



March 18, 2021

The Honorable Janet Yellen
United States Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Sent by USPS

Dear Secretary Yellen:

The American Rescue Plan Act of 2021, which became law when President Biden signed H.R. 1319 on March 11, will provide approximately \$350 billion to state and local governments to mitigate the economic impact of the pandemic. Section 602(c)(2)(A) restricts states from using the funds “to either directly or indirectly offset a reduction in the net tax revenue” of the state. We write to you to ask for greater clarification on how this provision of the bill will be interpreted and enforced.

Our organizations collectively represent the taxpayer communities of seventeen U.S. States, and we work to educate and inform taxpayers about technical state and local tax policy developments in our respective states.

Before adoption of the American Rescue Plan, some of our state and local governments were considering comprehensive tax reform, routine conformity to federal income tax provisions (including exclusion of PPP loan forgiveness from income taxation), revenue-neutral tax packages, and other state legislation that could have the impact of reducing net tax revenue.

Section 602(c)(2)(A) has created significant uncertainty as our states have begun to evaluate these and other tax policy decisions and how to consider utilizing funds provided by the

American Rescue Plan. Specifically, the bill specifies that a state shall not either “directly or indirectly offset a reduction in the net tax revenue” through “a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.” Some of the issues we are seeking clarification on include:

- For purposes of Sec. 602(c)(2)(A), what is the difference between a direct versus indirect offset? How will Treasury define “indirectly” offsetting a tax reduction? For example, if a state had previously planned an income tax reduction prior to passage of the act, will the state be limited in any way from covering allowable expenses from the fund?
- If a state has a surplus in budget funds now or in future years and enacts a change that results in a net revenue reduction, how will Treasury determine if an indirect offset occurs?
- Does a net tax revenue reduction include: changes in regulation or administrative interpretations, a delay in imposing a tax, or a delay in imposing a tax increase? (For example, court rulings may require state tax administrators to reinterpret state statutes.)
- If a state conforms to provisions of the American Rescue Plan that waive any tax payment associated with receipt of unemployment compensation, would Treasury withhold or recoup funds?
- If a state conforms to provisions of the Consolidation Appropriations Act of 2020 (for example, the non-Internal Revenue Code provisions that allow for deductions of expenses associated with a forgivable PPP loan), will Treasury withhold or recoup funds if the legislation enacting the conformity is signed after March 3, 2021?
- If a state delays tax collections because of a delay in federal tax filing dates (or state specific issues, such as delaying deadlines for certain taxpayers during a natural disaster such as hurricanes or wildfires, will Treasury withhold or recoup funds?
- Will Treasury withhold or recoup funds from a government if a state provides tax relief for low-income communities (such as establishing, expanding, or extending the planned termination date of an Earned Income Tax Credit program)?

As our states start to initiate economic recovery plans to bounce back from the economic downturn caused by the COVID-19 pandemic, policymakers need to understand how Section 602(c)(2)(A) will be interpreted by the United States Treasury.

We urge you to provide guidance for state and local governments, and for the taxpayers who ultimately will be affected, at your earliest convenience.

Immediate resolution of how revenue reductions will be treated will eliminate uncertainty facing our states. For some of our states, non-controversial tax policy decisions are on hold because it is unknown how the U.S. Treasury will interpret the American Rescue Plan.

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Since there could be many reasonable interpretations of the language in section 602(c)(2)(A), further guidance is essential. We know that your department will be working diligently to interpret this law and promulgate any related rules and regulations.

Thank you for considering our comments.

Sincerely,

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Arizona Tax Research Association

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California Taxpayers Association

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CC: President Joe Biden
Vice President Kamala Harris
U.S. House of Representatives
U.S. Senate