Senate looks to weekend consideration of Inflation Reduction Act

Senate Majority Leader Charles Schumer, D-N.Y., announced late this week that he would delay the chamber's August recess—which had been scheduled to begin on August 5—and that lawmakers would be in session on Saturday, August 6, to begin consideration of the Inflation Reduction Act of 2022, the $740 billion reconciliation package he and West Virginia Democratic Sen. Joe Manchin recently unveiled that includes some targeted business tax increases, a large increase in funding for the Internal Revenue Service, incentives to promote climate change mitigation and clean energy, and provisions to promote health care affordability.
URL: https://www.democrats.senate.gov/imo/media/doc/inflation_reduction_act_of_2022.pdf

At least some of the uncertainty around the outlook for the bill was resolved late August 4 when Schumer and Arizona Democratic Sen. Kyrsten Sinema—who had kept her thoughts on the measure closely guarded—announced she would support it with some modifications. Still, challenges remain for Democratic leaders, including the need to resolve certain technical issues in the package with the Senate parliamentarian and to navigate a potentially difficult "vote-a-rama" in which members may force a variety of difficult amendment votes.

Sinema's all in—but carried interest is out

Sinema has been closely watched since the Inflation Reduction Act was unveiled on July 27, as her support was far from guaranteed and Democrats in the evenly divided Senate cannot afford to lose any votes within their own ranks if the measure is to clear the chamber. In particular, Sinema has been critical of proposals to further tighten the current-law carried interest rules. She has also expressed concerns recently that the proposed minimum tax on book income of certain large companies—an idea Democrats latched onto last year in the face of her opposition to increasing statutory rates—would have an outsized impact on heavy users of accelerated depreciation, notably manufacturers.

Reflecting those concerns, Sinema issued a statement late on August 4 indicating she would support the bill with a few modifications, including scrapping the proposed changes to carried interest. She also noted that the revised bill would include changes to "protect advanced manufacturing"—a concept she did not further define but which is viewed as an effort to ensure that some or all of the book-tax timing differences represented by accelerated depreciation will be disregarded for purposes of the new book minimum tax. Also unknown is whether these pending changes will address amortization or depletion. But the details—which are still to be unveiled in revised legislative text—will be key to understanding how the modified provision would operate.

Stabenow seeks clean vehicle credit changes

Finance Committee member Debbie Stabenow, D-Mich., is also trying to negotiate changes to electric vehicle (EV) tax credit limits in the deal, calling the current language "a serious concern." Currently, the $7,500 tax credit is allowed only for EV purchases from automakers who have not yet hit a 200,000-vehicle sales cap. As proposed, the bill would lift the existing 200,000-vehicle cap on the credit but impose new sourcing requirements on automakers that have not yet hit that limit, restricting where they can procure battery components and critical minerals. Automakers reportedly have argued that the sourcing limits are too high and the phase-in is not realistic, making the credit of minimal value as a result.

Manchin has not appeared interested in modifying the provision, however.

"Tell [automakers] to get aggressive and make sure that we're extracting in North America, we're processing in North America and we put a line on China. I don't believe that we should be building a transportation mode on the backs of foreign supply chains. I'm not going to do it," he said to reporters August 3.

Stabenow, for her part, has not conditioned her support of the bill to securing her proposed modifications.

'Byrd Bath'

The announcement of Sinema's support for the Inflation Reduction Act removes one of the biggest impediments to passage of the Inflation Reduction Act, but it does not guarantee it. For example, although the measure is moving under the fast-track budget reconciliation process, which allows for passage by a simple majority of 51 votes rather than the three-fifths supermajority (typically 60 votes) that is normally required to advance legislation in that chamber, there are nonetheless several time-consuming steps that Democratic leaders must take to ensure that it complies with a set of sometimes arcane rules unique to reconciliation.

The various sections of the bill must go through what is known informally as a "Byrd Bath"—named for the Byrd Rule that governs reconciliation—with nonpartisan Senate Parliamentarian Elizabeth MacDonough, who determines whether each provision meets the strict requirements of reconciliation. For example, to be Byrd Rule-compliant, provisions must have a budgetary effect (not merely an "incidental" effect), cannot increase the deficit outside the 10-year budget window, and cannot make changes to the Social Security program.

The parliamentarian provides guidance, but only after staff members of the relevant Senate committees meet with her to review their respective sections of the measure and make arguments as to why a provision should or should not be deemed to satisfy the complex Byrd Rule tests. In the case of Republicans, this entails arguments for provisions to be struck from the bill, while Democrats will defend each provision's adherence to the Byrd Rule.

The bill's Medicare prescription drug pricing provisions, which were drafted earlier than the rest of the bill, have already been under the parliamentarian's review for more than two weeks, and Democrats are still awaiting guidance. The Energy and Natural Resources Committee, which has jurisdiction over many of the bill's climate-related provisions, began its review session August 4, and the Finance Committee, which is responsible for the tax title, among other sections, was scheduled to meet with the parliamentarian August 5. Any provision that is determined to violate the Byrd Rule will have to come out of the legislation (unless supporters can successfully collect 60 votes to waive a point of order). Removing or modifying a provision could in turn change the estimated revenue impact of the bill and necessitate scoring updates by the Joint Committee on Taxation (JCT) and Congressional Budget Office (CBO) staff. (See additional discussion of revenue estimates from the JCT and CBO below.)

The changes secured by Sen. Sinema, for example, will surely change the revenue estimate provided by the JCT and could necessitate the addition of other revenue-raising measures to offset the impact of removing carried interest changes and modifying the minimum tax on book income. One option Senate Democratic leaders reportedly are considering is an excise tax on stock buybacks. (A 1 percent excise tax on stock buybacks that was included in the House-passed Build Back Better Act last year was estimated to raise about $124.2 billion over 10 years.)
URL: https://www.jct.gov/publications/2021/jcx-46-21/

Teeing up the votes

Following the Byrd Bath, Schumer is expected to tee up a vote on the motion to proceed to the bill, which calls for up to 20 hours of debate, with 10 hours allotted to each side, but Democrats are expected to use only a fraction of their time. Schumer said August 4 that he plans to hold that vote on August 6, teeing up an action-filled weekend.

Once the motion to proceed passes and debate time is either exhausted or yielded back, the Senate begins a typically lengthy process known as a vote-a-rama, which allows for unlimited amendments to be offered as long as they are germane to the underlying reconciliation bill—and for as long as senators want to keep going. This process is often used to force politically challenging votes, and Republicans are expected to propose a long list of amendments they hope to use to their advantage ahead of the November election or to modify the bill in a way that would make it objectionable to Democrats whose votes will be needed to pass it.

Schumer and the Democratic leadership team have urged their caucus to fully support the bill and not propose or support any amendments as they seek to avoid “poison pills” that could sink the legislation. However, Sen. Bernie Sanders, a staunchly progressive member from Vermont, responded to what he dubbed “months of secret negotiations” between Schumer and Manchin by calling on his fellow senators in an August 3 floor speech to “study this bill thoroughly and to come up with amendments and suggestions as to how we can improve it.”

“As currently written, this is an extremely modest bill that does virtually nothing to address the enormous crises facing the working families of our country. It falls far short of what the American people want, what they need, and what they are begging us to do,” Sanders said, noting that at a minimum he plans to offer amendments to repeal all tax incentives for the fossil fuel industry and to ensure Medicare pays no more for prescription drugs than the Department of Veterans’ Affairs.

Sanders was also sharply critical in his remarks about the legislation’s failure to “repeal the Trump tax breaks that went to the very wealthy and large corporations,” noting that he expects a year-end tax extenders bill to provide additional tax benefits to businesses and high-income individuals.

Finance Committee Democrat Sheldon Whitehouse of Rhode Island, however, told reporters this week that, in his view, “the likelihood of there being good-faith changes is vanishingly small.” He urged Democrats to stick together and defend the bill against all amendments “[u]nless it’s something that’s somehow worked out with the entire caucus as a last-minute Democrat-wide, all-on-board, everybody-thumbs-up adjustment." But he added that he doesn't "see many of those happening."

The Wall Street Journal reported this week that Sen. Sinema has privately told people that she plans to seriously consider any proposed amendments and will not necessarily vote "no" just to prevent changes to the bill. It is unclear, though, whether her position on amendments has changed following her just-announced agreement with Majority Leader Schumer.

If any amendments pass that would put final passage of the reconciliation measure in jeopardy, Schumer could propose a path he has taken before: a final "wraparound" amendment that strips out any earlier floor amendments that had been approved. This would allow individual Democrats (especially those in tight races this fall) to go on record as voting for amendments they view as politically necessary but still preserve the original bill. Schumer has previously done this with the support of all his members, but Manchin has said he does not like that strategy and it is unclear if he (or other senators) would oppose it this time.

Sen. Chris Coons, D-Del., forecast August 4 that the vote-a-rama is "going to start later than we imagine, it's going to run longer than we would hope, and it's going to be more painful getting out of here than any of us have any reason to expect."

After the vote-a-rama comes a vote on final passage of the bill with any amendments that may have been adopted. Assuming Senate Democratic leaders have the votes they need to send their signature bill across the Rotunda, House Democrats are expected to follow suit and approve the measure along party lines. But that process could be a nail-biter, too, as Speaker Nancy Pelosi of California is operating with a slim majority and can afford for no more than four of her members to oppose the legislation if it is to win passage. (House Republicans, like their Senate counterparts, remain united in opposition to the bill.)

The House is currently away for its August recess, but Pelosi and Majority Leader Steny Hoyer, D-Md., have indicated that they will bring lawmakers back into session on 24 hours' notice if the legislation clears the Senate.

Scorekeepers weigh in

In two significant developments this week, the Congressional Budget Office and the Joint Committee on Taxation staff released their respective analyses of the fiscal implications of the legislation as unveiled by Schumer and Manchin on July 27. (As already noted, however, the CBO and JCT both will need to be provide updated estimates reflecting changes to the bill in the August 4 agreement that Schumer and Manchin reached with Sen. Sinema.)

CBO shows deficit reduction: The CBO estimate, which was released August 3, indicates that the Inflation Reduction Act would reduce the deficit by a total of $101.5 billion from 2022-2031 through a combination of cost savings ($14.5 billion) and revenue increases ($87 billion). Importantly, for purposes of the budget

reconciliation rules, the estimate also confirms that the legislation would not increase the federal deficit outside of the 10-year budget window.
URL: https://www.cbo.gov/system/files/2022-08/hr5376_IR_Act_8-3-22.pdf

JCT shows net revenue increase: Meanwhile, a "very preliminary" revenue score dated July 28 from the JCT staff shows that the tax provisions in the Inflation Reduction Act would increase federal receipts—on net—by roughly $68.2 billion between 2022 and 2031.
URL: https://www.finance.senate.gov/imo/media/doc/7.29.22%20Estimate%20of%20Manchin%20Schumer%20agreement.pdf

Among the highlights of the JCT report:

- **Corporate minimum tax, carried interest changes:** The measure would increase revenue through the proposed 15 percent minimum tax on adjusted financial statement income for certain corporations with profits exceeding $1 billion (estimated 10-year revenue gain: $313.1 billion) and proposed changes to the carried interest rules (estimated 10-year revenue gain: $13 billion).
- **Increased IRS enforcement funding:** Neither the JCT nor the CBO provides an official revenue score for a proposal to narrow the "tax gap"—the difference between the amount of tax owed to the government and the amount actually paid on a timely basis—by providing the IRS a special allocation of $80 billion (available over 10 years) to beef up its enforcement and taxpayer compliance efforts. The CBO report does, however, confirm that the heightened enforcement and compliance efforts funded under the proposal likely would bring in nearly $204 billion in previously uncollected taxes over the 10-year budget window. (CBO notes that the revenue would be reflected in the agency's baseline budget projections after the legislation is enacted).
- **Energy security incentives and offsets:** The legislation includes an array of energy-related credits and other tax incentives aimed at producing clean energy and reducing carbon emissions (estimated 10-year revenue loss: $98.3 billion), producing clean fuels (estimated 10-year revenue loss: $13.2 billion), reducing energy costs for consumers (estimated 10-year revenue loss: $36.9 billion), encouraging production and sales of clean-fuel passenger and commercial vehicles (estimated 10-year revenue loss: $14.3 billion), improving the reliability of the US energy grid and promoting domestic clean energy manufacturing (estimated 10-year revenue loss: $36.9 billion), and expanding clean energy transportation systems (estimated $10-year revenue loss: $65.6 billion). These provisions would be only partially offset by proposals to reinstate and increase the hazardous substance Superfund financing rate on crude oil and imported petroleum products, indexed to inflation (estimated 10-year revenue gain: $11.1 billion) and permanently extend the tax rate to fund the Black Lung Disability Trust Fund (estimated 10-year revenue gain: $1.2 billion).

For additional details on the tax provisions in the legislation as introduced, see *Tax News & Views*, Vol. 23, No. 26, July 29, 2022.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220729_1.html

Democrats, GOP joust over distributional impact of tax provisions

In addition to budget scorekeepers' analyses of the overall revenue and spending impacts of the Inflation Reduction Act, the JCT, in an analysis dated July 29, produced so-called "distributional" estimates that show the projected tax impact of the legislation on taxpayers at various income levels.
URL: https://www.finance.senate.gov/imo/media/doc/jct_distributional_effects_inflation_reduction_act.pdf

With some small exceptions, those estimates, which were released by Senate Finance Committee Republicans on July 30, show that taxpayers at all income levels—even those below the $400,000 threshold often cited by the Biden administration to delineate who should be held harmless from tax increases—would face a net increase in federal taxes over the next decade.

Sen. Mike Crapo of Idaho, the top Republican on the Senate Finance Committee, seized on JCT's figures in a press release.
URL: https://www.finance.senate.gov/ranking-members-news/jct-democrats-proposals-increase-taxes-on-millions-of-americans-

"Americans are already experiencing the consequences of Democrats' reckless economic policies," Crapo said. "The mislabeled 'Inflation Reduction Act' will do nothing to bring the economy out of stagnation and recession, but it will raise billions of dollars in taxes on Americans making less than $400,000."

But Democrats were quick to counter that criticism, noting that JCT's distributional estimates rely in part on technical—and somewhat arcane—assumptions about the relative incidence of the corporate tax between owners of capital and employees, and also do not factor in other aspects of the broader legislation that will lower costs for low- and middle-income Americans for prescription drugs and for health coverage obtained through the Affordable Care Act.

For his part, Sen. Manchin, speaking in a Fox News interview on August 2, called the Republican criticisms "pure, outright lies" and said that taxes on lower income Americans are "not going up at all."

Treasury Secretary Janet Yellen similarly defended the legislation in an August 2 letter to congressional leaders.
URL: https://home.treasury.gov/news/press-releases/jy0911

"The legislation would either reduce or have no effect on the taxes due or paid by any family with income less than $400,000 and is fully consistent with the President's pledge," Yellen wrote. "In fact, clean energy tax credits and the expanded premium tax credit will cut taxes for millions of Americans."

Yellen also sought to downplay the technical issue relating to the incidence of the corporate tax.

"The legislation would close tax loopholes by imposing a minimum tax on large corporations that ensures they pay a tax rate of at least 15 percent on the income reported to their shareholders . . . ," she wrote. ". . . This minimum tax applies exclusively to US-owned corporations that report more than $1 billion in income and foreign-owned multinationals that report more than $100 million in income. It would have no effect on the tax liability of families with income below $400,000."

Five former Treasury secretaries from Democratic and Republican administrations this week agreed with Yellen's assessment. In a statement released August 3, former Secretaries Timothy Geithner and Jacob Lew (who served in the Obama administration), Henry Paulson (from the George W. Bush administration), and Robert Rubin and Lawrence Summers (from the Clinton administration) commented that the legislation "is financed by prudent tax policy that will collect more from top-earners and large corporations. Taxes due or paid will not increase for any family making less than $400,000 [a] year. And the extra taxes levied on corporations do not reflect increases in the corporate tax rate, but rather the reclaiming of revenue lost to tax avoidance and provisions benefitting the most affluent."
URL: https://home.treasury.gov/news/press-releases/jy0912

Impact of minimum tax on manufacturing sector also a flash point: Senate Democrats and Republicans also sparred over the incidence of the 15 percent minimum tax on large corporations as a stand-alone policy, with a focus on the industries that would be most affected if the provision becomes law.

That debate started on August 1, when Sen. Crapo released JCT data showing that roughly one-half of the tax burden of the proposed book minimum tax would fall on the manufacturing sector.
URL: https://www.finance.senate.gov/imo/media/doc/jct_analysis_book_minimum.pdf

". . . [A]nalyses from nonpartisan experts show the legislation would . . . raise taxes on manufacturers, exacerbating supply chain disruptions, and costing US jobs and investment . . . ," Crapo said in a press release.
URL: https://www.finance.senate.gov/ranking-members-news/myth-vs-fact-tax-title-of-the-inflation-reduction-act-of-2022

But the next day Finance Committee Chairman Ron Wyden, D-Ore., issued his own press release with supplementary JCT data suggesting that roughly half of the estimated tax increase on manufacturers would fall on taxpayers within the pharmaceutical, technology, and apparel industries—an area of the economy that Democrats have long argued is prone to tax avoidance.
URL: https://www.finance.senate.gov/chairmans-news/wyden-warren-release-new-data-showing_big-pharma-tech-apparel-companies-pay-corporate-minimum-tax
URL: https://www.finance.senate.gov/imo/media/doc/CAMT%20JCT%20Data.pdf

"Big pharma, tech, and apparel companies would account for half the revenue coming in from 'manufacturers' under the corporate minimum tax," Wyden wrote. "These companies are playing the most games, and avoiding tax by manufacturing their drugs, phones, and shoes abroad. This is a minimum tax for tax dodgers stamping 'Made in China' on their products."

The JCT staff provided additional details on the application of the proposed tax in a letter to Wyden dated August 4.
URL: https://www.finance.senate.gov/imo/media/doc/8.4.22%20JCT%20Effective%20Tax%20Rate.pdf

While the changes demanded and secured by Sen. Sinema are meant to address concerns over the proposal, the corporate minimum tax is expected to remain a flash point in the debate between the parties in the days to come.

— Storme Sixeas, Alex Brosseau, and Michael DeHoff
Tax Policy Group
Deloitte Tax LLP