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Five-year FAA reauthorization—with no amendments—heads to the White House

The House this week cleared a bipartisan, bicameral legislative package that would reauthorize the Federal Aviation Administration (FAA) and the related excise taxes that help fund its operations through September 30, 2028. House passage of the bill, which was approved by the Senate on May 9 and does not include extraneous amendments, officially dashes any hope that the measure could serve as a vehicle to carry other legislative priorities—such as the House-approved tax relief package negotiated earlier this year by House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore.—to President Biden’s desk.

Biden is expected to sign the FAA measure into law before midnight on May 17, when the current stop-gap measure keeping the FAA in operation is scheduled to expire.

FAA Reauthorization Act of 2024

The five-year FAA bill—dubbed the FAA Reauthorization Act of 2024 (text, section-by-section summary)—is the result of months of negotiations between Senate Commerce Committee Chair Maria Cantwell, D-Wash., and ranking Republican Ted Cruz of Texas, as well as House Transportation and Infrastructure Committee Chairman Sam Graves, R-Mo., and ranking Democrat Rick Larsen of Washington.

URL: <https://www.congress.gov/bill/118th-congress/house-bill/3935/text>

URL: <https://www.commerce.senate.gov/services/files/E4B4E5F6-AA83-4F9E-B21C-0F03F95F5FE0>

It passed the House on May 15 on a broadly bipartisan 387-26 vote after being considered under “suspension of the rules”—a fast-track procedural tool in that chamber that allows for limited debate, no amendments, and passage upon an affirmative two-thirds vote.

The sprawling measure is long on policy changes within the aviation space, including making upgrades to the air traffic control system and mandating consumer refunds in certain cases when flights are disrupted, but does not make any substantive changes to existing aviation tax policy. Rather, the legislation would simply extend the current-law excise taxes on fuel and tickets, along with expenditure authority from the airport and airway trust fund, through September 30, 2028.

Smith-Wyden tax deal remains grounded

Although the FAA bill’s passage in the House was never in doubt, its relatively smooth flight through that chamber stands in contrast to its more turbulent trip through the Senate, which entailed a prolonged debate around potential amendments.

With fiscal year 2024 appropriations and a Ukraine-Israel-Taiwan foreign aid package finally signed into law, a number of senators had viewed the FAA bill as one of the last “must-pass” measures to move through the chamber before the November 2024 elections and sought to attach other—sometimes unrelated—legislative priorities.

That effort included an ultimately unsuccessful attempt by Finance Committee Chairman Wyden to include the bipartisan deal he negotiated with Ways and Means Chairman Smith—formally known as the Tax Relief for American Families and Workers Act (H.R. 7024)—as an amendment to the FAA measure.

URL: <https://www.congress.gov/bill/118th-congress/house-bill/7024/text>

Among other things, the Smith-Wyden legislation, which cleared the House by a broad bipartisan majority in January, would:

- Reverse (through 2025) certain business-unfriendly tax provisions related to the treatment of research expenditures, bonus depreciation, and the deduction for business interest expenses that were included

in the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) but did not take effect until several years after that measure was enacted;

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

- Enhance the child tax credit;
- Expand the low-income housing tax credit; and
- Tighten the rules for claiming the employee retention tax credit (ERTC) and expand the IRS’s authority to investigate questionable ERTC claims.

But ultimately, Wyden’s amendment—and all of the dozens of other amendments that had been filed—failed to get a vote on the Senate floor and lawmakers approved the FAA legislation with no extraneous provisions.

Child tax credit, ERTC offset remain concerns for Senate GOP: Of course, in many ways it comes as little surprise that Wyden’s amendment did not make the cut for a vote given the fact that the House-passed tax package has faced a wall of opposition from Finance Committee ranking Republican Mike Crapo of Idaho and other prominent GOP senators, who have objected to, among other things, the inclusion of a lookback rule in the child tax credit provision that would allow taxpayers to qualify for the expanded credit (for tax years 2024 and 2025) based on their prior-year income—something that critics believe would disconnect the credit from work.

Crapo and other GOP senators also have expressed reservations about the inclusion of a revenue offset (the strictures on ERTC claims) on the grounds that paying for extensions of current law would set a risky precedent next year when lawmakers confront the multi-trillion-dollar expiration of large swaths of the Tax Cuts and Jobs Act at the end of 2025. (The congressional debate over offsets for any TCJA extensions is expected to become even more intense in the coming months now that the Congressional Budget Office has estimated that the cost of extending various components of the TCJA would, in total, clock-in at roughly \$4.6 trillion over 10 years, an increase of \$1.1 trillion from projections it released in 2023. The higher estimated cost is due largely to the fact the latest 10-year budget window has shifted forward by a year, so it now includes another year in which the full cost of an extension would be added to the deficit. For prior coverage, see *Tax News & Views*, Vol. 17, No. 25, May 17, 2024.)

[URL: https://www.cbo.gov/publication/60114](https://www.cbo.gov/publication/60114)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240510_2.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240510_2.html)

Wyden, for his part, commented in remarks at a conference sponsored by the Tax Council Policy Institute (TCPI) on May 18 that Congress’s inability to get a relatively small (\$78 billion), bipartisan tax package to the White House bodes poorly for its chances of reaching a deal on the multitude of TCJA tax cuts that are scheduled to sunset next year.

“It’s pretty hard to build confidence for a significant bill in 2025 if you can’t get a much smaller bill that got 357 votes in the House and is paid for by fighting fraud,” Wyden said.

No immediate prospect of stand-alone vote: With most “must-pass” legislation for 2024 now in the rear-view mirror—at least until the November elections—attention will turn more squarely to Senate Majority Leader

Charles Schumer, D-N.Y., and whether he may force a stand-alone floor vote on the Smith-Wyden deal. Up until now, Schumer has been reticent to take such action given the general consensus that the bill would not garner enough GOP support to ensure that it can clear procedural hurdles in the chamber, and he has given no indication—publicly, at least—that his position has changed.

Wyden told the TCPI audience that he is “working with . . . Schumer to get a time schedule for the Senate to bring it up.”

— Alex Brosseau
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IRS issues updated procedures for private letter rulings regarding section 355 transactions

The Internal Revenue Service on May 1 published Rev. Proc. 2024-24, which provides updated guidelines for taxpayers requesting private letter rulings regarding certain matters relating to section 355 transactions.

URL: <https://www.taxnotes.com/research/federal/irs-guidance/revenue-procedures/procedures-provided-requesting-corporate-letter-rulings/7jh19>

Rev. Proc. 2024-24 includes new or revised guidelines relating to the treatment of:

- Delayed distributions of stock or securities of the controlled corporation (Controlled);
- The retention of stock or securities of Controlled by the distributing corporation (Distributing); and
- Deleveraging transactions undertaken by Distributing, including debt-for-debt exchanges.

Rev. Proc. 2024-24 applies to all section 355 ruling requests postmarked or, if not mailed, received by the IRS after May 31, 2024.

In conjunction with the issuance of Rev. Proc. 2024-24, the IRS released Notice 2024-38, which requests public comment on certain matters addressed in Rev. Proc. 2024-24 and describes the Treasury Department’s and the IRS’s concerns relating to those matters.

URL: <https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-requests-comments-corporate-transaction-letter-rulings/7jh18>

Find out more

A new alert from Deloitte Tax LLP discusses the practical implications of Rev. Proc. 2024-24 and Notice 2024-38 for the IRS’s letter ruling practice.

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240517_2_supplA.pdf

House taxwriters clamp down on foreign contributions to tax-exempt entities, unauthorized disclosures of taxpayer data

The House Ways and Means Committee this week approved, in some cases with bipartisan support, a series of Republican-sponsored bills intended to prevent foreign entities and ultrawealthy US donors from using tax-exempt organizations to exert improper influence in federal elections, as well as a separate measure that would ratchet up the penalties on individuals who are convicted of making unauthorized disclosures of federal tax returns and protected return information.

Exempt organizations and improper election influence

At a high level, some of the election-related measures approved at the May 15 Ways and Means Committee mark-up would impose new reporting requirements on tax-exempt organizations to make clear the extent to which they receive contributions from foreign donors and the extent to which these organizations provide financial assistance (in the form of grants, for example) to foreign entities. Other bills would impose new restrictions on tax-exempt organizations to prevent foreign donors and wealthy US donors from using them as conduits for impermissible political activity.

Disclosure of foreign contributions to exempt organizations: The American Donor Privacy and Foreign Funding Transparency Act (H.R. 8293), sponsored by Ways and Means Oversight Subcommittee Chairman Dave Schweikert, D-Ariz., would require tax-exempt organizations to publicly report on their annual Form 990 the aggregate amount of contributions they receive from foreign nationals during the taxable year and provide a breakdown of those foreign contributions on a country-by-country basis. It also would, with limited exceptions, prohibit federal agencies from collecting or requiring the submission of information on the identities of donors to a tax-exempt organization.

URL: <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/05/AINS-to-H.R.-8293.pdf>

The provisions relating to the disclosure of foreign-source contributions would be effective for returns filed for taxable years beginning after the date of enactment. The provisions regarding the collection of donor information would be effective on the date of enactment.

The Joint Committee on Taxation (JCT) staff has estimated that the measure would have a negligible impact on federal revenues over the 10-year budget window covering 2024-2034.

The bill cleared the panel by a 23-16 with no support from Democrats, who argued that prohibiting government agencies from collecting donor information would fuel the proliferation of “dark money” in

politics by ensuring that wealthy individuals who make substantial contributions to section 501(c)(4) organizations can remain anonymous.

Disclosure of grants by exempt organizations to foreign recipients: The Foreign Grant Reporting Act (H.R. 8290), sponsored by taxwriter Lloyd Smucker, R-Pa., would require section 501(c) organizations that make grants or provide other assistance to foreign entities to report on their annual Form 990 (1) the name and address of each foreign entity, (2) the aggregate amount of grants or other assistance provided to each entity during the year, and (3) whether the foreign entity is a charity. (Exempt organizations are already required to disclose details of the grants they make to US entities.)

URL: <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/05/AINS-to-H.R.-8290.pdf>

The bill, which was approved 38-0, would be effective for returns filed for taxable years beginning after the date of enactment. (JCT 10-year estimate: Negligible revenue impact.)

Indirect political contributions by foreign donors: The No Foreign Election Interference Act (H.R. 8314), sponsored by Rep. Nicole Malliotakis, R-N.Y., would amend the Internal Revenue Code to impose penalties on certain tax-exempt organizations that receive contributions from foreign nationals and then pass those contributions along in the form of donations to political action committees or other overtly political causes.

URL: <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/05/AINS-to-H.R.-8314.pdf>

Under the proposal, which passed by a margin of 39-1, a “specified tax-exempt organization” that receives a contribution or gift from a foreign national would be banned from making donations to a political committee for eight years. An organization that violates the ban would face a fine totaling 200 percent of the donation amount for each of the first two disqualified donations. An organization that violates the ban for a third time would automatically lose its tax-exempt status.

A “specified tax-exempt organization” is defined as an organization that has (1) gross receipts for the taxable year of \$200,000 or more, or (2) assets of \$500,000 or more (determined as of the close of the taxable year).

The bill would be effective for contributions made on or after January 1, 2025. (JCT 10-year estimate: Gain of less than \$500,000.)

Funding for election administration: Another measure, H.R. 8291, sponsored by Rep. Claudia Tenney, R-N.Y., generally would prohibit section 501(c)(3) organizations from providing below-cost services, scholarships, subsidies, or direct, in-kind, or indirect funding to official state or local election agencies.

URL: <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/05/AINS-to-H.R.-8291.pdf>

The bill was approved by a party-line vote of 23-17. Tenney and the panel’s Republicans contended that the proposal would curb the ability of ultrawealthy US donors to exert influence over the election process by using 501(c)(3) organizations to funnel funds to election agencies in jurisdictions that align with their political views. Democrats countered that it would prevent 501(c)(3) organizations from providing nonpartisan financial support to cash-strapped election agencies in economically disadvantaged jurisdictions.

The bill would be effective for taxable years beginning after December 31, 2024. (JCT 10-year estimate: Gain of less than \$500,000.)

Unauthorized disclosure of taxpayer information

Also at the mark-up, the committee voted 40-1 to approve legislation that would significantly increase the current-law penalties imposed on individuals who make willful and unauthorized disclosures of federal income tax returns and return information.

Under the Taxpayer Data Protection Act (H.R. 8292), sponsored by Ways and Means Committee Chairman Jason Smith, R-Mo., an individual convicted of violating federal prohibitions on tax return disclosure would face a maximum fine of \$250,000 (up from \$5,000 under current law), a maximum prison sentence of 10 years (up from five years under current law), or both. The measure also clarifies that an unauthorized disclosure involving the returns or return information of multiple taxpayers would be treated as a separate violation for each taxpayer whose data was disclosed. The stiffer penalties would be effective for disclosures made after the date of enactment.

URL: <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/05/AINS-to-H.R.-8292.pdf>

The legislation was introduced at least partially in response to a data breach at the IRS involving some 70,000 taxpayers that began in 2019 and made national headlines in 2021 when tax return information for several prominent individuals appeared in *The New York Times* and *Pro Publica*. A former IRS contractor subsequently was charged with and pleaded guilty to a single count of unauthorized disclosure and received the current-law maximum fine and prison sentence—an outcome many Ways and Means Committee members have argued was insufficient given the magnitude of the offense.

Next steps uncertain

It is unclear when or if any of the committee-approved bills will be brought to the House floor.

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Taxwriting panels announce upcoming hearings

House and Senate taxwriting panels have scheduled hearings on tax-related issues for the week of May 20.

Economic opportunity in the ‘Rust Belt’

The House Ways and Means Tax Subcommittee announced that it will hold a field hearing in Erie, Pa., on May 20 at 4:00 p.m. to discuss “how US tax policy, such as Opportunity Zones that were created by the [Tax Cuts and Jobs Act of 2017] can drive new investment and community development in underserved areas.”

A witness list was not available at press time. Previous tax-focused field hearings held by the full committee in various regions of the country in 2023 typically featured executives and owners of local businesses who offered their perspectives on the role tax policy can play in addressing the economic issues facing their respective communities.

Tax-advantaged savings accounts benefiting children

Across the Capitol, the Senate Finance Committee announced that it will hold a hearing on May 21 at 10:00 a.m. to examine “child savings accounts and other tax-advantaged accounts benefiting children.”

Witnesses will include William Elliott of the University of Michigan in Ann Arbor; Colleen Quint of the Alford Scholarship Foundation in Portland, Maine; Veronique de Rugy of The Mercatus Center at George Mason University in Fairfax, Va.; and Adam N. Michel of the Cato Institute in Washington, DC.

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