owned foreign corporation, even in cases where the foreign corporation is not a CFC (and therefore not subject to subpart F and GILTI regimes). This provision would amend section 245A so that the exemption applies to foreign portions of dividends received only from CFCs. It also would provide an election to be treated as a CFC for certain foreign corporations with US shareholders. This provision would be effective for taxable years of foreign corporations beginning after December 31, 2017.

Limitation on foreign base company sales and services income: The provision would limit foreign base company sales and services income to US residents and passthrough entities and branches in the United States, effective for taxable years beginning after December 31, 2021. It also would clarify that (1) the rules in section 961(c) apply in determining the basis of stock and certain property and the recognition of gain for all purposes of the code and (2) gain may be recognized by reason of section 961(b) and (c) upon a distribution of previously taxed earnings and profits by a lower-tier CFC to an upper-tier CFC in situations in which the amount of the distribution exceeds the upper-tier CFC's basis in the stock of the lower-tier CFC.

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This provision generally would apply to distributions occurring after, or taxable years of foreign corporations beginning after, December 31, 2021.

Other business revenue offsets

The Ways and Means-reported legislation includes a number of other business-focused revenue raisers which are discussed below.

Return of the Superfund: This legislation would reinstate the hazardous substance Superfund financing rate on crude oil and imported petroleum products at the rate of 16.4 cents/per gallon, indexed to inflation, and would reinstate the tax on sale of chemicals at twice the rates enacted in prior law. These provisions would be effective after December 31, 2021, and until January 1, 2032. Taxes on other chemicals covered in the currently lapsed Superfund regime would be reinstated and modified in the separate bipartisan infrastructure bill that passed the Senate in early August and is scheduled for House consideration no later than September 27.

Authority for advances to be appropriated to the trust fund would be reinstated through December 31, 2029.

Adjusted basis limitation for divisive reorganizations: The legislation would amend section 361 to provide that a distributing corporation in a divisive reorganization recognizes gain to the extent of controlled corporation debt securities transferred to the creditors of the distributing corporation in excess of the basis in assets (reduced by amounts paid by the controlled corporation to the distributing corporation) transferred from the distributing corporation to the controlled corporation in the transaction. It would be effective for reorganizations after the date of enactment.

Rules relating to common control: The tax code aggregates certain business entities to apply various limitations – for example, the gross receipts limitation in the use of the cash method of accounting under section 448(c) and the exemption from business interest deductibility limitations under section 163(j)). Section 52(a) addresses corporate entities and section 52(b) provides similar rules for noncorporate entities.

This proposal would provide that a taxpayer engaged in any activity in connection with a trade or business or any for-profit activity is subject to the aggregation rules under section 52(b). It would be effective for taxable years beginning after the date of enactment.

Wash sales: This proposal would include commodities, currencies, and digital assets in the wash sale rule, an anti-abuse rule previously applicable to stock and other securities. The wash sale rule in section 1091 prevents taxpayers from claiming tax losses while retaining an interest in the loss asset. It would be effective for taxable years beginning after December 31, 2021.

Modifications to treatment of certain losses: The provision would amend section 165(g) to provide that losses with respect to securities are treated as realized on the day that the event establishing worthlessness occurs. Other changes would (1) provide that partnership indebtedness is treated in the same manner as corporate

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indebtedness under the section, (2) amend section 165 to provide that a loss on a worthless partnership interest is subject to the same rules as a loss in a sale of a partnership interest, and (3) change the treatment of taxable liquidations of corporate subsidiaries to provide that a loss in a taxable liquidation is deferred until the property received in the liquidation is sold to a third party. The proposal generally would apply to taxable years beginning after December 31, 2021. The provision related to taxable liquidations of corporate subsidiaries would apply to liquidations on or after the date of enactment.

Modifications to exemption for portfolio interest: This provision would modify the definition of "10 percent shareholder," whose interest is exempt from portfolio interest. Specifically, it would provide that, in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total vote or value of the stock of such corporation is not eligible for the portfolio interest exemption, effective for obligations issued after the date of enactment.

Payments equivalent to publicly traded partnership income payments: This proposal would treat notional principal contract income calculated by reference to the US-source income or gain of all publicly traded partnerships, including those that are not engaged in a US trade or business, as "dividend equivalent amounts," sourced based on the residence of the payor rather than the recipient. As a result, these amounts would be US-source payments subject to 30 percent US withholding tax (which may be reduced by tax treaty). To determine the portion of the notional principal contract income that is attributable to the income or gain of a publicly traded partnership that is subject to the new sourcing rule, the publicly traded partnerships themselves must provide relevant information in notices to the relevant withholding agent.

Limitation on certain special rules for section 1202 gains: This provision would amend section 1202(a) to provide that the special 75 percent and 100 percent exclusion rates for gains realized from certain qualified small business stock will not apply to taxpayers with adjusted gross income equal or exceeding $400,000. The baseline 50 percent exclusion in section 1202(a)(1) would remain available for all taxpayers. The provision would apply to sales and exchanges after September 13, 2021, subject to a written binding contract exception.

Constructive sales: This provision would include digital assets in the constructive sale rules, anti-abuse rules previously applicable to other financial assets. The constructive sale rules in section 1259 treat the adoption of certain offsetting positions to previously owned positions as sales of the previously owned position. These rules prevent taxpayers from locking in investment gains without realizing taxable gain. The proposal would apply to taxable years beginning after December 31, 2021.

Adjustments to earnings and profits of controlled foreign corporations: Currently, a special rule in section 952(c)(3) for determining earnings and profits of a CFC has limited application with respect to subpart F income. This provision would relocate this rule to section 312(n) so that it is more generally applied in determining the earnings and profits of CFCs, in this case without regard to LIFO inventory adjustments, installment sales, and completed contract method of accounting. This provision would apply to taxable years of foreign corporations beginning after December 31, 2021, and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end.

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Certain dividends from controlled foreign corporations to US shareholders treated as extraordinary dividends: A general rule in section 1059 provides that if any corporation receives an extraordinary dividend with respect to any stock it has not held for more than two years prior to the dividend announcement date, the basis of the stock is reduced by the nontaxed portion of those dividends, and any excess is treated as gain from the sale or exchange of the stock.

This proposal would provide that any disqualified CFC dividend is treated as an extraordinary dividend without regard to the period the taxpayer held the stock to which the dividend relates. Under this new rule, a disqualified CFC dividend means any dividend paid by a CFC to a US shareholder of such foreign corporation if such dividend is attributable to earnings and profits which were earned, or are attributable to gain on property which accrued, while such foreign corporation was not a CFC or such stock was not owned by a US shareholder. The provision would apply to distributions made after the date of enactment.

DISCs and FSCs: The legislation would amend the definition of prohibited transaction under section 4975 to include an individual retirement account that holds an interest in a domestic international sales corporation (DISC) or foreign sales corporation (FSC) that receives any commission or other payment from an entity any stock or interest in which is owned by the individual for whose benefit the individual retirement account is maintained, effective for stock acquired or held on or after December 31, 2021.

A separate provision would clarify that gains from the sale or exchange of, and distributions by, a DISC or FSC to a foreign shareholder are treated as effectively connected with the conduct of a trade or business conducted through a permanent establishment deemed to be had by the shareholder in the United States, effective for distributions on or after December 31, 2021.

Taxes on tobacco products and nicotine: The legislation generally would increase the federal excise taxes on cigarettes, small cigars, and roll-your-own tobacco. It also would:

- Change the tax on large cigars from a tax on percentage of sales price to a tax per pound (at the rate of $49.56 per pound) but not less than 10.06 cents per cigar. It also would provide for larger increases in tax on smokeless tobacco (i.e., snuff, chewing tobacco, and pipe tobacco) and a new tax on discrete single-use units at the rate of $100 per thousand.
- Add “discrete single-use units” (that is, specified products containing tobacco that are not intended to be smoked) to the definition of smokeless tobacco at a proposed tax rate of $100 per thousand.
- Modify the definition of “roll your own tobacco” to include processed tobacco that is removed for delivery or delivered to a person other than a person with a permit.
- Impose a new excise tax on taxable nicotine – that is, any nicotine other than nicotine used in listed tobacco products that has been extracted, concentrated, or synthesized – at the greater of (1) the dollar amount specified for small cigarettes or (2) $100.66 per 1,810 milligrams of nicotine (and a proportionate tax on any fractional part thereof).
- Adjust tax rates on tobacco products for inflation beginning in 2022.
- Impose a floor stocks tax on cigarettes and small cigars, with a *de minimis* exemption amount of $1,000.

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The effective date for provisions related to cigarettes, small cigars, and smokeless tobacco is calendar quarters beginning after the date of enactment. The effective date for provisions related to large cigars, discrete single-use units, and taxable nicotine is calendar quarters beginning 180 days after the date of enactment.

The legislation also would clarify the rules regarding so-called "drawbacks" for exported tobacco products by providing that exports that are not subject to excise tax are ineligible for a drawback claim.

Credit for clinical testing of orphan drugs limited to first use or indication: This provision would limit the credit for qualified clinical testing expenses to expenses related to the first use or indication for an orphan drug as designated under section 526 of the Federal Food, Drug, and Cosmetic Act. It also would provide that clinical testing expenses for any drug that has received a marketing approval for any use or indication (either for use in rare disease or condition or non-rare disease or condition) do not qualify for the credit. It would be taxable years beginning after December 31, 2021.

Faster expiration of paid family and medical leave credit: The legislation would accelerate the termination of the employer credit for wages paid to employees during family and medical leave to taxable years beginning after 2023. Currently, the credit will terminate for wages paid in taxable years beginning after 2025.

Black Lung Disability Trust Fund tax: The legislation would extend the tax to fund the Black Lung Disability Trust Fund through December 31, 2025.

Rents from prison facilities not treated as qualified income for purposes of REIT income tests: This provision would amend section 856 to provide that income received with respect to property primarily used as a prison or other detention facility does not qualify for the purpose of REIT income tests. It would be effective for taxable years beginning after December 31, 2021.

Business tax relief

The legislation also includes a handful business-focused tax relief proposals (apart from the green energy and infrastructure incentives discussed elsewhere in this report).

Delayed effective date for amortization of research and experimental expenditures: One notable proposal would delay the effective date of a provision in the TCJA that generally requires research and experimentation expenses to be capitalized and amortized over five years for research conducted in the United States (15 years for research conducted outside of the United States). The provision as enacted in the 2017 law is scheduled to take effect in taxable years beginning after December 31, 2021. Under the Ways and Means proposal, the amortization requirement would become effective for amounts paid or incurred in taxable years beginning after December 31, 2025.

Temporary rule allowing tax-free reorganizations to partnerships for certain S corps: This provision would allow eligible S corporations to reorganize as partnerships without triggering tax. An eligible S corporation is defined as any corporation that was an S corporation on May 13, 1996 (prior to the publication of current-law

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“check the box” regulations with respect to entity classification). Eligible S corporations would be required to completely liquidate and transfer substantially all of their assets and liabilities to a domestic partnership during the two-year period beginning on December 31, 2021.

Changes to REIT constructive ownership rules: This provision would modify the REIT constructive ownership rules by providing that stock, assets, and net profits constructively owned by a partnership, estate, trust, or corporation by reason of the application of section 318(a)(3) (the “downward” attribution rule) are not considered as owned by such entity for purposes of again applying section 318(a)(3) in order to make another person the constructive owner of such stock, assets, or net profits. It would be effective for taxable years ending after the date of enactment.

Employment-focused tax credits: The legislation proposes several new targeted credits, outlined below, that would be available to certain employers.

- Credit for employer-provided child care: The legislation would provide a refundable payroll credit against the employer-side Hospital Insurance tax for 50 percent of qualified child care wages paid by an employer that operates a qualified child care facility (defined under rules provided by the Department of Health and Human Services). Qualified child care wages are defined as wages paid above the GS-3 step 1 rate for the applicable time period and locality, paid to employees other than highly compensated employees (the threshold for which starts at $130,000 and is adjusted for cost of living). The maximum wage that can be taken into account is $2,500 per quarter per employee. Health plan expenses allocable to qualified wages are included in wages. Gross income would be increased by the amount of the credit. The credit generally would not be available to federal government employers or for wages covered under a forgiven Paycheck Protection Program loan or a venue or restaurant grants in the American Rescue Plan. The provision would be effective for calendar quarters beginning after December 31, 2021.
- WOTC boost during COVID recovery period: The measure would increase the work opportunity tax credit (WOTC) to 50 percent for the first $10,000 in wages, through December 31, 2023, for all WOTC targeted groups except for summer youth employees. The increase also would be available for qualified wages earned by a WOTC target group employee in his or her second year of employment. (Current law limits allows WOTC to be claimed only on first-year wages.)
- Expanded Social Security tax credit for certain tipped wages: The measure would broaden the section 45B credit for employer Social Security taxes paid on employee tips to apply to tips received for providing beauty services to a client or customer, effective for taxable years beginning after December 31, 2021.
- Temporary credit for wages paid to local journalists: This proposal would allow an employment tax credit each calendar quarter for wages (up to $12,500) paid to local news journalists by an eligible local newspaper publisher. Other conditions and limitations would apply. The provision would be effective for calendar quarters during the first five calendar years beginning after the date of enactment.

Temporary deduction for costs of certain qualified sound recording productions: The legislation would amend section 181 to permit taxpayers to treat as currently deductible expenses for the cost of qualified

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sound recording productions not exceeding $150,000 in a taxable year. Qualified sound recording production would be defined as certain sound recordings produced and recorded in the United States. The deduction would take effect for taxable years ending after the date of enactment and would be available through December 31, 2025 (the current section 181 termination date).

Treatment of financial guaranty insurance companies as qualifying insurance corporations under passive foreign investment company rules: The legislation would provide that a financial guaranty insurance company that satisfies certain conditions may include unearned premium reserves in its applicable insurance liability for purposes of determining whether it is a passive foreign investment company. This provision would clarify that certain items on a financial statement shall be reported separately and would provide for regulatory authority to impose additional tax reporting requirements on financial guaranty insurance companies. This provision generally would be effective as if included in the Tax Cuts and Jobs Act (taxable years beginning after December 31, 2017). The reporting requirements would be effective for reports made after the date of enactment.

Payment to certain individuals who dye fuel: This provision would create a new refund mechanism allowing for refunds, without interest, to a taxpayer who removes from a terminal "eligible indelibly dyed diesel fuel or kerosene" for nontaxable use, and establishes to the satisfaction of the Treasury Secretary that tax for such fuel under section 4081 has already been paid. It would be effective for previously taxed, eligible indelibly dyed diesel fuel or kerosene removed on or after the date that is 180 days after the date of enactment.

Cover over of certain distilled spirits taxes: The legislation would repeal the limitation on cover over of taxes on rum to Puerto Rico and the Virgin Islands, effective for distilled spirits brought into the United States after December 31, 2021.

Incentives for renewable energy production and investment, alternative fuels

The legislation proposes production and investment tax credits related to renewable and alternative energy property and for production of certain alternative fuels. A number of these credits are provided at a base rate and a bonus rate. To claim the bonus rate, taxpayers would be required to pay wages of at least the local prevailing rates and to utilize registered apprenticeship programs subject to certain exceptions (the so-called Bacon-Davis rules).

These provisions plus other energy and infrastructure-related incentives in the legislation are discussed at a high level in this report. Additional details are available in a tax alert from Deloitte Tax LLP's Federal Tax Credits & Incentives specialists. (See separate coverage.)

Renewable electricity production tax credit: The legislation would extend the section 45 production tax credit for qualified facilities where construction begins before January 1, 2034, including for solar facilities. The credit would be available at a base rate of 0.5 cents/kilowatt hour and a bonus rate of 2.5 cents/kilowatt hour based on current applicable credit rates. The credit generally would be extended at 100 percent of the applicable

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credit rate through 2031, phase down in 2032 and again in 2033, and would fall to zero for facilities for which construction begins in 2034 and beyond.

Renewable energy investment tax credit: The investment tax credit for qualified energy property under section 48 generally would be extended through December 31, 2033, at a base rate of 6 percent of the basis of qualified energy property or a bonus rate of 30 percent of the basis of qualified energy property. For eligible property, the credit would be available at its full value through 2031, phase down in 2032 and again in 2033, and fall to zero for property for which construction begins in 2034 and beyond. The list of property eligible for the credit would be expanded to include energy storage technology, linear generators, microgrid controllers, dynamic glass, and biogas property.

Enhanced credit for solar facilities in low-income communities: The legislation provides for an enhanced incentive for the section 48 investment tax credit for solar facilities that are placed in service in certain low-income communities designated by the Treasury Secretary, effective for property placed in service after December 31, 2021. This provision would sunset at the end of 2031.

Elective payment for energy property and electricity produced from certain renewable resources: Under this provision, taxpayers would be permitted to elect a direct payment in lieu of the section 48 investment tax credit, the section 45 production tax credit, the section 45Q carbon capture and sequestration credit, the section 30C alternative vehicle refueling property credit, the section 48C advanced energy property credit, the section 48D investment credit for transmission property, the section 48E zero-emissions facility credit, the section 45W zero-emission nuclear power production credit, and the section 45X clean hydrogen production credit. It generally would be effective for property placed in service after December 31, 2021.

Domestic content bonus credit: The legislation provides for an increase in certain tax credits including the production tax credit and investment tax credit, in an amount that varies per credit and depending on whether certain labor requirements are satisfied, if a qualified facility or energy property certifies that any steel, iron, or manufactured product used in the construction of such facility was produced in the US prior to the end of the taxable year in which the facility is placed in service. A taxpayer that does not satisfy the domestic content provision requirements would be required to reduce its elective payment option under new section 6417 – to 90 percent of the otherwise allowable credit value in calendar year 2024, 85 percent in calendar year 2025, and zero in calendar year 2026 or later, subject to exceptions.

Electric transmission infrastructure credit: The legislation would create a new temporary investment tax credit (available for property placed in service after December 31, 2021, and before January 1, 2032) for a taxpayer's investment in qualifying electric power transmission property placed in service by the taxpayer. The base rate for the credit would be 6 percent of the basis of qualified electric transmission property; the bonus rate would be 30 percent of basis.

Zero-emissions facility credit: This proposal would create a capped 30 percent investment tax credit for qualified investments in qualified property which is part of a zero-emissions facility. Qualified investment is defined as the basis of eligible property placed in service by the taxpayer which is part of a zero emissions

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facility. The provision would be effective for periods after December 31, 2021 and would expire after December 31, 2031.

Carbon oxide sequestration credit: The legislation would extend the section 45Q carbon oxide sequestration credit to include facilities that begin construction before December 31, 2031. It also would change the base credit rate for new section 45Q carbon oxide sequestration facilities to $10 per ton (bonus rate of $50 per metric ton) for direct sequestration in secure geological storage and to $7 per ton (bonus rate of $35 per ton) of carbon that is used for enhanced oil recovery or utilized in a permitted manner. This provision would modify minimum capture threshold requirements and would be effective for taxable years beginning after December 31, 2021.

Green energy publicly traded partnerships: The legislation would expand the definition of qualified income for publicly traded partnerships from certain income derived from minerals and natural resources to include income derived from green and renewable energy. These additions include income from certain activities related to energy production eligible for the production tax credit, property eligible for the investment tax credit, renewable fuels, and energy and fuel from carbon sequestration projects eligible for credits under section 45Q. The provision would be effective for taxable years beginning after December 31, 2021.

Zero-emission nuclear power production credit: This proposal would create a new temporary credit with a base rate of 0.3 cents per kilowatt/hour credit (bonus rate of 1.5 cents per kilowatt/hour) for electricity produced at a qualified nuclear power facility and sold to an unrelated person. The credit would be reduced as the sale price of such electricity increases. It would be available for electricity produced and sold after December 31, 2021, and would terminate on December 31, 2026.

Extensions of expiring alternative fuels credits: The legislation would extend the following temporary current-law tax credits through 2031:

- Income and excise tax credits for biodiesel and biodiesel mixtures;
- The small agri-biodiesel producer credit;
- Excise tax credits for alternative fuels and alternative fuel mixtures; and
- The second generation biofuel income tax credit.

Sustainable aviation fuel credit: The proposal calls for a new temporary production tax credit for sustainable aviation fuel that achieves at least a 50 percent reduction in emissions relative to conventional jet fuel. The credit would be available fuel sold or used after December 31, 2022 and would expire after December 31, 2031.

Clean hydrogen production credit: This provision would create a new temporary tax credit for the production of clean hydrogen produced by a taxpayer at a qualified clean hydrogen facility beginning in 2022 during the 10-year period beginning on the date such facility is placed in service. The credit amount would be equal to the applicable percentage of a base rate of 60 cents (or a bonus rate of $3) multiplied by the volume of clean hydrogen produced by the taxpayer at a qualified facility during such taxable year. The applicable percentage

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would be determined by the percentage reduction in lifecycle greenhouse gas emissions reduction as compared to hydrogen produced by steam-methane reforming. The credit would not be available for facilities where construction begins in 2029 or later.

Extended and enhanced incentives for energy-efficient building projects

The legislation includes a number of business- and consumer-focused incentives for energy-efficient residential and commercial buildings.

Nonbusiness energy property credit: The legislation would extend the nonbusiness energy property credit to property placed in service before the end of 2031. It would expand and modify the credit beginning in 2022 by, among other things, increasing the credit percentage for installing qualified energy-efficiency improvements to 30 percent and replacing the lifetime cap on credits with a $1,200 annual limitation.

Credit for residential energy-efficient property: The legislation would extend this credit at the full 30 percent rate through 2031, with phase-downs in 2032 and again in 2033. The credit would sunset at the end of 2033. This provision also would expand the definition of eligible property to include battery storage.

Energy-efficient commercial buildings deduction: The legislation would temporarily enhance this deduction by, among other things, increasing the maximum deduction, changing this maximum from a lifetime to a three-year cap, and modifying certain eligibility requirements. The temporary enhancements would expire after December 31, 2031.

Energy-efficient new homes credit: The legislation would extend the credit through 2031 and replace the existing credit amounts with a $2,500 credit for new homes ($500 for multifamily dwellings) that meet certain energy-efficiency standards and a $5,000 credit for new homes ($1,000 for multifamily dwellings) that are certified as zero-energy ready homes. The provision would be effective for dwelling units acquired after December 31, 2021.

Treatment of conservation subsidies: The provision would exclude from gross income water conservation, storm water management, and wastewater management subsidies provided by public utilities, state or local governments, or storm water management providers effective for amounts received after December 31, 2018.

Incentives for alternative fuel vehicles

The legislation proposes several tax incentives – most of which are temporary – that are intended to promote alternative fuel vehicles for consumer and commercial use.

Refundable new plug-in electric vehicle credit for individuals: The legislation calls for a refundable income tax credit – available after December 31, 2021 and continuing through 2031 – for new qualified plug-in electric vehicles placed in service by a taxpayer during the taxable year. The base credit amount would be $4,000, with increases possible for vehicles that meet certain requirements related to battery capacity, domestic assembly,

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and domestic content of component parts. The credit amount would be limited to 50 percent of a vehicle's purchase price.

Beginning in 2027, the credit would be available only to vehicles whose final assembly is in the United States.

The credit would not be available for vehicles that exceed certain price thresholds (based on vehicle type). The credit amount also would phase out for taxpayers whose modified adjusted gross income exceeds certain thresholds based on filing status.

A 10 percent credit (up to $2,500) would be available for certain new two-wheel and three-wheeled plug-in vehicles.

Credit for previously-owned plug-in electric vehicles: The legislation also would create a temporary refundable credit for the purchase of used plug-in electric vehicles acquired after date of enactment through 2031. The proposal calls for a base credit of $1,250 for the purchase of qualifying used EVs, with additional incentives based on battery capacity. The credit would be capped at the lesser of $2,500 or 30 percent of the sale price. It generally would be limited to vehicles that meet certain eligibility criteria and price thresholds and would phase out for individuals whose modified adjusted gross income exceeds certain thresholds based on filing status.

Credit for qualified commercial electric vehicles: A new temporary credit would be available for qualifying commercial electric vehicles placed into service by the taxpayer. The credit would be equal to 30 percent of the cost of the vehicle. In the case of vehicles acquired by tax-exempt entities, the person who sold the qualified vehicle would be treated as the taxpayer that placed the vehicle into service. The credit would apply to qualifying vehicles acquired after December 31, 2021, through December 31, 2031.

Qualified fuel cell vehicles: The credit for the purchase of a qualified fuel cell motor vehicle would be extended through 2031, but would be limited to vehicles not of a character subject to depreciation. Beginning on January 1, 2022, commercial fuel cell vehicles otherwise eligible for this credit would be eligible for the new section 45V credit for qualified commercial electric vehicles.

Alternative fuel refueling property credit: The legislation would extend the alternative fuel vehicle refueling property credit through 2031. Beginning in 2022, it would expand the credit for zero-emissions charging infrastructure by providing a base credit of 6 percent for expenses up to $100,000 and 4 percent for allowable expenses in excess of such limitation (i.e., it would allow a credit for expenses beyond the limit if certain requirements are met). It also would provide an alternative bonus credit level of 30 percent for expenses up to $100,000 and 20 percent thereafter.

Employer-provided fringe benefits for bicycle commuting: The legislation would reinstate the exclusion for qualified bicycle commuting benefits, increase the maximum benefit amount, and expand the roster of eligible benefits. The credit would be available for taxable years beginning after December 31, 2021.

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Credit for certain new electric bicycles: The legislation would create a refundable 15 percent tax credit – up to $1,500 – for qualified electric bicycles placed in service after December 31, 2021, and through December 31, 2031. A taxpayer would be able to claim a credit for one bicycle per year (two for joint filers) and the credit would phase out as modified adjusted gross income exceeds certain thresholds based on filing status. Other requirements and limitations also would apply.

'Green workforce' incentives

Proposals in this area would:

- Extend the section 48C qualified advanced energy property credit, allowing the Treasury Secretary to allocate an additional $2.5 billion in credits for each year from 2022 through and including 2031, with $400 million in credits each year reserved for projects in automotive communities (effective on the date of enactment) and
- Create a new general business credit for up to 10 percent of certain mechanical insulation labor costs paid or incurred by the taxpayer during a taxable year (for costs paid beginning in 2022 through the end of 2031).

Economic and community development incentives

The legislation would expand certain current-law credits – and create some new ones – that are aimed at revitalizing economically distressed communities.

New markets tax credit: The legislation would permanently extend the new markets tax credit, provide additional allocations for 2022 and 2023, and set the allocation amount at $5 billion beginning in 2024 (indexed annually for inflation thereafter). It also would provide AMT relief to taxpayers claiming the credit.

Low-income housing tax credit: The legislation would expand the low-income housing tax credit by increasing the 9 percent housing credit and the small state minimum by 50 percent, phased in over five years, with amounts adjusted for inflation in calendar years 2026 through 2028.

Other provisions would (1) temporarily reduce the tax-exempt bond financing requirement, (2) provide a temporary 50 percent basis boost for certain buildings designated to serve extremely low-income households, (3) permit states to designate certain rural areas as difficult development areas, making projects in those areas eligible for a basis boost, (4) repeal the qualified contract exception for buildings receiving allocations beginning in 2022, (5) change the right-of-first-refusal safe harbor to an optional safe harbor, and (6) increase the credit for certain bond-financed projects designated by housing credit authorities (by treating them as difficult development areas for purposes of determining eligible basis).

These provisions generally would be effective in taxable years beginning after December 31, 2021.

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Rehabilitation tax credit: Proposed enhancements to the current-law credit include (1) increasing the credit rate to 30 percent through 2025, phasing it down in 2026 and 2027, and returning it to 20 percent beginning in 2028, (2) permanently increasing the credit rate to 30 percent for certain smaller projects, (3) relaxing the definition of "substantially rehabilitated" in determining expenses eligible for the credit, (4) eliminating the rehabilitation credit basis adjustment, (5) amending the disqualified lease rules to make it easier for nonprofits and other tax-exempt entities to take advantage of the credit, and (6) relaxing certain "prior use" limitations to make it easier for public schools to take advantage of the credit. These provisions have various effective dates in 2021 and 2022.

Neighborhood homes credit: This provision would create a new federal tax credit to encourage the rehabilitation of deteriorated homes in distressed neighborhoods. States would receive Neighborhood Homes Investment Act (NHIA) tax credit authority and administer and allocate credits on a competitive basis. Credits would be used to cover the gap between development costs and sales prices, up to 35 percent of eligible development costs. Rehabilitated homes must be owner-occupied for investors to receive the credits. Homeowners must be below certain income limitations, sales prices would be capped, and qualifying neighborhoods must have elevated poverty rates, lower incomes, and modest home values. Special rules would apply to rehabilitations that occur when homes are already owner-occupied prior to and during rehabilitation. This provision would be effective for taxable years beginning after December 31, 2021.

Credit for operations and maintenance costs of government-owned broadband: The legislation would create a 30 percent tax credit for state, local, and tribal governments for the operations and maintenance costs of government-owned broadband systems. Broadband service eligible for the credit would be required to meet certain minimum download and upload speeds. Expenses taken into account for purposes of this credit would be capped at $400 per newly subscribed household living within a low-income community. The credit would be effective for taxable years beginning after December 31, 2020, but would phase down in 2027 and 2028 and expire at the beginning of 2029.

Bond financing for infrastructure projects

The legislation proposes to expand availability of tax-preferred bonds to finance certain types of infrastructure projects.

Tax credit bonds: The legislation would authorize tax credit bond financing similar to the Build America Bonds program enacted in the American Recovery and Reinvestment Act of 2009. Under the proposed new program, which would be effective for bonds issued after December 31, 2021, state and local governments issuing qualified infrastructure bonds that otherwise would be tax-exempt would receive a tax credit equal to an applicable percentage of the interest if the entirety of the net proceeds are used for capital expenditures or the operation and maintenance of capital expenditures.

Advance refunding bonds: The legislation would restore the tax exemption for interest on advance refunding bonds issued by state and local governments, reinstating a provision that was repealed in the TCJA. This provision would be effective for bonds issued more than 30 days after the date of enactment.

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Qualified small-issue bonds: The legislation would permanently expand the small-issuer exception to the tax-exempt interest allocation rules for financial institutions by increasing the $10 million limit to $30 million (indexed annually for inflation), treating qualified 501(c)(3) bonds as tax-exempt obligations under the small-issuer exception, and permanently extending certain rules related to qualified holdings.

A separate provision would expand the definition of manufacturing facilities that are eligible for qualified small-issue bond financing to include facilities used for the creation or production of intangible property and facilities functionally related or subordinate (or directly related and ancillary) to facilities used for the manufacturing, creation, or production of tangible or intangible property. It also would raise the aggregate cap for prior issues to $30 million (from $10 million), indexed annually for inflation.

These provisions would be effective for obligations issued after the date of enactment.

Private activity bonds: The legislation includes provisions that would (1) expand certain exceptions to the private activity bond rules for first-time farmers, (2) exempt certain water and sewage facility bonds from the volume cap on private activity bonds, and (3) expand the definition of exempt facility bonds eligible for tax-exempt private activity bond financing to include certain bonds used to provide zero-emission vehicle infrastructure. The provisions for first-time farmers and for water and sewage facility bonds would take effect after the date of enactment. The provision for exempt facility bonds to finance zero-emission vehicle infrastructure would be effective after December 31, 2021.

Prevailing wage requirements: This provision would apply Davis-Bacon prevailing wage requirements (discussed above in the context of various alternative energy tax credits) to all proceeds of exempt facility bonds used for the construction, alteration, or repair of water furnishing facilities, sewage facilities, highway or surface freight transfer facilities, or zero-emissions vehicle infrastructure facilities. It would be effective for bonds issued after date of enactment.

Disaster mitigation and resiliency incentives

The legislation would assist business and individual taxpayers with certain expenses related to disaster recovery and disaster mitigation by:

Repealing the temporary limitation on the casualty loss deduction enacted in 2017’s Tax Cuts and Jobs Act, retroactive to casualty losses incurred beginning in 2018. This provision directs the Secretary to issue regulations or guidance intended to provide relief to certain homeowners whose personal residences were affected by deteriorating concrete foundations caused by the presence of the mineral pyrrhotite.

- Providing an exclusion from gross income for certain state-based grants made to homeowners that support mitigation efforts for earthquakes, fires, windstorms, and other disasters, effective for taxable years beginning after December 31, 2020.

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- Creating a tax credit equal to 30 percent of qualified expenditures for individuals and businesses who participate in a qualified state-based wildfire resiliency program, effective for expenditures paid or incurred after the date of enactment, in tax years ending after that date.

Investments in tribes and territories

The legislation includes several provisions to promote infrastructure development among US Indian tribes and economic development among US territories.

Tribal governments treated as states with respect to bond issuance: This provision generally would allow Indian tribal governments to issue governmental bonds and private activity bonds on a basis similar to state and local governments, but with certain location and gambling facility restrictions applicable to private activity bonds. It would be effective for obligations issued in calendar years beginning after the date of enactment.

New markets tax credit for tribal statistical areas: The legislation would create a new, permanent, annual $175 million new markets tax credit allocation for low-income communities in tribal areas and for projects that serve or employ tribe members. The new tribal allocation amount would be indexed for inflation beginning in 2024. The proposal would apply to the new markets tax credit limitation determination for calendar years after December 31, 2021.

Treat Indian areas as difficult development areas for purposes of certain buildings: The provision modifies the definition of a difficult development area to automatically include projects located in an Indian area, making these projects eligible for the 30 percent basis boost. (The inclusion would be limited to buildings that were assisted or financed under the Native American Housing Assistance and Self Determination Act of 1996, or, where the project sponsor is a qualifying Indian tribe.) This provision would allow these projects to receive more housing credit equity than would otherwise be available to them. The provision would apply to buildings placed in service after December 31, 2021.

Possessions economic activity credit: This provision would create a new economic activity credit for active businesses conducted in US territories or possessions (that is, the five fiscally autonomous territories of American Samoa, Guam, Commonwealth of Northern Marianas, Commonwealth of Puerto Rico, and the US Virgin Islands). The new credit would be a general business credit equal to 20 percent of the sum of the qualified possession wages and allocable employee fringe benefit expenses paid or incurred by a qualified domestic corporation for the taxable year up to $50,000 with respect to each full-time employee. An enhanced credit would be available for certain qualified small domestic corporations. The credit generally would be effective for taxable years beginning after date of enactment.

Additional new markets tax credit allocations for territories: This provision would create a new, permanent, annual $100 million new markets tax credit allocation for low-income communities in US territories, with 80 percent of the new allocation directed towards projects in Puerto Rico, and 20 percent directed towards projects in the other territories. The provision would be effective for calendar years after 2021. The allocation amount would be indexed for inflation beginning in 2024.

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Tax relief and incentives for colleges and universities

The legislation includes an array of measures that address endowment income of private colleges and universities, credits related to college- and university-sponsored programs for infrastructure research programs and environmental justice, and scholarship programs for medical students from certain underserved communities.

Reduced excise tax on investment income of private colleges and universities: The Tax Cuts and Jobs Act imposed a 1.4 percent excise tax on net investment income of a private college or university that has at least 500 tuition-paying students (at least 50 percent of whom are in the United States) and whose aggregate fair market value of assets at end of the previous taxable year (other than those used directly in carrying on tax-exempt purpose) is at least $500,000 per student.

The Ways and Means-approved legislation generally would reduce an institution's excise tax liability based on the amount of qualified undergraduate scholarship and grant aid it provides relative to its aggregate undergraduate tuition and fees collected during the taxable year. Under this proposal, liability would be reduced proportionately as the amount of its qualified aid exceeds 20 percent of tuition and fees, up to 33 percent of tuition and fees. To be eligible for the excise tax reduction, an institution would be required to provide the Treasury Department with a statement detailing the average federal student loan burden among several specified categories of first-time, full-time undergraduate students who during the taxable year completed a course of study for which the institution awarded a baccalaureate degree.

In addition, the bill would modify the enrollment threshold for imposition of the tax to clarify that the tax would apply only to private colleges and universities with no fewer than 500 tuition-paying students "below the graduate level." It also would index the $500,000 aggregate value of assets per student threshold to inflation.

These proposed changes would be effective for taxable years beginning after December 31, 2021.

Public university research infrastructure credit: The bill would create a 40 percent general business credit for qualified cash contributions made by a taxpayer to a certified higher educational institution (generally a public college or university or a nonprofit organization affiliated with a public college or university) in connection with a qualifying research infrastructure program. Taxpayers may elect to claim this credit with respect to a qualifying cash contribution in lieu of treating such contribution as a charitable deduction.

An institution of higher education may designate such contributions made by a taxpayer as qualified cash contributions only if it is certified as having been allocated a credit amount by the Secretary with respect to a qualifying project. The amount of cash contributions a certified educational institution may designate as qualified cash contributions may not exceed 250 percent of the credit amount allocated to such institution under this provision.

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The provision would provide $500 million of credits for each of calendar years 2022, 2023, 2024, 2025, and 2026 to be awarded by the Secretary to eligible educational institutions on a project application basis. Credits would be awarded based on the extent of expected expansion of an institution's targeted research within disciplines in science, mathematics, engineering, and technology.

The Treasury Department would have authority to prescribe regulations necessary to carry out this provision and to recapture and reallocate undesignated credit amounts. In the event of noncompliance, contributions made to an institution of higher education under this section shall be treated as unrelated business income and subject to tax.

Environmental justice credit: The legislation proposes a new capped refundable competitive credit of $1 billion for each year from 2020 through 2031 that would be available to colleges and universities for environmental justice programs. The base credit would be 20 percent of costs, which a receiving institution would have to spend within five years. A 30 percent credit would be available to programs with material participation from Historically Black Colleges and Universities and Minority Serving Institutions.

Qualifying programs would be designed to address or improve data about environmental stressors for the primary purpose of improving health and economic outcomes of individuals living in low-income areas who experience, or are at risk of experiencing, multiple exposures to qualified environmental stressors.

Institutions receiving allocations under the program would be required to make publicly available the application submitted to the Treasury Department and submit annual reports describing the amounts paid for and expected impact of the projects. The Treasury Department shall publicly disclose the identity of the institutions receiving the allocation and the amount of the allocation.

Rural and Underserved Pathway to Practice Training Program credit: The legislation would create a Rural and Underserved Pathway to Practice Training Program that would offer scholarships and stipends to encourage qualifying students from rural and underserved communities to attend medical school and practice medicine in those communities.

Qualified educational institutions that offer scholarship vouchers under the program generally would be eligible to receive a credit under section 36G equal to the aggregate amount paid or incurred during the taxable year pursuant to an annual award of these vouchers to qualifying students. Scholarship awards would not be includable in a student's gross income.

The provision would be effective for taxable years beginning after the date of enactment.

Tax increases for upper-income individuals

The Ways and Means-approved bill includes several proposed tax increases affecting affluent individuals to pay for social spending programs related to education, child care, health care, and paid family leave, and offset the cost of certain enhancements to tax incentives benefitting low-and middle-income taxpayers.

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Unless otherwise indicated, these provisions would be effective for taxable years beginning after December 31, 2021.

Increase in top marginal individual rate: The bill would return the top marginal rate to 39.6 percent, from the current level of 37 percent as enacted in the TCJA. (Under the TCJA, the 37 percent rate is scheduled expire at the end of 2025 and revert to 39.6 percent beginning in 2026.)

The proposed higher rate would apply to single filers with taxable income greater than $400,000, married individuals filing jointly with taxable income greater than $450,000, heads of households with taxable income greater than $425,000, married individuals filing separately with taxable income greater than $225,000, and estates and trusts with taxable income of more than $12,500.

The inflation-adjusted income thresholds for the top rate in the most recent tax year were $518,400 (single or head of household), $622,050 (married filing jointly), $311,025 (married filing separately), and $12,950 (trusts and estates).

Surcharge on high-income individuals, trusts, and estates: The bill would impose an additional tax of 3 percent on modified adjusted gross income that exceeds $2.5 million for married individuals filing separately, $100,000 for estates and trusts, and $5 million for all other taxpayers.

Increase in top rate on long-term capital gains and dividends: The current top tax rate of 20 percent on long-term capital gains and qualified dividends would be raised to 25 percent for those taxpayers paying the top marginal individual tax rate (not including the net investment income tax). This provision would generally be effective for taxable years ending after the September 13, 2021 (the date the proposal was introduced). Under a transition rule, the pre-existing statutory rate of 20 percent would continue to apply to gains and losses for the portion of the taxable year prior to the date of introduction. Gains recognized later in the same taxable year that arise from transactions entered into before the date of introduction pursuant to a written binding contract would be treated as occurring prior to the date of introduction.

Five-year holding period for carried interests: The legislation does not include a proposal from President Biden's FY 2021 budget blueprint that would tax income from carried interests at ordinary rates. It does, however, propose several changes to the carried interest rules, most notably by calling for an increase – generally to five years – in the holding period required for gain attributable an applicable partnership interest to qualify for long-term capital gain treatment. The three-year holding period under current law would remain in effect for real property trades or businesses and for taxpayers with adjusted gross income of less than 400,000.

Other proposed changes would: (1) reform the holding clock rules for purposes of measuring the three- or five-year holding period (including in the context of tiered partnerships), (2) modify the rules so that they apply to all transfers and not just to certain related persons, and (3) extend regulatory authority under the provision to address carry waivers and arrangements that Treasury finds are structured to avoid the purposes of this section.

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Expanded application of net investment income (NII) tax: The 3.8 percent tax that applies to NII earned by individuals would be expanded under the bill to cover trade or business income for taxpayers with more than $500,000 in taxable income (for joint filers), $250,000 (married filing separately), or $400,000 (all other taxpayers). Special rules would apply to estates and trusts. The tax would not apply to wages on which FICA is already imposed. Under current law, if SECA applies, the NII tax would not apply.

Limitation on passthrough deduction: The current-law 20 percent deduction (under section 199A) for income earned by an individual from a passthrough business entity would be limited under this bill to $400,000 for a single filer, $500,000 for joint filers, $250,000 for married individuals filing separately, and $10,000 for a trust or estate.

Limitation on excess business losses: The bill would permanently disallow excess business losses (net trade or business deductions in excess of trade or business income) for noncorporate taxpayers. These losses would be carried forward indefinitely as a deduction subject to the excess business loss rules (rather than as net operating loss under current law). The proposal would apply retroactively to taxable years beginning after December 31, 2020.

Estate and gift tax changes: The legislation does not include a Biden administration budget proposal that would eliminate the basis step-up on inherited assets for certain higher-income individuals. However, the bill does propose to restore the exemption amount for estates and gifts (which was temporarily increased to $10 million under the TCJA) to its post-2010 level of $5 million, indexed for inflation. (Under the TCJA, the current-law increased exemption is scheduled to expire at the end of 2025.)

The legislation also would amend a current-law provision that allows decedents who own qualified real property used in a family farm or family business to value it based on actual use rather than fair market value for estate tax purposes. Under this proposal, the allowable reduction in valuation would increase from $750,000 to $11.7 million.

Changes to rules for grantor trusts: Under this bill, grantor trusts would be considered part of a decedent’s taxable estate when the decedent is the deemed owner of the trusts. In addition, sales between grantor trusts and their deemed owner would be considered equivalent to sales between the owner and a third party. Both changes would apply to (1) trusts created on or after the date of enactment and (2) any portion of a trust established before the date of enactment that is attributable to a contribution made on or after that date.

Changes to rules for nonbusiness asset transfers: The legislation would clarify that when a taxpayer transfers nonbusiness assets – generally passive assets held for the production of income and not used in the active conduct of a trade or business – those assets would not be afforded a valuation discount for transfer tax purposes. It also adds a look-through rule that applies when a passive asset consists of a 10 percent interest in another entity. These changes would apply to transfers made after the date of enactment.

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Restrictions on retirement accounts

The legislation would raise additional revenue through proposals to address certain high-balance retirement accounts – so-called "mega IRAs" – and other restrictions intended to limit the ability of wealthy taxpayers to use IRAs and other qualified plans as tax planning tools rather than traditional retirement savings vehicles.

Contribution limits for certain high-balance IRAs: The legislation generally would prohibit new contributions to a Roth or traditional IRA for a taxable year if the total value of an individual's IRA and defined contribution retirement accounts exceeds $10 million as of the end of the prior taxable year. Excess contributions would be subject to an excise tax. (New contributions would not include rollover contributions, inherited IRAs, or IRAs acquired under a divorce or separation agreement.)

The limit on contributions would only apply to single taxpayers (or taxpayers married filing separately) with taxable income over $400,000, married taxpayers filing jointly with taxable income over $450,000, and heads of households with taxable income over $425,000 (all indexed for inflation).

A new annual reporting requirement would apply to employer defined contribution plans on aggregate account balances exceeding $2.5 million. The reporting would be to both the Internal Revenue Service and the plan participant whose balance is being reported.

These provisions would be effective tax years beginning after December 31, 2021.

Required minimum distribution increase for high-income taxpayers with large retirement account balances: Under the legislation, certain individuals whose combined balances in a traditional IRA, Roth IRA, and defined contribution retirement account generally exceed $10 million at the end of a taxable year would be required to take a minimum distribution for the following year. This requirement would apply only to taxpayers whose taxable income exceeds the thresholds described above (e.g., $450,000 for a joint return). The minimum distribution generally would 50 percent of the amount by which the individual's prior-year aggregate traditional IRA, Roth IRA, and defined contribution account balance exceeds the $10 million limit.

In addition, to the extent that the combined balance amount in traditional IRAs, Roth IRAs, and defined contribution plans exceeds $20 million, that excess would be required to be distributed from Roth IRAs and Roth-designated accounts in defined contribution plans up to the lesser of (1) the amount needed to bring the total balance in all accounts down to $20 million or (2) the aggregate balance in the Roth IRAs and designated Roth accounts in defined contribution plans. Once the individual distributes the amount of any excess required under this 100 percent distribution rule, then the individual would be permitted to determine the accounts from which to distribute to satisfy the 50 percent distribution rule above.

This provision would be effective tax years beginning after December 31, 2021.

Tax treatment of rollovers to Roth accounts: Current law imposes income limitations for taxpayers making contributions to Roth IRAs. In 2010, however, Congress repealed income limitations that were in place for Roth

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IRA conversions, allowing anyone to contribute to a Roth IRA through a conversion despite the income limitations for Roth IRA contributions. For example, an individual who exceeds the income limitation for contributions to a Roth IRA, can still make a nondeductible contribution to a traditional IRA and then convert the nondeductible contribution from the traditional IRA to a Roth IRA.

The legislation proposes to close so-called "back-door" Roth IRA strategies by eliminating Roth conversions for both IRAs and employer-sponsored plans for single taxpayers (or taxpayers married filing separately) with taxable income over $400,000, married taxpayers filing jointly with taxable income over $450,000, and heads of households with taxable income over $425,000 (all indexed for inflation). This provision would apply to distributions, transfers, and contributions made in taxable years beginning after December 31, 2031.

The legislation also would prohibit all employee after-tax contributions in qualified plans and prohibit after-tax IRA contributions from being converted to Roth accounts regardless of income level, effective for distributions, transfers, and contributions made after December 31, 2021.

Prohibition of IRA investments conditioned on account holder's assets, income, or credentials: The bill would prohibit an IRA from holding any security if the issuer of the security requires the IRA owner to have a certain minimum level of assets or income, or requires the account owner to have completed a minimum level of education or obtained a specific license or credential. For example, it would prohibit IRAs from holding investments that are offered to accredited investors because those investments are securities that have not been registered under federal securities laws. IRAs holding such investments would lose their IRA status.

This provision generally would be effective for tax years beginning after December 31, 2021, but would allow a two-year transition period for IRAs already holding these investments.

Extended statute of limitations for certain IRA noncompliance: The bill would expand the statute of limitations for IRA noncompliance related to valuation-related misreporting and prohibited transactions from three years to six years to help IRS pursue violations that may have originated outside the current-law three-year window. This provision would apply to taxes to which the current three-year period ends after December 31, 2021.

Prohibition on investment of IRA assets in entities in which the owner has a substantial interest: To prevent self-dealing under current-law prohibited transaction rules, an IRA owner cannot invest his or her IRA assets in a corporation, partnership, trust, or estate in which he or she has a 50 percent or greater interest.

The bill generally would adjust the 50 percent threshold to 10 percent for investments that are not tradable on an established securities market, regardless of whether the IRA owner has a direct or indirect interest. It also would prevent investment in an entity in which the IRA owner is an officer. Moreover, the bill would modify the rule to be an IRA requirement, rather than a prohibited transaction rule (i.e., in order to be an IRA, it must meet this requirement).

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These provisions generally would be effective for tax years beginning after December 31, 2021, but there is a two-year transition period for IRAs already holding these investments.

IRA owners treated as disqualified persons for purposes of prohibited transactions rules: The bill would clarify that, for purposes of applying the prohibited transaction rules with respect to an IRA, the IRA owner (including an individual who inherits an IRA as beneficiary after the IRA owner's death) is always a disqualified person. This would be effective for transactions occurring after December 31, 2021.

IRS enforcement and taxpayer compliance provisions

President Biden and the chairmen of the two congressional taxwriting committees contend that the government can raise significant revenue by reducing the so-called "tax gap" – the difference between the amount of tax owed to the government and the amount actually collected. To that end, the legislation proposes to beef up the Internal Revenue Service's enforcement budget to enable the agency to better identify sophisticated tax-avoidance transactions. It also includes targeted proposals to tighten certain reporting and penalty provisions and a retroactive proposal to limit certain transactions involving conservation easements.

Increased IRS enforcement funding: The bill would provide the IRS nearly $80 billion to invest in strengthening tax enforcement activities, increasing voluntary compliance, and modernizing information technology to support its enforcement efforts. No use of these funds is intended to increase taxes on any taxpayer with taxable income below $400,000.

An additional $410 million would be appropriated to the Treasury Inspector General for Tax Administration for expenses related to its oversight of the IRS. Another $157 million would be appropriated for the Tax Court for adjudicating tax disputes.

The appropriated funds would remain available until September 30, 2031.

Backup withholding and third-party network transactions: This would amend section 3406(b) to add to the list of reportable payments any payments in settlement of third-party network transactions for instances in which (1) the aggregate amount of such payment and all previous payments made by the third-party settlement organization to the participating payee during the calendar year equals or exceeds $600, or (2) the third-party settlement organization was required under section 6050W to file an information return for the preceding calendar year with respect to payments to the participating payee.

A transition rule for calendar year 2022 provides that a third-party network transaction required to be shown on a return required under section 6050W would be treated as a reportable payment only if the aggregate number of transactions between a third-party settlement organization and participating payee exceeds 200 within a calendar year.

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In addition, the proposal would align the $600 dollar threshold for information reporting under section 6050W with the $600 dollar threshold for backup withholding under section 3406. This provision would be effective for calendar years beginning after December 31, 2021.

Modification of procedural requirements relating to assessment of penalties: This provision would repeal a requirement that any assessment of penalties be approved by a supervisor of the employee making that determination. It would be effective as if included in section 3306 of the Internal Revenue Service Restructuring and Reform Act of 1998, which is notices issued, and penalties assessed, after December 31, 2000.

This provision also would require that each supervisor certify quarterly by letter to the Commissioner of Internal Revenue whether employees have followed the procedural requirements with respect to issuing notices of penalty, effective for notices of penalty issued after the date of the enactment of this legislation.

***Retroactive* limitation on deduction for qualified conservation contributions made by passthrough entities:** To curb certain syndicated conservation easements that some lawmakers view as tax shelters, this provision would deny charitable deductions for contributions of conservation easements by partnerships and other passthrough entities if the amount of the contribution (and therefore the deduction) exceeds 2.5 times the sum of each partner's adjusted basis in the partnership that relates to the donated property.

This general disallowance rule would not apply to donations of property that meet the requirements of the three-year holding period rule, and to contributions by family partnerships. In addition, certain taxpayers whose deeds are found to have certain defects and are notified by the Commissioner would have the opportunity to correct such defects within 90 days of the notice. This ability to cure would not apply in the case of reportable transactions and transactions for which deduction is disallowed under this section.

Various accuracy-related penalties would apply, including gross valuation misstatement penalty, and adjustments would be made to the statute of limitations on assessment and collection by the IRS, in the case of any disallowance of a deduction by reason of this provision.

This limitation generally would apply to contributions made after December 23, 2016 – the date the IRS issued Notice 2017-10, which designates certain conservation easement transactions as listed transactions that are subject to certain disclosure and list maintenance requirements.

For contributions of easements related to the preservation of certified historic structures, this provision would apply to contributions made in taxable years beginning after December 31, 2018.

The ability to cure defective deeds would be permitted for returns filed after the date of the enactment and for returns filed on or before such date if the section 6501 period has not expired as of such date.

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Tax relief for individuals and families

The legislation includes several provisions intended to enhance certain family-focused tax credits; ensure access to affordable health care coverage; support family caregivers; and provide benefits to union members, students, and individuals who are blind.

Enhanced child tax credit: The measure generally would extend through 2025 the increased amounts for the child tax credit ($3,000 per qualifying child and $3,600 for children under age 6) and the increased income phase-out ranges that were enacted in the American Rescue Plan earlier this year. The legislation also would permanently extend a temporary provision in the American Rescue Plan that made the credit fully refundable.

The credit also would continue to be available as advanceable monthly payments through 2025. For 2022 through 2025, the advance payment program would be codified in new code sections 24A and 7527B. A new lookback provision would allow taxpayers to use prior-year income (or prior-prior year income) for purposes of the phase-out rules. (Committee staff explains that the rule is intended to allow taxpayers to remain eligible for the credit even if their income rises above the phase-out range in a single year.)

The safe harbor limiting recapture of excess advance payments would not apply if the overpayment is due to fraud or intentional disregard of rules by the taxpayer. The current-law requirement that a taxpayer provide a Social Security Number for a child to receive a credit would be repealed.

Child and dependent care credit: The legislation would permanently extend several of the American Rescue Plan's enhancements to the child and dependent care credit, including, among other things, full refundability, the 50 percent maximum credit rate, increased phase-out thresholds, and the increased cap on expenses eligible for the credit ($8,000 for one qualifying individual, $16,000 for two or more qualifying individuals).

Exclusion for employer-provided dependent care: The legislation also would permanently extend the increased exclusion amounts ($10,500 for joint filers, $5,250 for married taxpayers filing separately) for employer-provided dependent care assistance enacted in the American Rescue Plan and would index those amounts for inflation.

Earned income tax credit: The bill would make permanent several temporary provisions in the American Rescue Plan that expanded the earned income tax credit for taxpayers with no qualifying children. It also would permanently extend a provision allowing taxpayers to use prior-year income in computing the credit in cases where a taxpayer's earned income in the current taxable year has decreased.

Affordable Care Act premium assistance: The legislation would permanently extend the premium tax credits under the Patient Protection and Affordable Care Act and increase the amount of qualified health insurance premiums covered under the credit to 80 percent (from 72.5 percent). It also would permanently extend the more generous rules enacted in the American Rescue Plan for determining an individual's eligibility premium assistance and make other targeted changes intended to make health care coverage for affordable for certain low-income populations.

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Credit for family caregiver expenses: To assist family caregivers, the measure also would create a nonrefundable credit, up to $4,000, equal to 50 percent of qualified expenses paid or incurred by an individual in providing care for a qualified care recipient during the taxable year. (The terms "qualified expenses" and "qualified care recipient" are defined in the legislation.) The amount of the credit is reduced by 1 percentage point for every $2,500 by which the taxpayer's adjusted gross income exceeds $75,000.

The credit would be available for taxable years beginning after December 31, 2021, and would expire after December 31, 2025.

Tax treatment of union dues: The legislation would provide a new above-the-line deduction of up to $250 in dues paid to a labor organization, effective for taxable years beginning after December 31, 2021.

Treatment of Pell Grants: The legislation would exclude Pell grants from gross income for federal income tax purposes. It also provides that for purposes of the American Opportunity Tax Credit and Lifetime Learning Credit, qualified tuition and related expenses would not be reduced by amounts received under a Pell Grant. The provision would be effective for taxable years beginning after December 31, 2021.

American Opportunity Tax Credit eligibility: The legislation would repeal a current-law provision that makes individuals ineligible for the American Opportunity Tax Credit if they have been convicted of felony drug offenses, effective for taxable years beginning after December 31, 2021.

Credit for qualified access technology for the blind: This proposal would create a new refundable credit of up to $2,000 in any three-consecutive-taxable-year period for amounts paid or incurred by the taxpayer for qualified access technology for use by a qualified blind individual who is the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer. It would take effect in taxable years beginning after December 31, 2021, and would sunset after December 31, 2026.

SALT relief left out, but still looms large: The legislation does not include a proposal to repeal or relax a TCJA provision that capped the value of the deduction for state and local taxes (SALT) at $10,000.

The SALT deduction had been unlimited before the TCJA became law and tends to be used more heavily in higher-taxed "blue" states, such as New Jersey, New York, Connecticut, and California; however, lawmakers in both parties who represent jurisdictions with expensive housing markets and steep property and income taxes have said the cap imposes undue burdens on their constituents and could erode the tax base in some localities as residents move to lower-tax areas. But many Republicans, as well as progressive Democrats, have countered that the deduction primarily benefits taxpayers at the upper end of the income scale. In 2019, JCT estimated that those earning more than $1 million would receive 52 percent of the benefit from repeal of the cap, and those making more than $200,000 would get 94 percent of the benefit.

Two Ways and Means Committee Democrats – Reps. Tom Suozzi and Bill Pascrell of New Jersey – have been adamant about addressing the cap. In a joint statement released on September 14, Suozzi, Pascrell, and Ways and Means Chairman Richard Neal, D-Mass., said they are still working with the Speaker's office on a

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resolution to the issue and noted that the Ways and Means package is "an important step in the process" of advancing the Build Back Better bill, "but not the final step."

"We are committed to enacting a law that will include meaningful SALT relief that is so essential to our middle-class communities, and we are working daily toward that goal," the statement said.

Next steps

Ways and Means was just one of a dozen House committees that wrapped up work this week on sections of the Build Back Better Act, meeting the (non-enforceable) September 15 deadline laid out in the Democrats' budget reconciliation instructions. From here, the various bills will move to the House Budget Committee, which will combine them all into a single package but cannot amend them. Committee members have reportedly been told they could begin considering the combined bill as early as September 21, but that date could slip to later in the week.

From there, the legislation will move to the House Rules Committee, where changes can – and are expected to – be made before it goes to the House floor for a vote by the full chamber. With numerous issues still being negotiated among various factions of House Democrats and between the House and the Senate, it is unclear how soon the House might vote on the package. House leaders would prefer for the bill to be fully "pre-conferenced" with the Senate so that the version they pass can simply be passed by the Senate as is. At this point, however, it remains possible that the Senate will amend the House bill and send its version back for another House vote.

"I think that it looks right now like we'll probably proceed to do our own bill and see if we can get 218 votes in the House to pass it, rather than wait for the Senate to act," House Budget Committee Chairman John Yarmuth, D-Ky., said this week. "It looks like right now we're going to end up getting the bill back from the Senate. The Senate is not as far along with some of their deliberations."

While Senate and House leaders have been working for weeks to come to terms on many of the provisions included in the House bills moved so far, Finance Committee Chair Ron Wyden has indicated that he has additional tax provisions for the Senate to consider. These include a corporate excise tax on stock buybacks, a corporate minimum tax, carbon pricing, mark-to-market treatment of certain assets held by wealthy individuals, and additional IRS enforcement tools. Wyden also may push more aggressive changes to the tax treatment of multinational corporations than those included in the Ways and Means-approved bill.

In addition to the SALT deduction cap, Democratic leaders working to pass their bill out of the House also are still negotiating policy related to prescription drug pricing (three Democratic members of the House Energy and Commerce Committee voted this week against a plan to let the Department of Health and Human Services negotiate prices that would have raised up to $700 billion), as well as the overall cost of the package.

Resolving each issue is a critical step. Since no Republicans in either chamber are expected to support the reconciliation package, Democrats have no votes to spare in the evenly-divided Senate and just three votes to

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spare in the House if they want to get a bill to President Biden's desk. Democratic Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona – and reportedly others who have not spoken out publicly – are opposed to the current size of the bill, although they have not offered a best-and-final alternative price tag they could support. Both senators met separately with President Biden September 15 to discuss their views on the package.

Manchin said on NBC's Meet the Press September 12 that there is no rush to commit to so much spending and that, while he supports many of the goals and programs that would be funded by the bill, some of them are not an urgent need right now and other proposals should be scaled back or means tested.

"If I can't go home and explain it, I can't vote for it," Manchin said. "I can't explain what we're doing now."

The price tag is also causing concern for at least one House member: Democratic taxwriter Stephanie Murphy of Florida, who was the sole Democratic vote against the tax package this week. (She also voted against the spending provisions the committee took up the week of September 6.) Amplifying a point made by many of the panel's Republicans during the mark-up, Murphy released a statement after the committee vote September 15 in which she expressed support for many of the bill's policy goals but cited concerns about its overall size and scope.

"I strongly support numerous provisions in the House Ways and Means portion of the Build Back Better Act, especially the historic provisions to combat the existential threat of climate change," Murphy said. "But there are also spending and tax provisions that give me pause, and so I cannot vote for the bill at this early stage. As this process moves forward, I remain optimistic that the comprehensive reconciliation package will be appropriately targeted and fiscally responsible – paid for by tax provisions that promote fairness but do not hurt working families."

The 'hard' infrastructure factor: Further complicating negotiations is a deadline of September 27 for the House to consider another key priority of the Biden administration: the Infrastructure Innovation and Jobs Act, the bipartisan "hard" infrastructure bill that cleared the Senate last month.

House progressives – supported by Speaker Nancy Pelosi, D-Calif. – refused to vote for the bill when it came over from the Senate in August, insisting that passage of the reconciliation package is equally important and that the two bills must be moved in tandem. (Progressives fear that if the infrastructure bill were to be passed first, the party's more moderate members would vote against the larger "human infrastructure" bill that focuses more on social programs.) In a compromise with House moderates, who threatened to vote against the budget resolution setting up the Build Back Better Act, Pelosi agreed to the September 27 deadline.

However, as that date looms and it is evident the Senate will not yet have cleared its own version of the reconciliation package – a condition Pelosi had previously set for House consideration of the infrastructure bill – it is currently not clear how the standoff between the two camps within the Democratic caucus will be resolved.

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