Fiscal cliff in 2025 looms large in JCT's latest expiring provisions list

A slew of temporary tax provisions set to lapse after 2025—many of which were enacted in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97)—accounts for more than 40 percent of the 89 tax "extenders" that are scheduled to expire between 2024 and 2034, according to a recently released report from the Joint Committee on Taxation (JCT) staff.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf
URL: https://www.jct.gov/publications/2024/jcx-1-24/

A reckoning for the TCJA

The Tax Cuts and Jobs Act moved through a Republican-controlled Congress in 2017 under budget reconciliation rules which, among other things, prevented the measure from increasing federal deficits outside of the 10-year budget window (at that time covering 2018 through 2027). To meet that constraint, lawmakers designed the net $1.3 trillion package to provide a mix of permanent tax cuts (generally focused on businesses) and temporary relief (generally focused on individuals and passthrough entities). As a result, under the measure as enacted, the bulk of the provisions on the individual side of the code (including for passthrough entities) are in effect only through 2025. Some of the headline tax relief provisions that are set to lapse include reduced tax rates on ordinary income; repeal of what's known as the "Pease" limitation on itemized deductions; increases in estate and gift tax exemption amounts, alternative minimum tax exemptions, the standard deduction, and the child tax credit; and the 20 percent deduction for certain passthrough business income.

Other notable TCJA provisions that are scheduled to sunset after 2025 include the higher deduction percentages for global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII), the limitation of the deduction for state and local taxes (SALT), and the repeal of the personal exemption.

That list could grow if Congress adopts provisions in the bipartisan tax package released this week by House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., that would renew expensing of some research expenditures and a more generous limitation on business interest deductibility (both of which have now lapsed under the TCJA) and reinstate 100 percent expensing of certain capital investments (which, as enacted in the TCJA phased down to 80 percent in 2023 and 60 percent in 2024). As currently proposed in the Tax Relief for American Families and Workers Act of 2024 (H.R. 7024), those tax relief provisions also would expire at the end of 2025. (See separate coverage in this issue for additional discussion of that proposal.)
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/H.R.-7024-Bill-Text.pdf

Making the upcoming cliff even more precipitous is that fact that several significant non-TCJA tax incentives—such as lookthrough treatment of payments between certain related controlled foreign corporations, the new markets tax credit, the work opportunity tax credit, accelerated cost recovery for motorsports entertainment complexes, expensing of certain qualified film and live theatrical production costs, and the employer credit

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under section 45S for paid family and medical leave—that were renewed for five years under an omnibus tax-and-spending package enacted in December of 2020 are also scheduled to expire at the end of 2025.

The future of the TCJA tax cuts is likely to frame much of the tax policy debate ahead of the presidential and congressional elections this November. Republican candidates likely will push for long-term—or even permanent—extensions of the expiring provisions. Democratic candidates, meanwhile, are likely to contend that the TCJA's tax benefits should be extended only for less affluent taxpayers (such as those with incomes below $400,000, the threshold often cited by the Biden administration) or be allowed to lapse.

Two tranches of Inflation Reduction Act clean energy incentives

The Inflation Reduction Act of 2022 (P.L. 117-169)—the roughly $740 billion tax-and-spending package that moved through a Democratic-controlled House and Senate under fast-track budget reconciliation rules in the 117th Congress—will come in for its own reckoning with the scheduled sunset of 14 clean energy tax incentives in 2024 and another 12 in 2032. These provisions generally are intended to reduce consumer energy costs, increase domestic energy security and manufacturing, and reduce greenhouse gas emissions. Some of these are new incentives that were created in the Inflation Reduction Act, while others were available under prior law but were extended—and in some cases enhanced—under the reconciliation measure.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Provisions expiring in 2024 include, among others, the beginning-of-construction date for renewable power facilities eligible to claim the renewable electricity production credit or the investment credit in lieu of the production credit; the beginning-of construction date for the increased credit for business solar property and the credit for fiber-optic solar property, fuel cell property, microturbine property, geothermal property, combined heat and power system property, small wind energy property, and waste energy recovery property; and incentives for biodiesel and renewable diesel, sustainable aviation fuel, and alternative fuel and alternative fuel mixtures.

Among the provisions sunsetting in 2032 are credits for carbon oxide sequestration; alternative fuel refueling property; nonbusiness energy property; clean hydrogen production; zero-emission clean nuclear production; advanced manufacturing production; energy-efficient home improvements; and for new clean electric vehicles, previously owned electric vehicles, and commercial electric vehicles.

A detailed discussion of all the clean energy tax provisions in the Inflation Reduction Act is available from Deloitte Tax LLP.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/inflation-reduction-act-2022-clean-energy-incentives.html

As is the case with the TCJA expiring provisions, support for or opposition to many of these incentives—particularly those targeted to clean energy products and projects—is likely to break largely along party lines. In this instance, Democrats are expected to back long-term or permanent extensions while most Republicans are expected to call for allowing them to expire or even repealing them ahead of their sunset dates.

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Other highlights

Airport and Airway Trust Fund excise taxes are set to expire in a matter of weeks—on March 8 of this year—after Congress approved a short-term extension late last month.

Examples of other provisions that are due to lapse in the coming years include the advanced manufacturing investment credit, bonus depreciation, and the election to invest capital gains in an opportunity zone (in 2026); Highway Trust Fund excise taxes and the limitation on excess business losses for noncorporate taxpayers (in 2028); Superfund excise taxes (in 2031); and the residential clean energy credit and the beginning-of-construction date for the increased geothermal heat pump property credit (in 2034).

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