Smith-Wyden tax package includes business tax relief, child tax credit enhancements, and more

After months of behind-the-scenes negotiations, House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., announced an agreement on a bipartisan tax relief package on January 16 that, as expected, includes temporary provisions that would reverse several taxpayer-unfriendly business provisions enacted in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) and enhance the current-law child tax credit.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/The-Tax-Relief-for-American-Families-and-Workers-Act-of-2024-Technical-Summary.pdf
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Other provisions in the agreement call for reducing double taxation on Taiwanese companies operating in the US, expanding affordable housing incentives, providing tax relief for victims of certain natural disasters, and increasing the dollar-amount thresholds that trigger filing requirements for filing certain information returns.

The proposal also includes provisions that would modify the pandemic-era employee retention tax credit to crack down on perceived abuses in the program. These revenue raisers are intended to ensure that the overall package does not increase the deficit, although as of press time an official score from the Joint Committee on Taxation was not yet available.

Undoing TCJA changes

The Smith-Wyden legislation would reverse—through 2025—three significant revenue-raising provisions in the Tax Cuts and Jobs Act that have recently taken effect and that many in the business community contend are impediments to innovation and growth.

Treatment of research expenditures: The proposal would delay mandatory capitalization of research expenditures under section 174—for domestic expenditures only—retroactive to expenses paid or incurred after December 31, 2021. (The TCJA requires domestic expenses to be amortized over five years beginning in 2022.) The proposal does *not*, however, modify the current-law treatment of expenditures incurred for research conducted abroad. Those costs still would have to be amortized over 15 years as enacted in the TCJA.

Bonus depreciation: The proposal would reinstate 100 percent bonus depreciation retroactive to January 1, 2023. (Under the TCJA, the bonus depreciation rate phased down to 80 percent in 2023 and 60 percent in 2024.)

Business interest expense limitation: The proposal also would reinstate the allowance for depreciation and amortization for the 30 percent limitation on interest deductions, retroactive to January 1, 2023, and, if elected by the taxpayer, retroactive to January 1, 2022.

Section 179 small business expensing cap: For property placed in service in taxable years beginning after December 31, 2023, the proposal would increase the amount of investment that a small business can immediately write off to $1.29 million, an increase above the $1 million cap enacted in 2017. That $1.29 million figure would also be adjusted for inflation after 2024.

Child tax credit enhancements

The proposal would make the child tax credit more generous—a key priority of congressional Democrats—by permitting the refundable portion of the credit to be calculated on a per-child basis, gradually increasing the overall limit on refundability, allowing parents to use prior-year income to qualify for the credit, and indexing the maximum credit amount for inflation.

These provisions, although significant, stop short of the enhancements Democrats made as part of the pandemic-era American Rescue Plan (P.L. 117-2), which applied only for tax year 2021. Under that law, the credit was increased from $2,000 per child to $3,600 per child up to age 5 and $3,000 for children up to age 17. For that year only, the credit was also made fully refundable (rather than partially refundable, depending in part on an individual's earnings, as under current law); moreover, many taxpayers could elect to receive the benefits as advanceable monthly payments rather than waiting to claim them when filing a tax return in the following year.
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf

US-Taiwan double taxation relief

The proposal also incorporates legislation approved by the House Ways and Means Committee late last year that is intended to relieve double taxation burdens on Taiwanese companies operating in the United States.

At a high level, the proposal would provide benefits for income from US sources earned or received by qualified residents of Taiwan, including reduced tax rates, taxation of only that income effectively connected with a US permanent establishment, and preferential treatment of wages and related income earned by qualified residents. It also would authorize the president to negotiate additional tax benefits between the US and Taiwan subject to certain limitations.

These provisions reflect the fact that the US cannot sign a tax treaty with Taiwan because of the "One China" policy, under which the US recognizes the People's Republic of China (PRC) as the sole legal government of China, therefore maintaining formal relations with the PRC and only unofficial relations with Taiwan.

The provisions in last year's Ways and Means legislation and in the Smith-Wyden proposal reflect a compromise agreement reached last year by the Senate Finance Committee and the Senate Foreign Relations Committee, which both have jurisdiction over the issue on that side of the Capitol. (For additional background and details, see *Tax News & Views*, Vol. 24, No. 40, Dec. 1, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231201_2.html

Affordable housing tax incentives

The proposal would enable states to allocate more credits for affordable housing projects by increasing the low-income housing tax credit ceiling for calendar years 2023 through 2025 (effective for taxable years beginning after December 31, 2022) and reducing the bond-financing threshold under the credit to 30 percent for projects financed by bonds with an issue date before 2026.

Disaster tax relief

The proposal would provide tax relief for victims of certain federally declared disasters by (1) extending temporary taxpayer-favorable rules for deducting certain personal casualty losses related to major federally declared disasters that were last renewed in the Consolidated Appropriations Act, 2021 (P.L. 116-260) and are now expired, (2) providing an exclusion from gross income for amounts received as qualified wildfire relief payments, and (3) treating payments received by individuals incurring damages or losses related to last year's train derailment in East Palestine, Ohio, as qualified disaster relief payments for purposes of section 139(b) and therefore excludable from gross income.
URL: https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf

Increased reporting thresholds for Forms 1099-NEC and 1099-MISC

The proposal generally would increase the threshold for payments by a business for services performed by an independent contractor or subcontractor and for certain other payments to $1,000 (from $600) and adjust it for inflation after 2024. The new threshold would be based on payments during the calendar year and would apply to payments made after December 31, 2023.

Employee retention tax credit

The proposal includes revenue-raising provisions to address perceived fraud in the pandemic-era employee retention tax credit (ERTC) program. Notably, it would accelerate the deadline for filing additional claims for the credit to January 31, 2024. (The current deadline for claiming the ERTC is April 14, 2024 for tax year 2020, and April 15, 2025 for tax year 2021.) It also would impose new reporting requirements and restrictions on promoters of the credit and would extend by one year the statute of limitations for the IRS to assess penalties on improper ERTC claims.

Next steps

It currently is unclear exactly how the agreement will move through the House and Senate. Finance Committee Chairman Wyden has indicated that he would like to see the measure signed into law before the start of the filing season for tax year 2023 on January 29, although there are doubts that such a timeline is realistic given that lawmakers' immediate priority is to move a continuing resolution (CR) to fund federal government operations before the current stopgap measure keeping the one tranche of federal departments and agencies operating expires in just three days, on January 16. (Funding for the second tranche of departments and agencies expires on February 2 under the current CR.)

House and Senate leaders have agreed on a plan for another short-term “laddered” CR with deadlines of March 1 and March 8. That legislation is expected to be taken up in both chambers in the coming days.

House Speaker Mike Johnson, R-La., conceivably could move the tax package through his chamber as a stand-alone bill, likely by invoking an expedited process known as “suspension of the rules” that provides for limited debate, no amendments, and a two-thirds vote for passage (rather than the usual simple majority that is needed to pass legislation under a “rule”). He has not publicly committed to that strategy, however, and there is no similar path forward available in the Senate.

Assuming the two chambers can agree on funding government operations ahead for fiscal year 2024 of what likely will be the new deadlines in March, lawmakers could conceivably look to attach the emerging tax agreement to the larger appropriations package. But Smith and Wyden may have to resolve certain issues with the proposal itself before they can focus on a legislative vehicle for advancing it. For example, some lawmakers who support the ERTC may object to accelerating the deadline for filing claims since it could adversely affect taxpayers making legitimate claims for the credit. It’s also worth noting that not all taxwriters currently appear to be on board with the package as released. Senate Finance Committee ranking member Mike Crapo, R-Idaho, called the framework a “thoughtful starting point” on January 16 but stopped short of offering his support for the current package. For his part, House Ways and Means Committee ranking member Richard Neal, D-Mass., who recently has signaled his concern that the proposed child tax credit enhancements may be insufficient, had not publicly commented on the proposal as of press time.

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