TaxNewsFlash

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Legislative update: Senate releases legislative text of bipartisan infrastructure bill

The U.S. Senate in the evening of August 1, 2021, released legislative text of a 2,702-page bipartisan infrastructure bill—legislation that the Senate is expected to vote on later this week. The **bill** [PDF 3.8 MB] includes proposed tax law changes as well other budgetary offsets.

Revenue provisions (tax)

Division H of the bill includes revenue provisions that are estimated by the Joint Committee on Taxation (JCT) to raise approximately $51 billion over 10 years on a net basis. Read the JCT revenue estimate—**JCX-33-21**.

The revenue provisions in Division H include the following:

Revenue raisers

- Requiring information reporting with respect to digital assets such as cryptocurrency, generally effective for returns and statements required to be filed or furnished after December 31, 2023 [estimated to raise approximately $28 billion over a 10-year period]
- Extending certain Superfund excise taxes through December 31, 2031, and modifying the amount of tax applicable to certain chemicals, generally effective as of July 1, 2022 [estimated to raise approximately $14.45 billion over a 10-year period]
- Terminating the employee retention credit earlier than scheduled by making it applicable to wages paid before October 1, 2021 (rather than wages paid before January 1, 2022) [estimated to raise approximately $8.2 billion over a 10-year period]
- Modifying the section 430(h)(2)(C)(iv) table of applicable minimum and maximum percentages with respect to certain pension plans (i.e., "pension smoothing") [estimated to raise approximately $2.9 billion over a 10-year period]

Revenue losers

- Expanding the definition of exempt facility bonds to include certain qualified broadband projects and qualified carbon dioxide capture facilities; providing a partial exemption to the private activity bond volume cap for exempt facility bonds relating to such projects and facilities; and increasing the national limitation amount for qualified highway or surface freight transportation facilities [estimated to lose approximately $1.2 billion over a 10-year period]
- Modifying the Code section 118 contribution-to-capital rules to apply to certain amounts received by regulated public utilities for water or sewerage disposal services [estimated to lose approximately $1.25 billion over a 10-year period]

Scored as having no revenue effect

- Extending various highway-related excise taxes (including fuel taxes and heavy vehicle use taxes) as well as certain related exemptions for six years
- Extending the authority to spend out of the highway trust fund, the sport fish restoration and boating trust fund, and the leaking underground storage tank trust fund until October 1, 2026
- Modifying the automatic extension of certain deadlines in the case of taxpayers affected by federal declared disasters
- Providing the Treasury Secretary with authority to postpone certain deadlines in the case of certain "significant fires"
- Tolling of time for filing a petition with the Tax Court in certain cases in which a filing location is inaccessible or otherwise unavailable on the date the petition would otherwise be due
- Modifying the rules for postponing certain acts due to service in a combat zone or contingency operation

Background

The bill reflects the results of negotiations among a bipartisan group of Senators. President Biden also has expressed support for bipartisan infrastructure legislation.

Last week, a procedural motion with respect to the bill was approved by the Senate with the support of all 50 Senate Democrats plus 17 Senate Republicans.

The bill is drafted as an amendment in the nature of a substitute to a highway bill that the House previously passed. The amendment is being offered by Senators Sinema (D-AZ), Portman (R-OH), Manchin (D-WV), Cassidy (R-LA), Shaheen (D-NH), Collins (R-ME), Tester (D-MT), Murkowski (R-AK), Warner (D-VA), and Romney (R-UT).

The bill reportedly includes approximately $550 billion in spending, the cost of which would be offset by a variety of provisions (including the tax provisions described above). The Congressional Budget Office is expected to provide a table showing additional budgetary effects (including revenue raised by certain non-tax provisions not scored by JCT).

What's next?

The Senate is expected to consider the bill later this week. Amendments might be adopted during this process.

Assuming the bill passes the Senate with at least 60 votes, the House might be expected to address the legislation at some time in the fall. Speaker Pelosi previously indicated that the House would consider bi-partisan infrastructure legislation at the same time as it addresses separate legislation addressing other Democratic policy priorities through the budget reconciliation process.

In order for legislation to become law, the House and Senate ultimately need to agree to the same version of the legislation and the president needs to sign it into law.