Ways and Means Republicans advance 'economic growth' tax package

Republicans on the House Ways and Means Committee on June 13 formally kicked off what could be a months-long debate over the contours of a potential deal on tax legislation in Congress this year as they approved a trio of largely business-focused tax-relief measures that Chairman Jason Smith, R-Mo., argues are intended to promote economic growth.

The Tax Cuts for Working Families Act (text; Joint Committee on Taxation summary), the Small Business Jobs Act, (text; summary), and the Build it in America Act (text; summary) all cleared the committee with only Republican votes after a roughly 10-hour mark-up session. As expected, a string of amendments proposed by the panel's Democrats failed along party lines.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/06/H.R.-3936-Bill-Text51.pdf
URL: https://www.jct.gov/publications/2023/jcx-25-23/
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/06/H.R.-3937-Bill-Text-1.pdf
URL: https://www.jct.gov/publications/2023/jcx-26-23/
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/06/H.R.-3938-Bill-Text-1.pdf
URL: https://www.jct.gov/publications/2023/jcx-28-23/

The three committee-approved measures are expected to be consolidated into a single package—dubbed the American Families and Jobs Act—sometime before the legislation is eventually brought to the House floor.

Provisions at a glance

Overall, the Ways and Means package is intended to mitigate the adverse impact of some business-related tax code changes that were enacted in the Tax Cuts and Jobs Act (P.L. 115-197) and other recent legislation, spur small-business manufacturing and investment, pare back clean energy tax incentives that became law as part of last year's Inflation Reduction Act (P.L. 117-169), help US-based businesses remain competitive internationally, and offer individuals some relief from the effects of inflation by temporarily increasing the standard deduction. Chairman Smith commented in his opening statement at the mark-up that these provisions reflect the concerns voiced by small-business owners, farmers, and individuals during field hearings on tax and economic issues that the committee held in West Virginia, Oklahoma, and Georgia earlier this year.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf
URL: https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc

Based on estimates from the JCT staff, the three Ways and Means bills, taken together, include a total of $237 billion in tax cuts and $216 billion in revenue increases for a net revenue loss of $21 billion over the 10-year budget window covering 2023-2033. According to the JCT, the Tax Cuts for Working Families Act and the Small Business Jobs Act—neither of which includes revenue offsets—would decrease receipts by $96.8 billion and $81.1 billion, respectively, over 10 years. The Build It in America Act, which includes tax cuts and revenue-raising provisions, would increase receipts by $156.9 billion (net) over the budget window.
URL: https://www.jct.gov/publications/2023/jcx-25-23/
URL: https://www.jct.gov/publications/2023/jcx-27-23/

URL: https://www.jct.gov/publications/2023/jcx-29-23/

The major provisions of the legislation and their estimated revenue impact are outlined briefly here. For additional details, see *Tax News & Views*, Vol. 24, No. 23, June 9, 2023.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230609_1.html

Research expenditures, bonus depreciation, business interest expenses: The legislation proposes to temporarily reverse—through 2025—three significant revenue-raising provisions in the Tax Cuts and Jobs Act that have recently taken effect and that many in the business community contend are impediments to innovation and growth. Specifically, the measure would:

- Delay mandatory capitalization of research expenditures under section 174, retroactive to January 1, 2022 (JCT estimated 10-year revenue loss: $25.4 billion);
- Reinstate 100 percent bonus depreciation, effective January 1, 2023 (estimated 10-year revenue loss: $3.0 billion); and
- Reinstate the allowance for depreciation and amortization for the 30 percent limitation on interest deductions, retroactive to January 1, 2023, and, if elected, retroactive to January 1, 2022 (estimated 10-year revenue loss: $18.9 billion).

1099 reporting thresholds: The Ways and Means legislation would repeal the more stringent thresholds that trigger Form 1099-K reporting ($600 in transactions with no floor on the number of annual transactions) that were imposed on third-party settlement organizations under the American Rescue Plan (P.L. 117-2) in 2021 and return them to their prior levels (a $20,000 transaction floor and at least 200 transactions annually). The current-law thresholds were scheduled to take effect for calendar years after 2021; however, the Treasury Department announced late last year in Notice 2023-10 that it would delay enforcement of the new rules until after 2023. The JCT estimates this provision would reduce federal receipts by $9.7 billion over 10 years.
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf
URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf

The legislation also would increase the general Form 1099 reporting threshold to $5,000 (from $600, the level in effect since 1954) beginning in 2024, with annual adjustments for inflation thereafter (estimated 10-year revenue loss: $14.5 billion).

Small-business incentives: The Ways and Means legislation would expand the expensing limitation under section 179 to $2.5 million (from $1 million under current law) effective for property placed in service in taxable years beginning after December 31, 2023 (estimated 10-year revenue loss: $44.1 billion). It also would expand the exclusion from gain for qualified small-business stock under section 1202 (estimated 10-year revenue loss: $11.7 billion).

Energy provisions: The Ways and Means legislation would significantly pare back the clean energy tax incentives enacted in last year's Inflation Reduction Act by:

- Repealing the clean electricity production credit (estimated 10-year revenue gain: $25.2 billion) and the clean electricity investment credit (estimated 10-year revenue gain: $90.5 billion);
- Generally returning the clean vehicle credit to the pre-Inflation Reduction Act parameters but retaining certain limitations on the credit in the 2022 law related to modified adjusted gross income of purchasers, manufacturer's suggested retail price of eligible vehicles, and critical mineral and battery component requirements (estimated 10-year revenue gain: $99.7 billion); and
- Repealing the credits for previously owned clean vehicles and qualified commercial clean vehicles (combined estimated 10-year revenue gain: $741 million).

It also would repeal the Superfund tax on crude oil received at US refineries and petroleum products entering the US for consumption, use, or warehousing after December 31, 2022, and the authorization for the Hazardous Substance Superfund to borrow from the General Fund through repayable advances (estimated 10-year revenue loss: $10.5 billion).

International competitiveness and supply-chain issues: The legislation includes a provision that would allow taxpayers to make an election to essentially opt out of certain regulations recently issued by the Treasury Department that critics argue are overly stringent in determining what constitutes a creditable foreign tax and that Ways and Means Republicans contend may discourage companies from moving operations closer to the US (estimated 10-year revenue loss: $1.3 billion).

A separate provision would expand an existing tax on sales of US land to foreign purchasers by imposing a 60 percent excise tax on purchasers from certain specified "countries of concern" (negligible revenue impact).

Opportunity Zones: The Ways and Means legislation would create a new rural Opportunity Zones program, generally following the structure created under the Opportunity Zone program enacted in the Tax Cuts and Jobs Act, and also would implement reporting requirements for all qualified Opportunity Zones (estimated 10-year revenue loss: $1.1 billion).

Temporary standard deduction bonus: The Ways and Means package would increase the individual standard deduction by $4,000 for joint filers and $2,000 for single filers on 2024 and 2025 tax returns, with an adjustment for inflation in 2025; however, these "bonus" amounts would be subject to phase-outs that begin with income greater than $400,000 for joint filers and income greater than $200,000 for single taxpayers. This provision would decrease federal receipts by $96.8 billion over 10 years, according to the JCT staff.

A familiar debate

The debate at the mark-up was dominated largely by familiar partisan talking points and mutual partisan finger-pointing. Chairman Smith and the panel's Republicans generally contended that their legislation would build on the successes of the Tax Cuts and Jobs Act—which they moved through Congress in 2017 under budget reconciliation rules and without Democratic support—by providing additional tax relief to small businesses and families. Republicans also argued that the legislation addresses what they regard as the policy failures of the Inflation Reduction Act—the tax, spending, and jobs package that Democrats moved through

Congress under budget reconciliation rules and without GOP support last year—by chipping away at tax provisions such as the clean energy incentives that they contend have fueled inflation and primarily benefit what Smith called “politically connected industries” and well-heeled individuals who can afford to purchase high-priced electric vehicles even without the inducement of a tax incentive.

For their part, Ways and Means ranking member Richard Neal, D-Mass., and the panel’s Democrats countered that the Republican legislation would compound what they view as the failures of the Tax Cuts and Jobs Act by providing additional benefits to large corporations and the wealthy while largely ignoring the needs of working families. Moreover, Democrats said, GOP proposals to pare back the Inflation Reduction Act’s clean energy tax incentives would disrupt the burgeoning clean energy economy by killing new investments made possible under last year’s legislation—including many projects that are based in Republican districts.

Democrats also chided GOP taxwriters for bringing forward a not-fully-offset tax package less than two weeks after the resolution of a lengthy stand-off over increasing the federal debt limit that was driven by a reluctance among House Republicans to hike the nation’s borrowing authority without also making significant spending cuts to address rising federal deficits. On that front, Democrats accused their Republican colleagues of masking the true cost of their tax package by including only temporary extensions (through 2025) of fixes for the treatment of research expenditures, bonus depreciation, and deductibility of business interest expenses—provisions that, if made permanent and not offset, would further drive up the deficit over the 10-year budget window. (It’s worth noting that Democrats in 2021 were themselves accused of camouflaging the long-term cost of their Build Back Better legislation—the precursor to the Inflation Reduction Act that cleared the House but ultimately stalled in the Senate—by proposing a host of short-term spending initiatives and tax incentives in the hope that a future Congress would make them permanent.)

Democrats also disputed assertions by Republicans on the panel that tax cuts “pay for themselves” by sparking economic growth.

A path forward?

Despite their stated objections to the legislation, ranking member Neal and Democratic taxwriters nonetheless observed that the GOP tax package presents opportunities for negotiation and compromise.

“We would be prepared to discuss some of the proposals here in a balanced, legislative, professional manner if the opportunity might avail itself for the purpose of discussing some of our priorities as well,” Neal said in his opening statement at the mark-up.

Neal specifically cited the now-expired enhancements to the child tax credit that were enacted in the American Rescue Plan plus enhancements to the new markets tax credit as examples of potential bargaining chips for a bipartisan deal. (Chairman Smith has stated in the past that he would be open to expanding the child tax credit if it were coupled with work requirements. Across the Rotunda, issues related to child tax credit enhancements and work requirements were also a topic of debate this week at a Senate Finance Committee hearing on anti-poverty and family support provisions in the tax code. See separate coverage in this issue for details.)

Ways and Means Democrat Earl Blumenauer of Oregon commented that there is potential for bipartisan agreement on the treatment of research expenditures and on bonus depreciation if taxwriters are able to "collectively talk through" those issues where consensus appears likely. However, he rejected proposed changes to current-law clean energy incentives and repeal of the Superfund tax as offsets.

Rep. Gwen Moore, D-Wis., argued that the more favorable tax treatment for research expenditures, bonus depreciation, and business interest expenses in the Republican package must be paid for but that it cannot be done by "cannibalizing the energy of the future" and would require an infusion of additional revenue offsets.

"If we're going to be serious . . . we're going to have to talk about raising revenue," she said.

Democratic amendments fail

Democratic attempts to modify the legislation during the mark-up to reflect some of their policy priorities proved unsuccessful, however, as a dozen proposed amendments were rejected almost entirely along party lines.

Among the business-focused amendments that were voted down were proposals to: require expenditures for research performed in China to be amortized over 15 years (offered by ranking member Neal); require GILTI to be calculated on a country-by-country basis (offered by Rep. Lloyd Doggett, D-Texas); retain the Superfund tax (offered by Rep. Earl Blumenauer, D-Ore.); limit the more favorable treatment of research expenditures, bonus depreciation, and interest expense deductibility to companies that meet prevailing wage requirements (offered by Rep. Linda Sanchez, D-Calif.); reverse proposed changes to the clean vehicle credit (offered by Rep. Dan Kildee, D-Mich.); and incrementally phase out the exclusion from gain for small-business stock for taxpayers with income over $1 million (offered by Rep. Don Beyer, D-Va.).

On the individual side of the tax code, an amendment by Reps. Suzan DelBene of Washington, Mike Thompson of California, and Dwight Evans of Pennsylvania that would have permanently reinstated the now-expired child tax credit enhancements from the American Rescue Plan was ruled out of order. (The amendment was offered during consideration of the Tax Cuts for Working Families Act and was determined to be not germane to that underlying legislation.)

The panel also rejected an amendment from Rep. Bill Pascrell of New Jersey that would have increased the deduction limitation for state and local taxes (SALT) to $60,000 for single filers and $120,000 for joint filers for tax years beginning after December 31, 2022, through December 31, 2032. The Tax Cuts and Jobs Act capped the SALT deduction at $10,000 through 2025, and since that measure became law, repealing or relaxing the limitation has been a priority for many lawmakers in both parties who represent jurisdictions with high local income and property tax rates.

Although some Republican taxwriters suggested that the expanded standard deduction in the Ways and Means legislation might help mitigate the impact of the SALT cap for some taxpayers, GOP Reps. Claudia Tenney and Nicole Malliotakis, both of New York, agreed that Congress also needs to directly address the SALT limitation. Tenney and Malliotakis both voted against the Democratic amendment, however. Democrats Lloyd Doggett of Texas and Gwen Moore of Wisconsin did not cast votes on the amendment and Democrat Terri Sewell of Alabama voted "present." Pascrell, for his part, called his proposal "a good starting point for negotiations."

Chairman Smith told the panel that he has had numerous conversations with members of the so-called SALT Caucus in an effort to reach a "fair" outcome, noting that the issue is "something we have to look at."

Details of all the amendments offered at the mark-up and the vote tallies for each are available on the Ways and Means Committee website.
URL: https://waysandmeans.house.gov/event/markup-of-h-r-___-h-r-3936-h-r-3937-h-r-3938/

Next steps

It is currently unclear when the consolidated legislation will be bought up for a vote on the House floor. While legislation marked up by the committee would typically move to the floor within a week or two, there are indications that this package might not advance that quickly as Republicans argue behind closed doors about whether or not to address the SALT cap, and a contingent of deficit hawks pushes for a fully offset bill—while rejecting additional tax increases as pay-fors.

Assuming Chairman Smith and House GOP leaders are able to address these concerns among rank-and-file Republican members, the legislative package presumably would clear the chamber mostly (if not entirely) along party lines. But the legislation in anything close to its current form almost certainly would fizzle in the Democratic-controlled Senate, where Finance Committee Chairman Ron Wyden, D-Ore.. echoing the sentiments of many House Democratic taxwriters, has characterized it as a starting point for bipartisan, bicameral negotiations.

"Democrats are interested in helping businesses and American families at the same time," Wyden said in a news release issued shortly after the Ways and Means legislation was unveiled on June 9. "Pairing tax cuts for businesses and families has been the bipartisan practice for several years in recent memory. I'm hopeful there's enough common ground for the two sides to reach an agreement this year, and I'm going to work with my colleagues in the Senate on our own priorities."

Wyden cautioned, though, that Democrats in the Senate would cede no ground on GOP demands for rolling back clean energy credits—an issue on which Democrats and the White House fought and won during the recent debt-limit deliberations.

“Repealing [the Inflation Reduction Act’s] clean energy incentives would be a gut punch for American businesses, workers, and manufacturers, a gift to Big Oil and Chinese industry, and a major setback in the fight to address the climate crisis. It’s not going to happen,” Wyden said.

— Michael DeHoff and Storme Sixeas
Tax Policy Group
Deloitte Tax LLP