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Bipartisan tax package in limbo in the Senate; SALT relief held up in the House

With the Senate focused this week on debating foreign assistance and US border security and hoping to leave Washington for a scheduled two-week recess, the bipartisan tax package negotiated by the chairmen of the two congressional taxwriting committees and recently passed by the House has been put on the back burner in the upper chamber, and it is still unclear whether it has a path to passage there. In the House, meanwhile, with floor action on some contentious legislative issues consuming the bulk of leadership's time and attention

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during a truncated work week, plans for a vote on a proposal to relax the current-law cap on the deduction for state and local taxes were scuttled, at least temporarily.

Tax Relief for American Families and Workers Act

The $78 billion Tax Relief for American Families and Workers Act (H.R. 7024)—which would, among other things, temporarily reinstate several lapsed business-friendly tax provisions originally enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), enhance the child tax credit and the low-income housing tax credit, and impose new strictures on the pandemic-era employee retention tax credit program—passed by an overwhelming bipartisan majority of 357-70 in the House on January 31.
URL: https://www.congress.gov/118/bills/hr7024/BILLS-118hr7024eh.pdf
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

The unstoppable force that wasn't: Senate Finance Chairman Ron Wyden, D-Ore.—who crafted the bill with House Ways and Means Committee Chairman Jason Smith, R-Mo.—had been optimistic that the strong House vote would help propel it through the Senate. But even though the House-approved measure picked up a couple of endorsements from some Senate Republicans this week, many GOP lawmakers—including some on the Finance Committee—have indicated that they don't see it as an unstoppable force on their side of the Capitol and have demanded an opportunity to offer amendments. According to *Punchbowl News*, the Finance Committee's top Republican, Sen. Mike Crapo of Idaho, formally requested a committee mark-up this week, but Wyden has not committed to holding one.

Crapo and a number of his colleagues have indicated they want to see changes to the House-passed bill—primarily to the expanded child tax credit—before they will support it. However, members on both sides of the aisle recognize that any modifications to the carefully balanced package, which includes business and family tax benefits and is almost entirely offset, are likely to topple it.

"We all know the challenge there is when you start considering amendments on a tax package, anything becomes fair game," Sen. Todd Young, R-Ind., a Finance member, said this week. "And I am not confident that the end product will be something that we have enough support for. But it's a dynamic situation."

Child tax credit expansion a target for GOP arrows: The chief criticisms of the child tax credit provisions from Senate Republicans mirror those of several House Republicans who voted against the bill. They argue, for example, that the measure would allow benefits for children born in the US to immigrants who illegally entered the country. (To be clear, the legislation maintains the current-law requirement enacted in the Tax Cuts and Jobs Act that credit-eligible children must have a US social security number.) Senate Republican critics also contend that a one-year lookback provision that would allow taxpayers to claim the credit based on either current-year or prior-year income disconnects the incentive from work. (Ways and Means Committee Chairman Jason Smith sought to refute these claims—and touted support for the measure from prominent conservative sources off of Capitol Hill—in press releases issued on February 7 and February 8.)
URL: https://waysandmeans.house.gov/washington-examiner-sets-the-record-straight-on-a-big-win-for-conservative-tax-policy/

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URL: https://waysandmeans.house.gov/icymi-op-ed-the-new-expansion-of-the-child-tax-credit-maintains-strong-work-incentives/

Sen. Marco Rubio, R-Fla., a chief advocate of the TCJA's expanded credit, told reporters this week that he remains a supporter of the credit in principle, but added that it has to be "a real child tax credit, not a government check." He also cited his specific objections to the lookback provision and the proposed acceleration of the credit's phase-in for larger families.

Ranking member Crapo has stated he would like to see the lookback provision removed from the package and Rubio has said he would offer an amendment to strike that provision if the bill comes to the Senate floor.

Finance Committee member Charles Grassley, R-Iowa, has complained that a provision allowing the IRS to adjust refunds for those taxpayers who would be due a benefit from the expanded credit but filed their taxes before the legislation was enacted would give the Biden administration an opportunity to curry favor with voters by sending out additional refund payments ahead of this November's presidential election—a contention that Ways and Means Chairman Smith also disputes).
URL: https://waysandmeans.house.gov/correcting-the-record-tax-relief-for-american-families-and-workers-act-protects-taxpayers-and-prevents-attempts-to-politicize-americans-tax-refunds/

An off-putting offset: Senate Finance Committee member Thom Tillis, R-N.C., has criticized the measure's revenue-raising proposals to curb the employee retention tax credit program, arguing that they are not true offsets, and he has advocated that Republicans hold out for a win in November by former President Donald Trump before they make any decisions on tax policy.

Sen. Mike Braun, R-Ind., told reporters this week that he would oppose the bill "if it's got any type of fake pay-for," even if it includes policy provisions that he otherwise would support.

Ranking member Crapo, meanwhile, has not publicly opposed sunsetting the credit, but he has stated in the weeks since the bill was unveiled that he is wary about including offsets in legislation that extends previously enacted tax provisions. (As a policy matter, Republicans have historically believed that such extensions do not require offsets.)

Some 'likes' from Republicans: The tax bill did attract a couple of GOP champions outside of the Finance Committee this week, with Sen. Roger Marshall of Kansas and Sen. Markwayne Mullin of Oklahoma saying they would be willing to support the package as passed by the House.

"There's win-win opportunities in this," Marshall told reporters. "It's so important for farmers back home, for small businesses back home. And I think Republicans need to lean into the child care issue. This is pro-family."

However, Marshall also acknowledged that tax policy isn't a top priority for the Senate right now, as the chamber spent this week embroiled in a debate over legislation that combined emergency aid for Ukraine, Israel, and Taiwan with tougher security protections for the US southern border. (That package was defeated but Senate leaders are currently attempting to advance just the foreign aid provisions.)

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"There's not much oxygen left in any room right now," Marshall said February 7.

Possible paths forward: The Senate is currently scheduled to be out of session the weeks of February 12 and February 19—although those plans could be modified depending on what happens with the foreign aid package on February 9 and into the coming weekend. Lawmakers also face two deadlines—on March 1 and March 8—to fund the federal government for fiscal year 2024, which began last October 1, so it looks unlikely that the tax bill will get much attention this month. However, the measure's strong bipartisan showing in the House could be a signal to congressional leaders that it is now "safe" to fold it into one of the "must pass" government funding bills that have to be dealt with in the coming weeks.

Senate Majority Leader Charles Schumer, D-N.Y., also could opt to bring up the bill as a stand-alone measure on the floor; however, without an agreement to limit the number of amendments that can be offered, debate on the bill could take a significant amount of time and the amendment process could become unwieldy, leading many to believe this is a less preferred option.

Minority Whip John Thune, R-S.D., said February 1 that Schumer will not get support from enough GOP senators to overcome the 60-vote procedural hurdle that would limit debate and amendments; however, Crapo acknowledged this week that it is possible Democrats could find enough votes from Republicans who are not on the Finance Committee.

The SALT trade

Back in the House, a provision that did not make it into the Tax Relief for American Families and Workers Act when it emerged from the Ways and Means Committee but has an important bloc of supporters failed to advance as a stand-alone measure this week after falling victim to time constraints and competing legislative priorities.

Newly elected GOP members from jurisdictions with high state and local taxes (SALT) originally decried the tax package for failing to repeal or raise the $10,000 cap on SALT deductions implemented by the TCJA and threatened to derail unrelated Republican legislation if the cap was not addressed. The members argued that this was an especially critical issue for the February 13 special election in New York's third congressional district, where Republicans are hoping to hold the seat that became vacant after GOP Rep. George Santos was expelled from Congress on December 1 of last year. (Former Ways and Means member Tom Suozzi, who did not seek re-election to Congress in 2022, is the Democratic candidate in the race.)

As a result of conversations ahead of the House floor vote on the tax package, New York SALT advocates emerged with a commitment from Speaker Mike Johnson, R-La., to quickly begin a process for moving a stand-alone bill (H.R. 7160) from Rep. Mike Lawler, R-N.Y., that would raise the SALT deduction cap for 2023 to $20,000 for married couples filing jointly with adjusted gross income of up to $500,000. The House Rules Committee advanced the proposal on February 1, which would have allowed it to move to the House floor this week.

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URL:
https://rules.house.gov/sites/republicans.rules118.house.gov/files/SALT%20Marriage%20Penalty%20Elimination%20Act.pdf

That vote slipped, though. Officially, the reasons for the delay were the shortened work week in the House due to a previously planned retreat for the chamber's Democrats, and the floor time required for the House to hold votes—which ultimately failed—on impeaching Homeland Security Secretary Alejandro Mayorkas and on providing additional aid to Israel.

However, passing the procedural measure on the floor that would allow for a vote on the SALT bill itself will require a majority in the House, and it is not clear the votes are there, so supporters were likely reluctant to hold a failed vote ahead of the New York special election. Outside conservative groups have lined up against the measure, arguing that SALT relief would help a relatively narrow band of high-earning taxpayers and force lower-tax states to subsidize higher-tax jurisdictions. The question of repealing or raising the SALT cap is something that divided House Democrats when they were in the majority, as well, so Lawler and his supporters may not be able to count on members from across the aisle to provide the votes necessary to secure the bill's passage.

Lawler wrote on X (formerly Twitter) February 5 that the House will debate and vote on the rule the week of February 12.
URL: https://twitter.com/lawler4ny/status/1754708570996662523

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CBO's latest budget and economic outlook once again warns of long-term fiscal pressures

The latest annual projections from the nonpartisan Congressional Budget Office (CBO) assessing the state of the US budget and economy for the next decade show a large and growing mismatch between federal revenues and spending even as the agency sees inflation moderating and economic growth persisting at a pace consistent with pre-pandemic levels.

Revenue, spending projections

CBO's *Budget and Economic Outlook: 2024 to 2034*, released on February 7, represents the agency's first full accounting of the federal fiscal and economic forecast after enactment of the Fiscal Responsibility Act of 2023 (FRA, P.L. 118-5), the budget accord negotiated by President Biden and then-House Speaker Kevin McCarthy, R-Calif., that placed statutory caps on discretionary spending for fiscal years 2024 and 2025 in exchange for suspending the federal debt limit through January 1, 2025.

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URL: https://www.cbo.gov/system/files/2024-02/59710-Outlook-2024.pdf
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The latest report predicts budget deficits will average 5.7 percent of gross domestic product (GDP) over the next decade—more than 150 percent higher than the average 3.7 percent of GDP deficit registered over the past 50 years. This represents a slight improvement over CBO's estimates from last year, which had deficits averaging 6.1 percent of GDP over the decade—a decline which stems mainly from the FRA's discretionary spending caps.

Although deficits have declined recently as the economy has recovered from the COVID-19 pandemic, that trend is coming to a close. CBO projects the deficit for fiscal 2024 (which runs through September 30 of this year) will come in at about $1.5 trillion and remain below $1.7 trillion through fiscal year 2027 as bigger revenue gains (more on those below) help put a damper on rising outlays. During the latter half of the 10-year budget window, however, the agency expects the annual deficit will steadily rise until it reaches almost $2.6 trillion in 2034.

Revenues and spending: CBO sees federal revenues rising from 16.5 percent of GDP last year to 17.5 percent in the current fiscal year. According to CBO, much of that increase is due to the Internal Revenue Service's postponement—from 2023 to 2024—of tax payments for certain individuals and corporations affected by natural disasters. On the corporate side, revenues are also projected to be higher in 2024 on account of the Treasury's penalty relief granted to estimated payments of the corporate alternative minimum tax (CAMT), which the CBO suggests depressed CAMT payments during 2023.

Over the course of the next 10 years, CBO projects revenues will fall about one-half percentage point in 2025, but then recover as major components of the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) are scheduled to expire. After that time, the agency expects receipts will hover within a relatively narrow band and average 17.8 percent of GDP over the full budget window, a bit north of the 17.3 percent of GDP average over the past five decades.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

As for corporate revenues in particular, CBO actually foresees a decline as a share of the economy over the next decade—a dynamic the agency attributes to the net effect of several factors including the conclusion of payments under the "deemed repatriation" tax enacted in the Tax Cuts and Jobs Act, increased foreign tax credit claims, declining domestic business profits generally, and the offsetting effect of the phase-in of various taxpayer-unfavorable provisions under the TCJA.

Meanwhile, on the spending side of the ledger, outlays—which have fallen sharply from their pandemic-era highs—are expected to resume their steady climb due to pre-existing demographic trends that are projected to increase the ranks of Social Security and Medicare beneficiaries and thus push up spending within those programs. Health care cost growth is also expected to continue to outstrip economic growth, thus pushing up that budgetary component as a share of GDP. By 2034, outlays would exceed 24 percent of the economy—a slight moderation from last year's report due to the FRA's discretionary spending caps which, as noted above, have served to lower CBO's projections of annual appropriations over the next 10 years.

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Over the past 50 years, spending has averaged about 21 percent of GDP.

Inflation, interest rates, GDP: On the economic front, CBO forecasts that inflation will continue to moderate, falling from 3.2 percent (actual) in 2023 to 2.5 percent (as measured by growth in the Consumer Price Index) in 2024. By 2026 and for the remainder of budget window, CBO sees inflation returning to a more normal Federal Reserve-targeted level of about 2 percent.

Annual economic growth (adjusted for inflation) is projected to fall by half this year (from 3.1 percent in 2023 to 1.5 percent in 2024) on account of weaker growth in consumer spending and reduced investment in nonresidential real estate, but then bounce back to 2.2 percent in 2025 and average 1.9 percent over the last five years of the budget window. Inherent in these projections is an assumption that the Federal Reserve's recent campaign to raise its key policy-making rate, the Federal Funds Rate, will result in a so-called "soft landing" for the economy that blunts annual price growth without triggering a recession.

Debt service costs: In line with most market observers, CBO projects that the Fed will significantly moderate its short-term, inter-bank lending rate in the coming years. However, CBO also believes that longer-term rates will remain elevated, at least in comparison to their pandemic-era lows. For example, according to CBO, the average rate on 10-year Treasury bonds will remain around 4 percent (its actual average in 2023) over the course of the next decade.

As a result, interest payments on the national debt are projected to average 3.5 percent of GDP over the next decade, up from a 3.1 percent of GDP average in last year's report and 2.6 percent of GDP in the year before. In nominal terms, the agency expects the government will incur $1.6 trillion in debt service costs in 2034 alone—roughly 16 percent of total spending that year.

Publicly held debt: In its January 2020 long-term outlook (published before the pandemic), CBO had projected that debt held by the public—that is, federal debt not held in intragovernmental accounts such as Social Security and Medicare trust funds—would not reach 100 percent of GDP until the early 2030s.

This week's analysis, however, shows that dubious milestone will be reached next year, and that publicly held debt will climb to 116 percent of the economy by the end of the 10-year budget window. (Actually, debt briefly crossed 100 percent of the economy by the end of fiscal year 2020, but then fell again as pandemic-related pressures began to wane).

'Current law' caveat

It is important to note that, by law, CBO is generally required to make its projections on the basis of "current law," or laws as they are currently in effect. (One exception is excise taxes dedicated to trust funds—for example, highway- and aviation-related taxes—which are assumed to be continued beyond any scheduled expiration).

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That means this week's analysis does not account for the budget impact of any potential supplemental spending package that some Democrat and Republican lawmakers are currently pursuing.

On the flip side, also inherent in CBO's projections is an assumption that the temporary tax provisions scheduled to expire over the budget window—including nearly all of the individual tax changes and the passthrough deduction under section 199A that were enacted in the TCJA and are set to lapse after 2025—will not be renewed, and revenues will be higher as a result. (For details on a recent report from the nonpartisan Joint Committee on Taxation staff outlining all the temporary provisions that currently are scheduled to expire between 2024 and 2034, see *Tax News & Views*, Vol. 25, No. 3, Jan. 19, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240119_2.html

That assumption similarly applies to certain other TCJA provisions—including those affecting bonus depreciation, the business interest deduction limitation under section 163(j), the timing of research expenditure deductions, and the minimum tax on US multinationals known as the global intangible low-taxed income regime—that, if left untouched by lawmakers, will have (or are already having) the effect of raising revenue under current law.

Any long-term—and unoffset—extensions of expiring TCJA provisions that are adopted by Congress and signed into law would cause the deficit to spike dramatically. CBO estimated in budget projections published in May of 2023 that the 10-year cost (including additional debt service) of renewing all of the expiring individual TCJA provisions is $2.91 trillion, and that maintaining current law on several business provisions—related to foreign profits and profit shifting—that are also due to change would cost another $166 billion.
URL: https://www.cbo.gov/publication/59154

The Tax Relief for American Families and Workers Act of 2024 (H.R. 7024)—which recently cleared the House but is stuck in the Senate—would reinstate the now-expired TCJA provisions related to full expensing, the treatment of research expenditures, and the business interest expense deduction through 2025. CBO estimated in its May 2023 budget projection that a long-term extension of full expensing would cost $384 billion over 10 years. Recent estimates from the Tax Foundation, a Washington-based think tank, peg the 10-year cost of maintaining expensing for research expenditures and the 30 percent limitation on business interest expense deductions at $174.5 billion and $123.1 billion, respectively. (See separate coverage in this issue for an update on the status of that legislation.)
URL: https://www.congress.gov/118/bills/hr7024/BILLS-118hr7024eh.pdf
URL: https://taxfoundation.org/research/all/federal/making-2017-tax-reform-permanent/

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Deloitte Tax looks at proposed rules on section 45V clean hydrogen production tax credit

The Treasury Department and the Internal Revenue Service on December 26, 2023, published in the Federal Register a notice of proposed rulemaking and notice of public hearing (REG-117631-23) relating to the section 45V clean hydrogen production credit and the election to claim the section 48 energy investment tax credit in lieu of the section 45V credit, as established and amended by the Inflation Reduction Act of 2022 (P.L. 118-169).
URL: https://www.federalregister.gov/documents/2023/12/26/2023-28359/section-45v-credit-for-production-of-clean-hydrogen-section-48a15-election-to-treat-clean-hydrogen
URL: https://www.taxnotes.com/research/federal/usc26/45V
URL: https://www.taxnotes.com/research/federal/usc26/48
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

The proposed regulations provide guidance on section 45V eligibility and other key issues on which taxpayers have sought clarity since section 45V was enacted in 2022. This guidance considers nearly 250 comments received from industry participants, environmental groups, individuals, and other stakeholders in response to IRS Notice 2022-58, released on November 3, 2022, as well as extensive consultation with external stakeholders in coordination with the Environmental Protection Agency and the Department of Energy.
URL: https://www.irs.gov/pub/irs-drop/n-22-58.pdf

The proposed regulations apply to taxable years beginning after December 26, 2023. However, taxpayers may rely on the proposed regulations for taxable years beginning after December 31, 2022, and before the date the final regulations are published in the Federal Register, provided the taxpayers follow the proposed regulations in their entirety and in a consistent manner.

Treasury and the IRS have requested written or electronic comments on all aspects of the proposed regulations by February 26, 2024.

A public hearing on the proposed regulations has been scheduled for March 25, 2024, at 10:00 a.m. Eastern time. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 4, 2024.

Find out more

A new alert from Deloitte Tax LLP provides a technical summary of the proposed regulations.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240209_3_suppA.pdf

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Treasury, IRS ramp up revenue projections from Inflation Reduction Act funding

A report from the Treasury Department and the Internal Revenue Service released on February 7 suggests that the roughly $80 billion in mandatory spending that was allocated to the IRS under the Inflation Reduction Act of 2022 (P.L. 117-169) to strengthen its enforcement program, modernize its information technology, and enhance its taxpayer service operations could increase federal revenues by as much as $561 billion between 2024 and 2034. That amount could swell to as much as $851 billion if the funding stream, which is set to run out in 2031 under the legislation as enacted, is renewed for 2032 and 2033 as proposed in the fiscal year 2024 budget blueprint President Biden sent to Congress last March, the report states.
URL: https://www.irs.gov/pub/irs-pdf/p5901.pdf
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Broader estimating criteria

According to the report, the Treasury Department had initially projected that the new funding would generate roughly $390 billion in new revenues between 2024 and 2034 based on a "rigorous but extremely conservative" estimating methodology that measured "direct revenue" recouped from noncompliant taxpayers and "protected revenue"—that is, revenue losses that were forestalled because the government caught fraudulent refund claims before refunds are actually paid out. Both of these measurements are tied to increases in IRS enforcement staffing (focused principally on large businesses, complex partnerships, and high-wealth individuals) as a result of the new funding infusion. (The nonpartisan Congressional Budget Office, for its part, estimated in 2022 that the government's heightened enforcement and compliance efforts funded under the Inflation Reduction Act as enacted likely would bring in nearly $204 billion in previously uncollected taxes over the 10-year budget window covering 2022-2031.)
URL: https://www.cbo.gov/system/files/2022-08/hr5376_IR_Act_8-3-22.pdf

But the report contends that a more accurate measure of the return on investment from the new funding must also take into account other changes to agency operations that the IRS is putting into place, such as:

- Enhancements to taxpayer service operations that promote voluntary compliance by making it easier for taxpayers to communicate with the agency, resolve questions, and pay what they owe;
- Expanded third-party information reporting initiatives, which encourage taxpayers file accurately up front and enable the IRS to ensure compliance through electronic information return processing;
- Greater emphasis on issuing "taxpayer-centric" notices intended to "nudge" specific groups of taxpayers into voluntary compliance by reminding them of their filing obligations; and
- Technology improvements such as modernized compliance systems and new tools that allow the IRS to better identify noncompliance and fraud patterns, thus reducing noncompliance and improving revenue protection and recovery.

The report also states that a more stringent and visible enforcement program creates a general deterrent effect on taxpayer behavior that in turn promotes higher levels of voluntary compliance.

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Under these expanded estimating methods and assuming the mandatory funding stream is extended for 2032 and 2033, the government would gain $68 billion from direct revenue recapture efforts between 2024 and 2034, $39 billion from the deterrence effect of stepped-up enforcement efforts, $53 billion from adopting behavioral science techniques (such as “nudging”) and $301 billion in efficiency gains from an overhaul of the IRS’s information technology systems, according to the report.

Impact of rescissions

It’s important to note that the projections in the report assume that the IRS receives the entire $80 billion funding stream as originally enacted in the Inflation Reduction Act and that Congress continues to provide sufficient discretionary funding for the agency as part of the annual federal budgeting process.

But President Biden and then-Speaker Kevin McCarthy, R-Calif., reached a handshake agreement during their negotiations over the Fiscal Responsibility Act (P.L. 118-5), the debt limit deal that was signed into law last June, to rescind $10 billion of the Inflation Reduction Act funding in fiscal year 2024 and another $10 billion in fiscal year 2025. And a renegotiated version of that agreement hammered out last month between current House Speaker Mike Johnson, R-La., and Senate Majority Leader Charles Schumer, D-N.Y., calls for rescinding the entire $20 billion in fiscal year 2024. Moreover, Republicans in both chambers are likely to seek further clawbacks of the funding in future negotiations over tax and spending legislation.
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The Treasury Department warned of the potential revenue impact of cutting back the funding allocation in a news release issued in conjunction with the report. According to Treasury, “[a] $20 billion rescission would reduce revenues by over $100 billion.” Although the IRS would still be able to carry out its stepped-up enforcement efforts—primarily targeting large corporations and high-wealth individuals with complex tax returns and opaque sources of income—rescissions “would cause [Inflation Reduction Act] enforcement funding to run out in 2029—about two years earlier than it would have under the [legislation] as enacted—reducing the revenue raised in 2029 and subsequent years.”
URL: https://home.treasury.gov/news/press-releases/jy2079

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Werfel to appear at Ways and Means hearing with likely focus on continued delay of tighter 1099-K reporting requirements

The House Ways and Means Committee announced this week that it will hold a hearing on February 15 at 10:00 a.m., with Internal Revenue Service Commissioner Danny Werfel appearing as the sole witness.

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The official announcement from the committee released on February 8 does not include a specific agenda, but it appears that the hearing is being convened in conjunction with a letter sent by Chairman Jason Smith, R-Mo., and the panel's Republicans last December 21 asking the IRS commissioner to make himself available to testify in late January or early February about the agency's decision to delay implementation of the more stringent information reporting requirements for third-party payment processors that were enacted in 2021.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/02/ADVISORY_Full-Committee_February-15-2024.pdf
URL: https://waysandmeans.house.gov/wp-content/uploads/2023/12/Smith-Miller-led-1099-K-letter-to-IRS-12.21.23.pdf

Taxpayer relief or administrative overreach?

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 under prior law to $600 and eliminated the prior-law 200-transaction threshold, effective for reporting for returns filed for calendar years after 2021.
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf

A number of lawmakers in both parties tried—without success—to postpone those more stringent thresholds reporting thresholds as part of the omnibus tax-and-spending legislation that Congress approved in December of 2022. In the wake of that failed effort, however, the IRS issued Notice 2023-10 at the end of 2022 in which it delayed enforcement of the new rules until after 2023.
URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf

In its second round of administrative relief—Notice 2023-74, issued last November—the IRS stated 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 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." The IRS also announced its intention 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.
URL: https://www.irs.gov/pub/irs-drop/n-23-74.pdf

Following the release of Notice 2023-74, Ways and Means Committee Chairman Jason Smith, R-Mo., contended in a news release that the IRS had overstepped its authority in an attempt to mitigate the impact of an "unworkable" provision.
URL: https://waysandmeans.house.gov/chairman-smith-irs-concedes-democrat-signature-law-unworkable-illegally-rewrites-key-provision/

"By delaying implementation of this arbitrary and harmful new reporting threshold that goes after Americans for selling concert tickets and used furniture, President Biden is dodging accountability for Democrats' partisan law that places over 90 percent of the tax burden on middle-class families and gig workers, according to the Joint Committee on Taxation," Smith said. "It's unlikely this move is even constitutional given the clear text of

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the legislation Democrats enacted, when it's up to Congress, not the White House, to amend or repeal bad laws," he added.

In their December 21 letter asking Werfel to appear before the committee, Smith and his fellow GOP taxwriters acknowledged that they did not support the American Rescue Plan provision reducing the 1099-K threshold, but nonetheless noted that they have "serious concerns with the IRS's actions that have continually ignored the clear letter of the law," adding that the agency now "appears to be writing an entirely new policy without the authority to do so."

"The legislation that our Democrat colleagues passed on a party-line vote very clearly states that the Form 1099-K threshold was set at $600 for tax year 2022 and onward. The enacted law did not give the IRS room to delay or change this threshold," the letter said.

Other possible questions

Although the hearing likely will focus on the delayed implementation of the 1099-K reporting thresholds, Werfel also may face questions from taxwriters about the agency's ability to implement a provision in the House-approved Tax Relief for American Families and Workers Act (H.R. 7024) that would allow the IRS to adjust refunds for those taxpayers who would be due a benefit under that measure's expanded child tax credit but filed their taxes before the legislation becomes law.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf

That bipartisan legislation, which was negotiated by Ways and Means Chairman Smith and Senate Finance Committee Chairman Ron Wyden, D-Ore., cleared the House by a wide bipartisan margin on January 31. The measure is currently stuck in the Senate, however, where it has run into resistance from some GOP lawmakers who, among other things, have expressed concern that giving this refund-adjustment authority to the IRS would allow the Biden administration to manipulate the timing of additional payments for political purposes, a criticism that Smith has disputed. (See separate coverage in this issue for more on the bill's current status.)
URL: https://waysandmeans.house.gov/correcting-the-record-tax-relief-for-american-families-and-workers-act-protects-taxpayers-and-prevents-attempts-to-politicize-americans-tax-refunds/

Ways and Means Committee members also may ask Werfel about how the IRS intends to deploy the mandatory funding allocated to it (over 10 years) in the Inflation Reduction Act of 2022 (P.L. 117-169) to strengthen its enforcement program, modernize its information technology, and enhance its taxpayer service operations, and about a recently released report from the IRS and Treasury that contends that the improvements to the agency's operations as a result of the new funding could generate hundreds of billions of dollars in new revenue for the government over the coming 10 years. (See separate coverage in this issue for additional details on that report.)
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

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Gomez makes a comeback

In other Ways and Means developments, Rep. Jimmy Gomez, D-Calif., announced this week that he is rejoining the committee to fill the vacancy on the Democratic roster created when taxwriter Brian Higgins of New York resigned from Congress on February 2 to take a position as head of a Buffalo-area arts organization. (Higgins announced his intention to leave Congress in November of last year.)
URL:
https://gomez.house.gov/news/documentsingle.aspx?DocumentID=3048&&utm_source=%20urban_newsletters&utm_medium=news-DD&utm_term=TPC

Gomez is one of three Democratic taxwriters—along with Steven Horsford of Nevada and Stacey Plaskett of the Virgin Islands—who lost their seats on the Ways and Means Committee at the start of 2023 after party ratios on all House committees were readjusted to reflect the GOP's majority status in the chamber in the 118th Congress. Although all three were eligible to return to the panel in the event of a Democratic vacancy, Gomez has the most seniority in Congress, which positioned him to be the first to be offered the open committee slot once it became available.

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White House FY 2025 budget blueprint expected March 11

President Biden is expected to release his budget proposal for fiscal year 2025 on March 11, according to multiple press reports citing comments from an unnamed official at the White House Office of Management and Budget.

Nonbinding statutory deadlines

The anticipated March 11 delivery date blows past the statutory requirement in the Budget and Accounting Act of 1921 that every presidential administration send Congress its budget request for the upcoming fiscal year no later than the first Monday in February, which this year fell on February 5. In practice, however, the statutory deadline often goes unmet—the Trump, Obama, and George W. Bush administrations all had overdue budget submissions on their respective records, for example—and there is no penalty for late delivery of a budget.

Congress, for its part, is struggling with deadline issues of its own as lawmakers attempt to finalize a spending plan for the remainder of fiscal year 2024, which began last October 1. House Speaker Mike Johnson, R-La., and Senate Majority Leader Charles Schumer, D-N.Y., reached a deal on a topline spending number of roughly $1.7 trillion for federal departments and agencies on January 7, and an agreement on how to subdivide that

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amount among each chamber's 12 appropriations subcommittees—which gives leaders of those subcommittees the green light to draft actual spending bills—was struck late last month.

Since October 1, Congress has been keeping the government's doors open through a series of short-term continuing resolutions (CRs) that fund federal operations at fiscal year 2023 levels. The latest of these extends funding through March 1 for four appropriations measures and through March 8 for the remaining eight spending bills. As of February 9, the House is set to be in session for seven days before the stopgap funding for the first tranche of federal departments and agencies under the current CR expires on March 1, and another four days before funding for the second tranche lapses on March 8. The Senate will be in session for five days ahead of the March 1 deadline and another four days before the current CR expires on March 8 (although a two-week Senate recess scheduled to start at the end of this work week may be delayed for several days while senators work on a supplemental emergency aid package for Ukraine, Israel, and Taiwan). Whether lawmakers can complete their work on federal appropriations for the *current* fiscal year before the White House releases its spending blueprint for the *coming* fiscal year remains uncertain.

A 'Green Book'—presumably

Although it has not been confirmed by the White House, the budget blueprint presumably will be accompanied by a "Green Book" from the Treasury Department, which will provide more granular discussion of the administration's tax and revenue policies and their projected impact on federal receipts. Details in the Green Book are likely to influence any subsequent legislation that is marked up in the congressional taxwriting committees and moves through Congress.

The president may offer a preview of what will be included in his upcoming budget request when he delivers his State of the Union message before a joint session of Congress on March 7.

Based on his previous budget blueprints, the president is likely to renew calls for revisiting many of the revenue-raising provisions targeting businesses and upper-income individuals (generally, those with incomes greater than $400,000) that were left out of the Inflation Reduction Act, (P.L. 117-169), the roughly $740 billion tax and spending package that moved through a Democratic-controlled House and Senate under fast-track budget reconciliation rules in August of 2022 with no support from congressional Republicans. Also likely are proposals to rescind certain tax cuts for businesses and upper-income individuals that were enacted in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), the massive tax relief budget reconciliation measure that moved through a Republican-controlled Congress without Democratic support and was signed into law by then-President Trump. Many of those TCJA provisions—primarily on the individual side of the tax code—are set to expire after 2025.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Budget as messaging vehicle

Many of the president's tax priorities for the coming fiscal year are likely to be embraced in the Senate, where Democrats hold the majority, but fall flat in the House of Representatives, where the GOP majority is intent on

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permanently extending the temporary tax relief in the TCJA and scaling back or repealing significant chunks of the Inflation Reduction Act. In turn, any efforts by House Republicans to extend or enhance the TCJA and dismantle the Inflation Reduction Act are expected to be ignored once they reach the other side of the Capitol and likely would prompt a veto threat from the president.

Given the dynamics of divided government in Washington, the tax proposals in the administration's budget blueprint and those put forward by Republicans in the second session of 118th Congress may wind up serving largely as messaging vehicles for each party to tout its respective tax policy platform and make the case for why voters should give it unified control of Capitol Hill and the White House in this November's presidential and congressional elections.

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