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Still no meeting of minds on 'Build Back Better,' but work continues on retirement security enhancements

As lawmakers returned to Capitol Hill following their two-week spring recess, West Virginia Democratic Sen. Joe Manchin offered a few details about what he would like to see in a modified version of the Build Back Better Act, the expansive tax-and-spending plan that congressional Democratic leaders hope to move under fast-track budget reconciliation procedures. However, Manchin's priorities appear to be difficult to square with those of other Senate Democrats and by week's end there continued to be considerable doubt about whether even a slimmed-down bill could reach President Biden's desk before Congress runs out of time in this election year.

Meanwhile, there were more durable signs of progress this week on bipartisan efforts to expand retirement security protections.

Build Back Better: A little talk, but no progress

As approved in the House last November, the roughly $1.75 trillion Build Back Better Act calls for significant tax increases impacting large corporations and high-income individuals to pay for lower- and middle-class tax relief and fund new spending for White House priorities such as expanded access to pre-kindergarten education, child care and elder care, affordable housing, and programs to mitigate climate change. (A detailed summary of the tax provisions in the House-passed legislation is available from Deloitte Tax LLP.)
URL: https://www2.deloitte.com/us/en/pages/tax/articles/build-back-better-tax-legislation.html?id=us:2em:3na:tnv:awa:tax:042922&sfid=7015Y000003WdBmQAK

But shortly before Christmas, Manchin brought Senate action on the legislation to a halt when he announced that he would not support it in its current form and thus would not provide the crucial fiftieth vote needed to get it through the chamber. (The budget reconciliation rules allow the measure to clear the Senate by a simple majority rather than the three-fifths supermajority—typically, 60 votes—that is normally required to avert a filibuster. Because Democrats control only 50 seats in the Senate and are not expected to receive any Republican support for the bill, they need all of their own votes—plus the tie-breaking vote of Vice President Kamala Harris—to get it across the finish line.)

Manchin explained in his December 19 announcement that he "cannot explain the sweeping Build Back Better Act in West Virginia and . . . cannot vote to move forward on this mammoth piece of legislation." (For prior coverage, see *Tax News & Views*, Vol. 22, No. 56, Dec. 20, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211220_1.html

Getting specific: Since then, Manchin has said there have not been official talks with the White House or his Democratic colleagues about alternatives, but he has made periodic (and relatively high-level) comments about what he might be open to supporting—and what he will not. In particular, he has highlighted his interest in using a portion of any revenue raised by the bill to pay down the federal deficit, and has said he supports energy incentives, prescription drug reform, and a rollback of some of the tax cuts enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97).

Manchin elaborated on some of his priorities this week, telling reporters on April 26 that he wants to see the corporate tax rate raised to 25 percent and the long-term capital gains tax rate raised to 28 percent, with half of the resulting new revenue allocated to paying down the federal debt. He also said he wants the bill to eliminate tax “loopholes” to make “sure that everyone pays their fair share, but not gouge anyone or make it [punitive]. . . .” Manchin made his comments after emerging from a meeting with Senate Majority Leader Charles Schumer, D-N.Y., where the two discussed Manchin’s concerns about inflation—now at its highest level since the early 1980s.

Manchin also seemed to effectively reject the social spending included in the House bill and in President Biden’s original legislative agenda.

“We’re not talking about going down that path again,” he said, adding that any social spending legislation would have to be vetted through the congressional committee process under regular order—that is, outside of budget reconciliation.

“Reconciliation to me is about getting inflation under control, paying down this debt, getting a handle on what’s going on,” Manchin said.

Because a social spending bill is unlikely to attract enough Republican support to generate the 60 votes necessary to overcome a potential Senate filibuster under regular order, however, its chances for passage would be remote.

Conflicting priorities: The vision Manchin laid out is far different than that of Democrats in the progressive wing of the party, who began this Congress with far more ambitious goals for a tax-and-spending package. But even if those members were to resign themselves to supporting the significantly narrower bill Manchin envisions, such a measure likely still would face resistance from centrist Democratic Sen. Kyrsten Sinema of Arizona, given her continued opposition to increasing tax rates. (It’s worth remembering that House Democratic leaders left proposals for tax rate increases on corporations, upper-income individuals, and long-term capital gains and dividends out of their Build Back Better legislation to help ensure Sinema’s support for the measure once it reached the Senate.)

As those watching this process play out for nearly a year have said, finding the Venn diagram overlap of provisions that can win the support of both Manchin *and* Sinema is proving to be nearly impossible, and in this 50-50 Senate, that bodes poorly for success.

A ‘regular order’ energy and climate bill?: Further fueling skepticism about the prospects for a reconciliation package, Manchin, who chairs the Senate Energy and Natural Resources Committee, hosted a meeting on April 25 with Sen. Lisa Murkowski, R-Alaska, and other senators from both parties to discuss the possibility of a bipartisan climate and energy security package that would move through Congress under regular order. In addition to adding another time-consuming agenda item to the congressional calendar—which tends to be shorter in an election year, anyway—the climate change and green energy provisions in the House version of the Build Back Better Act have been considered among the least contentious, and pulling them out of the reconciliation vehicle would seem to underscore how little momentum that bill currently has.

Sen. Kevin Cramer, R-N.D., told *Politico* that the bipartisan energy group plans to meet twice more the week of May 2 and that Manchin "wants to make a decision quickly" on whether a bill can come together. Cramer also told reporters this week that such a bipartisan package might include "direct payments that can lead to a commercialization of carbon capture technologies" and that "it would be crazy to not have nuclear on the table."

'Nothing formal': In talking about the outlook for a reconciliation bill, Manchin was quick to emphasize that his conversations with White House officials and with Schumer are not formal negotiations.

"There's nothing formal," he told reporters April 26. "I want to make sure [you] all understand: There's no false hopes here."

Wyden eyes 'SECURE 2.0' mark-up

Although the prospects for action on even a scaled-down version of a Build Back Better bill remain in doubt, there continues to be strong bipartisan support on both sides of the Capitol for a second round of retirement security legislation that builds on 2019's Setting Every Community Up for Retirement Enhancement (SECURE) Act. (The SECURE Act was enacted as part of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).)
URL: https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf

Senate Finance Committee Chairman Ron Wyden, D-Ore., told reporters April 25 that his panel will mark up a so-called "SECURE 2.0" package in the near term, although he did not provide a specific timeline for committee action. Wyden indicated that taxwriters are "sifting through" various proposals and that the schedule would be dictated by when there is consensus on which provisions should be included.

"Everybody knows in the Senate we do lots of negotiating, if you want to pass something," he said.

The panel currently has a number of bipartisan proposals to draw on in crafting a legislative package. Thus far in the 117th Congress, Wyden has released the Encouraging Americans to Save Act (S. 2452); taxwriters Ben Cardin, D-Md., and Rob Portman, R-Ohio, have reintroduced their Retirement Security and Savings Act (S. 1770); and taxwriters Charles Grassley, R-Iowa, Maggie Hassan, D-N.H., and James Lankford, R-Okla., have introduced their Improving Access to Retirement Savings Act (S. 1703).
URL: https://www.congress.gov/bill/117th-congress/senate-bill/2452/text
URL: https://www.congress.gov/bill/117th-congress/senate-bill/1770/text
URL: https://www.congress.gov/bill/117th-congress/senate-bill/1703/text

Across the Rotunda, the House approved its own SECURE 2.0 legislation—the Securing a Strong Retirement Act of 2022 (H.R. 2954), sponsored by Ways and Means Committee Chairman Richard Neal, D-Mass., and ranking member Kevin Brady, R-Texas—late last month by a vote of 414-5. That measure, broadly speaking would:
URL: https://www.congress.gov/bill/117th-congress/house-bill/2954/text

- Allow plan participants nearing retirement to contribute more to their retirement accounts—by increasing the limits on catch-up contributions for certain employees, for example—and allow plan participants to take advantage of the benefits of tax-deferred earnings over a longer period of time by raising the age for beginning mandatory minimum distributions;
- Expand the universe of workers that participate in employer-sponsored retirement plans—for example, by requiring employers offering certain types of retirement plans to automatically enroll their employees in those plans (subject to an employee opt-out), allowing employers to treat student loan payments made by their employees as elective deferrals for purposes of determining retirement plan matching contributions, reducing the service requirements for part-time employees to participate in an employer plan, and providing a tax credit for employers who reduce service requirements and accelerate vesting schedules for employees who are military spouses;
- Modify certain retirement plan design rules to ease administrative burdens for plan sponsors—particularly small businesses—and provide additional flexibility and other relief for plan participants;
- Remove barriers to offering certain types of annuity products within a defined contribution plan;
- Provide greater flexibility for employers offering employee stock ownership plans;
- Simplify the current-law saver's credit (available to low- and moderate-income individuals who make contributions to a retirement account); and
- Make certain technical amendments to 2019's SECURE Act.

These and other proposed retirement plan enhancements and savings incentives—a number of which align with provisions in the various Finance Committee proposals—would reduce federal receipts by nearly $35.8 billion over 10 years, according to a revenue estimate released by the nonpartisan Joint Committee on Taxation staff on March 28. But that amount would be more than offset by nearly $35.9 billion in pay-fors, most of which would expand "Roth" treatment of certain retirement accounts and certain retirement account contributions. ("Roth"-style retirement accounts, named for former Senate Finance Committee Chairman William Roth, R-Del., require contributions to be made with after-tax funds rather than on a pre-tax basis, with distributions paid out tax-free during retirement.)
URL: https://www.jct.gov/publications/2022/jcx-3-22/

Other tax developments

Here is a brief recap of other post-recess tax developments on Capitol Hill this week.

House taxwriters approve budget views and estimates: The House Ways and Means Committee on April 28 approved by voice vote a "budget views and estimates" letter for fiscal year 2023 identifying the committee's legislative priorities for those areas of the federal budget that fall within its jurisdiction.

URL: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/FY2023%20V%2BE%20Letter.pdf

The letter, which is required under the Congressional Budget Act of 1974, will be sent to the House Budget Committee as that panel gets ready to develop its fiscal year 2023 budget resolution in the coming weeks. (Other House committees will send their own views and estimates letters to the Budget panel outlining their respective priorities. It is not expected the House and Senate will adopt matching budget resolutions this year that would be necessary to unlock another round of budget reconciliation.)

On tax policy, the Ways and Means letter broadly reiterates the Biden administration's legislative agenda, noting that the panel "will prioritize tax policies that benefit middle class families and those working to climb into the middle class," with a specific emphasis on "infrastructure investment, retirement savings, workforce development, access to higher education, and small business growth." The panel also "will continue to review other tax matters, including full and fair administration of the tax laws by the Internal Revenue Service . . . and will closely review the revenue recommendations contained in the president's fiscal year 2023 budget," the letter states.

Senate OKs income exclusion for restitution to human trafficking survivors: The Senate on April 27 approved by unanimous consent the Human Trafficking Survivor Tax Relief Act (S. 895) a bipartisan bill introduced by Finance Committee Republican John Cornyn of Texas that would provide an exclusion from gross income, for income tax purposes, for any civil damages, restitution, or other monetary award (including compensatory or statutory damages and restitution imposed in a criminal matter) paid pursuant to an order of mandatory restitution or in a criminal proceeding for human trafficking or similar offenses.
URL: https://www.congress.gov/bill/117th-congress/senate-bill/895/text

A bipartisan companion bill (H.R. 6389) was introduced in the House earlier this year but has not yet been taken up in the Ways and Means Committee.
URL: https://www.congress.gov/bill/117th-congress/house-bill/6389/text

Finance panel to examine laws and enforcement governing the political activities of tax-exempt entities: The Senate Finance Subcommittee on Taxation and IRS Oversight announced that it will hold a hearing on May 4 at 2:00 p.m. to address laws and enforcement governing the political activities of tax-exempt entities.

The witness list as of press time includes Philip Hackney of the University of Pittsburgh School of Law; Bradley A. Smith of the Institute for Free Speech; Ann M. Ravel, formerly of the Federal Election Commission; and Scott Walter of the Capital Research Center.

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