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SERVICE STATION DEALERS OF AMERICA AND ALLIED TRADES

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Corporate Transparency Act Preliminarily Blocked by Texas Court

The Corporate Transparency Act (CTA) and its implementing regulations, which require U.S. business entities (mostly small businesses) to report ownership and leadership information to the Treasury Department, were preliminarily blocked nationwide by a Texas federal court last week.

The injunction comes just weeks before the January 1, 2025 deadline for compliance with reporting requirements.

The injunction temporarily bars the Treasury Department from enforcing the reporting requirements at this time, but this does not necessarily mean the CTA is gone. Litigation and appeals are likely to continue, which will cause uncertainty around next steps.

There is a lot to parse here and it is difficult to provide clear advice given the timing and unique nature of a preliminary injunction (compared with a final ruling or permanent injunction).

The Judge's order is attached here for reference.

SSDA-AT has been supporting efforts to repeal/delay the CTA.

Reconciliation Explained

What is Reconciliation?

Reconciliation is a special legislative process created as part of the Budget Act of 1974. It is intended to help lawmakers make the tax and mandatory spending changes necessary to meet the levels proposed in the Congressional budget resolution.

Reconciliation instructions are put forward as part of a concurrent budget resolution that is adopted by both chambers of Congress. These instructions set cost or savings targets for Congressional committees, with instructions covering mandatory spending, revenue, or debt limit changes. Following these instructions, committees of jurisdiction identify specific policies to meet these goals in the form of a reconciliation bill, which can be enacted on a fast-track basis.

A reconciliation bill is privileged in several ways, including a 20-hour limit on debate in the Senate, a non-debatable motion to proceed to the bill, and a germaneness test for amendments.

Most importantly, the limit on debate time and the non-debatable motion to proceed means a reconciliation bill cannot be filibustered in the Senate – allowing the Senate to pass a reconciliation bill by a simple majority, with the Vice President able to cast a tie-breaking vote, rather than needing 60 votes to end debate.

How do Reconciliation Instructions Work?

The budget reconciliation process begins with the adoption of a concurrent budget resolution in both chambers of Congress that includes reconciliation instructions. The reconciliation instructions identify the legislative committee(s) tasked with reconciliation, the dollar amount of budgetary changes that must be achieved over designated time frames (usually the first year of the budget and the five- or ten-year period covered by the budget resolution) that the committee(s) must achieve, and the date by which the committee(s) should report reconciliation legislation.

Reconciliation instructions may also direct the House Ways and Means Committee and the Senate Finance Committee to report legislation to change the limit on the public debt in accordance with the spending levels in the budget resolution.

While budget resolutions often assume and even suggest that committees include specific policies, these suggestions are not binding or enforceable. The budget resolution sets dollar targets, but the committees decide how these targets are met, substantively limited only by their jurisdiction.

Normally, the budget resolution process begins in the House and Senate Budget Committees, which build the resolution, set spending and revenue levels, and draft reconciliation instructions in collaboration with legislative committees. The resolution is then marked up and reported out of the budget committees for consideration on the floor of the House or Senate. In the Senate, consideration of the budget resolution in committee is subject to a theoretically unlimited number of amendments, through a process known as "vote-a-rama." However, if the Senate Budget Committee has not reported out a budget resolution by April 2nd, any senator can introduce their own budget resolution for consideration and amendment on the Senate floor, which is also subject to a vote-a-rama by the whole Senate.

If only one committee has reconciliation instructions, the reconciliation legislation reported by that committee goes directly to the House or Senate floor for consideration. Often, instructions will span multiple committees. In such cases, each committee reports its bill to the Budget Committee, which in turn combines the individual bills into an omnibus measure.

Can a Reconciliation Bill Add to the Deficit?

Reconciliation was designed to bring revenue and spending policies in line with the levels of the concurrent budget resolution, which has generally meant that it was intended to reduce budget deficits. However, a reconciliation bill is technically allowed to either decrease or increase the deficit over the time period covered by the budget resolution. It is also possible for a reconciliation bill to contain provisions with costs as well as savings so long as the net effect complies with the reconciliation instructions.

In 2007, the Senate adopted the "Conrad Rule," which prohibited reconciliation from increasing deficits. However, the Conrad Rule was repealed in the Fiscal Year (FY) 2016 budget resolution (over our objections). Even without the Conrad Rule, reconciliation legislation cannot add more to the deficit than the amount allowed in the instructions under the budget resolution, though there is no limit on how costly these instructions can be.

Reconciliation legislation is also subject to several budget points of order. To avoid a 60-vote point of order, the bill must comply with the spending and revenue levels in the budget and abide by the Senate "pay-as-you-go" (PAYGO) rule, which prevents legislation from adding to deficits. However, these rules can be changed – or exceptions added – in the budget resolution itself. For example, an exemption to Senate PAYGO was written into the FY 2021 budget resolution that provided for reconciliation for the American Rescue Plan.

As with any other bill, deficit increases under reconciliation are subject to the statutory PAYGO law, which does not allow net increases in the deficit over the course of a year or the following five-year and ten-year periods. An exclusion from statutory PAYGO, even as part of a reconciliation bill, would still be subject to a 60-vote point of order.

Statutory PAYGO can be addressed in separate legislation; however, that legislation is subject to a 60-vote threshold. In 2017, for instance, a December continuing resolution enacted on the same day as the 2017 Tax Cuts and Jobs Act removed the tax cuts from the statutory PAYGO scorecard. If PAYGO had not been waived, the resulting sequester would have been large enough to eliminate mandatory programs that are subject to the sequester.

Finally, and in many ways more importantly, provisions in a reconciliation bill that increase the deficit beyond the period covered by the budget resolution are subject to a 60-vote point of order under the "Byrd Rule" unless the costs are offset by savings from other provisions in the same title of the bill.

What is the "Byrd Rule"?

Although reconciliation bills are granted many privileges that are not available to most other legislation, they remain bound by several other restrictions. Some of these restrictions championed by the late Senator Robert Byrd (D-WV) and established in Section 313 of the Budget Act are jointly referred to as the "Byrd Rule." The Byrd Rule disallows "extraneous matter" from being included in a reconciliation bill, chiefly through three major restrictions on reconciliation legislation.
First, reconciliation legislation must only involve budget-related changes and cannot include provisions that have no fiscal impact, that have "merely incidental" fiscal impacts, or that increase the deficit if the committee did not follow its reconciliation instructions. For example, the Byrd Rule kept lawmakers from including a minimum wage increase along with COVID-19 relief in the American Rescue Plan. During the efforts to repeal and replace the Affordable Care Act (ACA), it prevented lawmakers from repealing the individual health insurance mandate or modifying rules on how much health insurance companies could adjust premiums based on age. Even though both policies would have budgetary implications, they were considered "merely incidental" budget effects. Often, policymakers can identify workarounds to these rules; for example, while they could not repeal the individual mandate, they were able to reduce the penalty to $0 and thus effectively eliminate it in the Tax Cuts and Jobs Act.

Second, reconciliation bills cannot change Social Security spending or dedicated revenue, which are considered "off-budget." Non-Social Security policies that indirectly affect benefits or payroll tax revenue do appear to be in order, however.

Finally, provisions in a reconciliation bill cannot increase the deficit in any fiscal year after the window of the reconciliation bill unless the costs outside the budget window are offset by other savings in that committee's section of the bill. This means that, while a reconciliation bill can increase near-term deficits, it must maintain or reduce long-term deficits. Policymakers often achieve this objective through artificial expiration dates that sunset some parts of a reconciliation bill, which may be extended later in separate legislation. Notably, the long-term deficit test does not account for changes in interest payments or indirect effects on Social Security.

The Byrd Rule provides a "surgical" point of order that strikes any provisions in violation without blocking the entire bill. However, the Byrd Rule can be waived with 60 votes. Even though this point of order only exists in the Senate, it de facto governs the House too, given that it can be applied to any conferenced legislation that must pass both chambers in order to become law.

Lawmakers consult with the Senate Parliamentarian to address potential Byrd Rule challenges. Typically, they review provisions with the Parliamentarian before reconciliation legislation comes to the floor so they can fix or drop provisions as needed, a process informally known as the "Byrd Bath."

What are Other Restrictions on Reconciliation?

The Senate Parliamentarian has ruled that a budget resolution can only provide for one reconciliation bill each of revenue, spending, and the debt limit. If a reconciliation bill has both spending and revenue provisions, no other reconciliation bill affecting spending or revenues is allowed under that budget resolution's instructions. A reconciliation bill cannot change the budget process either, for instance by establishing or modifying discretionary spending limits, because the changes themselves must directly affect spending or revenues without relying on subsequent Congressional action. The Senate Parliamentarian has also ruled that a reconciliation bill cannot create or amend any type of fast-track procedure for legislation limiting debate time in the Senate. However, the Senate Parliamentarian has also ruled that lawmakers may pass more than one budget resolution per fiscal year with reconciliation instructions, though the process is arduous and time-consuming because it must follow the regular order of passing a budget resolution without any ways to expedite it.

Additionally, it seems unlikely that reconciliation legislation can be used for specified changes to discretionary spending. This includes the authorization of new appropriations, the passage of appropriations bills themselves, or special one-time appropriations such as those included in 2020 COVID-19 relief bills. In many cases, lawmakers could avoid this prohibition by classifying and structuring discretionary spending as mandatory spending – a strategy that was utilized for COVID-19 relief under the American Rescue Plan that would have likely been covered by discretionary spending programs under other circumstances.

How has Budget Reconciliation Been Used in the Past?

In total, 23 bills have become law through reconciliation, including the 1990 Omnibus Budget Reconciliation Act; the Balanced Budget Act of 1997; the 2001, 2003, and 2017 tax cuts; portions of the Affordable Care Act of 2010; the American Rescue Plan; and the Inflation Reduction Act. Some of these efforts, such as the 1990 and 1993 Omnibus Budget Reconciliation Acts, produced significant deficit reduction (each saved nearly $500 billion over five years), while others, such as the 2001, 2003, and 2017 tax cuts, have increased deficits. We have a published a comparison of pre-2008 reconciliation bills here.

In addition to the 23 enacted reconciliation bills, four reconciliation bills have passed both chambers of Congress but were subsequently vetoed by the President. The most recent veto of a reconciliation bill occurred in 2015, when President Obama vetoed legislation that would have repealed large parts of the Affordable Care Act. A reconciliation bill to repeal parts of the Affordable Care Act in 2017 ultimately failed in the Senate.

Can Reconciliation Be Used to Enact Elements of President Trump's 2024 Campaign Plan?

Some parts of President Trump's 2024 campaign plan could be included in reconciliation legislation, though it is not clear if the plan in full could be enacted using the procedure.

Several of President Trump's tax proposals, such as extension of the Tax Cuts and Jobs Act or imposition of broad-based tariffs, would likely be allowable in reconciliation as long as they comply with reconciliation instructions and do not violate the Byrd Rule. That could include proposals that would exempt certain types of income from payroll taxes, even though doing so would affect revenue coming into Social Security. Because these proposals do not make direct changes to Social Security and instead only indirectly affect Social Security revenues, the Senate Parliamentarian may deem them compliant with the Byrd Rule. Likewise, President Trump could repeal the energy- and environment-related tax credits from the Inflation Reduction Act through reconciliation.

Congress could also enact changes to mandatory spending programs proposed by President Trump in a reconciliation bill so long as they comply with reconciliation instructions, do not violate the Byrd Rule, and do not add to deficits beyond the ten-year window. However, changes to discretionary spending – such as increasing military spending or eliminating the Department of Education – may not comply with reconciliation rules.

The greatest uncertainty around its inclusion in reconciliation legislation surrounds President Trump's proposed changes to immigration. Congress would likely be able to increase funding for border security and immigration enforcement through reconciliation, but it is unlikely that Congress could directly change laws around the immigration process using reconciliation.

Can Reconciliation Legislation Include Budget Process Changes?
The Byrd Rule restriction against provisions that do not directly affect spending or revenues would prohibit most changes to the budget process and budget enforcement rules. Most budget process and budget enforcement provisions do not by themselves

change spending or revenues but rather apply to subsequent legislation that does affect spending and revenues.

As a result, provisions adjusting or extending discretionary spending limits could not be considered because the actual increase or decrease in spending would not occur until subsequent action on appropriations bills subject to the limits occurs. The Byrd Rule also prohibits provisions that exempt the budgetary effects of reconciliation legislation from budget enforcement rules.

How can Congress Pursue a Second Reconciliation Bill in One Year?

Ordinarily, Congress enacts only one reconciliation bill each year based on the budget resolution adopted that year, although it is possible to consider separate bills for revenue, spending, and the debt limit (separate revenue and spending bills were enacted in 1982, 1997, and 2006). It is possible to enact multiple reconciliation bills per year, though it lacks precedent.

Because Congress did not adopt an FY 2021 budget resolution until midway into the fiscal year, they issued one set of reconciliation instructions by passing that budget early in calendar year 2021, resulting in the American Rescue Plan. Congress then adopted an FY 2022 budget resolution in August 2021, which included a different set of reconciliation instructions that paved the way for eventual passage of the Inflation Reduction Act in August 2022. Republicans also took this approach in 2017, when an FY 2017 budget resolution was adopted in January 2017 with instructions used to attempt to repeal parts of the Affordable Care Act (which failed in the Senate) and an FY 2018 budget resolution was adopted in late October 2017 with instructions used to enact the Tax Cuts and Jobs Act.

It is possible that Congress could issue even more instructions by adopting a second budget resolution for each year or a resolution for future years, although those procedures have never been used to enact reconciliation legislation and would significantly break from precedent.

USDOL's Wage and Hour Division announces Notice of Proposed Rulemaking

On December 3, 2024, the U.S. Department of Labor announced a notice of proposed rulemaking (NPRM), Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act that would phase out certificates allowing employers to pay workers with disabilities at wage rates below the federal minimum wage.

Since the Fair Labor Standards Act was enacted in 1938, significant legal and policy developments have expanded employment opportunities and rights for individuals with disabilities.

Expectations and beliefs regarding the employment of individuals with disabilities have evolved and increased opportunities for individuals with disabilities.

With this NPRM, the Department proposes to:

- Cease the Department's issuance of new section 14(c) certificates to employers submitting an initial application on or after the effective date of a final rule.
- Permit existing section 14(c) certificate holders, assuming all legal requirements are met, to continue to operate under section 14(c) certificate authority for up to 3 years after the effective date of a final rule.

If finalized, the Department believes this proposal would increase wages, improving the economic self-sufficiency of these workers. Along with the broader shifts in opportunities for workers with disabilities, this proposal could lead to an increase in the overall labor force participation rate for persons with disabilities.

This proposal would not require impacted workers to leave their current places of employment, nor would it require current section 14(c) certificate holders to amend the type of services that they currently provide.

The Department expects that many workers currently paid under a section 14(c) certificate will be able to transition to full-wage employment, leading to benefits for workers.

For more information on the notice of proposed rulemaking and if you would like to provide a comment, please visit www.regulations.gov. To contact the Wage and Hour Division call toll-free at 1-866-4US-WAGE (487-9243).