



States Challenge Tax Cut Offset Provision in the American Rescue Plan

The American Rescue Plan (ARP) Act of 2021 includes the establishment of a [State Fiscal Recovery Fund](#) which **appropriates \$219.8 billion** to states to address the continued economic effects caused by the COVID-19 pandemic. One of the [restrictions](#) established in the ARP is that states shall not “...either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from 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”.

In response, states are seeking clarification from the Treasury Department as to the interpretation of this provisions. On May 16, 2021, 21 state attorneys general issued a [letter](#) to Treasury Secretary Janet Yellen asserting the language “...could be read to deny States the ability to cut taxes in any manner whatsoever—even if they would have provided such tax relief with or without the prospect of COVID-19 relief funds”.

Secretary Yellen in a [letter](#) dated March 23, 2021, wrote to the attorneys general that “...it is well established that Congress may place such reasonable conditions on how States may use federal funding” and that “...nothing in the Act prevents states from enacting a broad variety of tax cuts”. Secretary Yellen further stated that “...if States lower certain taxes but do not use funds under the Act to offset those cuts...the limitation in the Act is not implicated.”

The Treasury Department is in the process of developing further guidance for the provision in the ARP, including the issue of tax cut offset restrictions. Some state attorneys general, however, have filed suit against the Treasury Department to seek an injunction against the “tax mandate”.

Uncertainty regarding this language was a topic of conversation during a recent appearance by research analysts of The Council of State Governments (CSG) before the Alaska House of Representatives Finance Committee.

CSG will continue to monitor the developments related to the issue of the tax offset language in the American Rescue Plan and update this brief accordingly.

Treasury Guidance:

- [April 7th, 2021](#): Changes to State Income Tax to Conform with Federal Income Tax Law

State Lawsuits:

- [West Virginia, Alabama, Arkansas, Alaska, Florida, Iowa, Kansas, Montana, New Hampshire, Oklahoma, South Carolina, South Dakota, Utah](#)
- [Ohio](#)
- [Missouri](#)
- [Arizona](#)
- [Kentucky, Tennessee](#)