Highlights

- Expansion of Child Tax Credit
- Bonus Depreciation Extended
- Immediate Deduction of R&E Expenditures
- Expansion of 179 Deduction
- Tax Treaty-Like Benefits for Taiwan Residents
- End of ERTC Claims

Inside

Tax Briefing | Tax Relief for American Families and Workers Act of 2024

Ways and Means Committee Approves Wide-Ranging Tax Bill

On January 19, 2024, the House Ways and Means Committee overwhelmingly approved the Tax Relief for American Families and Workers Act of 2024 by a 40-3 vote. The bill provides for increases in the child tax credit, delays the requirement to deduct research and experimentation expenditures over a five-year period, extends 100-percent bonus depreciation through 2025, and increases the Code Sec. 179 deduction limitation, among other business-friendly provisions. The bill would also extend tax treaty-like benefits to Taiwan, and extend some disaster-related tax relief. The provisions are paid for by changes to the COVID-era employee retention tax credit, including an acceleration of the termination of the period for making new claims, and increasing penalties on erroneous or fraudulent credit claims.

Most of the significant provisions in the bill are retroactively applicable to prior tax years. The hope is to get this bill to President Biden before filing season begins for the 2023 tax year. However, it is unclear if this is possible given House and Senate schedules during January, though the bill enjoys bipartisan support in both chambers of Congress. Even if Congress could pass the bill before filing season starts, changes that are retroactively applied to the 2023 tax season would create headaches for the IRS and would surely lead to a delay in processing returns.

INDIVIDUAL TAX RELIEF

Child Tax Credit

The lone change for individuals in the proposed bill is an expansion of the child tax credit. Under current law, the child tax credit is equal to $2,000 per child for taxpayers who do not have earned income in excess of certain threshold amounts. A portion of this $2,000 can be applied as a refundable credit,

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up to an inflation adjusted amount ($1,600 for 2023). For a taxpayer with one or two children, the refundable portion is limited to the lesser of:

- the balance of the child tax credit amount to which the taxpayer would otherwise be entitled based on the number of qualifying children; or
- 15% of the amount by which the taxpayer's earned income exceeds $2,500.

For a taxpayer with three or more children, the refundable portion of the credit is limited to the lesser of:

- the balance of the child tax credit amount to which the taxpayer would otherwise be entitled based on the number of qualifying children; or
- the greater of: (a) the excess of the taxpayer's Social Security taxes over the earned income credit allowed to the taxpayer for the tax year; or (b) 15% of the taxpayer›s earned income in excess of $2,500

Under the proposed law, the calculation of the refundable amount will be determined on a per-child basis, meaning that once the earned income amount in excess of $2,500 is multiplied by 15%, that amount is then multiplied by the total number of children, resulting in the total refundable amount. This change would apply to the 2023, 2024, and 2025 tax years.

Additionally, the maximum amount of the refundable credit will be statutorily increased for three tax years, instead of relying upon inflation adjusted increases. These amounts will be $1,800 for 2023, $1,900 for 2024, and $2,000 for 2025.

The maximum amount of the overall child tax credit will also be adjusted for inflation from the $2,000 amount for 2024 and 2025.

> **COMMENT.** *These temporary changes are similar to some changes that were implemented for the 2021 tax year by the American Rescue Plan Act of 2021. That bill made the credit fully refundable for those years, increased the total credit to $2,500 per child. Not carried over from that bill was the provision allowing for the credit to be paid in advance on a monthly basis. This proposed change would still require taxpayers to wait until they file their return to claim the benefit.*

The final change from the bill allows taxpayers to elect, in 2024 and 2025, to use earned income from the prior taxable year in calculating the credit if the taxpayer's earned income in the current year is less than earned income in the prior year. This would impact claims for the refundable child tax credit.

> **COMMENT.** *This is one provision that was carried over from the 2021 expansion of the child tax credit.*

BUSINESS TAX RELIEF

A number of business incentives that have been passed in recent years, going back to the Tax Cuts and Jobs Act of 2017, have expired in the last couple of years. This bill would extend some of those provisions, delay the implementation of other provisions, and expand some long-standing deductions.

Research and Experimental Expenses

Under current law, domestic research and experimental expenditures paid or incurred in tax years beginning after December 31, 2021 are required to be amortized over a five-year period. In tax years prior to 2021, these expenses could be immediately deducted in the year in which they were paid or incurred. Costs attributable to research or experiment outside the U.S. must be deducted over a 15-year period.

The proposed law would delay to tax years beginning after December 31, 2025 the application of this rule with regard to research and experimental costs attributable to domestic activities. There would be no change for activities outside the U.S. The bill provides transitional rules applicable to interactions with research credits, as well as making accounting changes.

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"Most of the significant provisions in the bill are retroactively applicable to prior tax years."

COMMENT. *The bill does not provide any direct rules applicable to claiming the deduction in a tax year for which a return has already been filed for tax years beginning in 2022. Presumably, these retroactive deductions will necessitate the filing of an amended return, unless the IRS provides a means for claiming the deduction on a subsequent year's return.*

Business Interest Limitation

Under current law, in tax years beginning before 2022, the calculation of adjusted taxable income for purposes of the business interest expense limitation under Code Sec. 163(j) was made without regard to any deductions for interest, taxes, depreciation, amortization, or depletion (EBITDA). For tax years beginning after 2021, depreciation, amortization, and depletion were removed from the carve-out, meaning only deductions for interest and taxes were not taken into account in computing the limitations.

The new law would restore depreciation, amortization, and depletion to the carve-out in the calculation of adjusted taxable income for tax years beginning after December 31, 2023 and before January 1, 2026. Further, taxpayers can elect to restore depreciation, amortization, and depletion to the carve-out for tax years beginning after 2021 and before 2024.

COMMENT. *Again, short of guidance from the IRS allowing to apply this change retroactively on a current-year tax return, an amended return will likely be required for these changes to be applied.*

Bonus Depreciation

Over the last 20 years, first-year depreciation (or bonus depreciation) has gone through many changes and iterations. The most recent iteration was from the Tax Cuts and Jobs Act of 2017, which generally allowed qualified property placed in service after September 17, 2017 and before January 1, 2023, to be immediately expensed in the year in which the property was placed in service ("100-percent bonus depreciation"). The law provided for a gradual reduction in the first-year depreciation for property placed in service after 2022 (80% in 2023, 60% in 2024, 40% in 2025, 20% in 2026) before being eliminated altogether for property placed in service in 2027 (these years are all extended by 1 year for longer production period property and certain aircraft).

The proposed bill would extend 100-percent bonus depreciation to apply to property placed in service before January 1, 2026 (January 1, 2027 for longer production period property and certain aircraft). The 20% and 0% bonus depreciation rates would continue to apply to property placed in service generally in 2026 and 2027.

Increased 179 Deduction

Under current law, business may elect to expense the cost of certain qualifying property (depreciable tangible personal property, off-the shelf computer software, and qualified real property that is purchased for use in the active conduct of a trade or business) rather than recover the cost through depreciation. The amount of the deduction is limited to an inflation-adjusted amount. For 2024, the amount of the deduction is capped at $1.22 million, and this limit is reduced dollar-for-dollar by the amount of the expense in excess of $3.05 million.

The proposed law would increase these amounts for property placed in service after 2023. For property placed in service in 2024, the deduction limitation is increased to $1.29 million and the expense limitation is increased to $3.22 million. These amounts would be adjusted for inflation in tax years beginning after 2024.

EMPLOYEE RETENTION TAX CREDIT

The above changes are largely paid for through changes in the Employee Retention Tax Credit (ERTC). The ERTC was first established at the beginning of the COVID-19 pandemic in March of 2020. The credit was meant to provide businesses with a credit against certain payroll taxes if they retained employees during lockdowns that may have limited the business' income. The credit was extended by the American Rescue Plan Act

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of 2021, and slightly expanded to apply to Medicare taxes as well. Under current law, taxpayers can continue to make ERTC claims until April 15, 2025, even though the period of retained employment for which the credit can be claimed has long-since passed.

Recently, the IRS has become aware of a number of fraudulent claims being made by taxpayers, in many cases unknowingly, due to the emergence of third-party processors of claim requests ("COVID-ERTC promoters"). Due to the huge number of potentially fraudulent claims, the IRS in late 2023 announced that it was putting a freeze on accepting any further claims while it investigated its current backlog for possible instances of fraud. Meanwhile, the IRS established an amnesty program for taxpayers who themselves may have discovered a potential instance of an ERC claim to which they are not entitled to withdraw their claim or to pay back an unqualified credit without penalty.

The proposed bill includes a number of measures intended to combat these fraudulent claims, including dramatic increases in penalties on fraudulent COVID-ERTC promoters, an extension of the limitations period on assessments of ERTC claims to six years, and provisions that effectively require COVID-ERTC promoters to report themselves to the IRS in the same manner as promoters of listed transactions.

Most significantly, the bill would terminate the period for making claims for the ERTC on January 31, 2024.

OTHER PROVISIONS

Taiwan

Much of the bill relates to Taiwan. Due to the inability of the United States to enter into a bilateral tax treaty with Taiwan, the bill provides "treaty-like" relief for Taiwan residents. The stated purpose of this portion of the bill is to provide relief from potential double taxation by reducing withholding rates, establishing permanent establishment rules, determining treatment of employment income, and establishing who is a qualified resident of Taiwan. The bill also provides a framework for the negotiation of a tax agreement between the President and Taiwan.

Disaster Relief

The bill also includes some disaster relief provisions. These include an extension of relief first provided in the Taxpayer Certainty and Disaster Tax Relief Act of 2020. The relief as passed by the original 2020 Act includes the forgiveness of early-withdrawal penalties under Code Sec. 72(t) for qualified disaster distributions, the recontribution of amounts withdrawn for home purchases, and an increase in the amount of loans from qualified plans. An employee retention credit is also allowed for employers in affected areas, as well as special casualty loss rules for affected individuals. This was the package of one-off relief Congress would provide on a disaster-by-disaster basis in prior years.

The proposed legislation extends the relief to apply to any federally declared disaster during the period beginning on January 1, 2020 and ending 60 days after the date of enactment.

The bill also provides exclusions from income for certain qualified wildfire relief payments made after December 31, 2019 and before January 1, 2026, as well as relief payments related to the East Palestine, Ohio train derailment.

1099-MISC and 1099-NEC Filing Thresholds

The bill would increase the threshold for the need to file a Form 1099-NEC or 1099-MISC by businesses paying for services performed by an independent contractor or other similar payments from $600 to $1,000 for payments made after December 31, 2023. After 2024, the $1,000 would be adjusted for inflation.

Affordable Housing

The bill would also increase the nine percent low income housing tax credit ceiling by 12.5 percent for calendar years 2023 through 2025, as it was during calendar years 2018 through 2021. The bill would also lower the bond-financing threshold to 30 percent for projects financed by bonds with an issue date before 2026.

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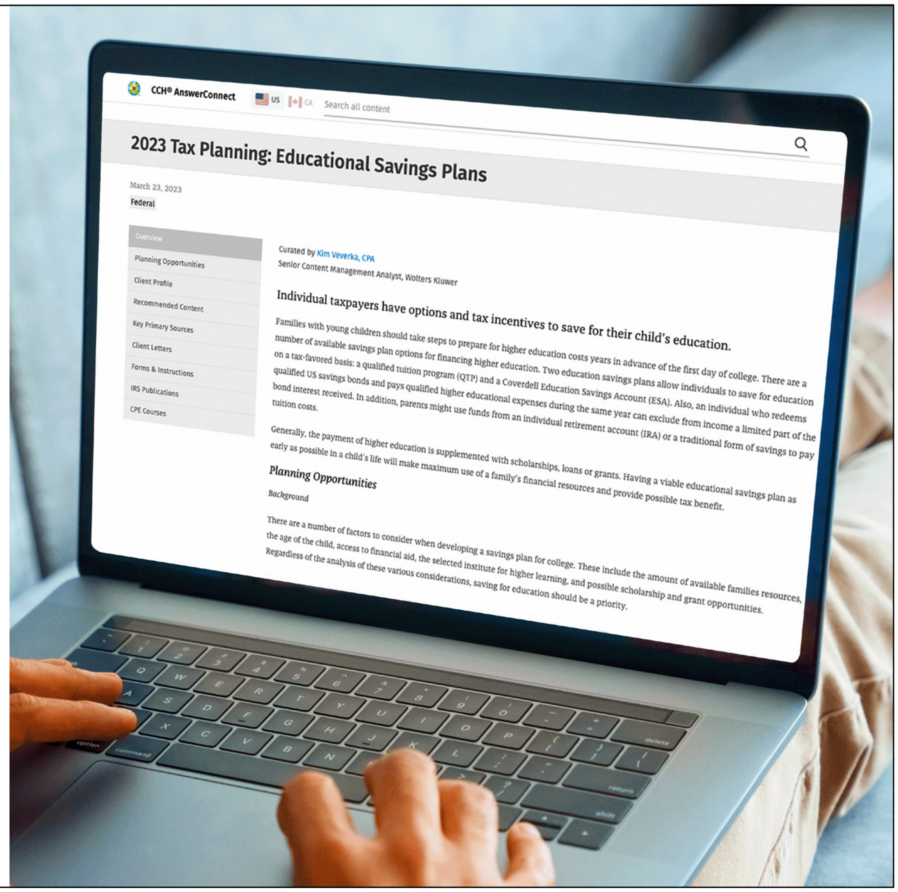

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