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House OKs permanent research credit; Obama administration threatens veto

Legislation to permanently extend the research and experimentation tax credit cleared the House of Representatives on May 20 by a vote of 274-145. Support did not fall entirely along party lines, with 37 Democrats breaking ranks to vote "aye"; however, the bill, which includes no revenue offsets, faces an uncertain future in the Senate and a veto threat from the Obama administration.

American Research and Competitiveness Act

The American Research and Competitiveness Act of 2015 (H.R. 880), which the Ways and Means Committee approved on February 12, would make permanent a modified version of the now-expired alternative simplified method for calculating the research and experimentation tax credit effective for tax years beginning after December 31, 2014. Going forward, the credit would equal:

- 20 percent of qualified research expenses for the tax year that exceed 50 percent of a taxpayer's average qualified research expenses in the three preceding tax years, plus
- 20 percent of basic research expenses for the tax year that exceed 50 percent of a taxpayer's average basic research expenses in the three preceding tax years, plus
- 20 percent of all expenses (without regard to a base amount) paid to an energy research consortium for research conducted for the taxpayer.

A taxpayer that has no qualified research expenses in any of the preceding three tax years would be permitted to claim a reduced research credit at a rate of 10 percent.

The traditional 20 percent credit that was calculated using a base period would be repealed.

The legislation also would provide that in the case of an eligible small business (as defined in section 38(c)(5)(C)) the research credit determined under section 41 for taxable years beginning after December 31, 2014, is a specified credit and thus may be used to offset both regular and alternative minimum tax liability.

According to estimates from the Joint Committee on Taxation (JCT) staff, the bill would reduce federal revenues by $181.6 billion over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4784

Precursor to tax reform?

Passage of a permanent research credit furthers efforts by House Ways and Means Committee Chairman Paul Ryan, R-Wis., to pave the way for tax reform by embedding certain key extenders into the permanent budget baseline and thereby lower the long-term cost of a revenue-neutral overhaul of the tax code. (Former Ways and Means Committee Chairman Dave Camp, R-Mich., adopted a similar strategy in the 113th Congress after it became clear that House Republican leaders would not allow him to bring his comprehensive tax reform discussion draft up for a vote in the committee or on the House floor.)

Ways and Means Committee member Kevin Brady, R-Texas, who sponsored H.R. 880, stated during floor debate that its passage would mark "a critical step" toward tax reform, explaining that "by taking a provision that has been temporary far too long and making it a permanent part of our tax code…we can invest in research with certainty [and] have honest scorekeeping in our budget…."

But Ways and Means ranking Democrat Sander Levin of Michigan contended that although Democrats supported the research credit, they were unwilling to make it permanent without revenue offsets and without also addressing key middle-class tax extenders that would expand the earned income tax credit, the child tax credit, and the American Opportunity Tax Credit.

"Today's R&D bill is tax reform in reverse," Levin said.

Since the 114th Congress convened in January, the House has approved – without offsets – permanent extensions of the deduction for state and local general sales taxes in lieu of the deduction for state and local income taxes, increased small-business expensing limits under section 179, tax relief provisions targeting S corporations, and tax incentives to promote charitable giving.

Future prospects in doubt

H.R. 880 now heads to the Senate, where its prospects for moving forward are uncertain. Although it likely would find a receptive audience among the Republican majority in the Senate, its lack of offsets could prompt challenges from Democrats, who control enough seats in that chamber to keep legislation locked in procedural limbo. In addition, Finance Committee Chairman Orrin Hatch, R-Utah, has not yet indicated how – or when – he intends to address extenders legislation this year.

For its part, the White House, which has routinely promised to veto other unpaid-for permanent extenders bills, stuck to that position in a May 19 statement of administration policy, arguing that “H.R. 880 violates the very standard that House and Senate Republicans approved less than a month ago in their concurrent budget resolution, which requires offsetting the cost of any tax extenders that are made permanent with other revenue measures.”
URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr880r_20150519.pdf

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Lawmakers moving toward two-month, unoffset highway patch

With the Highway Trust Fund running low on cash, Congress is expected to clear a two-month extension of the program – without revenue offsets – before leaving for the week-long Memorial Day recess. The short-term fix was approved in the House on May 20 by a vote of 387-35 and was on track to clear the Senate at press time.

The action pushes further decisions on funding until the end of July. (The trust fund’s spending authority expires on May 31, although the fund currently is projected to remain solvent until sometime in July.)

The decision to move an unoffset, two-month patch marks a change in course for House Ways and Means Committee Chairman Paul Ryan, R-Wis., and Senate Finance Committee Chairman Orrin Hatch, R-Utah. Hatch had indicated on May 13 that he and Ryan had tentatively identified the estimated $11 billion in revenue offsets needed to keep the Highway Trust Fund operating through the end of this year. But that plan subsequently was scrapped because of a lack of bipartisan consensus on the pay-fors.

No clear path on long-term funding

There are myriad views in Congress on the long-term future of infrastructure funding. In principle, there is broad agreement that a six-year highway bill would be optimal for planning and certainty; but such legislation would require additional trust fund receipts beyond those projected under current law, and the potential source of this funding is where agreement breaks down. An increased gas tax (or “user fee,” as some legislators call it) would provide the most predictable – and directly relevant – revenue stream, but leaders in both the Senate and House have flatly stated that they will not hold a vote on a gas tax hike this year.

The latest idea being discussed – by lawmakers such as House Majority Leader Kevin McCarthy, R-Calif., as well as by White House officials – is to use revenues from international business tax reform to pay for a large transit bill. Some have suggested that a shift from the current worldwide system towards a territorial regime for taxing foreign-source income of US multinationals would create a one-time revenue increase resulting from a “deemed repatriation” that could be paired with the Highway Trust Fund later this year.

Another approach, recently floated by Senate Republican Conference Chairman John Thune of South Dakota, would link long-term transportation funding to the renewal of expired tax extenders provisions.

Hatch and Ryan have so far not signaled how they intend to address a long-term funding fix, although both in the past have rejected calls to pay for highway spending through a stand-alone tax on repatriated foreign earnings that is not tied to broader tax reform.

In comments to reporters this week, Hatch appeared skeptical that highway funding would be linked to tax reform.

"It's certainly a way we could get there but we're not even near doing tax reform at this point. …I don't think tax reform as a practical matter is going to be part of [highway funding] as of right now, but who knows by the end of the year," he said.

For his part, Ryan discussed the Ways and Means Committee's plans to move limited business tax reform and extenders legislation this year during a May 19 speech to the American Institute of Certified Public Accountants, but did not specifically mention either as a vehicle for highway spending. (See related coverage in this issue.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150522_3.html

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Ryan lays out agenda for limited tax reform, early action on extenders

House Ways and Means Committee Chairman Paul Ryan, R-Wis., said May 19 that his panel may act on limited business tax reform legislation this year and would seek to avoid a last-minute rush to address expired tax extenders provisions.

Speaking at a meeting of the American Institute of Certified Public Accountants in Washington, Ryan acknowledged that because of the Obama administration's reluctance to take on individual tax reform, significant action that side of the code – including an examination of the tax treatment of carried interest income – would likely be on hold until 2017. But he noted that it is still possible "to see if we can do some down payment on tax reform, to fix our international rules, to fix these tax extenders, and what kind of cleanup can we do in the tax code to simplify things."

The House has already passed bills to make several so-called extenders permanent – including, most recently, the research and experimentation credit – as a way to lay the groundwork for reform, but it is unclear whether those bills will be taken up in the Senate. (For more on the research credit and House efforts to move permanent extenders bills, see separate coverage in this issue.)

In the meantime, Ryan said his committee will not wait until the end of the year to pass routine extenders legislation, noting that delayed action in recent years – which sometimes resulted in retroactive extensions of expired provisions – had created uncertainty for taxpayers.

Ryan indicated that he wanted to avoid a repeat of last year's extenders process, in which taxpayers "had to wait until December 11 to find out if these provisions…were going to continue or not."

Finance Committee working groups get deadline extension

On the other side of the Capitol, Senate Finance Committee Chairman Orrin Hatch, R-Utah, and ranking member Ron Wyden, D-Ore., announced May 21 that they would extend the deadline for the committee's five bipartisan tax reform working groups to submit their recommendations for a tax code overhaul. The groups had been expected to complete their work by May 31.

The working groups – covering the topics of individual income tax, business income tax, savings and investment, international taxation, and community development and infrastructure – have continued to meet and have also discussed their work to date with the entire Finance Committee; but it has been unclear whether there is enough consensus within the individual groups to make recommendations. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 17, May 15, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150515_1.html

The lack of consensus apparently prompted some Finance Committee members to seek additional time to produce their final reports. Sen. John Thune, R-S.D., told reporters May 21 that "everybody is asking for some additional time."

Earlier in the week, Hatch did not appear inclined to offer an extension, telling *Politico* that if the groups did not meet their deadline, "that's just too bad." But he subsequently indicated in a joint statement with Wyden that "[a]fter receiving valuable feedback from our working group co-chairs on how they need more time to produce constructive results, we feel it is prudent to allow additional time so that they can continue their work."

The new deadline will be determined sometime after lawmakers return from their week-long Memorial Day recess on June 1.

Going public – or not: It remains unclear whether Hatch and Wyden plan to release recommendations from the working groups to the public. Some Finance Committee staffers recently indicated, however, that the international group – which reportedly is closer to consensus and discussing a US patent box – might decide on its own to make its recommendations public. (For prior coverage of the international working group, see *Tax News & Views*, Vol. 16, No. 16, May 8, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150508_2.html

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