



# SCWA Legislative Update

December 6, 2021



## Congress Passes Continuing Resolution Through February 18, 2022

On December 2nd, the Senate passed a Continuing Resolution to fund the government for Fiscal Year 2022 through February 18, 2022, and sent it to President Biden for his signature, thus avoiding a government shutdown.

The House passed the Continuing Resolution earlier in the day.

After the Senate vote, the President signed the bill.

A continuing resolution through February 18<sup>th</sup> doesn't necessarily mean that the government must be funded at last-year's level through February 18<sup>th</sup>. Any appropriations bill enacted after December 2, 2021, and signed by the President, can provide funds for the government at any level Congress stipulates.

This includes the Build Back Better Act, an appropriations bill funding all branches of government for Fiscal Year 2022, which Democrats hope to pass around Christmas time if they can reach agreement with West Virginia Senator Manchin, who is the primary obstacle to agreement.



## What's Happening with the Build Back Better Act?

From a tax viewpoint many of the provisions which would have been so detrimental to small businesses and their owners were removed from the final House version of the BBB. In the final House bill, there was:

- No change to individual tax rates with modified adjusted gross income ("MAGI") of \$10,000,000 or less;
- No change to estate and gift tax exemption amounts or rates;
- No change to grantor trust rules (the original provision would have created havoc with almost all irrevocable life insurance trusts);
- No change to valuation discounts (the original provision would have made it difficult to transfer interests in a cost-effective manner in family LLCs and partnerships from the older to the younger generation);
- Significant surtax increases (especially for non-grantor trusts)
  - Additional 5% on MAGI for individuals in excess of \$10,000,000 (single or

- married filing jointly) and for non-grantor trusts in excess of \$200,000
  - Extra additional 3% on MAGI for individuals in excess of \$25,000,000 (single or married filing jointly) and for non-grantor trusts in excess of \$500,000;
- No change to C corporation tax rates;
- No change to the very important 20% qualified business income deduction under 199A for pass-through entities;
- 3.8% surtax on active business income from pass-through entities such as S corporations and partnerships for the excess over \$400,000 (if single) and \$500,000 (if married filing jointly)—whereas the current 3.8% net investment income tax only applies to passive income;
- IRA provisions back in
  - No IRA contributions for \$10,000,000 retirement plan accounts of applicable taxpayers (\$400,000 single, \$450,000 joint) after 2028
  - For applicable taxpayers (\$400,000 single, \$450,000 joint), Required Minimum Distributions (RMDs) for retirement plan accounts valued at more than \$10,000,000 will have to withdraw 50% of the value over the \$10,000,000 limit. For accounts over \$20,000,000, applicable taxpayers must draw down 100% of any Roth account to bring the value down to \$20,000,000. These provisions are effective as of January 1, 2029
  - No after-tax Roth conversions after 2021 (same as original provision)
  - No Roth conversion for applicable taxpayers after 2031 (same as original provision)
  - One IRA provision is out – IRAs can continue to invest in private equity since the proposed prohibitions against IRAs being invested in assets for accredited investors have been eliminated
- 1202 stock – similar to the original proposal – a retroactive reduction of the 100% or 75% benefit to 50% for individuals with AGI of \$400,000 or more and all non-grantor trusts and estates. Only change from original proposal was to clarify the effective date is “after September 13, 2021.”
- SALT (state and local taxes) deduction up to \$80,000 until 2031 at which point the SALT deduction goes back to the \$10,000 limitation brought in by the Trump tax bill. This is a revenue raiser since the \$10,000 limitation under the Trump tax bill would revert to prior law with an unlimited SALT deduction as of 2026.

Now the action moves to the Senate. It's too soon to judge what the Senate version will look like or even when it will be brought up, however it seems unlikely that any negative tax provisions will come in, particularly with Senator Manchin having the deciding vote. Senator Bernie Sanders (I VT) may have a lot to say - but the Senators who will be most important are Joe Manchin (D WV) and Kyrsten Sinema (D AZ). Based on Senator Manchin's comments, it is likely he will require some of the new social programs be pared back or eliminated which will reduce the cost of the bill. He has specifically mentioned having concerns with the paid leave program in the bill, as well as expanding Medicare, creating a methane emission fee and having a larger tax credit for union-made electric vehicles. Senator Sanders wants to expand the House version which expanded Medicare to cover hearing, to also include vision and dental. This will only happen if Senator Manchin is okay with it which is doubtful. He has already expressed concern that the country cannot pay for Medicare as it stands today let alone expanding it. It is possible that the Senate will cut back the House's SALT provision so it is only available to those taxpayers who are below the \$400,000 filing single and 450,000 filing jointly income thresholds. If the Senate did throw out SALT, it is quite possible that it would be brought back in conference.

Senator Manchin does not seem to be in any rush to bring the bill up until at least the end of the year because of his concerns with parts of the bill, inflation and the Senate's busy schedule, including keeping the government open, raising the debt ceiling and getting a defense bill through. If Senator Manchin stayed with this timetable, then the conference would be in the spring. It is even possible that the Democrats in the Senate will fail to pass the bill. Many anticipate that the Senate will ultimately pass a BBB bill but it will be a skinnier version than the House bill.

You may have noticed that for months Speaker of the House, Nancy Pelosi (D CA), tried to get a bill passed in the House that would be able to get through the Senate unchanged. When it became apparent that to get the infrastructure bill through the House the BBB bill would have to be decoupled from a version acceptable to the Senate, Speaker Pelosi freed the Representatives to pass the version they wanted. The House Democrats know this version will not get through the Senate and basically the House will have to adopt whatever comes out of conference.

It took a lot of work for a number of associations to get rid of the most damaging tax provisions (many of which would have hit upper middle class taxpayers as well as small business owners) to start educating folks on the Hill as well as the other small business associations as to the damage these provisions could wreak. There were also a handful of associations to lead the charge against the potential harmful limitation of the 199A deduction.

It's probably too early to breathe a sigh of relief but we'll know soon enough what the final version of the BBB will look like.



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