

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

STATE OF OHIO,

Plaintiff,

v.

JANET YELLEN, in her official capacity
as Secretary of the Treasury, *et al.*,

Defendants.

Case No. 1:21-cv-00181-DRC

District Judge Douglas R. Cole

NOTICE OF INTERIM FINAL RULE

Defendants submit this notice to inform the Court that the Treasury Department has now issued an Interim Final Rule implementing the relevant portions of the American Rescue Plan Act of 2021, including the offset provision – challenged by Ohio’s pending preliminary-injunction motion – that prohibits States from using Rescue Plan funds “to either directly or indirectly offset a reduction in the net tax revenue . . . resulting from” changes in state law. 42 U.S.C. § 802(c)(2)(A). The Rule, attached as Exhibit A for the Court’s convenience, has been submitted to the Office of the Federal Register (OFR) for publication in the Federal Register. *See* U.S. Department of the Treasury, *Coronavirus State and Local Fiscal Recovery Funds* (last visited May 10, 2021), <https://go.usa.gov/xH7dA>.

The Rule provides a comprehensive framework for implementing the offset provision, Ex. A at 81-96, and explains that “[a] recipient government would only be considered to have used [Rescue Plan] Funds to offset a reduction in net tax revenue resulting from” changes in state law “if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the [Rescue Plan] Funds to offset the

reduction in net tax revenue.” Ex. A at 81–82. Under the Act, and now the Rule, a State is free to modify its taxes as it believes appropriate, as long as the changes—taken together over the reporting period—do not result in a reduction to the State’s net tax revenue. *See* Defs.’ Opp’n 17, 21–23, ECF No. 29; Ex. A at 83–84 (“If the recipient government’s actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.”). A State is also free to lower its net tax revenue, as long as it does not use the Rescue Plan funds to offset—pay for—that reduction. *See* Defs.’ Opp’n 17–18, 21–23; Ex. A at 82 (recognizing “three sources of funds” that may be used as permissible offsets: “organic growth, increases in revenue (e.g., an increase in a tax rate), and certain cuts in spending”). And even if a State uses Rescue Plan funds to offset a reduction in net tax revenue, the only consequence would be to lower the amount of its federal grant by the amount of the offset. *See* Defs.’ Opp’n 17–18; Ex. A at 94.

While the Act itself provided more than clear notice of the funding condition at issue, Defs.’ Opp’n 21–23, Treasury’s comprehensive framework has now implemented the plain language of the offset provision by establishing a “step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue.” Ex. A at 83; *id.* at 85–94. In doing so, both the Act and the Rule simply ensure that Rescue Plan Funds “are used in a manner consistent with the statute’s defined eligible uses and the offset provision’s limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.” Ex. A at 85.

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