NATIONAL ASSOCIATION OF Manufacturers

Budget Reconciliation Summary

On Aug. 7, the U.S. Senate approved budget reconciliation legislation on a party-line vote. The legislation, which passed 51–50 (with Vice President Harris providing the tiebreaking vote), was the product of months of negotiations between Democratic senators following the unveiling last year of the larger, more expansive Build Back Better agenda. The NAM opposed the budget reconciliation bill, which includes tax increases on manufacturers and price-setting measures that will impact pharmaceutical manufacturers' ability to innovate.

The bill that ultimately passed the Senate, however, contained significantly fewer harmful impacts on manufacturers as a direct result of a sustained, broad-based lobbying and advocacy campaign undertaken by the NAM. This campaign was focused strategically on key senators in states like Arizona and West Virginia and included direct advocacy, grassroots activation, earned media and paid media with significant resources spent on television, digital and radio ads and other real-time innovative tactics to influence the debate. The NAM's advocacy led to revisions to the bill's so-called "book tax" that recognize the importance of manufacturers' investments in machinery and equipment.

The budget reconciliation bill also includes clean energy incentives. As Timmons stated, "any desirable elements of this bill can and should be pursued as standalone legislation."

The NAM's advocacy in opposition to the bill continued ahead of the House of Representative's vote on the legislation on Friday, Aug. 12.

Summary of Key Provisions

15% Corporate Alternative Minimum Tax ("Book Tax")

- The legislation creates a new 15% corporate alternative minimum tax in the form of a tax on financial statement income ("book tax") that applies to corporations with a three-year average adjusted financial statement income exceeding $1 billion. Foreign-parented corporations with global income of $1 billion and U.S. income of $100 million would be subject to the tax. A corporation will owe tax under this regime if its book tax liability is greater than its regular tax liability plus the base erosion and anti-abuse tax (BEAT).
- The U.S. Department of Treasury is granted the authority to determine when a corporation is no longer subject to the book tax based on a specified number of consecutive taxable years (as determined by the Treasury) in which the corporation does not meet the income test, as well as the circumstances of the taxpayer.
    - While full expensing, general business tax credits (e.g., the R&D tax credit) and foreign tax credits are income tax concepts, these amounts are allowed as adjustments to a company's book earnings. The bill does allow for accelerated depreciation and full expensing to be used when calculating book tax liability, which is particularly important for manufacturers in reducing tax liability. Financial statement losses can be carried forwarded indefinitely for taxable years ending after Dec. 31, 2019, but cannot exceed 80% of income. A tax credit for prior year book taxes can be applied against regular tax liability provided that the regular tax liability is greater than the book tax liability.

  - Additional provisions address the treatment of specific items for book tax purposes, such as partnership income, certain items of dividend income and defined benefit plans.
  - *Effective Date*: Taxable years beginning after Dec. 31, 2022.

Excise Tax on Stock Buybacks

- The legislation imposes an excise tax equal to 1% of the fair market value of a publicly traded domestic corporation's stock repurchased in a taxable year (unless the total value of repurchases is below $1 million). Certain foreign company stock buybacks are also subject to the tax.
- The amount of repurchases subject to the excise tax can be reduced by new issuances of stock, including to employees. Repurchases are exempt if they are part of a reorganization or if the stock repurchased is contributed to an employer-sponsored retirement plan or employee stock ownership plan.
- *Effective Date*: Applies to share repurchases after Dec. 31, 2022.

Limitations on Excess Business Losses of Noncorporate Taxpayers

- Under current law, the amount of business losses that can be deducted by noncorporate taxpayers is limited to $270,000 for individuals and $540,000 for joint filers; this limit is set to expire after 2026.
- The legislation extends this limitation for two years, through the end of 2028.

IRS Enforcement

- The reconciliation bill provides $45 billion in enforcement funding for the IRS, which cannot be used to increase taxes on taxpayers with income under $400,000.

Prescription Drug Pricing

- A $3 billion program within the Department of Health and Human Services is established to carry out the drug-pricing provisions of the legislation. This new program will determine and lead the direct negotiations of the federal government on behalf of the Secretary of HHS, covering the select drugs offered in Medicare prescription drug programs. HHS will negotiate prices for 10 drugs in 2026 and increase to another 10 drugs in 2027 and further expand in following years to cover more medicines and treatments. The negotiation process is heavily bureaucratic and leaves drug manufacturers little room to negotiate, with stiff excise taxes and penalties for noncompliance, including limitations on administrative and judicial review.

Affordable Care Act Subsidies

- The bill expands expiring Affordable Care Act subsidies for all ACA beneficiaries and extends tax credits to 2025 for taxpayers whose household income exceeds 400% of the poverty line. The NAM strongly opposed the Affordable Care Act in 2010.

Renewable Tax Credits

- The legislation extends production tax credits and investment credits for renewable energy projects through the end of 2025 and expands the types of renewable projects that qualify. Additionally, it reduces the current base credit amount by 80% unless prevailing wage and apprenticeship requirements are met. A new 10% domestic content bonus and a 10%

"energy community" bonus for projects where a former coal mine or powerplant has closed are available. The credit is reduced for tax-exempt bonds.
- New 10% to 20% tax credit bonuses for wind and solar projects supporting low-income, minority and underserved communities are included.

Carbon Capture, Utilization and Storage

- The value of the 45Q credit is increased to $85 per metric ton of CO_2 for disposal, $60 per metric ton for injection or utilization and $180 per metric ton for direct air capture. Additionally, the bill reduces the minimum annual capture thresholds for facilities to qualify.

Nuclear Electricity

- The bill creates a new 45U credit for electricity from a qualified nuclear facility. The base credit is 0.3 cents per kilowatt-hour; a bonus credit rate of 1.5 cents per kilowatt-hour is available if wage and apprenticeship requirements are satisfied.
- The Department of Energy is allocated $700 million to ensure the acquisition, maintenance, procurement and domestic production of high-assay low-enriched uranium.

Clean Fuels

- The legislation extends existing biodiesel, renewable diesel, alternative and second-generation biofuels credits through the end of 2024.
- A new 45V credit for clean hydrogen production pays $0.60 to $3.00 per kg based on the lifecycle carbon footprint of the hydrogen production. The credit is indexed to inflation, and direct pay is available.
- New clean fuels production tax credits are based on the emissions factor of the fuel. The base credit is 20 cents per gallon, up to $1.00 if wage and apprenticeship requirements are met. For sustainable aviation fuel, the base credit is 35 cents, and the bonus credit is $1.75.
- The legislation establishes a new program with $6.2 billion for R&D in sustainable aviation fuels.

Energy-Efficiency Incentives

- Residential Retrofits: Rebates and other incentives for energy audits, product installations and battery storage are included in the bill, as are additional taxpayer deductions for retrofits for energy-efficiency lighting, cooling, ventilation and roof product installations.
- DOE is provided an additional $10 billion in grants for more energy-efficient homes and to support code adoption.

Electric and Clean Vehicle Tax Credits

- The legislation eliminates the current 200,000-vehicle per manufacturer cap, allows fuel cell vehicles to qualify and imposes battery composition, overall cost and income restrictions. The $7,500 credit is dependent on battery component origin, requiring North American sourcing of battery components, starting at 50% and reaching 100% by 2029.
- Qualification for the credit phases out if household AGI is greater than $300,000 for a married couple filing jointly, $225,000 for a head of household and $150,000 for single filers. An $80,000 price limit for vans, SUVs and pickups and $55,000 for light-duty vehicles is established in the bill with the credit expiring on Dec. 31, 2032.

- The legislation expands the credit for zero-emissions charging and refueling infrastructure with a base credit of 6% reimbursement for expenses up to $100,000. It also provides a bonus credit for meeting wage requirements and creates credits for commercial and previously owned clean vehicles.

Green Energy Manufacturing

- The bill extends section 48C qualified advanced energy property credit and provides an additional $10 billion. Taxpayers receive a base rate of 6% reimbursement of the cost, increasing to 30% if taxpayers satisfy prevailing wage and apprenticeship requirements. The provision expands the definition of eligible projects to include energy storage systems and components, electric grid modernization equipment or components, renewable and low-carbon fuels, energy conservation technologies, electric and fuel-cell vehicles, charging and refueling infrastructure, hybrid-vehicle projects and the decarbonization of industrial facilities.
- The legislation establishes the Advanced Manufacturing Production Tax Credit. The credit amount varies for the specific clean energy components or critical minerals produced.
- An additional $500 million to the Defense Production Act for activities related to enhanced critical mineral processing is included.
- DOE is provided an additional $7.8 billion to finance and support advanced manufacturing technologies and $25 billion in loan guarantee authority.

Superfund Tax Expansion

- A tax on crude oil and imported petroleum products is imposed at the rate of 16.4 cents per barrel, indexed to inflation.

Electricity Incentives

- The legislation creates a technology-neutral incentive for emission reductions from electricity production. Facilities qualifying for sections 45, 45J, 45Q, 45U, 48, 48A or 48D are ineligible. The base amount is 0.3 cents per kwh, and an alternative amount of 1.5 cents applies to small facilities or facilities that satisfy prevailing wage and apprenticeship requirements.
- Additionally, an investment tax credit is established for clean electricity or storage facilities that cannot apply for credits under sections 45, 45J, 45Q, 45Y, 48 or 48A. The base rate of the credit is 6% of cost, and the bonus rate is 30% for small facilities or facilities that satisfy prevailing wage and apprenticeship requirements.
- $250 billion in loan guarantee authority and $2 billion in direct loans are included in the bill for builders of transmission lines. $860 million for new transmission siting grants are available to siting authorities to speed permitting.

Energy Leasing

- The legislation rescinds the 10-year moratorium for offshore wind development off the coast of North Carolina, South Carolina, Florida and Georgia as well as U.S. territories.
- The minimum onshore and offshore oil and gas royalty rate is increased to 16.66% of production, up from 12.5%.
- This bill requires the administration to offer 2 million acres of onshore federal land for lease annually, or to couple any wind and solar leases with oil and gas leasing auctions.
- Minimum lease bids are increased in this bill. It also ends noncompetitive leasing, increases annual rental rates for holding a lease, imposes a $5 per acre interest fee for leasing and increases financial requirement threshold for bonding.

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<u>New Climate Regulations</u>

- The legislation provides $27 billion for the EPA to establish a “GHG Reduction Fund” to make grants supporting the deployment of low- and zero-emission technologies.
- A new methane fee for oil and gas operations is included in the bill unless methane rules are in effect in all states. The fee quickly escalates from $900 per ton to $1,500 per ton of emissions by 2026.
- It includes $7.4 billion for new EPA GHG regulations, state grants, monitoring, reporting and enforcement activities.
- Additionally, $4 billion is provided for port electrification, trucking emissions reductions and related programs.
- Significant new funding for the EPA to create carbon footprint requirements for construction materials for federal projects is included in the legislation. Additionally, more than $4 billion is provided for federal procurement of low-carbon construction and transportation materials.