

TaxNewsFlash

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Legislative update: U.S. Senate passes budget resolution; implications for major tax legislation

The U.S. Senate early this morning passed—by a party-line vote of 50-49—a concurrent resolution on the budget for FY 2022.

Once agreed to by the House of Representatives, the concurrent resolution would “unlock” the use of budget reconciliation procedures to advance legislation addressing various Democratic policy initiatives, including major tax law changes, by simple majority vote in the Senate.

Senate budget resolution

The budget resolution calls for up to \$3.5 trillion in new spending in areas such as education, child care, dependent care, green energy/climate change, affordable housing, and health care.

The resolution allows for a deficit increase of up to \$1.75 trillion. Nonetheless, a [Senate Budget Committee summary](#) [PDF 442 KB] (released on August 9, 2021) indicates that the costs are to be offset by a combination of new tax revenues, health-care savings, and long-term economic growth. The summary also indicates that the agreement would prohibit new taxes on “families making less than \$400,000 per year, and on small businesses and family farms.”

The resolution does not dictate the policies to be enacted but rather provides instructions to various committees, including the tax-writing committees, to develop the specific policy proposals that would be included in a reconciliation bill. If adopted by both chambers of Congress, the resolution would instruct each the Senate Finance Committee and the House Ways and Means Committee to report by September 15, 2021, changes in laws within the committee’s jurisdiction that would reduce the deficit by not less than \$1 billion over a 10-year period.

Read text and a summary of the budget resolution in a [Senate Budget Committee release](#) (August 9, 2021).

The Senate Budget Committee summary lists some of the items that could be addressed by the Senate Finance Committee as it develops its policy proposals. The list includes, among other issues:

- Paid family and medical leave
- Extensions of the child tax credit, earned income tax credit, and child and dependent care tax credit
- Clean energy, manufacturing, and transportation tax incentives
- Housing incentives
- “Pro-worker” incentives
- SALT cap relief
- Medicare expansion, Affordable Care Act expansion, long-term care, and “health equity”

The summary also lists the following as possible offsets that could be considered:

- Corporate and international tax reform
- Tax fairness for high-income individuals
- IRS tax enforcement
- Health-care savings
- Carbon polluter import fee

In a Senate Finance Committee [press release](#) (August 9, 2021), Chairman Ron Wyden (D-OR) stated:

To restore fairness to our tax code and pay for these once-in-a-generation investments, the Finance Committee has been working on a menu of options for the caucus to consider. Our proposals will fall into four categories: multi-national corporations, the wealthiest individuals, enforcement against wealthy tax cheats and savings from other programs.

Many of these proposals have been laid out — the Wyden-Brown-Warner international tax framework to ensure mega-corporations pay their fair share, legislation to expand the pass through deduction while dedicating it to Main Street small businesses, legislation to close the carried interest loophole for private equity moguls, and legislation to ensure wealthy investors pay tax on investments underlying derivatives contracts, just to name a few.

KPMG observation

Although the jurisdictions of the Senate Finance Committee and the House Ways and Means Committee differ in some respects, both include federal tax, health programs under the Social Security Act (including Medicare and Medicaid), social security, and tariffs.

The instructions to the tax-writing committees specify a nominal deficit reduction target of \$1 billion. They do not dictate specific legislative changes, or the extent changes are to relate to tax matters, as opposed to other issues within the committees’ jurisdictions.

The budget resolution instructs the tax-writing (and other) committees to report changes in law within their jurisdictions no later than September 15, 2021. It is possible, however, that committees could miss this deadline given the challenges associated with putting together massive legislation. Missing the deadline does not invalidate the resolution or the ability to use the reconciliation process.

Several amendments to the resolution were agreed to on the Senate floor, including several relating to tax matters. For example, amendments were adopted relating to (1) adopting information reporting requirements with respect to account balances, (2) not changing the like-kind exchange rules, and (3) preventing tax increases on small business. The Senate also approved an amendment to promote competitiveness and innovation by supporting research and development.

Nonetheless, these amendments do not bind Congress as to what ultimately is included in reconciliation legislation.

Finally, the budget resolution does not address increasing or suspending the debt limit. Instead, it appears that the debt limit will be undertaken in other legislation (perhaps in conjunction with a continuing resolution). Addressing the debt limit would be needed to avoid a default on government debt at some point this fall, while a continuing resolution might be needed to avoid a possible government shutdown at the end of September. Read a [statement](#) (August 9, 2021) from Treasury Secretary Yellen with regard to the debt limit.)

Implications for major tax law changes

Approval of the concurrent resolution by both the House and the Senate would allow Democrats to use the budget reconciliation process to advance major tax changes (and other policy initiatives) without any Republican support—assuming virtually every House Democrat and every Senate Democrat supports the reconciliation legislation that ultimately is developed.

Specifically, budget reconciliation rules would enable Democratic leadership to avoid the Senate filibuster rules and pass legislation, including major tax changes, through the Senate with only 51 votes (rather than the 60 votes typically required). Thus, if all 50 Republican Senators were to oppose the reconciliation legislation, the legislation could still pass the Senate, provided that all 50 Senate Democrats voted in favor of it, with Vice President Harris (as president of the Senate) voting to break the tie.

The reconciliation rules include a number of complex procedural limitations and conditions that can affect the substance and design of the underlying legislation, including limitations regarding increases to the federal long-term deficit in any year beyond the 10-year “budget window” and a requirement that provisions must modify spending or revenue with those changes not being “merely incidental” to the non-budgetary purposes. Read more about reconciliation, a February 2021 report on the Biden Administration and the 117th Congress: [TaxNewsFlash](#)

What's next?

House Democratic leadership has indicated that the House will return to session on the evening of August 23, 2021, to consider the budget resolution. To “unlock” the budget reconciliation process, the House and Senate must agree to the same resolution. Thus, if the House makes any changes to the resolution as passed today by the Senate, the differences between the House and Senate versions would need to be reconciled. The president does not need to sign the budget resolution.

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