Biden revives familiar corporate, high-wealth revenue proposals in FY 2024 budget package

Leaning into the “Let’s finish the job!” message he laid out in his State of the Union address last month, President Biden released a budget blueprint for fiscal year 2024 on March 9 that draws heavily on tax increases targeting multinational corporations and other large businesses, the fossil fuel industry, and high-income and high net-worth individuals that he proposed in previous budget packages to pay for tax relief for lower- and middle-class individuals and an array of spending priorities, help ensure the solvency of Social Security and Medicare, and reduce the deficit.

Tax policy highlights

Many of the returning revenue raisers in this year’s proposed budget had been contenders for inclusion in the Inflation Reduction Act of 2022 (P.L. 117-169)—the massive tax-and-spending measure that Democrats moved through Congress under budget reconciliation rules—but were left out of the final package that the president signed into law last August.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

On the business side, notable proposals that are being revived include an increase in the corporate tax rate to 28 percent, international reforms intended to move the US toward compliance with the OECD’s Pillar Two Model Rules, and repeal of various deductions and credits currently available to fossil fuel companies.

The president also has called for strengthening a corporate tax hike that *was* enacted in the Inflation Reduction Act—the excise tax on stock buybacks—by increasing the rate to 4 percent from its current-law level of 1 percent.

Returning proposals targeted at high-income and high-net worth individuals include, among others, an increase in the top marginal income tax rate to 39.6 percent; changes to the tax treatment of capital gains, dividends, and carried interests; and provisions to tighten the estate and gift tax rules. Also hitting the comeback trail this year is a proposed minimum tax on both income and unrealized gains on assets of ultrawealthy taxpayers—although the rate has jumped to 25 percent, compared to 20 percent as proposed last year.

In addition, the White House proposes to tighten the rules around tax-preferred retirement plans to prevent certain wealthy individuals from accumulating multimillion balances in so-called “mega IRAs” and to bolster the Medicare Trust Fund by increasing the net investment income tax for certain upper-income taxpayers by imposing a higher rate and expanding its application to include additional sources of income.

As expected, the budget package generally has gotten an unenthusiastic reception among congressional Republicans, who have indicated that they will use the coming two years to map out their own tax-and-spending agenda which they hope to see enacted should the GOP win control of the House, Senate, and White House in the 2024 elections.

Find out more

The discussion that follows looks at the president's budget blueprint in the larger context of the federal debt-and-deficit outlook, highlights the new revenue provisions as well as some of the significant returning provisions, recaps the Republican response to the president's proposals, and considers whether any significant tax legislation can make it through Congress and be signed into law in 2023.

Descriptions of specific provisions in the budget package and characterizations of the administration's position on various aspects of current law are based on details in the so-called "Green Book," which provides the Treasury Department's explanations of the revenue provisions in the budget proposal. (For a more extensive discussion of the tax proposals in the administration's fiscal year 2023 budget plan, which form the basis for many of the provisions in this year's release, see *Tax News & Views*, Vol. 23, No. 12, Mar. 29, 2022.)
URL: https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220329_1.html

Debt and deficit outlook, budget assumptions

At a high level, President Biden's fiscal blueprint takes a markedly different approach than those of his predecessors, including President Donald Trump, whose budgets typically relied on steep spending cuts and strong economic growth assumptions to show sharply declining budget deficits, and then surpluses, over time, and President Barack Obama, whose budget plans generally leaned on a mixture of more moderate spending reductions and revenue increases to lower deficits with the primary goal of stabilizing and then gradually reducing the federal debt as a share of gross domestic product (GDP).

Anticipating elevated deficits: President Biden's fiscal 2024 budget, by contrast, largely accepts the premise that deficits will be elevated over the next decade. In fact, in dollar terms, the blueprint has deficits increasing from $1.38 trillion in fiscal 2022 to $1.85 trillion in fiscal 2024. After a brief reprieve in which deficits fall back to about $1.5 trillion in fiscal 2027, the fiscal plan projects steadily rising budget shortfalls that would exceed $2 trillion by the end of the 10-year budget window in 2033.

Still, the White House estimates that its budget policies would cut deficits, on net, by almost $3 trillion over the next decade relative to baseline estimates of revenues and spending over that span.

The blueprint envisions federal spending averaging about 24.8 percent of GDP over the next decade—notably higher than the average level of about 21 percent of GDP registered over the past 50 years. Revenues would also be higher than in the past—amounting to 19.6 percent of GDP on average over the next decade, about 2.2 percentage points higher than its five-decade average.

By the end of the 10-year budget window (fiscal 2033), revenues would be at their 10-year high of 20.1 percent of GDP, a level not seen since the late years of the Clinton administration when the federal budget was briefly in surplus.

The budget's elevated deficits as a share of the economy means that the federal debt held by the public (that is, debt not held in intragovernmental accounts such as the Social Security and Medicare trust funds) is also projected to rise steadily over the next 10 years, from about 98.4 percent of GDP in the current fiscal year to almost 110 percent of GDP in fiscal 2033.

Modest growth assumptions: In another departure from the budget blueprints of many previous administrations, which often assumed that their proposed policies would be tonic for economic growth—which can then have favorable secondary effects on projected revenue and spending levels—the Biden administration's growth assumptions are relatively modest. Over the next decade, the budget assumes that real economic growth will come in at a bit more than 2 percent per year, roughly in line with its level in the years leading up to the coronavirus pandemic. Real growth would be at its lowest level of the coming decade this year, at just 0.6 percent.

By contrast, two other economic assumptions in the budget—with respect to projected inflation levels and interest rates—could be interpreted as somewhat optimistic, at least compared to current trends. On inflation, the blueprint assumes that growth in the Consumer Price Index (CPI) will fall from 8.1 percent in 2022 to 4.3 percent this year, and then quickly level out at 2.3 percent per year from 2025 through the end of the 10-year budget window. Meanwhile, rates on short- and medium-term Treasury bills and bonds are projected to decline after this year. (For example, the rate on a 10-year Treasury note is projected to fall from 3.9 percent this year to 3.4 percent by 2026, where it would more or less remain for the rest of the decade).

The administration's assumptions on inflation and interest rates are slightly more optimistic than, but in the same ballpark as, recent projections published by the nonpartisan Congressional Budget Office (CBO)—which, along with the Joint Committee on Taxation (JCT), are Congress's official arbiters of the fiscal outlook—that have inflation falling to about 4.8 percent this year and then returning to a more normal Federal Reserve-targeted level of about 2 percent for the remainder of the budget window. On interest rates, CBO pegged the average rate on a 10-year Treasury bond rising from about 3.0 percent in 2022 to 3.9 percent this year and then holding steady at about that level for the remainder of the decade. (For prior coverage of CBO's budget and economic projections, see *Tax News & Views*, Vol. 24, No. 6, Feb. 17, 2023.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230217_1.html

Proposed changes to corporate tax rules

The administration contends in a fact sheet describing the budget that the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), the Trump-era tax relief reconciliation measure that moved through Congress without any Democratic support, provided significant tax relief for corporations, but that corporations did not use the resulting increase in profits to reinvest in the domestic economy. President Biden's budget proposals, the administration says, would "incentivize job creation and investment in the United States and ensure that large corporations pay their fair share."
URL: https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/09/fact-sheet-the-presidents-budget-cuts-the-deficit-by-nearly-3-trillion-over-10-years/
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Corporate rate increase: The president's budget again includes an increase in the corporate tax rate from 21 percent to 28 percent, but notably would make this increase retroactive to taxable years beginning after December 31, 2022. This increase would also drive the effective rate on global intangible low-taxed income (GILTI) to 14 percent—but a separate provision would further raise the effective GILTI rate to 21 percent.

In addition to the rate hike being an "administratively simple way to raise revenue," the Treasury Department states in the Green Book that "a significant share of the effects of the corporate tax increase would be borne by foreign investors. Therefore, some of the revenue raised by the proposal would result in no additional federal income tax burden on US persons."

Quadruple the tax on stock buybacks: This proposal would increase the 1 percent tax rate on corporate stock repurchases, enacted as part of the Inflation Reduction Act, to 4 percent, retroactive to buybacks made after December 31, 2022.

Tax corporate distributions as dividends: The administration argues in the Green Book that corporations have "devised many ways to avoid dividend treatment under current law"—for example, by entering into "preparatory transactions to eliminate earnings and profits or shifting earnings and profits to a prior or subsequent tax year." Corporations also "enter into transactions (so-called 'leveraged distributions') to avoid dividend treatment upon a distribution by having a corporation with earnings and profits provide funds (for example, through a loan) to a related corporation with no or little earnings and profits, but in which the distributee shareholder has high stock basis," the administration says.

The budget blueprint proposes to amend the tax code in ways the administration contends would ensure that a transfer of property by a corporation to its shareholder(s) better reflects the corporation's dividend-paying capacity. Specifically, the proposal would:

- Amend section 312(a)(3) to provide that earnings and profits are reduced by the basis in any distributed high-basis stock determined without regard to basis adjustments resulting from actual or deemed dividend equivalent redemptions or any series of distributions or transactions undertaken with a view to create and distribute high-basis stock of any corporation, effective as of the date of enactment;
- Treat a leveraged distribution from a corporation (distributing corporation) to its shareholder(s) that is treated as a recovery of basis as the receipt of a dividend directly from a related corporation (funding corporation) to the extent the funding corporation funded the distribution with a principal purpose of not treating the distribution as a dividend from the funding corporation, effective for transactions occurring after December 31, 2023;
- Disregard a subsidiary's purchase of hook stock for property so that the property used to purchase the hook stock gives rise to a deemed distribution from the purchasing subsidiary (through any intervening entities) to the issuing corporation, effective for transactions occurring after December 31, 2023; and
- Repeal the boot-within-gain limitation in reorganization transactions in which the shareholder's exchange is treated under section 356(a)(2) as having the effect of the distribution of a dividend, effective for transactions occurring after December 31, 2023.

Limit tax avoidance through inappropriate leveraging of parties to divisive reorganizations: The administration contends that in the absence of a comprehensive limitation, divisive reorganizations can "provide opportunities for tax planners to structure transactions that economically resemble tax-free cash sales." The budget blueprint proposes to eliminate what it calls "monetization loopholes" to "increase the integrity" of the tax code. At a high level, these proposals would:

- Eliminate excessive tax-free monetization of divisive reorganizations by modifying the two safe harbors for the tax-free transfer of boot and securities of a controlled entity to creditors of a distributing entity and
- Prevent tax avoidance through the transfer of contingent liabilities to a controlled entity by imposing two additional requirements under section 355 that, if not satisfied, would result in gain recognition by a distributing entity (but not the distributing entity's shareholders).

Both provisions generally would be effective for transactions occurring after the date of enactment.

Limit losses recognized in liquidation transactions: The administration explains in the Green Book that taxpayers with a built-in loss in the stock of a subsidiary may be able to recognize the loss on a taxable liquidation within a controlled group of corporations under section 331, without exiting their investment. For example, a corporate taxpayer may transfer more than 20 percent of the stock of the subsidiary to a related entity, reducing ownership below the 80 percent threshold, and then cause the subsidiary to liquidate. The liquidation is often accomplished through a "check-the-box" election to be classified as a partnership rather than a corporation, an election which applies only for US income tax purposes. Structuring into such taxable liquidations can also be used to recognize a loss on property held by the liquidating corporation under section 336, such as in cases involving a foreign-owned domestic corporation, the White House explains.

This proposal would modify section 267 to complete liquidations within a controlled group where the assets of the liquidating corporation remain in the controlled group after the liquidation. Where applicable, this would cause losses—both on the stock of the liquidating corporation and the property it holds—to be denied. The proposal would also grant the Secretary and her delegates the authority to allow for the deferral, rather than the denial, of such losses under the principles of section 267(f), as well to address the use of controlled partnerships to avoid these rules. The proposal would apply to distributions after the date of enactment.

Conform definition of 'control' with corporate affiliation test: The administration argues that the control test under section 368(c) "creates potential for taxpayers to improperly achieve desired tax outcomes through structured transactions." The budget renews a proposal from last year to conform the control test under section 368(c) with the affiliation test under section 1504(a)(2), so that "control" would be defined as the ownership of at least 80 percent of the total voting power and at least 80 percent of the total value of stock of a corporation. The term "stock" would not include certain preferred stock that meets the requirements of section 1504(a)(4). The proposal would be effective for transactions occurring after December 31, 2023.

Accelerate and tighten rules on excess employee remuneration: The budget blueprint proposes to address certain arrangements that, according to the administration, enable employers to "plan around" the limitation on the deduction for excess employee remuneration under section 162(m). These proposals would:

- Accelerate the effective date of the expanded definition of "covered employees" for purposes of the limitation from taxable years beginning after December 31, 2026 (as enacted in the American Rescue Plan Act of 2021), to taxable years beginning after December 31, 2023.
- Add an aggregation rule that would treat all members of a controlled group within the meaning of section 414(b), (c), (m), and (o) of the code as a single employer for purposes of determining the covered employees and applying the deduction disallowance for compensation paid to these employees in excess of $1 million;
- Amend section 162(m) to ensure that otherwise deductible compensation paid to a covered employee is considered applicable employee remuneration, whether or not paid directly by the publicly held corporation; and
- Expand the regulatory authority of the Secretary to issue regulations and other guidance as necessary to carry out the purposes of section 162(m) and to prevent the avoidance of the rule, including through the performance of services other than as an employee or by payment of compensation through a partnership or other passthrough entity.

The proposal would be effective for taxable years beginning after December 31, 2023.

Rents from prison facilities not treated as qualified income for purposes of REIT income tests: This proposal would provide that any amount received or accrued, directly or indirectly, with respect to any real or personal property primarily used in connection with any correctional, detention, or penal facility does not qualify as rents from real property. It would be effective for taxable years beginning after December 31, 2023.

Changes to the tax treatment of multinational corporations

The White House budget blueprint includes many provisions—several of which are carried over from last year—that would tighten current-law tax rules that the administration and congressional Democrats have argued provide incentives for companies to locate investment in foreign jurisdictions and move US-based jobs and production activities offshore.

Notably, the administration proposes to revamp—and in some instances, eliminate—key international tax provision in the Tax Cuts and Jobs Act: the global intangible low-tax income regime, the base erosion anti-abuse tax (BEAT) and the deduction for foreign-derived intangible income (FDII).

Revise GILTI regime: The president's budget once again proposes several changes to the current global minimum tax regime, including eliminating the QBAI exemption, reducing the section 250 deduction for GILTI inclusion to 25 percent (thus, in conjunction with the proposed 28 percent corporate rate discussed above, increasing the effective GILTI rate to 21 percent), and calculating GILTI on a country-by-country basis instead of a global basis.

The proposal also would decrease the 20 percent disallowance of foreign tax credits incurred to 5 percent, allow net operating losses (NOLs) to be carried forward (within a single jurisdiction), and allow foreign tax credits to be carried forward 10 years (within a single jurisdiction). It would repeal the high-tax exemption to subpart F income and its cross-reference in section 951A of the GILTI rules.

The reduction in the section 250 deduction to 25 percent would be effective for taxable years beginning after December 31, 2022. The other elements would be effective for taxable years beginning after December 31, 2023.

This section would also limit the deduction for dividends received from non-controlled foreign corporations, effective after the date of enactment; limit the ability of domestic corporations to invert; and make several other changes related to foreign income.

Undertaxed profits rule: In line with last year's budget request, this proposal would repeal the BEAT and replace it with an Undertaxed Profits Rule (UTPR), intended to be consistent with the UTPR that is described in the Pillar Two of the OECD's Model Rules. The proposal would be effective for taxable years beginning after December 31, 2024.

Repeal the FDII deduction: According to the administration, the FDII deduction, which currently is 37.5 percent but is scheduled to decrease to 21.875 percent in tax years beginning after 2025, provides "large tax breaks to companies with excess profits, gives multinational companies a competitive advantage over domestic producers, and creates undesirable incentives to locate certain economic activity abroad."

The administration proposes to repeal the FDII deduction effective for taxable years beginning after December 31, 2023, an action that it contends would raise significant revenue that can be deployed to incentivize research and development activities in the United States directly and more effectively, although it does not specify what those incentives would be.

Revise the rules that allocate subpart F income and GILTI between taxpayers to ensure that subpart F income and GILTI are fully taxed: According to the administration, current law allows subpart F income, or tested income of a controlled foreign corporation (CFC), to "escape US taxation in certain cases in which stock of the CFC is transferred and the CFC distributes a dividend (including a deemed dividend) to any person other than the US shareholder on the last relevant day."

The White House budget proposes to modify existing pro rata share rules to require a US shareholder of a CFC that owns, directly or indirectly, a share of stock of the CFC for part of the CFC's taxable year, but not on the last relevant day, to include in gross income a portion of the foreign corporation's subpart F income allocable to the portion of the year during which it was a CFC. It also would revise the pro rata share rules for determining a US shareholder's GILTI inclusion with respect to a CFC and authorize the Secretary to issue regulations or other guidance necessary or appropriate to carry out the purposes of the proposal.

The proposal would apply to taxable years of foreign corporations beginning after the date of enactment and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end.

Eliminate exploited mismatch in calculation of earnings and profits of controlled foreign corporations: Under the administration's proposal, the earnings and profits of a CFC would be determined for all purposes by taking into account LIFO, installment sales, and the completed contract method of accounting. Thus, under the proposal, the earnings and profits of a CFC generally would follow the income tax accounting treatment, including for purposes of determining the amount of earnings and profits available for distribution under section 245A.

The provision would be effective for taxable years of foreign corporations ending on or after December 31, 2023, and to taxable years of US shareholders in which or with which such taxable years of the foreign corporations end.

Limit foreign tax credits from sales of hybrid entities: The proposal would apply the principles of section 338(h)(16) to determine the source and character of any item recognized in connection with a direct or indirect disposition of an interest in a specified hybrid entity and to a change in the classification of an entity that is not recognized for foreign tax purposes (for example, due to an election under the entity classification regulations).

Thus, for purposes of applying the foreign tax credit rules, the source and character of any item resulting from the disposition of the interest in the specified hybrid entity, or change in entity classification, would be determined based on the source and character of an item of gain or loss the seller would have taken into account upon the sale or exchange of stock (determined without regard to section 1248). In addition, because the proposal is limited to determining the source and character of such an item of gain or loss for purposes of applying the foreign tax credit rules, the proposal does not affect the amount of gain or loss recognized as a result of the disposition or the change in entity classification.

The Secretary and her delegates would be granted authority to issue any regulations necessary or appropriate to carry out the purposes of the proposal, including those applying the proposal to other transactions that have a similar effect and exempting certain transactions among related parties from application of the proposal.

The proposal would be effective for transactions occurring after the date of enactment.

Restrict deductions of excessive interest of members of financial reporting groups: The administration argues that the "fungibility of money makes it easy for multinational groups to substitute debt for equity in a controlled entity in order to shift profits to lower-tax jurisdictions."

The budget blueprint proposes to address this by, among other things, limiting the deduction for interest expense by a member of a financial reporting group (as defined in the proposal) if the member has net interest expense for US tax purposes and the member's net interest expense for financial reporting purposes (computed on a separate company basis) exceeds the member's proportionate share of the financial reporting group's net interest expense reported on the group's consolidated financial statements (excess financial statement net interest expense).

The proposal would be effective for taxable years beginning after December 31, 2023.

Treat payments substituting for partnership effectively connected income as US-source dividends: The administration proposes to treat the portion of a payment on a derivative financial instrument (including a securities loan or sale-and-repurchase agreement) that is contingent on income or gain from a publicly traded partnership or other partnership specified by the Secretary or her delegates as a dividend equivalent, to the extent that the related income or gain would have been treated as effectively connected income if the taxpayer held the underlying partnership interest.

The Secretary would have authority to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, this section, including with respect to payments made between foreign persons. No inference is intended as to the application of current law to derivative transactions on interests in partnerships with effectively connected income.

The proposal would be effective for taxable years starting December 31, 2023.

Expand access to retroactive qualified electing fund elections: The administration proposes to modify section 1295(b)(2) to permit a qualified electing fund (QEF) election by the taxpayer at such time and in such manner as the Secretary or her delegates shall prescribe by regulations. Taxpayers would be eligible to make a retroactive QEF election without requesting consent only in cases that do not prejudice the US government. For example, if the taxpayer owned the PFIC in taxable years that are closed to assessment, the taxpayer would need to obtain consent and to pay an appropriate amount to compensate the government for the taxes not paid in the closed years on amounts that would have been includable in the taxpayer's income if the taxpayer had made a timely QEF election. While it is less common for partnerships and other non-individual taxpayers to inadvertently fail to make a QEF election, the Secretary would have authority to allow such taxpayers to make retroactive QEF elections in appropriate circumstances.

The proposal would be effective on the date of enactment. It is intended that regulations or other guidance would permit taxpayers to amend previously filed returns for open years.

Reform taxation of foreign fossil fuel income: The budget blueprint proposes to repeal the exemption from GILTI for foreign oil and gas extraction income (FOGEI) and expand the definition of FOGEI to include oil shale and tar sands. The proposal would be effective for taxable years beginning after December 31, 2023.

Provide tax incentives for locating jobs and business activity in the US and remove tax deductions for shipping jobs overseas: On the incentive side, the budget plan revives a proposal from last year that would create a new general business credit equal to 10 percent of the eligible expenses paid or incurred in connection with onshoring a US trade or business. Onshoring is defined generally as reducing or eliminating a trade, business, or line of business currently conducted outside the US and starting up, expanding, or otherwise moving the same trade or business within the US, to the extent that the action results in an increase in US jobs.

The proposal would be effective for expenses paid or incurred after the date of enactment.

Income tax proposals affecting high-wealth and upper-income taxpayers

The White House notes in a fact sheet released in conjunction with the budget blueprint that the president's tax priorities reflect his belief that "we need to reward work, not wealth—and ensure the wealthiest Americans and biggest corporations don't pay lower tax rates than teachers or firefighters." To that end, the budget reprises a litany of proposals from last year aimed at increasing taxes on upper-income and high-net-worth taxpayers and also unveils a few new ones.

Increase in the top marginal tax rate: This proposal would again increase the top marginal tax rate from 37 percent to 39.6 percent for tax years beginning after December 31, 2022.

Higher minimum income tax on the wealthiest taxpayers: The president has once again proposed a minimum tax on total income—generally including unrealized capital gains—of taxpayers with wealth of more than $100 million, but he notably increased the rate from 20 percent to 25 percent this year.

A taxpayer's minimum tax liability would be the minimum rate of 25 percent times the sum of (1) taxable income and (2) unrealized gains, including on ordinary assets. This product would then be reduced by the sum of the taxpayer's unrefunded, uncredited prepayments and regular tax. The proposal would be effective for taxable years beginning after December 31, 2023.

Apply the net investment income tax (NIIT) to passthrough business income of upper-income taxpayers: The president's plan revives a proposal to ensure all passthrough business income of high-income taxpayers ($200,000 for single taxpayers and heads of households, and $250,000 for joint filers) is subject to either the NIIT or self-employment tax, effective for taxable years beginning after December 31, 2022.

Increase the NIIT rate and additional Medicare tax rate for higher-income taxpayers: A new proposal this year that is intended to shore up the Medicare Trust Fund would:

- Increase the additional Medicare tax rate to 5 percent for taxpayers earning more than $400,000 a year. (The 5 percent rate would apply only to income above the $400,000; income below that threshold would continue to be taxed at 3.8 percent.)
- Increase the NIIT rate to 5 percent for taxpayers with more than $400,000 of income. The administration explains that for taxpayers with positive net investment income, the NIIT would increase to 5 percent on the lesser of (1) net investment income or (2) the excess, if any, of modified adjusted gross income over $400,000. The threshold would be indexed for inflation.

The proposal would be effective for taxable years beginning after December 31, 2022.

Reform the taxation of capital income: The budget blueprint renews proposals that would tighten the tax treatment of capital income in an effort to prevent more affluent taxpayers from avoiding tax on their appreciated investments. These proposed changes would:

- Tax long-term capital gain and qualified dividend income of at ordinary rates, applicable to taxpayers with taxable income of more than $1 million ($500,000 for married filing separately). The provision would be effective for gains required to be recognized and for dividends received on or after the date of enactment. Income thresholds would be indexed for inflation after 2024.
- Treat transfers of appreciated property by gift or on death as realization events. Thus, "the donor or deceased owner" of an appreciated asset would realize "a capital gain" at the time of the transfer. This provision would be effective for gains on property transferred by gift, and on property owned at death by decedents dying, after December 31, 2023, and on certain property owned by trusts, partnerships, and other noncorporate entities on January 1, 2024.

Prevent excessive accumulations by high-income taxpayers in tax-favored retirement accounts: The budget blueprint includes several proposals intended to prevent high-income taxpayers from accumulating excessive balances in tax-preferred individual retirement accounts and qualified retirement plans and thus limit what the administration sees as the ability of these taxpayers to use IRAs and other qualified plans as tax planning tools rather than traditional retirement savings vehicles.
Specifically, the administration would:

- Require a high-income taxpayer with an aggregate vested account balance under certain tax-favored retirement arrangements that exceeded $10 million as of the last day of the preceding calendar year to distribute a minimum of 50 percent of that excess. This provision would apply to a taxpayer whose modified adjusted gross income in a given taxable year exceeds $450,000 (for a married-joint filer or a surviving spouse), $425,000 (for a head-of-household, or $400,000 (in other cases). This provision generally would be effective for tax years beginning after December 31, 2023.
- Curb so-called "back door" conversions to Roth IRAs, generally by prohibiting Roth conversions for both IRAs and employer-sponsored plans in the case of upper-income taxpayers (defined based on the modified adjusted gross income thresholds outlined above), effective for distributions made after December 31, 2023.
- Prohibit an IRA from holding an interest in a domestic international sales corporation (DISC) or a foreign sales corporation (FSC) that receives a payment from an entity owned by the IRA owner, effective for interests in DISCs and FSCs acquired or held after December 31, 2023.
- 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.
- Extend the statute of limitations in the case of a substantial error relating to valuation of assets with respect to an IRA from three years to six years, and extend the statute of limitations for the excise tax

on prohibited transactions from three years to six years, effective for taxes for which the three-year window would end after December 31, 2023.

Estate and gift tax proposals

The White House also proposes to tighten certain rules around the taxation of estates and gifts to limit the ability of wealthier taxpayers to use generational transfers and other transfer arrangements to delay tax on appreciated assets.

Improve tax administration for trusts and decedents' estates: Building on a proposal from last year, the budget blueprint includes assorted changes that would expand definition of 'executor,' increase the limit on the reduction in value of special use property, extend 10-year period for certain estate and gift tax liens, require reporting of estimated total value of trust assets, require that a defined value formula clause be based on a variable that does not require IRS involvement, and simplify the exclusion from the gift tax for annual gifts.

Limit duration of generation-skipping transfer tax (GST) exemption: This proposal, also repeated from last year, generally would provide that the GST exemption would apply only to: (1) direct skips and taxable distributions to beneficiaries no more than two generations below the transferor, and to younger-generation beneficiaries who were alive at the creation of the trust and (2) taxable terminations occurring while any person described above is a beneficiary of the trust. It would apply on and after the date of enactment to all trusts subject to the generation-skipping transfer tax, regardless of the trust's inclusion ratio on the date of enactment.

Modify income, estate, gift, and generation-skipping transfer tax rules for certain trusts: Building on a proposal from last year, the White House would change the rules around trusts by:

- Generally requiring that the remainder interest in a grantor retained annuity trust (GRAT) at the time the interest is created have a minimum value for gift tax purposes equal to the greater of 25 percent of the value of the assets transferred to the GRAT or $500,000 (but not more than the value of the assets transferred);
- Treating a trust's purchase of assets from, or interests in, a trust that is subject to GST tax (regardless of the selling trust's inclusion ratio), as well as a purchase of any other property that is subject to GST tax, as a change in trust principal that would require the redetermination of the purchasing trust's inclusion ratio when those assets (or trust interest) are purchased;
- Ignoring trust interests held by additional tax-exempt organizations for purposes of the GST tax;
- Modifying the definition of a guaranteed annuity from a charitable lead annuity trust; and
- Treating loans made by a trust to a trust beneficiary as a distribution for income tax purposes, carrying out each loan's appropriate portion of distributable net income to the borrowing beneficiary.

Require consistent valuation of promissory notes: The proposal, which is repeated from last year, would impose a consistency requirement by providing that, if a taxpayer treats any promissory note as having a sufficient rate of interest to avoid the treatment of any foregone interest on the loan as income or any part of the transaction as a gift, that note subsequently must be valued for federal gift and estate tax purposes by limiting the discount rate to the greater of the actual rate of interest of the note, or (for estate tax purposes) the applicable minimum interest rate for the remaining term of the note on the date of death.

Private foundation issues: The budget blueprint also renews proposals from last year that would limit the use of donor advised funds to avoid a private foundation payout and exclude payments to disqualified persons from counting toward the private foundation payout requirement.

Significant provisions affecting noncorporate taxpayers

The budget includes several policies intended to strengthen the tax rules for noncorporate taxpayers, including a new White House proposal to make permanent and tighten the excess business loss limitation under section 461(l).

Strengthen limitation on loss for noncorporate taxpayers: Although it has not been in past Biden budget plans, the administration is now proposing to make permanent the limitation on loss deductibility under section 461(l) that is designed to reduce the ability of individual taxpayers to use business losses to offset unrelated income. That annual loss limitation—which is currently set to expire after 2028—is currently pegged at $578,000 for married couples and $289,000 for all other taxpayers (indexed for inflation).

Under the White House budget plan, this "excess business loss" limitation would be made permanent. Significantly, the proposal would also provide that any loss deduction denied by 461(l) would not become an NOL carryforward in subsequent years—as is the case under current law—subject only to an 80-percent-of-taxable-income limitation under section 172. Instead, those carryforward excess business losses would be treated as current-year losses in subsequent years, again subject to the 461(l) loss limitation.

Additionally, the budget includes several additional proposals aimed at noncorporate taxpayers that have appeared in previous Biden fiscal plans. These proposals would:

- **Prevent basis shifting by related parties through partnerships:** Under current law, a partnership may generally elect, in the case of a distribution of property (section 734), to adjust the tax basis of its partnership property under section 754. This proposal intends to "reduce the ability of related parties to use a partnership to shift partnership basis among themselves for the purpose of creating advantageous tax results with no meaningful economic consequences."
- **Tax carried (profits) interests as ordinary income:** Consistent with the Biden administration's fiscal year 2023 budget plan, this proposal would repeal section 1061 (which generally extends the long-term holding period requirement for favorable carried interest taxation from more than one year to more than three years) and change the taxation of certain profits interests for taxpayers with taxable income (from all sources) in excess of $400,000. Specifically, if these taxpayers held an investment services partnership interest (ISPI) in an investment partnership, their distributive share of income would be

treated as ordinary regardless of the character of the income at the partnership level. Likewise, any gain from a partner's sale of an ISPI also would be taxed at ordinary rates.

- **Repeal deferral of gain from like-kind exchanges:** The proposal would limit the deferral of gain from like-kind exchanges of real property to $500,000 for each taxpayer ($1 million for married individuals filing a joint US federal income tax return) for each taxable year.
- **100 percent depreciation recapture for section 1250 property:** In general, this proposal would treat any gain upon disposition of section 1250 property held for more than one year as ordinary income to the extent of the cumulative depreciation deductions taken after the effective date of the provision, which in this case would be taxable years beginning after December 31, 2023.

Energy-related tax provisions

Last year's Inflation Reduction Act included significant production and investment tax credits related to renewable and alternative energy property, credits for production of certain alternative fuels, incentives to promote low- and zero-emission vehicles, and incentives for energy-efficient building projects. However, that legislation did not repeal any of the deductions or other special provisions that, according to the administration, provide distorted incentives to produce fossil fuels. Accordingly, the president's budget again proposes an end to these provisions, including:

- The enhanced oil recovery credit for eligible costs attributable to a qualified enhanced oil recovery project;
- The credit for oil and gas produced from marginal wells;
- The expensing of intangible drilling costs;
- The deduction for costs paid or incurred for any qualified tertiary injectant used as part of a tertiary recovery method;
- The exception to passive loss limitations provided to working interests in oil and natural gas properties;
- The use of percentage depletion with respect to oil and gas wells;
- Two-year amortization of geological and geophysical expenditures by independent producers, instead requiring amortization over the seven-year period used by major integrated oil companies;
- Expensing of exploration and development costs;
- Percentage depletion for hard mineral fossil fuels;
- Capital gains treatment for royalties;
- Exemption from corporate income tax for fossil fuel publicly traded partnerships;
- The oil spill liability trust fund excise tax exemption for crude oil derived from bitumen and kerogen-rich rock; and
- Accelerated amortization for air pollution control facilities.

These provisions generally would be effective for taxable years beginning after December 31, 2023. In the case of royalties, the proposal would be effective for amounts realized after taxable years beginning after December 31, 2023. The repeal of the exemption from the corporate income tax for publicly traded partnerships with qualifying income and gains from activities relating to fossil fuels would be effective for taxable years beginning after December 31, 2028.

Elimination of drawbacks on certain petroleum taxes: The budget blueprint also includes a new revenue-raising proposal that would disallow the rebate of petroleum excise taxes that go to the oil spill liability trust fund or the hazardous substance superfund when products are exported. The provision would be effective after December 31, 2023.

Impose digital asset mining energy tax: Also new this year is a provision that would impose an excise tax on firms engaged in digital asset mining equal to 30 percent of the cost of electricity used in their activities. This tax would be phased in over three years—starting with taxable years beginning after December 31, 2023—at a rate of 10 percent in the first year, 20 percent in the second, and 30 percent thereafter.

Define the term ultimate purchaser' for purposes of diesel fuel exportation: The proposal would define the person entitled to a rebate of federal excise taxes as the last purchaser in the United States for the purposes of diesel fuel and kerosene exportation. The proposal would be effective for diesel fuel and kerosene exported after December 31, 2022.

Tax treatment of digital assets

The administration's fiscal 2024 budget blueprint contains one notable new provision in the cryptocurrency realm that would apply the wash sale rules to digital assets and address related-party transactions.

Specifically, this provision would amend section 1091 to add digital assets to the list of assets subject to the wash sale rules, which, under current law, generally seek to disallow losses from the sale of stock or securities if the same or substantially identical stock or securities are purchased within 30 days before or after the sale (a so-called "wash sale"). Additionally, the wash sale rules—for all types of assets—would be modified to defer losses in certain related-party situations. These proposals would be effective for taxable years beginning after December 31, 2023.

Additionally, the administration's latest budget includes a number of digital asset-related provisions that also have appeared in past Biden fiscal plans, including policies that would:

- **Modernize rules treating loans of securities as tax-free to include other asset classes and address income inclusion:** In general, this proposal would expand the securities loan nonrecognition rule in section 1058 to apply to loans of digital assets, provided that such loans have terms that are similar to those currently required for securities loans in section 1058.
- **Provide for information reporting by certain financial institutions and digital asset brokers for purposes of exchange of information:** The administration proposes to expand US financial institution reporting obligations on non-US account holders. According to the Green Book, this proposal would result in more robust reciprocal tax information exchange between the US and jurisdictions with which it maintains reciprocal income tax treaties or intergovernmental agreements under the Foreign Account Tax Compliance Act (FATCA). The rules would require US financial institutions to report (1) account balances for financial accounts maintained in the US that are held by foreign persons, (2) non-US source income payments to accounts held by foreign persons, (3) gross proceeds from sale or

redemption of property custodied in financial accounts held by foreign persons, and (4) information regarding passive entities and their substantial foreign owners.

- **Require reporting by certain taxpayers of foreign digital asset accounts:** The administration proposes to require individuals and certain domestic entities to disclose digital assets maintained in a "foreign digital asset account," defined as "any account that holds digital assets maintained by a foreign digital asset exchange or other foreign digital asset service provider."
- **Amend the mark-to-market rules for dealers and traders to include digital assets:** In general, this proposal would amend the mark-to-market rules under section 475 to include digital assets as another category of assets that may be marked to market by a dealer or trader in such assets.

Economic and community development provisions

The budget blueprint includes a slate of provisions aimed at revitalizing economically distressed communities, including a new proposal aimed at encouraging the building and rehabilitation of affordable owner-occupied housing. (See separate coverage in this issue for details of a Senate Finance Committee hearing on the role of tax policy in expanding the availability of affordable housing.)

Establish a new 'Neighborhood Homes Credit': The administration argues that although the housing market is supported by a number of tax incentives such as the low-income housing tax credit, the mortgage interest deduction, and tax-exempt housing bonds, there currently is no incentive in the tax code designed to directly support the building or renovation of affordable owner-occupied housing, whether by homebuilders or homeowners themselves.

To fill this gap, the budget proposes to establish a "Neighborhood Homes Credit" (NHC) that would be allocated by state-level Neighborhood Homes Credit Agencies (NHCAs) for the purpose of encouraging: (1) new construction for sale, (2) substantial rehabilitation for sale, and (3) substantial rehabilitation by existing homeowners who will remain in their communities. This new credit allocation—which, for each state or US territory, would be capped at the greater of $8 million or $6 times the state's population (indexed for inflation after 2024)—would be effective for taxable years beginning after December 31, 2023.

Expand and enhance the low-income housing tax credit (LIHTC): The budget proposes to make a number of enhancements to the LIHTC, including by increasing the annual "housing credit dollar amounts" (HCDAs) that states are allocated each year for purposes of the 9 percent LIHTC credit rate, and by reducing the 50 percent private activity bond (PAB) financing requirement (to 25 percent) that enables a building to earn credits at the 4 percent LIHTC rate if the building and land it sits on are financed by PABs subject to a state's volume cap.

Make the new markets tax credit permanent: The new markets tax credit was last extended by the Consolidated Appropriations Act, 2021 (P.L. 116-260) at $5 billion each calendar year 2020 through 2025. The administration's proposal would extend the credit permanently with a new allocation for each calendar year after 2025 at $5 billion, indexed for inflation after 2026.
URL: https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf

Extend the period for assessment of tax for certain qualified opportunity fund investors: Taxpayers who invest in a qualified opportunity fund (QOF) may elect to defer eligible gain from the taxpayer's income for the year the gain is realized. The gain is generally deferred until December 31, 2026. However, if an "inclusion event" occurs (*e.g.*, the fund loses its QOF status), the taxpayer must include the deferred gain in its income for the year in which the inclusion event occurs. The Green Book notes that a longer assessment statute of limitation is needed for taxpayers who defer gain from QOFs because inclusion events "may not be readily identifiable on the taxpayer's return" so the IRS may not know about the inclusion event before the three-year assessment statute of limitation expires. In general, this provision would extend the assessment statute of limitations until "three years after the date on which the IRS is furnished with all of the information that it needs to assess the deficiencies."

Modify the work opportunity tax credit to promote longer-term employment: To encourage employers to provide long-term employment opportunities to members of targeted groups under the work opportunity credit program, the administration proposes to increase from 120 to 400 the minimum number of hours worked by an individual in the first year of service to become eligible for the credit. The proposal would be effective for individuals hired after December 31, 2023.

Tax administration and compliance provisions

The Biden administration has argued that it can raise significant revenue by reducing the so-called "tax gap"—the difference between the amount of tax legally owed to the government and the amount actually collected on a timely basis. To that end, the budget blueprint lauds the Inflation Reduction Act's recent 10-year infusion of almost $80 billion in mandatory IRS funding as "stable, long-term funding through 2031 to improve tax compliance by finally cracking down on high-income individuals and corporations who too often avoid paying their lawfully owed taxes and improving service for the millions of Americans that do pay their taxes."

Extend mandatory funding provided to the IRS for fiscal years 2032 and 2033: As a continuation of that policy, the administration's budget plan proposes to extend the mandatory funding stream for two additional years—that is, for the additional years covered by the 10-year budget window. That funding would be provided at $14.3 billion in fiscal 2032 and $14.8 billion in fiscal 2023.

Without that continuation of supplemental funding, the administration argues that the IRS "will be confronted with an abrupt and severe decline in its budget . . . which would force the IRS to cut back on audits of large corporations and complex partnerships and thereby increase the deficit."

Increase discretionary IRS funding: Additionally, the White House budget plan proposes to increase the IRS's regular operating budget—that is, funding provided under the annual appropriations process—to $14.1 billion for the coming fiscal year (a $1.8 billion increase over its fiscal 2023 level, as enacted), with the additional funds focused on business systems modernization and customer service improvements.

Compliance proposals: In addition to the proposed mandatory and discretionary budget increases for the IRS, the administration's plan also includes several targeted measures—most of which have appeared in prior Biden fiscal plans—that are intended to improve taxpayer compliance, including provisions that would:

- Address taxpayer noncompliance with listed transactions;
- Amend the centralized partnership audit regime to permit the carryover of a reduction in tax that exceeds a partner's tax liability;
- Incorporate Chapters 2/2A in centralized partnership audit regime proceedings;
- Authorize limited sharing of business tax return information;
- Impose an affirmative requirement to disclose a position contrary to a regulation;
- Extend to six years the statute of limitations for certain tax assessments;
- Expand and increase penalties for noncompliant return preparation and e-filing; and
- Address compliance in connection with tax responsibilities of expatriates.

Family-related tax benefits

The tax increases proposed in the administration's latest budget would help offset the cost of several family-related tax benefits the president wants to see enacted into law.

Increase the employer-provided childcare tax credit for businesses: The administration proposes to increase the existing tax credit to 50 percent of the first $1 million of qualified care expenses for a maximum total credit of $500,000 per year. The portion of the credit related to referral expenses would remain at 10 percent with a maximum amount of $150,000. This proposal would be effective for taxable years beginning after December 31, 2023.

Extension of enhanced family benefits in American Rescue Plan, Inflation Reduction Act provisions: The budget proposal also proposes to extend certain temporary family tax relief provisions that were enacted during the president's first two years in office. Specifically, the White House proposes to:

- Extend through 2026 the child tax credit enhancements (such as an increased credit amount, higher phase-out thresholds, and an increased age limit for a qualifying child) that were enacted in the American Rescue Plan and expired at the end of 2021 and permanently extend full refundability of the credit, regardless of earned income. Both provisions would be effective for taxable years beginning after December 31, 2022. The administration also would permanently allow taxpayers to elect to receive the credit in monthly installment payments—another expired provision in the American Rescue Plan—for taxable years beginning after December 31, 2023, and would make other assorted changes to certain definitions and eligibility rules.
- Restore and permanently extend the American Rescue Plan's expansion of the earned income tax credit for workers without qualifying children, effective for taxable years beginning after December 31, 2022.
- Permanently extend the Inflation Reduction Act's expansion of health insurance premium tax credits, effective for taxable years beginning after December 31, 2025.

Other proposed changes: The administration also proposes to:

- Make the current-law adoption tax credit refundable and allow certain guardianship arrangements to qualify, effective for taxable years beginning after December 31, 2023.
- Permanently extend the income exclusion for forgiven student loan debt, effective for taxable years beginning after December 31, 2025.
- Expand tax preferred treatment for scholarship and loan repayment programs to include certain federal programs dedicated to improving access to medical care for underserved populations, effective for taxable years beginning after December 31, 2023.

No love from Republicans at Ways and Means hearing

While the budget submission provides the president with the opportunity to formally lay out his tax policy agenda, these proposals are not binding and the authority for drafting actual legislation ultimately lies with Congress. But congressional Republicans have their own tax agenda that is largely predicated on extending and expanding the Tax Cuts and Jobs Act. And given that the GOP has the majority in the House—and controls enough seats in the Senate to be able to block proposals from the Democratic majority they find objectionable—it is unlikely that the White House budget package will advance this year.

House Ways and Means Committee Chairman Jason Smith, R-Mo., and his GOP colleagues on the panel left no doubt about that outcome during a March 10 hearing with Treasury Secretary Janet Yellen to discuss the budget package. (Senate taxwriters will have their chance to grill Yellen on the budget at a Finance Committee hearing scheduled for March 16.)

Smith contended in his opening statement that the administration's proposals affecting passthrough entities would "hit mom-and-pop small businesses, violating President Biden's pledge not to increase taxes on small businesses," and that the president's estate tax proposals would "force family farms and ranches to sell their assets or risk closing their doors." He also argued that proposals to align the taxation of multinationals with the OECD's Pillar Two provisions would "make it better to be a foreign worker or business than an American one."

Smith asked Secretary Yellen if she would comply with his request in a letter sent March 9 that the Treasury Department provide the panel with legislative language for its tax proposals within 30 days.
URL: https://waysandmeans.house.gov/wp-content/uploads/2023/03/03.09.2023-Ltr-to-Treasury.pdf

Yellen replied that the Green Book provides the details necessary for taxwriters to consider the administration's tax proposals and that Treasury staff is willing to work with committee staff to review draft legislation sent over from lawmakers.

IRS funding: Smith wondered how the administration could justify requesting additional mandatory funding for the IRS when the Treasury Department has not yet released its plan for implementing the $80 billion tranche of funding (over 10 years) that was authorized under the Inflation Reduction Act.

Yellen replied that the spending plan would be completed "in the coming weeks" and would be made public.

In separate exchanges with Chairman Smith and GOP taxwriter Adrian Smith of Nebraska, Yellen reiterated the administration's promise that the IRS would not use Inflation Reduction Act funding to increase audits on taxpayers with income below $400,000 "relative to historical levels."

Addressing Adrian Smith's concern that the new funding would allow the IRS to greatly expand the ranks of its audit team, Yellen stated that the "vast majority" of new hires would be filling vacancies that the IRS anticipates will be opening up over the coming 10 years as the result of normal attrition and the expected retirements of older workers.

Passthrough taxes: In response to a question from GOP taxwriter Vern Buchanan of Florida about the small-business impact of the White House's proposals to increase taxes on passthrough entities, Yellen reiterated the administration's position that the budget would not increase taxes on taxpayers with income less than $400,000.

Buchanan countered that many small business owners who have income greater than $400,000 but invest the excess income back into their businesses likely would be harmed by the administration's proposals.

Yellen agreed with an assertion by Democratic taxwriter Lloyd Doggett of Texas that 85 percent of the administration's proposals to increase net investment income taxes would be paid by taxpayers with income greater than $1 million and none of that burden would fall on taxpayers with income below $400,000.

Global minimum taxes and US competitiveness: Doggett asked Yellen about an assertion by Chairman Smith that the administration's proposals to bring the tax treatment of multinational corporations into alignment with the OECD's Pillar Two agreement would put US-based businesses at a competitive disadvantage—particularly in relation to China.

Yellen replied that China has signed on to Pillar Two and thus would be required to raise its minimum tax to 15 percent on a country-by-country basis. She also noted that the Pillar Two rules include an enforcement mechanism that would allow the US to impose a top-up tax on Chinese-domiciled businesses operating in the US if China does not adhere to the agreement.

Opportunities for consensus?

With Democrats and Republicans putting forward tax legislative agendas that are fundamentally at odds with each other, the prospects for enactment of a substantial tax package in 2023 appear dim. It remains possible, though, that lawmakers could reach consensus on a handful of relatively narrow tax provisions that attracted a measure of bipartisan support in the previous Congress but were left out of the lame duck omnibus spending package enacted at the end of 2022. Proposals falling into this category could include legislation that would repeal or defer certain revenue-raising provisions in the Tax Cuts and Jobs Act, such as mandatory research expense amortization, the stricter limits on the deduction for net business interest expense, and the new phase-down in the bonus depreciation percentage. Other non-TCJA policies that have been percolating in Congress—such as relief from last-in-first-out (LIFO) inventory recapture for automobile dealers or relief from lowered 1099 reporting thresholds enacted in 2021's American Rescue Plan—could also fall into this bucket.

Action on these provisions likely would depend in large part upon the broader political dynamics surrounding other legislation moving through Congress, such as measures to increase the federal debt ceiling, reauthorize Airport and Airway Trust Fund excise taxes, renew the farm bill, or fund the federal government for fiscal year 2024, that could serve as vehicles for certain of these policies.

Despite the broad bipartisan support that several of these items enjoyed last year, however, supporters were stymied in part by an unresolved dispute between Democrats, who wanted to pair those business-friendly provisions with an extension of the now-expired enhancements to the child tax credit enacted in 2021, and Republicans, who bristled at the potentially larger cost of the child tax credit changes. That dynamic has carried over into 2023, although there is some hope among Democrats that the more populist bent of Ways and Means Committee Chairman Smith may make him more amenable to revisiting the child tax credit. Smith indicated late last year, for example, that Republicans may be open to legislation expanding the credit if it includes a work requirement. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 41, Dec. 9, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/221209_1.html

It also is possible that other narrow tax issues that are not currently on the radar of either party could emerge in the 118th Congress and generate enough bipartisan support to clear both chambers and become law, although right now these fall into the realm of "unknown unknowns."

Possible timing: Because debt ceiling negotiations are setting up to be a contentious fight over spending policy that will likely come to a head sometime in the next few months, it is unclear if the resulting legislation will prove to be a vehicle that can carry extraneous items.

In an early sign of just how tricky the debt ceiling talks might be, the House Ways and Means Committee on March 9 reported legislation—the Default Prevention Act (H.R. 187)—that would prioritize payments of principal and interest on the publicly held debt, and similar intragovernmental payments on obligations held within the Social Security and Medicare trust funds, in the event the statutory debt limit is breached in the coming months. The legislation, which is strongly opposed by congressional Democrats and was approved on a party-line vote in the Ways and Means Committee, stands alongside another GOP demand to condition any increase or suspension of the debt limit—which Treasury and congressional estimators expect will be due sometime between June and September of 2023 in order to avoid a default—upon reducing fiscal year 2024 appropriations to the levels enacted for fiscal 2022, an approach that would entail a more than $100 billion cut relative to appropriations levels as ultimately enacted for fiscal year 2023.
URL: https://waysandmeans.house.gov/wp-content/uploads/2023/03/Amendment-in-the-Nature-of-a-Substitute-to-H.R.-187.pdf

The other potential vehicles for a tax bill this year—the government funding package and reauthorizations of the aviation excise taxes and the farm bill—all have end-of-September deadlines, although the appropriations process could be extended through a continuing resolution until sometime in December. As a result, we may be in a holding period for tax policy changes for some time.

Regulatory action remains possible: Although opportunities for legislative action on tax policy appear limited, we still can expect that the Treasury Department (and other federal agencies) will be active in writing regulations that will have a major impact on businesses and individuals. Late last December, for example, the Treasury Department announced that it would delay enforcement of the stricter reporting thresholds for third-party payment processors that was enacted in the American Rescue Plan Act of 2021 and scheduled to take effect for tax year 2022 transactions. (Lawmakers had hoped to approve relief of some kind during the post-election lame duck session but were unsuccessful in getting such a provision included in last month's omnibus spending bill.)
URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf

Indeed, this sort of regulatory intervention has been the norm for recent presidencies: when the Congress is unable to produce legislation, policymaking by regulation becomes a major focus. Although Treasury can't administratively raise tax rates, decisions around how to implement previously enacted laws, especially the Inflation Reduction Act, will have major implications for affected taxpayers.

— Alex Brosseau, Michael DeHoff, and Storme Sixeas
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