

Senate-approved ‘motion to instruct’ China competitiveness conferees calls for preserving expensing of research costs

A nonbinding measure calling on conferees to a recently convened House-Senate conference committee on China competitiveness legislation to include language in any conference agreement preserving full and immediate expensing of research and experimentation costs was approved by the Senate May 4 on a bipartisan 90-5 vote.

28 ‘motions to instruct’

The research expensing measure was offered by Senate Finance Committee member Maggie Hassan, D-N.H., as part of a broader package of 28 so-called “motions to instruct” the House and Senate conferees to 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). Twenty of the motions came from the GOP side of the aisle and eight came from Democrats.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220506_2_supplA.pdf

The conference committee, which was formally established on April 28, is comprised of a massive group of 107 House and Senate members, largely due to the fact that the sweeping legislation touches the jurisdiction of many different congressional committees.

The Hassan motion which, again, is not binding on the conference committee, is aimed at reversing a change under section 174—originally enacted as part of the Tax Cuts and Jobs Act of 2017 (P.L. 115-97)—that, as of January 1 of this year, requires certain research expenditures to be amortized over a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 than deducted currently.

The motion, which is comprised of nothing more than a single sentence of text, encourages to the conferees to “insist that the final conference report include provisions that expand the research and development tax credit for small businesses and preserve full and immediate expensing for research and development investments.”

In a related development this week, a group of almost 70 House lawmakers—led by taxwriters John Larson, D-Conn., and Ron Estes, R-Kan.—sent a letter to party leaders calling for “immediate action” to reverse research expense amortization.

“As each month passes, failure to act yields proportionately more harm to innovation and competitiveness,” the letter said.

Handful of other tax-related motions to instruct also get votes: In addition to the section 174 measure, the Senate also voted this week on a handful of other motions to instruct that had possible implications for the tax code.

Motions that were approved include calls to:

- Provide incentives to support domestic semiconductor manufacturing and innovation (offered by Sen. Mark Kelly, D-Ariz., and approved by a voice vote). Senate Finance Committee Chairman Ron Wyden, D-Ore., told Bloomberg Government that he and ranking member Mike Crapo, R-Idaho, “feel strongly” about providing an investment tax credit for semiconductors and will push to ensure that such a provision is included in the final legislation.
- Require that any taxpayer funds spent in the bill, including those provided to universities and private corporations, be subject to a “return on investment analysis” and potential claw-back (offered by Sen. Rick Scott, R-Fla., and approved by voice vote).
- Prohibit any renewable energy projects from receiving assistance—whether by grant or tax incentive—under the final bill from procuring materials, technology, or critical minerals from China (offered by Sen. Dan Sullivan, R-Alaska, and approved by voice vote).

The Senate defeated motions to:

- Prohibit recipients of incentives for domestic semiconductor manufacturing from buying back their own stock, outsourcing jobs, or weakening union agreements (offered by Sen. Bernie Sanders, I-Vt., and rejected by a 6-87 vote) and
- Prohibit the enactment of new mandates on greenhouse gas emissions unless China enacts similar mandates (offered by Senate Finance Committee member Tim Scott, R-S.C., and rejected by a 47-49 vote).

Kildee: Attaching tax title to China bill may be ‘difficult’

Although the motion to instruct conferees to include a fix for research and experimentation costs under section 174 garnered widespread support from both Senate Democrats and Republicans, 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 believe that the provisions included in the various motions to instruct instead 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.

House Democratic taxwriter Dan Kildee of Michigan, for example, told Politico this week that opening up the bill to tax changes could complicate its path to enactment, in large part because so many members have varying tax priorities that they would like to have sent to President Biden’s desk.

“I think we recognize that, at the appropriate time, we’ll need to take up tax legislation,” Kildee said. “. . . In order to keep the momentum for [the China legislation], it’s more difficult to open up the door to a specific tax title, and then allow that to be another reason to delay and delay. . . . So I think it’s really more a tactical question, less so a substantive one . . . about how much we can do with each particular vehicle. It was a source of some discussion, but I think it’s fairly clear there won’t be a specific tax title in this bill.”

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