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Third-party payment processors and recipients get extra year of relief from stricter information reporting requirements

The IRS announced November 21 that it will extend for one additional year the transition relief from the enforcement of the more stringent information reporting requirements for third-party payment processors that were enacted in 2021.

The American Rescue Plan Act of 2021 (P.L. 117-2) reduced the dollar-threshold triggering the Form 1099-K reporting requirement from \$20,000 to \$600 and eliminated the 200-transaction threshold, effective for

reporting for returns filed for calendar years after 2021. A number of lawmakers in both parties tried—without success—to include a provision delaying the implementation of the stricter reporting thresholds in the omnibus tax-and-spending legislation that Congress approved in December of 2022; however, the IRS late last year issued Notice 2023-10, in which it delayed enforcement of the new rules until after 2023.

[URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf](https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf)

[URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf](https://www.irs.gov/pub/irs-drop/n-2023-10.pdf)

Notice 2023-74

In its latest round of administrative relief, Notice 2023-74, the IRS indicated that it will treat calendar year 2023 as an additional transition period with respect to enforcing the new 1099-K reporting requirements. The agency explained in a November 21 news release issued in conjunction with the notice that its decision to further delay implementing the American Rescue Plan provision was based on “feedback from taxpayers, tax professionals, and payment processors” and its desire “to reduce taxpayer confusion.”

[URL: https://www.irs.gov/pub/irs-drop/n-23-74.pdf](https://www.irs.gov/pub/irs-drop/n-23-74.pdf)

Phased-in dollar threshold possible for tax year 2024: The IRS also announced in that news release that it intends to phase-in the implementation of the stricter rules enacted in the American Rescue Plan by setting the dollar-threshold triggering the reporting requirement at \$5,000 (instead of \$600) for tax year 2024.

“We spent many months gathering feedback from third-party groups and others, and it became increasingly clear we need additional time to effectively implement the new reporting requirements,” IRS Commissioner Danny Werfel explained in the release. “Taking this phased-in approach is the right thing to do for the purposes of tax administration, and it prevents unnecessary confusion as we continue to look at changes to the Form 1040. It’s clear that an additional delay for tax year 2023 will avoid problems for taxpayers, tax professionals, and others in this area.”

In the release, the IRS requested comments from stakeholders on the planned \$5,000 threshold for tax year 2024 and on “other elements of the reporting requirement, including how best to focus reporting on taxable transactions.”

Find out more: Additional details on Notice 2023-74 are available in a new tax alert from Deloitte Tax LLP’s Global Information Reporting Group.

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231201_1_suppA.pdf](https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231201_1_suppA.pdf)

Another tax bill ‘driver’ taken off the table

The IRS’s action gives taxpayers and the government more time to prepare for the implementation of the new 1099-K reporting requirements; however, it also deprives Congress of an urgent issue that otherwise might have provided momentum for a possible tax package in the near term.

And it’s worth noting that the release of Notice 2023-74 came just three months after the IRS provided administrative relief for another issue that had been regarded as a significant potential driver for tax legislation

in 2023: namely, concerns expressed by retirement plan sponsors about their ability to comply with provisions in last year's SECURE 2.0 Act (Division T of the Consolidated Appropriations Act, 2023 (P.L. 117-328)) that require catch-up contributions made by certain higher-income participants in 401(k) and similar retirement plans to be designated as after-tax Roth contributions effective for taxable years beginning after December 31, 2023. In that instance, the IRS announced in Notice 2023-62 that it will provide a two-year administrative transition period to implement the new requirement. The notice also addressed concerns by plan sponsors and participants over perceived ambiguity in the statutory language of the SECURE 2.0 Act by clarifying that eligible plan participants can continue to make catch-up contributions after 2023, regardless of income.

[URL: https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf](https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf)

[URL: https://www.irs.gov/pub/irs-drop/n-23-62.pdf](https://www.irs.gov/pub/irs-drop/n-23-62.pdf)

Tax legislation thrives on deadlines: Although there has been little in the way of public debate between the House and Senate this year about the contours of a possible tax package, recent reports have indicated that taxwriting committee leaders in both chambers have been working behind the scenes to reach an agreement that would provide some \$40-50 billion in business-focused tax relief—presumably including provisions to reverse certain changes that have taken effect pursuant to 2017's Tax Cuts and Jobs Act (TCJA, P.L. 115-97) that curtailed deductions for research expenditures and business interest expense, and dialed back immediate write-offs for capital investments—along with a similarly-sized package of enhancements to the child tax credit. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 38, Nov. 10, 2023.)

[URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf](https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_1.html](https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_1.html)

Outside the taxwriting committees, 146 rank-and-file House Republicans signed on to a November 29 letter spearheaded by Rep. Rudy Yakym, R-Ind., that urged Speaker Mike Johnson, R-La., to “support legislative action in any upcoming package by the end of the year to support [extensions of] immediate R&D expensing, full capital expensing, and a pro-growth interest deductibility rule.” (The letter notably does not call for an enhanced child tax credit, however.)

[URL: https://d12t4t5x3vyizu.cloudfront.net/yakym.house.gov/uploads/2023/11/FINAL-Letter-to-Speaker-Johnson-Regarding-End-of-Year-Tax-Package.pdf](https://d12t4t5x3vyizu.cloudfront.net/yakym.house.gov/uploads/2023/11/FINAL-Letter-to-Speaker-Johnson-Regarding-End-of-Year-Tax-Package.pdf)

The prospect of Republicans and Democrats targeting tax packages of roughly similar size and the growing support for a tax bill among rank-and-file GOP House members would seem to be good signs for those striving to see enactment of a modest tax measure in the coming weeks. But tax legislation often does not make it through Congress and to the president's desk unless there is also some imminent deadline—such as the pending expiration of key tax incentives or the pending implementation of a new tax provision regarded as problematic for a significant segment of the tax base—that compels Congress to act. With the IRS's actions on the American Rescue Plan's 1099-K reporting requirements and the SECURE 2.0 Act's treatment of retirement plan catch-up contributions now obviating the need for immediate legislative fixes, the lack of significant action-forcing events could prove to be an impediment for a tax bill in the coming weeks.

Suitable legislative vehicle remains elusive: Compelling tax-related deadlines aside, lawmakers also face the continuing challenge of finding a “must pass” legislative vehicle that could carry a tax package. In recent years, tax legislation similar in scope to what taxwriters currently envision has often been attached to year-end

omnibus appropriations measures. But the on-going battle in Congress over federal appropriations for fiscal year 2024 took an unconventional turn last month with the passage and enactment a so-called “laddered” continuing resolution (CR) put forward by House Speaker Johnson that keeps the government’s doors open (at fiscal year 2023 levels) on a staggered schedule into early next year, with funding deadlines of January 19 for some departments and agencies and February 2 for the others.

According to Johnson, the dual-deadline strategy was intended to *avoid* a year-end omnibus and encourage lawmakers to instead follow a more traditional path on appropriations by approving on a piecemeal basis the 12 spending bills required to fund government operations for fiscal year 2024.

If Johnson’s laddered CR approach works as intended and yields a series of single spending bills rather than an omnibus, however, lawmakers may be hard pressed to find another suitable measure to which they could attach a tax title. Alternatively, if negotiations on single spending bills falter and Congress either punts to an omnibus measure or adopts a long-term continuing resolution—Johnson has said he will not accept another short-term stopgap—then tensions arising from that process could sap the energy and political goodwill required for any further dealmaking and leave the prospects for a tax package in doubt.

Appropriations work still largely incomplete: As the fiscal year 2024 appropriations process lurches forward, the volume of unfinished spending measures in both chambers remains daunting. So far, the House has approved 7 of the 12 the spending bills required to fully fund the government, while the Senate has cleared only 3. No bills have been reconciled in bicameral conference negotiations.

Moreover, the House and Senate have been at odds over topline spending numbers for federal departments and agencies. The Democratic-led Senate seems intent on funding government operations at fiscal year 2023 levels—roughly \$1.59 trillion in total spending—as agreed to in the Fiscal Responsibility Act (P.L. 118-5), the debt limit deal hammered out between President Biden and then-House Speaker Kevin McCarthy, R-Calif., that was signed into law this past June. In the Republican-controlled House, meanwhile, members of the Freedom Caucus had been adamant that Congress must cut spending to the levels in effect for fiscal year 2022—roughly \$1.47 trillion in total spending—consistent with what they say was a “handshake” agreement they made with Kevin McCarthy this past January when he was campaigning to win the speaker’s gavel. (Their contention has been that the topline numbers in the Fiscal Responsibility Act set a ceiling for spending, but not a floor.)

URL: <https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf>

But comments by Freedom Caucus Chairman Scott Perry, R-Pa., at a November 29 news conference suggested that the hardline stance among conservative House Republicans may be softening.

“It’s still too much for many of us, but what was agreed to during Memorial Day was this [Fiscal Responsibility Act] number of \$1.59 trillion. Most of the House voted for it. Most of the Senate voted for it. That’s where we have to be. We realize that \$1.47 [trillion] is not going to happen.”

If a significant segment of Freedom Caucus members share Perry’s assessment, it would be a notable about-face for a group whose objections to the spending limits that McCarthy accepted in the Fiscal Responsibility

Act—and in a subsequent stopgap spending bill in October—touched off a rebellion that ultimately led to McCarthy’s ouster as speaker. (It is unclear, though, if Perry’s apparent concession on topline numbers in the Fiscal Responsibility Act means he would also accept certain handshake agreements between President Biden and McCarthy in their negotiations over that legislation—including one that redirects some \$20 billion of the mandatory funding allocated to the IRS under the Inflation Reduction Act to unspecified nondefense discretionary priorities over the next two fiscal years.)

A tight calendar that’s getting even tighter: Interwoven with all of these concerns is the reality of an extremely tight legislative calendar in the coming weeks. Between now and the end of this year, the House is scheduled to be in session for only 8 days and the Senate is set to be in for 10. The recently released congressional calendars for 2024 show the House in session for 8 days leading up to the first government funding deadline of January 19, compared to 9 days for the Senate. House members are then scheduled to recess the week of January 22 and return on January 29—just 4 working days ahead of the second funding deadline of February 2. The Senate will be in session for 9 days between January 19 and February 2.

Senate Finance Committee ranking member Mike Crapo, R-Idaho, told reporters November 28 that there has been “some movement” on a potential deal among taxwriting committee leaders and added that he is “still working to get something done now.”

For his part, Senate taxwriter Sherrod Brown, D-Ohio, commented that there currently is a bit more optimism about the prospects for a tax deal than there was just a few weeks ago; however, he also cautioned that, as a practical matter, the start of the 2023 tax filing season in mid-to-late January leaves Congress with an extremely narrow window to get a package approved and signed into law.

“You can’t wait much past December [or] maybe early January because of the tax season. We can’t dramatically change tax law February 1 or something,” Brown said.

— Michael DeHoff
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House taxwriters approve US-Taiwan tax pact

After several months of jurisdictional negotiations, a compromise reached between two Senate panels this week enabled the House Ways and Means Committee to pass legislation allowing for an agreement with Taiwan that would reduce double taxation on Taiwanese companies operating in the US. The breakthrough on the tax agreement, which is of particular importance to the semiconductor industry the US is looking to strengthen, could mean that a bill makes its way to the president before year-end.

While such an agreement with a trading partner would typically be a bilateral tax treaty, the US cannot sign such a treaty with Taiwan because of the “One China” policy, under which the US recognizes the People’s

Republic of China (PRC) as the sole legal government of China, therefore maintaining formal relations with the PRC and only unofficial relations with Taiwan. As a result, the legislation moving through Congress would authorize negotiations on a tax agreement to be conducted through the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office (TECRO), rather than directly between the US and Taiwan.

How we got here

The Senate Foreign Relations Committee, which under normal circumstances has jurisdiction over tax treaties, passed the Taiwan Tax Agreement Act of 2023 (S. 1457) on July 25, authorizing the administration to negotiate an agreement on cross-border tax issues between the US and Taiwan. This approach would obviate the need for changes to the US tax code, but Finance Committee leaders argued that their subject-matter expertise is important for this unique situation and that changes to the US tax code can be done more quickly. The Senate Finance Committee unanimously approved the US-Taiwan Expedited Double Tax Relief Act (S. 3084) on September 14, and the two committees agreed to work towards a compromise approach.

[URL: https://www.congress.gov/bill/118th-congress/senate-bill/1457/text](https://www.congress.gov/bill/118th-congress/senate-bill/1457/text)

[URL: https://www.congress.gov/118/bills/s3084/BILLS-118s3084rs.pdf](https://www.congress.gov/118/bills/s3084/BILLS-118s3084rs.pdf)

In a statement November 29, Finance Committee Chairman Ron Wyden, D-Ore., and ranking member Mike Crapo, R-Idaho, along with Foreign Relations Chairman Ben Cardin, D-Md., and ranking member Jim Risch, R-Idaho, announced they had reached that compromise: a bill with two titles incorporating much of both committees' language, which was easily approved by voice vote at a Ways and Means Committee mark-up on November 30.

Title I of the negotiated bill (H.R. 5988, offered as an amendment in the nature of a substitute by Ways and Means Committee Chairman Jason Smith, R-Mo.) comprises the Senate Finance-passed US-Taiwan Expedited Double Tax Relief Act, which would provide benefits for income from US sources earned or received by qualified residents of Taiwan, including reduced tax rates, taxation of only that income effectively connected with a US permanent establishment, and preferential treatment of wages and related income earned by qualified residents. According to a description provided by the Joint Committee on Taxation (JCT) staff, these rules are "analogous to provisions typical in bilateral treaties to which the [US] is a party." The proposed rules would apply only if the US Treasury secretary certifies that reciprocal provisions are put in place for US persons with respect to income sourced in Taiwan.

[URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/11/AINS-to-H.R.-5988.pdf](https://gop-waysandmeans.house.gov/wp-content/uploads/2023/11/AINS-to-H.R.-5988.pdf)

[URL: https://www.jct.gov/publications/2023/jcx-52-23/](https://www.jct.gov/publications/2023/jcx-52-23/)

Title II comprises the United States-Taiwan Tax Agreement Authorization Act, which authorizes the president to negotiate additional tax benefits between the US and Taiwan beyond those provided for in Title I but limits any such negotiations to benefits addressed in the US's model tax treaty. This section requires the president to notify Congress before negotiations begin and to provide periodic updates on talks and requires Congress to pass both approval legislation and implementing legislation before any benefits could take effect.

“Taiwan—one of the world’s largest economies—is among the United States’ top trading partners, yet the only such partner without an agreement to address double taxation,” the senators said in their statement. “Our bills not only rectify this problem, but facilitate broader investment between the United States and Taiwan, create more American jobs across the country, and help promote our collective prosperity, national security, and economic resilience.”

Next steps: Congressional passage by year-end?

Many businesses, and especially those in the semiconductor industry, hope the legislation will become law before the end of this year. Following on 2022’s CHIPS and Science Act (P.L. 117-167), lawmakers anticipate attracting more advanced semiconductor manufacturing—especially from Taiwan, where 60 percent of all chips are currently produced—but industry officials and legislators argue that the costs are prohibitive in part due to the lack of an agreement to prevent double taxation. Without a tax agreement, Taiwan’s corporations face a 30 percent withholding tax on dividends, interest, and royalties in the US, compared with rates as low as 5 percent (and, in certain instances, even zero) for some companies from countries that have tax treaties with the US.

URL: <https://www.congress.gov/117/plaws/publ167/PLAW-117publ167.pdf>

Ways and Means Chairman Jason Smith told reporters this week that he has discussed the bill with House leadership and is optimistic it will be voted out of the chamber quickly. The question for those in the tax policy arena is the process by which that might happen. This late in the calendar year, as the number of legislative days dwindles, smaller bills are often attached to much larger “must pass” measures, such as omnibus appropriations legislation to fund federal government operations. However, with the annual federal spending process now kicked into early 2024, such vehicles are in shorter supply than usual this year. (Congress recently passed a “laddered” continuing resolution extending funding into late January of next year for some federal department and agencies and early February for others. For additional details, see *Tax News & Views*, Vol. 24, No. 39, Nov. 17, 2023.)

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231117_1.html

“We’ll take whatever vehicle we can,” Senate Foreign Relations Committee Chairman Cardin told reporters ahead of the Ways and Means vote.

Also in search of an engine to pull it across the finish line is a trio of tax provisions many businesses have spent two years pushing for: retroactive repeal of mandatory amortization of research and development expenses and of stricter limits on the expensing of business interest deductions, which both took effect in 2022, and a retroactive return to full expensing of capital investment, which began phasing out this year. Democrats insist the three provisions must be paired with tax relief for families, such as an expanded child tax credit.

While there has been much behind-the-scenes negotiating among taxwriting staff and members to craft such a package—estimated to cost about \$100 billion in revenue, split fairly evenly between the business and individual provisions—key players say there is still no deal and no obvious vehicle in sight. (See separate coverage in this issue for a discussion about how the IRS’s recent announcement of additional administrative

relief from more stringent 1099-K reporting requirements that had been scheduled to take effect in 2024 has complicated congressional efforts to reach a deal on a tax package in the near term.)

Two other tax measures also reported favorably

In addition to the tax agreement with Taiwan, the Ways and Means Committee also approved two other pieces of tax legislation at the November 30 mark-up—both of them relatively narrow and noncontroversial.

The first measure—reported to the full House by a unanimous 41-0 vote—was H.R. 6408, legislation that was introduced on November 14 by taxwriters David Kustoff, R-Tenn., and Rep. Bradley Schneider, D-III.

[URL: https://www.congress.gov/bill/118th-congress/house-bill/6408/text](https://www.congress.gov/bill/118th-congress/house-bill/6408/text)

In general, the legislation would seek to terminate the tax-exempt status of terrorist-supporting organizations. Under current law, tax code section 501(p) serves to suspend the tax exemptions of certain US-based “terrorist organizations” named by the IRS. H.R. 6408 would similarly suspend the tax exemption of named terrorist-supporting organizations (that is, an entity that provides material support or resources to a terrorist organization). The JCT staff has estimated that the measure would have a negligible impact on federal revenues.

[URL: https://www.jct.gov/publications/2023/jcx-53-23/](https://www.jct.gov/publications/2023/jcx-53-23/)

The second tax measure—reported by a unanimous 42-0 vote—was H.R. 1432, the VSO Equal Tax Treatment Act, or “VETT” Act. That bill, which was introduced on March 3 by House taxwriters Brad Wenstrup, R-Ohio, and Jimmy Panetta, D-Calif., would expand the deductibility of charitable contributions to all federally chartered tax-exempt organizations serving current and former members of the armed forces (that is, organizations described in tax code section 501(c)(19)) by superseding a rule that currently requires such organizations to maintain a membership of at least 90 percent wartime veterans in order to receive tax-deductible contributions.

[URL: https://www.congress.gov/bill/118th-congress/house-bill/1432/text](https://www.congress.gov/bill/118th-congress/house-bill/1432/text)

According to the JCT staff, H.R. 1432 is estimated to reduce federal revenues by roughly \$1 million over the next decade.

[URL: https://www.jct.gov/publications/2023/jcx-54-23/](https://www.jct.gov/publications/2023/jcx-54-23/)

The panel also approved three nontax bills at the mark-up that would modify the Social Security Act and US Customs rules.

Subcommittee hearings ahead

In other Ways and Means developments this week, two subcommittees announced plans to hold separate hearings on December 6.

- **Federal debt:** The Oversight Subcommittee will hold a hearing at 10:00 a.m. on December 6 to examine the drivers of the rapidly rising cost to service federal debt and US debt management practices.
- **Expanding economic growth:** The Tax Subcommittee will hold a hearing at 2:00 p.m. on December 6 to discuss the benefits of pro-growth tax policy for American families, workers, and small businesses.

Witness lists for the two hearings were not available at press time.

— Storme Sixeas and Alex Brosseau
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Deloitte Tax looks at proposed regulations under section 987

The IRS and Treasury Department on November 9 released proposed currency regulations under section 987 and related rules. Section 987 applies to taxpayers with a qualified business unit (QBU) in the form of a disregarded entity, branch, partnership, trust, or estate, if the QBU has a functional currency that is different from the functional currency of its tax owner(s). Section 987 addresses foreign currency translation related to operations, assets, and liabilities of QBUs, and provides rules for computing taxable income (and associated earnings and profits) of the QBU, recognizing currency gain or loss, and translating basis in property that is transferred to or from a QBU.

The proposed regulations are based on the final section 987 regulations issued in 2016 and 2019 but contain significant changes that include modifying, removing, or adding rules under sections 985 through 989, as well as under sections 861 and 1502. If finalized, the newly proposed guidance would apply to most taxpayers, with very limited exceptions, and would significantly change the way most taxpayers currently make computations for section 987 QBUs.

The regulations as proposed would apply to taxable years beginning on or after December 31, 2024. When finalized, the 2023 proposed regulations would also have a retroactive effect for certain QBUs that terminate on or after November 9, 2023.

Find out more: Tax alert, webcast

A new alert from Deloitte Tax LLP discusses the details of the proposed regulations. A Tax News & Views webcast on the proposed regulations set for December 6 at 11:00 a.m. (eastern time) will examine the newly introduced elections, loss limitation rules, and other provisions; issues around transitioning to the new rules and coordinating with other tax rules; and the effects of the new rules on tax compliance and provisions.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-17-november-2023.pdf>

URL: https://my.deloitte.com/index.html#/signin?site=us_en&pl=en-US&pc=US&pi=db&eventid=L195053gnRK

— Michael DeHoff
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Deloitte Tax resources address Pillar Two considerations for the C-Suite, M&A activity

The OECD has introduced Pillar Two—an unprecedented approach to addressing perceived base erosion and profit shifting, representing one of the biggest shifts in international taxation in decades. Multinational groups with revenue exceeding 750 million euros must calculate a top-up tax in every jurisdiction where they pay less than 15 percent in taxes and new rules ensure multinational entity groups pay at least 15 percent tax in every jurisdiction in which they operate. The anticipated effective date is January 1, 2024, in varying jurisdictions, and even if top-up taxes are not expected to be material, compliance will add significant time and effort for many companies.

In the M&A sphere, transactions happening now and from 2024 onwards may already impact a multinational group's future Pillar Two position and potential Pillar Two top-up tax liabilities. Therefore, Pillar Two considerations should be factored into a contemplated deal's costs, contractual documentation, and information sharing.

Find out more

A new 5x5 resource guide from Deloitte Tax LLP identifies five insights that C-Suite leaders need to know about the new Pillar Two rules and five actions they can take now to prepare for their implementation.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-5x5-pillar-two-considerations-for-the-c-suite.pdf>

A new article from Deloitte Tax discusses what Pillar Two M&A considerations are top-of-mind, who the rules apply to, and what taxpayers can do today to address these rules and considerations.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/m-and-a-tax-talk.html?id=us:2em:3na:tnv:awa:tax:120123&sfid=7015Y000004RoR7QAK>

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Wyden introduces Billionaires Income Tax proposal

Senate Finance Committee Chairman Ron Wyden, D-Ore., introduced legislation this week that would impose an annual mark-to-market regime on high-wealth households.

[URL: https://www.finance.senate.gov/imo/media/doc/billionaires_income_tax_legislative_text.pdf](https://www.finance.senate.gov/imo/media/doc/billionaires_income_tax_legislative_text.pdf)

Wyden explained in a news release that his proposed Billionaires Income Tax, which was unveiled on November 29, is intended to address the so-called “buy, borrow, die” strategy in which an ultrawealthy investor buys an asset such as a business, borrows against that asset’s appreciating and untaxed value over a period of years to fund “their extravagant lifestyle,” and then passes the asset on to their heirs at death subject to minimal taxes, or in some cases no tax at all. (“Buy, borrow, die” was the centerpiece of a Finance Committee hearing last month that examined how the tax code allows the most affluent individuals to minimize their tax bills. For prior coverage, see *Tax News & Views*, Vol. 24, No. 38, Nov. 10, 2023.)

[URL: https://www.finance.senate.gov/chairmans-news/wyden-leads-democratic-colleagues-in-introducing-billionaires-income-tax](https://www.finance.senate.gov/chairmans-news/wyden-leads-democratic-colleagues-in-introducing-billionaires-income-tax)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_2.html](https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_2.html)

“America’s tax code is riddled with loopholes that allow the ultrawealthy to get away without paying their fair share, while working families have to play by a different set of rules and pay taxes out of each paycheck,” Wyden said in the release. “You can only have a successful economy if you have a tax code that treats everyone fairly. My Billionaires Income Tax will make that a reality by ensuring those at the very top start paying their fair share, just like the rest of us.”

Co-sponsors of the measure include Finance Committee Democrats Debbie Stabenow, of Michigan, Sherrod Brown of Ohio, Bob Casey of Pennsylvania, Sheldon Whitehouse of Rhode Island, and Elizabeth Warren of Massachusetts. They are joined by Democratic Sens. Brian Schatz of Hawaii, Mazie Hirono of Hawaii, Tammy Baldwin of Wisconsin, Jeff Merkley of Oregon, John Fetterman of Pennsylvania, Tina Smith of Minnesota, Peter Welch of Vermont, Jack Reed of Rhode Island, and Ed Markey of Massachusetts, along with Independent Sen. Bernie Sanders of Vermont.

How it would work

According to a one-page summary from the Finance Committee staff, Wyden’s proposal would take a three-pronged approach to taxing high-wealth individuals, defined as those with \$100 million in annual income or more than \$1 billion in assets for three consecutive years.

[URL: https://www.finance.senate.gov/imo/media/doc/billionairesincometaxonepager.pdf](https://www.finance.senate.gov/imo/media/doc/billionairesincometaxonepager.pdf)

- **Mark-to-market treatment of gains and losses from tradable assets:** Under the proposal, tradable assets (such as stocks) owned by covered taxpayers would be marked to market each year. Covered taxpayers would pay tax on gains or take deductions for losses, whether or not they sell the asset, and would be able to carry back their losses for up to three years in certain circumstances. (A capital gain or

capital loss related to a tradable covered asset generally would be treated as long-term capital gain or long-term capital loss, respectively, regardless of holding period.)

- **Deferral charge on gains from nontradable assets:** A covered taxpayer who sells a nontradable asset (such as real estate or a business interest) would pay their usual tax on the gain, plus a “deferral recapture amount,” which the summary describes as being akin to interest on tax deferred while the taxpayer held that asset. According to the summary, this approach would simplify compliance by eliminating the need for annual valuations of nontradable assets. The amount owed would be calculated by allocating an equal amount of gain to each year the covered taxpayer held that specific asset, determining how much tax would have been owed on the gain in each year, and assessing interest on unpaid tax for the time the tax was deferred. Interest would be assessed using the short-term federal rate plus 1 percentage point. No interest would accrue prior to the date of enactment of the proposal or the first tax year the individual becomes subject to the Billionaires Income Tax, whichever is later.
- **Transition and anti-abuse rules:** The proposal provides that the first time a covered taxpayer’s tradable assets are marked to market, the taxpayer may elect to pay the resulting tax over five years. The taxpayer may also elect to treat up to \$1 billion of tradable stock in a single corporation as a nontradable asset, which, according to the summary, would help to ensure that the proposal does not affect the ability of an individual who founds a successful company to maintain their controlling interest. The proposal also contains anti-abuse and anti-avoidance rules.

A more detailed section-by-section summary of the proposal is also available from Finance Committee staff.

URL: [https://www.finance.senate.gov/imo/media/doc/billionairesincometaxsection.pdf](https://www.finance.senate.gov/imo/media/doc/billionairesincometaxsectionbysection.pdf)

Wyden did not provide a formal revenue estimate for the proposal, but he stated in Senate floor remarks on November 30 that it would increase federal receipts by \$557 billion over 10 years. That amount is consistent with a preliminary estimate he received from the Joint Committee on Taxation staff when he unveiled a draft version of a Billionaires Income Tax with a mark-to-market component in 2021 as part of the discussion around what was then known as President Biden’s “Build Back Better” tax-and-spending agenda. (“Build Back Better” was ultimately supplanted by a narrower legislative effort that culminated in the Inflation Reduction Act, which did not include any sort of mark-to-market regime for wealthy individuals.)

URL: <https://www.finance.senate.gov/chairmans-news/wyden-statement-on-billionaires-income-tax-score>

URL: <https://www.finance.senate.gov/chairmans-news/wyden-unveils-billionaires-income-tax>

In his floor remarks this week, Wyden stated the revenue generated by his proposal would be sufficient to avert the looming solvency crisis for the Medicare program.

“If the ultrawealthy started paying their fair share under my Billionaires Income Tax proposal, Medicare would be financially sound, and we could protect the Medicare guarantee for millions of Americans,” he said.

Beyer announces Billionaire Minimum Income Tax Act

Across the Capitol, House Ways and Means Committee member Don Beyer, D-Va., and Rep. Steve Cohen, D-Tenn., waded into the wealth tax debate on November 29 as they reintroduced their proposed Billionaire Minimum Income Tax Act.

Text was not available at press time, but Beyer and Cohen explained in a joint news release that the measure “would require households worth over \$100 million to pay an annual minimum 25 percent tax rate on their full income, including regular income along with realized and unrealized gains.”

URL: <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=6037>

According to Beyer and Cohen, the measure is nearly identical to legislation they introduced in 2022, with the notable exception of a higher proposed minimum tax rate—25 percent, compared to 20 percent in the prior bill—plus “a handful of technical revisions.” (Last year’s proposal was referred to the Ways and Means Committee but never received a mark-up.)

URL: <https://www.congress.gov/bill/117th-congress/house-bill/8558/text>

Laying down markers

Wyden has not announced plans for a Finance Committee mark-up of his proposal in the near term and the Beyer-Cohen bill is not expected to be taken up in the Republican-controlled House Ways and Means Committee. Indeed, neither measure has an apparent path forward in the current Congress, where the GOP holds the majority in the House of Representatives. Both proposals, however, represent the kind of legislation Democrats might try to advance if they win back the House and retain control of the Senate and the Oval Office in the 2024 elections, though it is unclear if the concept of a wealth tax enjoys unanimous support among Democrats, which might be necessary for the proposals to advance unless the party has substantial majorities in each chamber. A wealth tax proposal was considered, but not included, in the Inflation Reduction Act in the previous Congress.

— Michael DeHoff
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