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Wyden seeks R&E expensing, chipmaker credit in China competitiveness conference committee

Senate Finance Committee Chairman Ron Wyden, D-Ore., told reporters this week that he will push for a return to full and immediate expensing of research and experimentation costs, along with a new tax credit to encourage domestic semiconductor manufacturing, as part of a recently convened House-Senate conference committee on China competitiveness legislation; but even though these provisions enjoy bipartisan support, it remains unclear whether a final conference report will include tax code changes of any kind.

Wyden: R&E amortization a 'misjudgment'

Wyden's remarks came as conferees were preparing to start hashing out differences on H.R. 4521, which is variously referred to as the United States Innovation and Competition Act of 2021 (USICA), the America COMPETES Act, or the "CHIPs" bill (as in, microchips and/or semiconductors, the domestic production of which would be bolstered under the legislation).

The conference committee, which was formally established on April 28 and held its first public meeting on May 12, is comprised of a massive group of 107 House and Senate members, including Wyden. The committee's size is due largely to the fact that the sweeping legislation touches the jurisdiction of many different congressional committees.

According to Wyden, a return to full and immediate expensing of research costs "goes right to the heart of how we want to make sure that we are as competitive as possible in dealing with China in tough global markets."

The proposed change in the treatment of research expenditures, which has the broad support of both Democrats and Republicans in both chambers of Congress, is aimed at reversing a provision in tax code section 174—originally enacted as part of the Tax Cuts and Jobs Act of 2017 (P.L. 115-97)—that, as of January 1 of this year, requires certain research expenditures to be amortized over a number of years rather deducted currently.

The breadth of that bipartisan support was made clear May 4 when the Senate voted 90-5 to approve a nonbinding motion to instruct the conferees offered by Finance Committee member Maggie Hassan, D-N.H., calling on the negotiators to preserve research expensing as part of any conference agreement. In the House, a bipartisan group of almost 70 lawmakers—led by taxwriters John Larson, D-Conn., and Ron Estes, R-Kan.—recently sent a letter to party leaders calling for "immediate action" to reverse research expense amortization. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 16, May 6, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220506_2.html

Wyden commented this week that while "[t]here were plenty of flaws in the 2017 tax bill," the shift to mandatory capitalization of research expenses was "a really, very, very costly misjudgment."

Wyden, Neal also prioritizing 'FABS' bill

As part of his remarks to reporters this week, Wyden noted that he would also push for including the Facilitating American-Built Semiconductors (FABS) Act (S. 2107) as part of any final conference agreement.

That legislation—which Wyden introduced last year along with Senate Finance Committee ranking member Mike Crapo, R-Idaho, and a handful of other committee members on both sides of the aisle—would generally provide a 25 percent tax credit for domestic investment in plants and equipment by semiconductor manufacturers.

A broadly stated “motion to instruct” offered by Sen. Mark Kelly, D-Ariz., that was aimed at encouraging domestic chip production was approved in the Senate May 4 by a voice vote.

For his part, House Ways and Means Committee Chairman Richard Neal, D-Mass., who, like Wyden, is a conferee on the China competitiveness bill, stated this week that the conference agreement presents “a grand opportunity” to provide a tax credit for domestic production of microchips.

Is a tax title feasible?

Although restoring full and immediate deductibility of research costs under section 174 and providing a tax credit for domestically produced microchips have garnered bipartisan support on both sides of Capitol Hill, many observers—and some lawmakers—remain dubious that any conference agreement on China competitiveness legislation (which may take weeks, if not months, to negotiate) will carry a tax title, and have acknowledged that these provisions may have to wait for another legislative vehicle such as a post-election lame duck tax-and-spending bill that has been customary in recent years.

Mike Crapo, the Senate’s top GOP taxwriter, has called for including the FABS Act in the conference agreement, but has also questioned whether adding a tax title might prompt a torrent of proposed amendments from conferees that could bog down the progress of the underlying legislation.

“I think that the broader issue for [the 174 change and the FABS Act] is if you start putting any tax items into USICA, does that open up the floodgate for everything,” Crapo said May 10.

Similarly, Ways and Means Committee Democrat Dan Kildee of Michigan has called for negotiators to include tax relief for automobile dealers that use the last-in, first-out accounting method and who are having difficulties replenishing inventory because of supply chain issues; but he also acknowledged to reporters May 12 that there is a risk of “pushing too hard [on a tax title] and losing the bill.”

Rep. Kevin Brady of Texas, the top Republican on the House Ways and Means Committee, appeared to reject the idea of a tax title outright. Commenting on the prospect of adding a tax credit for semiconductors to the conference report, Brady told reporters on May 12 that he “see[s] no need for a tax title . . . especially one favoring a single industry.”

Some Democrats, meanwhile, are also concerned that addressing research expensing could create unfavorable political optics if moved outside their parallel effort to raise taxes on businesses and high-income individuals while providing tax relief to low- and middle-income families as part of their so-called “Build Back Better” initiative.

Although the House-passed Build Back Better Act, which Democrats want to move through Congress under fast-track budget reconciliation rules, includes a provision that would delay mandatory amortization of research expenditures through 2025, that measure has stalled in the Senate and its prospects remain unclear as Democrats in that chamber continue to struggle to coalesce around a tax-and-spending package that can

garner the support of all 50 members of their caucus. (A detailed summary of the tax provisions in the House-passed legislation is available from Deloitte Tax LLP. For a status update on the Build Back Better legislation, see *Tax News & Views*, Vol. 23, No. 15, Apr. 29, 2022.)
URL: https://www2.deloitte.com/us/en/pages/tax/articles/build-back-better-tax-legislation.html?id=us:2em:3na:tnv:awa:tax:051322&sfid=7015Y000003WdDXQA0
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220429_1.html

Ways and Means Chairman Richard Neal, meanwhile, told reporters May 12 that he would like to put an expansion of the child tax credit on the table as part of the China competitiveness conference negotiations.

Sen. Shelly Moore Capito of West Virginia, the top Republican on the Senate Environment and Public Works Committee, summed up the current state of play when asked by reporters on May 10 what tax-related changes, if any, she thought could make it into a final conference agreement on the competitiveness legislation.

"I think with a hundred conferees it's hard to predict what's going to happen," Capito said.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

House GOP taxwriter Tom Reed resigns from Congress

Rep. Tom Reed of New York, one of the most senior Republicans on the House Ways and Means Committee, unexpectedly announced his immediate resignation from Congress May 10. He will join Prime Policy Group, a DC lobbying firm.

Reed, a former mayor, was first elected to the House in 2010 and represented a district in western New York. In 2021, following allegations of inappropriate behavior toward a female lobbyist, he announced that he would not seek another term in office.
URL: https://twitter.com/TomReedCongress/status/1373781668784390151?s=20&t=ilbCECFmxkltpWQ3eQrEPA

Until his resignation, Reed was the ranking member on the Ways and Means Social Security Subcommittee. Ways and Means Republicans will name a current GOP taxwriter to their top spot on the subcommittee, and the House Republican Steering Committee will determine which GOP lawmaker will receive a much-coveted appointment to the taxwriting panel. At press time it was not clear when either decision will be announced.

In his farewell speech on the House floor this week, Reed said he was proud to have "put people before politics" during his time in office, but he lamented the current partisan rancor in Congress.

"I believe the current focus on extremism demands us to heed the words of Abraham Lincoln uttered years ago as we face a similar threat to our existence today: "A house divided cannot stand,'" Reed said. "But I add, 'a house united will not fail.' It is time for petty political posturing to end. Leadership must emerge."

Until his announcement last year that he would not run for re-election, Reed served as a co-chair of the Problem Solvers Caucus, a bipartisan group of about 50 House members who describe themselves as "organized to get to 'yes' to help solve some of our country's most pressing challenges." He also belonged to the centrist Republican Main Street Partnership and the more conservative Republican Study Committee.

In a May 10 statement following Reed's resignation, Ways and Means Committee ranking member Kevin Brady, R-Texas, said that Reed "provided vital work and leadership on tax reform, and as Republican leader of the Ways and Means Subcommittee on Social Security, ensured our seniors continued to receive their benefits during the pandemic."

Reed is the second Ways and Means Republican this year to give up his congressional seat before the end of his term. (Rep. Devin Nunes of California resigned from Congress this past January to head a media company founded by former President Donald Trump and was subsequently replaced on the taxwriting panel by Rep. Greg Murphy, R-N.C.)

Additional changes to the Ways and Means Committee roster are ahead when the 118th Congress convenes in 2023. Over the past year, ranking member Kevin Brady and Democratic taxwriters Ron Kind of Wisconsin, Tom Suozzi of New York, and Stephanie Murphy of Florida all have announced that they are not seeking re-election.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

Deloitte Tax looks at proposed amendments to qualified intermediary withholding agreements

The Treasury Department and IRS on May 3 published Notice 2022-23 proposing amendments to the qualified intermediary (QI) withholding agreement. The amendments in Notice 2022-23 would expand the scope of the QI agreement to permit a QI to assume withholding and reporting responsibilities under sections 1446(a) and (f) in limited instances. Once finalized, the new rules would apply to QI agreements in effect on or after January 1, 2023.
URL: https://www.irs.gov/pub/irs-drop/n-22-23.pdf

Find out more

A new alert from Deloitte Tax LLP's Global Information Reporting group describes the proposed amendments.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220513_3_suppA.pdf

— Susan Segar and Jonathan Cutler
Global Information Reporting
Deloitte Tax LLP

Ways and Means Oversight panel to hold hearing on 'taxpayer fairness across the IRS'

House Ways and Means Oversight Subcommittee Chairman Bill Pascrell, D-N.J., announced this week that his panel will hold a hearing on May 18 at 10:00 a.m. to discuss "taxpayer fairness across the IRS."

A witness list for the hearing was not available as of press time.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP