Federation of Tax Administrators
11.29.2021
MEMORANDUM
Build Back Better Act
House Passage

Background

Two months after the House Ways and Means Committee passed their tax and revenue portion of H.R.5376, the Build Back Better Act, House lawmakers passed the legislation on November 19, 2021 by a vote of 220-213. The House's vote last week was a result of two months of negotiations between Democratic Congressional Leadership, Centrist and Progressive lawmakers, and the White House.

Largely focused on concerns from Sens. Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) over total spending levels and revenue raising options of the earlier $3.5 trillion BBBA, on October 28, President Biden announced a trimmed down "Build Back Better" framework. This framework brough the initial package from $3.5 trillion to $1.75 trillion over 10 years and provided revenue offsets which are estimated to add up to nearly $2 trillion over the same period. These offsets include large tax increases for businesses (both domestic and international) as well as IRS enforcement measures. Framework provisions had then been incorporated by the House Rules Committee into the revised BBBA that was reported out of the House Budget Committee, under reconciliation rules, in September. After the House passed the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58), Leadership moved quickly to "whip" up the votes and send the legislation to the Senate for consideration.

When the Senate returns from the Thanksgiving holiday, there will be at least a two-week period before lawmakers consider the BBBA. This two-week period will allow the Senate to reach a deal on deal on funding the federal government for fiscal year (FY) 2022, raise the debt ceiling, and pass the annual defense authorization. After these items are complete, Senate Majority Leader Chuck Schumer (D-NY) has set a deadline of the holidays for the BBBA to be passed. During the few weeks before a full Senate chamber vote, it is expected that there will be more negotiations over the total cost and policy scope of the legislation. Key Democratic Senators have publicly discussed their desire to address the total cost of the legislation and other key items such as the state and local tax (SALT) deduction cap and the possibility of including a IRS bank reporting requirement. Timing will also depend on when the Senate parliamentarian will finish the so-called "Byrd Bath" process, under which the BBBA will be evaluated to determine whether key components of the bill have direct budgetary effect and can therefore pass the Senate with a simple majority.

Should the BBBA pass the Senate with revisions, the legislation would then need to head back to the House for consideration before it could be sent to President Biden to be signed into law.

BBBA Key Tax Provisions

While the BBBA will continue to be revised as it heads to the Senate for consideration according to the Congressional Budget Office (CBO), the $1.7 trillion package would increase federal deficits by $367 billion over 10 years. Additionally, the CBO estimated that the IRS enforcement provisions will yield $207 billion in added revenue, which would put the net cost of the measure at a projected $159 billion total over 10 years. Some other key provisions include the following:

Corporate Tax: The BBBA has a corporate alternative minimum tax (AMT) provision which would impose a 15% minimum tax on adjusted financial statement income for corporations with such income over $1 billion to shareholders, while preserving the value of general business credits. This provision would allow applicable corporations an indefinite carryforward of financial statement losses and an indefinite carryforward for an

AMT credit to be claimed against regular tax in future years. Effective date: taxable years beginning after December 31, 2022.

The BBBA also imposes a 1% excise tax on publicly traded U.S. corporations for the value of any of their stock that is repurchased by the corporation during the taxable year. This provision would not apply if no gain or loss is recognized on the repurchase by the shareholder, if the repurchased stock or its value contributes to an employer retirement plan, if the stock's total value during the tax year does not exceed $1 million, or if the repurchase is treated as a dividend. Effective date: on repurchases of stock after December 31, 2021.

Interest Expense of International Financial Reporting Groups: The legislation adds section 163(n), which limits the interest deduction of certain domestic corporations that are members in an international financial reporting group to be an allowable percentage of 110% of the net interest expense. An allocable share of the domestic corporation's net interest expense is the portion of the expense which bears the same ration to the total group expense as the corporation's EBITDA bears to the group's total EBITDA. Effective Date: Taxable years beginning after December 31, 2022.

Outbound International Provisions: The BBBA revises the Section 250 deduction for Foreign-Derived Intangible Income (FDII) to 24.8% which results in a rate of 15.8%. The Global Intangible Low-Taxed Income (GILTI) deduction is reduced by 5%, resulting in a 15% rate. GILTI is also exempt from expense allocation rules. Effective Date: Taxable years beginning after December 31, 2022.

Inbound International Provisions: The Base Erosion and Anti-Abuse Tax (BEAT) is amended to 10% in tax years after December 31, 2021 and before January 1, 2023; 12.5% for tax years after December 31, 2022 and before January 1, 2024; 15% for tax years after December 31, 2023 and before January 1, 2025; and 18% for tax years after December 31, 2024. The increased rate for banks and securities dealers would not apply to any tax year after December 31, 2024 and base erosion minimum tax would be determined without regard to credits. The 3% base erosion percentage threshold would be eliminated except for tax years beginning before January 1, 2024.

Other Business Provisions: The legislation **e**xpands the base of the 3.8% Net Investment Income Tax (NIIT) to apply to active business income for pass-through firms and the active pass-through loss limitation enacted in P.L. 115-97, the Tax Cuts and Jobs Act (TCJA) is made permanent.

Individual Income Taxes: Under this portion of the legislation, House lawmakers have created a new surcharge on modified adjusted gross income (MAGI), defined as adjusted gross income less investment interest expense, equal to 5 percent on MAGI more than $10 million plus 3 percent on MAGI above $25 million. BBBA also extends the American Rescue Plan Act (ARPA, P.L. 117-2) Child Tax Credit (CTC) expansion through 2022, and makes the entire CTC refund permanent. ARPA's temporary expansion of the Earned Income Tax Credit (EITC) eligibility, phase-in rates, and amount is extended through 2022. Limits have been placed on Individual Retirement Accounts (IRAs) contributions when balances reach $10 million and accelerate required minimum distributions for those accounts. Lastly, the SALT deduction cap has been raised from $10,000 to $80,000 and is extended through 2030. This would apply to the 2021 tax year. For 2031, the SALT deduction cap would be set back ~~at~~ to $10,000.

Tobacco/Nicotine Taxes: A provision is included in the BBBA that imposes a new excise tax on "taxable nicotine," which is defined as any nicotine that has been extracted, concentrated, or synthesized. Taxable nicotine is treated as a tobacco product as well as general items that apply to tobacco products. This includes packaging requirements and items related to purchase, receipt, possession, or sale and items related to civil and criminal penalties. Taxed amount is the greater of the value specified for small cigarettes, or $50.33 per 1,810 milligrams of nicotine. Effective Date: 180 days after the enactment of the legislation.

Internal Revenue Service (IRS) Support: $80 billion is provided for the IRS to improve taxpayer services, enforcement, operations support, and system modernization. Of the $80 billion, $15 billion is provided for the IRS to prepare and deliver a report to Congress on development costs and running a free direct efile tax return system. These funds cannot be used to increase taxes on any taxpayer with taxable income below $400,000. Appropriated funds are made available to the IRS until September 30, 2031.

Additional Resources:

- Legislative Text
- Section-BY-Section

For questions, please contact FTA staff

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