



March 2023 Newsletter

From the Executive Director: *Like a Bad Penny, Tax Increase Ideas Keep Surfacing in Washington*

Submission of the President's budget to Congress is an annual ritual that typically occurs this time of year and officially kicks off the Congressional appropriations process. And in keeping with tradition, the Biden Administration unveiled its proposed [Fiscal Year 2024 budget](#) on March 9. As expected, the proposal includes billion-dollar plus increases for most federal agencies and departments. What attracted our attention though is it also includes some hefty revenue raisers on small and medium sized Main Street businesses. Among the more egregious provisions is a proposal to expand the Net Investment Income Tax (NIIT) to include the active income of pass-through business owners. Recall that the original NIIT purposefully excluded the business income of active owners because it was seen as tax on small businesses. The Administration is proposing to reverse course on this front by characterizing this exclusion as a "loophole."

The proposal would increase the NIIT's rate from 3.8 percent to 5 percent. That would raise the top rate paid on all S-Corporation income to 42 percent, or twice the current rate on large public companies structured as C-Corporations. When tax rates are slated to increase in 2026, the top S-Corporation rate would rise to nearly 45 percent. The Joint Committee on Taxation scored the NIIT expansion as raising \$252 billion dollars over ten years. Combined with the scheduled rate increase on S-Corporations in 2026, it is estimated that it would result in tax increase on small businesses that exceeds \$300 billion. The Hardwood Federation signed a letter to Congressional leaders opposing this proposal which may be found [here](#).

Also included within the U.S. Department of Treasury's General Explanations of the Administration's FY2024 Revenue Proposals, colloquially known as "The Greenbook," (a document to explain the revenue proposals included in the President's Budget) there are other proposed revenue raisers that are worth flagging. While there is no proposed elimination of the "stepped up in basis" that was floated during the Build Back Better legislative exercise, the Administration is proposing basically the equivalent. Under the President's budget, any transfer of wealth or assets at death would be characterized as an income recognition event, meaning that the assets would be considered income and be taxed at fair market value. Under current law, taxpayers may transfer wealth at death without triggering income taxes.

The proposal would also impact flow of wealth into or out of a grantor trust. Under the President's budget, any deposits or withdrawals from a grantor trust would be considered a "sale" for income tax purposes and trigger a capital gains tax. Currently, these transactions are tax free.

On the corporate side, the proposal would increase the corporate tax rate to 28 percent from the current 21 percent rate.

It is important to keep in mind that Administration budget proposals are generally messaging documents to signal to Congressional appropriators the President's policy priorities. The divided nature of this Congress with each party maintaining slim majorities in one chamber means these proposed revenue raisers will face stiff headwinds on the Hill. The Federation will, however, be tracking these proposals closely for any traction they may find in the 118th Congress.

In a related development, Rep. Tracey Mann (R-KS) is leading a [resolution](#) in the House to highlight the importance of maintaining stepped up basis for preserving small businesses. The resolution notes that eliminating stepped up basis would threaten the ability of small business owners to make generational transfers of their operations. Rep. Adrian Smith (R-NE), a member of the House Ways & Means Committee, has also lent his name to the resolution.

And one final note on tax policy. Earlier this month, a bipartisan group of Senators led by Senators Maggie Hassan (D-NH) and Todd Young (R-IN) introduced legislation to extend the research and development tax credit that expired last year and expand it to apply to more startups and small businesses. Specifically, the bill would roll back a provision of the Tax Cuts and Jobs Act (TCJA) of 2017 law that, starting in 2022, requires companies to amortize their R&D costs over five years rather than the year in which they are incurred. It would also expand the eligibility for the refundable research tax credit and would gradually raise the cap for that credit for small businesses and startups. Other cosponsors of the bill are Senators Cortez Masto (D-NV), Barasso (R-WY), Sinema (D-AZ), Tillis (R-NC), Feinstein (D-CA), Daines (R-MT), Kelly (D-AZ), Hagerty (R-TN), Murray (D-WA) and Moran (R-KS)

Extending the credit is a top priority of the business community and was in the mix as part of omnibus appropriations bill negotiations late last year, but an agreement could not be reached. Also of note, the Hardwood Federation is working with the National Association of Manufacturers and others to push for legislation that will restore industry's ability to take full advantage the tax break known as the Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) deduction. This covers interest incurred on business loans, a provision which expired last year. Sawmills and other capital-intensive operations rely on EBITDA to raise capital, hire new workers, and expand operations. During the past year, interest rate hikes have led to higher financing costs and are taking a bite out of revenues. Sen. Shelley Moore-Capito (R-WV) is expected to lead the charge on legislation in the near future.

Also in that mix and arguably more important for our sector is extending the 100 percent bonus depreciation benefit of the TCJA. Recall that full expensing ratcheted down to 80 percent at the beginning of this year and is slated to decrease by 20 percent each year until fully phased out in 2027. Legislation has not yet been introduced to extend this benefit retroactively to January 1, 2023, but we know this issue is a priority for House Ways & Means Committee Chairman Jason Smith (R-MO). Advocating for retroactive extension of this critical tax benefit will be a centerpiece "ask" during our fly-in mid-June. As always, the Hardwood Federation team is close to the action on Capitol Hill and will continue to educate lawmakers about the need to preserve

these key tax benefits as well as our concerns with any tax proposal that may affect our businesses or the ability to transfer them to future generations.

Issues:

Federation Steps Up Farm Bill Advocacy, Lobbies for Hardwood Education Program

The HF team has been making the rounds on Capitol Hill to advocate for a [Hardwood Products Access and Development Program](#), focusing on conversations with many House and Senate agriculture committee members and other leaders on industry issues. Recent House side meetings have included HFPAC events with Reps. Chavez-Deremer (R-OR), David Rouzer (R-NC), Mike Simpson (R-ID) and Carol Miller (R-WV). The Federation has also met with key Senate Agriculture Committee members, including the offices of Sens. Ernst (R-IA), Fetterman (D-PA), McConnell (R-KY), Smith (D-MN) and Stabenow (D-MI), who chairs the committee. On the grassroots front, more than 150 members of the hardwood industry have sent letters to their senators urging inclusion of a Hardwood Products Access and Development Program within the 2023 farm bill. If you would like to contact your senators, please click [here](#).

Senate Ag Committee Spotlights Forest Management, Old Growth in 2023 Farm Bill

On March 1, Senate Agriculture Committee Chair Debbie Stabenow (D-MI) and Ranking Member John Boozman (R-AK) conducted a [hearing](#) to review forestry and conservation programs that will be included in the 2023 Farm Bill. That said, lawmakers wasted no time in diving into a detailed discussion on how to reduce wildfires through effective forest management. Industry ally and Ranking Member Boozman asked one of the three committee witnesses, USFS Associate Chief Angela Coleman, about specific ways that the agency could promote wood products to achieve their wildfire prevention goals. Coleman responded that the USFS supports creation of a “healthy timber-producing infrastructure” and more wood innovation grants as pillars for effective land management and wildfire mitigation.

Turning to specific executive action, Ranking Member John Boozman (R-AK) expressed concern over the Biden Administration’s [Executive Order](#) on old growth forests. He characterized USDA’s effort to come up with a universal definition of “old growth” as “an impossible task that will only lead to litigation” that will divert resources “from important forest management activities.” The senator also pointed out that foresters have failed to agree on a universal definition for old growth, stating that the lack of consensus was an “Achilles heel” to the executive order. In August 2022, the Federation submitted comments to USDA urging federal regulators to avoid applying a “one size fits all” definition to old growth.

Sen. Thune (R-SD) Promotes Wood Products, Pushes Forest Management Bill

In addition to exercising oversight over USDA through his role on the Ag Committee, Sen. John Thune (R-SD) is pushing forest management to the forefront of the panel’s agenda by

reintroducing the [Expediting Forest Restoration and Recovery Act](#). To reduce the threat of disease and insect infestations as well as wildfires, this important bill will require the U.S. Forest Service (USFS) to fast-track treatment of more than 70 million acres of federal lands that have been identified as at risk. Pointing out the important role of forest products, Sen. Thune stated that “proactive management plays a critical role in keeping the [forests] healthy and supporting the forest products industry, which supports jobs in rural communities.” In addition to prioritizing treatment of forestland threatened by disease and wildfires, the bill would also require the USFS to publish an annual report detailing the acres that have been treated. The Federation will keep you posted on the bill’s progress as it moves through the Senate.

Bipartisan Senators Move to Establish “Future of Forests” Panel

Also on the forest management front, bipartisan senators are taking forward-thinking measures to map out strategies to improve forest health. In February, Senators Angus King (I-ME) and Roger Wicker (R-MS) introduced a [bipartisan bill](#) to establish an advisory panel to evaluate ways to improve U.S. forest health while reviewing the past contributions and current priorities of the Forest Inventory and Analysis (FIA) program. Working in conjunction with the National Association of State Foresters, the legislation would require the panel to include between 10 and 20 members, composed of experts from state and federal agencies, industry and universities. The bill further requires that the panel convene no later than three months after enactment of the legislation. A path forward for the bill is not certain at this time.

House Forestry Subcommittee Spotlights Farm Bill, Resources for Wildfires

Not to be outdone by their Senate colleagues, on March 8, the House Agriculture Subcommittee on Forestry jumped on the forestry management bandwagon and held its own [hearing](#) to review programs to be authorized in the 2023 Farm Bill. During the panel’s Q&A with stakeholders, Bill Imbergamo, Executive Director of the Federal Forest Resource Coalition, pointed out that most of the wildfires that gripped the country in 2020 and 2021 took place on federal lands. Imbergamo also pointed out that while the Inflation Reduction Act provided significant pots of extra money for the U.S. Forest Service (USFS), policy makers should make sure that funds are more closely “aligned with the agency’s budget structure.” This would place the USFS in a more pro-active posture, including promotion of timber harvesting and pest and disease control, to mitigate wildfires.

USFWS Issues “Framework” for Compliance with New NLEB Rule

On January 30, the U.S. Fish and Wildlife Service (USFWS) [extended](#) the effective date of the final rule reclassifying the northern long-eared bat (NLEB) from threatened to endangered for an additional 60 days, through March 31, 2023. In an effort to ease the transition to the new NLEB rule, the USFWS is offering tools for stakeholders, including an Interim Consultation Framework, that will provide guidance through March 31, 2024. The guidance will focus on projects taking

place within the northern long-eared bat's 37-state range. For more information on the NLEB and its new classification, please click [here](#).

Congress Moves to Rescind Biden Administration's New WOTUS Rule

On March 29, the Senate passed a largely symbolic "[Resolution of Disapproval](#)" under the Congressional Review Act (CRA) to rescind the Biden Administration's "Waters of the United States" (WOTUS) rule that expands the scope of Clean Water Act permits for logging and other agricultural activities. The Senate adopted the resolution by a vote of 53 to 43, sending the measure to the President's desk, where he is expected to veto the resolution. On March 9, the House passed the measure by a vote of 227 to 198.

Coalition Advocates for Expedited Labor Talks for West Coast Ports

On March 24, the Hardwood Federation joined a coalition of more than 200 industry groups in a [letter](#) to President Biden urging completion of a final agreement between dock workers and Pacific maritime ports. As reported earlier, the maritime port labor contract expired in July 2022, adding uncertainty to ongoing supply chain disruptions and bottlenecks at the west coast ports. Industry urges the Administration to continue to engage both parties in productive talks to avoid a strike, while pointing out that many stakeholders have already shifted cargo to other ports, bypassing the west coast altogether.

Mark Your Calendar! The Federation Fly-In is Back, June 13 – 15, 2023
To sign up and reserve your room, please click [HERE!](#)