

## Litigation Funding Dodges Tax Bullet in Big Beautiful Bill

By Robert W. Wood

However, as the sausage was being made, the excise tax morphed materially. First, the Senate bill proposed to reduce the withholding rate to 15.9%. That would have meant that, under a typical gross-up provision, a law firm would have been contractually obligated to increase its payments to the funder by 18.9%. That was an improvement over the 25.6% that would have been necessary under the House bill.

Significantly, the Senate version also changed the amount to which the withholding rate would apply. The original Tillis bill required withholding on the full gross amount of each payment to the funder. The updated Senate bill required withholding only on the amount representing “qualified litigation proceeds,” which is defined as the funder’s profit from the transaction.

However, the bill the Senate just passed and sent to the House does not include it. The Senate parliamentarian ruled that the new litigation funding tax could not be included in the reconciliation process because it was a regulatory provision with only incidental revenue effects. So, the provision is probably dead for now, even if the House wants to revive it.

Even so, some funders have already said they expect the provision in one of its guises to rear its head again in future legislation. The excise tax on funders—with withholding tax enforcement on lawyers—was intended in part to curb litigation. A long list of companies was firmly behind the proposed tax and some have powerful lobbyists. Therefore, beautiful or not, stay tuned.

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