

## Senate Passes Inflation Reduction Act: Latest From the Hill

AUGUST 8, 2022

The Senate has passed the Inflation Reduction Act of 2022 (“Act”), sending the bill to the House, where lawmakers are expected to take up the bill later this week.

The Act’s passage follows a busy weekend on the Hill, which included lawmakers forging ahead with the comprehensive reconciliation bill with formal debate and the Senate voting Sunday 51 to 50 to pass the reconciliation bill, with Vice President Kamala Harris casting the tie-breaking vote.

Since Winston & Strawn last reported on the Act, Senate Democrats removed the widely discussed provision narrowing the application of long-term capital gains rates to carried interest in order to secure the votes for the bill’s passage. In its place, Senate Democrats introduced a new 1% excise tax on stock buybacks expected to take effect on January 1, 2023, as discussed below. In addition, late changes to the bill included an amendment championed by Senator John Thune (R-SD), which modified the aggregation rule under the Act’s to-be-created corporate minimum tax to restrict the application of the tax and the aggregation of income from certain entities commonly owned by investment funds or partnerships.

A detailed discussion of the key tax provisions of the Act can be found below:

## KEY PROVISIONS

### Corporate

- **Corporate Alternative Minimum Tax.** The Act creates a corporate alternative minimum tax (“AMT”) equal to 15% of financial statement income, less foreign-tax credits, that applies to corporate taxpayers meeting an “average annual adjusted financial statement income” test—i.e., the corporate taxpayer’s average adjusted financial statement income for a three-year period exceeds \$1 billion. The Act also contains rules for the computation of financial statement income for the purposes of this determination and authorizes the Secretary of the Treasury to promulgate additional regulations and guidance relating to the effect of these rules.
- **Taxation of Stock Buybacks.** The Act introduces a new 1% excise tax on stock buybacks effective January 1, 2023. The 1% excise tax would be levied on the value of corporate stock buybacks and is expected to raise \$74

billion and offset the revenues projected to be realized from the removed carried-interest provision and from modifications to the Act creating an exemption for depreciation tax deductions from the corporate minimum tax.

## IRS Appropriations and Enforcement

- **Taxpayer Services.** The Act appropriates \$3.18 billion for necessary expenses for the IRS to provide (1) taxpayer services, including prefilling assistance and education; (2) filing and account services; (3) taxpayer advocacy services; and (4) other services.
- The Act appropriates \$45.6 billion for necessary expenses for the IRS to (1) determine and collect taxes, (2) provide legal and litigation support, (3) conduct criminal investigations (including investigative technology), (4) provide digital-asset monitoring and compliance activities, (5) enforce criminal statutes related to violations of the Internal Revenue Code and other financial crimes, (6) purchase and hire passenger motor vehicles, and (7) provide other services.
- **Operations Support.** The Act appropriates \$25.3 billion for necessary expenses relating to supporting IRS operations.
- **Business Systems Modernization.** The Act appropriates \$4.75 billion for necessary expenses relating to the modernization of the IRS, which includes the development of callback technology and other technology for purposes of providing a more personalized customer service.
- **Task Force to Design an IRS-Run Free “Direct File” Tax Return System.** The Act appropriates \$15 million for the IRS to deliver to Congress a report detailing (1) the cost (including options for differential coverage based on taxpayer adjusted gross income and return complexity) of developing and running a free, direct e-file tax return system; (2) taxpayer opinions, expectations, and level of trust for a free, direct e-file system; and (3) the opinions of an independent third party on the overall feasibility and capacity of the IRS to implement an e-file system.
- **United States Tax Court.** The Act appropriates \$153 million for the Tax Court.
- **No Tax Increases on Certain Taxpayers.** The Act states that none of the IRS appropriations listed above are intended to increase taxes on any taxpayers or small business with taxable income below \$400,000.

## Key Takeaways

- The Act, as passed by the Senate, no longer contains previously proposed changes to the taxation of carried interest.
- The Act contains key modifications introduced after recent negotiations with Senator Kyrsten Sinema (D-AZ) and implemented to secure the senator’s vote.
- Bill is expected to be taken up later this week and ultimately sent to President Biden for signature.

Winston & Strawn will continue to monitor any developments relating to the Inflation Reduction Act of 2022.

For further information, please contact the authors or your Winston relationship attorney.

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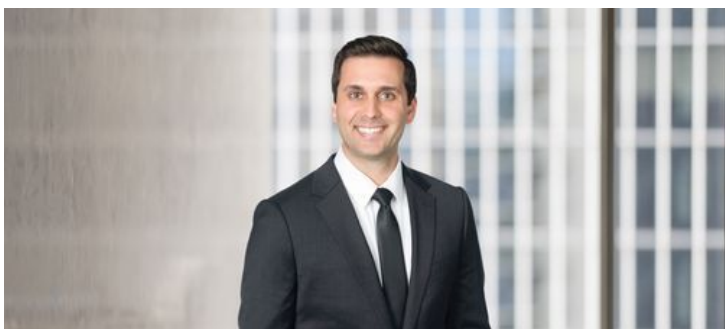
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