Inflation Reduction Act clears House, awaits Biden's signature

The House of Representatives voted 220-207 on August 12 to approve a roughly $740 billion budget reconciliation package that includes a new minimum tax on certain large corporations, an excise tax on stock buybacks, a significant increase in funding for the Internal Revenue Service, incentives to promote climate change mitigation and clean energy, and provisions to promote health care affordability.

House passage of the legislation informally known as the Inflation Reduction Act of 2022 was along strict party lines and came just days after the measure cleared the Senate by a margin of 51-50, with all of that chamber's Democrats aligned in support of the bill, all 50 Republicans in opposition, and Vice President Kamala Harris breaking the tie.
URL: https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117SAHR5376.pdf

The bill now heads to the White House for President Biden's signature.

A twisting path to 'yes'

The measure as approved follows—with modifications—the general contours of the proposal that was unveiled by Majority Leader Charles Schumer, D-N.Y., and Sen. Joe Manchin, D-W.Va., on July 27. That proposal as originally introduced included, among other things, a book-minimum tax, changes to the carried interest rules, and increased IRS funding. (For details on Schumer and Manchin's original proposal, see *Tax News & Views*, Vol. 23, No. 26, July 29, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220729_1.html

Manchin had presented a persistent challenge to efforts by Democratic leaders to move a reconciliation package through the evenly divided Senate after he announced late last year that he would not support the expansive $1.75 trillion reconciliation bill—known as the Build Back Better Act—that cleared the House in November. Manchin stated at the time that he feared the House-passed bill would stoke inflation and that he objected to what he called "budget gimmicks" such as offering certain popular spending programs and tax incentives on a short-term basis when they almost certainly would be renewed for longer periods by a future Congress and therefore would be more expensive in the long run. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 56, Dec. 20, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211220_1.html

In the ensuing months, Schumer and Manchin engaged in on-again, off-again negotiations to craft a narrower bill that would address Manchin's stated policy priorities of clean energy, health care, and deficit reduction, but in the days leading up to the announcement of a deal it appeared that those talks had broken down irretrievably. Indeed, many Senate Democrats seemed resigned to moving a relatively bare-bones measure with just a handful of health care provisions and no significant tax title. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 24, July 22, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220722_1.html

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Changes from Sinema: But even with an agreement in hand, Manchin and Schumer had to make some significant modifications to their proposal at the behest of Arizona Democratic Sen. Kyrsten Sinema, who expressed reservations about specific revenue provisions and whose support also was essential to getting the package through the Senate, given that all 50 Republicans in that chamber were united in opposition. The changes negotiated with Sinema include:

- Narrowing the proposed book-minimum tax on certain large corporations;
- Scrapping a provision that would have tightened current-law rules governing the tax treatment of carried interest income;
- Adding a 1 percent excise tax on corporate stock buybacks; and
- Adding an extension of the excess business loss rules, a provision inserted at the very end of the bill's consideration on the Senate floor to offset the loss of revenue from an unrelated change to the aggregation rules under the new book-minimum tax to which she and several other Democrats objected.

Sinema had been critical of the carried interest changes in the original Schumer-Manchin proposal and had told the majority leader that she would not support the bill unless the provision was removed.

"[She] said she would not vote for the bill, not even move to proceed, unless we took it out," Schumer told reporters August 5. "We had no choice."

Sinema also had expressed concerns recently that the proposed minimum tax on book income of certain large companies—an idea Democrats latched onto last year in the face of her opposition to increasing statutory corporate tax rates—would have an outsized impact on heavy users of accelerated depreciation, notably manufacturers.

Senate 'Byrd Bath' leaves tax title intact, but forces a name change: Significantly, all of the tax provisions in the modified proposal survived a review process in the Senate known as the "Byrd Bath," in which that chamber's parliamentarian determines whether or not each provision in the bill complies with the strict requirements of the "Byrd Rules" governing budget reconciliation legislation. To comply with the Byrd Rules, provisions must have a direct budgetary effect (not merely an "incidental" effect), cannot increase the deficit outside the 10-year budget window, and cannot make certain changes to the Social Security program. Provisions that run afoul of Byrd Rule requirements must be scrapped or modified to become compliant unless supporters can get 60 votes in favor of a motion to waive the underlying point of order.

One casualty of the review process—aside from some nontax provisions, including one related to proposed price caps on insulin in the private insurance market—was the bill's "short title," which the parliamentarian struck after determining it was not Byrd Rule-compliant. As a consequence, the legislation making its way to the White House is officially known as "An Act to provide for reconciliation pursuant to title II of S. Con. Res. 14," although its informal name—the Inflation Reduction Act of 2022—is what's likely to endure in public discourse. (It's worth noting that President Trump's signature tax package, which also moved through Congress

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under budget reconciliation procedures, continues to be known as “The Tax Cuts and Jobs Act of 2017,” even though the parliamentarian struck the title as part of the Byrd Bath review of that legislation.)

No SALT? No problem: Once the legislation reached the House, it averted a potential trip hazard after a number of Democrats representing districts with high local income and property taxes backed down from their longstanding promise to oppose any reconciliation deal that did not eliminate or relax the current-law $10,000 cap on the deduction for state and local taxes (SALT), which was enacted in the Tax Cuts and Jobs Act and is scheduled to expire after 2025.

In comments to reporters early this week, New Jersey Democratic Rep. Josh Gottheimer explained that he and other members of the so-called “SALT Caucus” would reverse course and vote for the bill because it “doesn’t raise taxes one penny on families or small businesses” and “will actually save people thousands of dollars on prescription drugs, energy, and health care costs.”

The House ultimately advanced the legislation without any changes to the Senate-approved language. (The House Rules Committee sent the bill to the floor under a “closed rule,” which prohibits any amendments from being offered on the floor.) If the House had changed the bill in any way, the modified proposal would have had to go back to the Senate for review, debate, and another floor vote—a potentially risky proposition given how Senate Democrats have struggled to coalesce around a tax-and-spending package that could win the support of all 50 of their members. (Getting all 50 of their members to return for a second vote might have presented a challenge for Senate Democratic leaders in and of itself.)

Find out more: This edition of *Tax News & Views* provides an updated overview of the tax provisions in the legislation, plus links to additional detailed discussion from Deloitte Tax LLP.

Corporate minimum tax

The Inflation Reduction Act includes a book-minimum tax (AMT) similar to that originally proposed in the House-approved Build Back Better legislation that would impose a 15 percent minimum tax on “adjusted financial statement income” (AFSI) of applicable corporations over the “corporate AMT foreign tax credit for the taxable year.”

Under the bill, an applicable corporation’s minimum tax would be equal to the amount by which the tentative minimum tax exceeds the sum of corporation’s regular tax for the year and the corporation’s BEAT liability under section 59A. Although similar to other proposed legislation, the provision as approved by Congress includes a few noteworthy revisions, such as:

- A modification to the language addressing the amount of income that is taken into account and attributable to the holding of stock in a corporation that is not a member of the US consolidated group. In such cases, AFSI of the taxpayer with respect to such corporation shall be determined by only taking into account the dividends received from such other corporation. It is thought this adjustment is

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intended to exclude amounts otherwise taken into account with respect to stock under the mark-to-market method of accounting.
- A special rule addressing the treatment of amounts attributable to defined benefit pension plans and tax-exempt income.
- Provisions allowing for reductions to AFSI for (1) depreciation deductions allowed under section 167 with respect to section 168 property and (2) amortization deductions allowed under section 197 with respect to "qualified wireless spectrum." When these provisions are applicable, AFSI is adjusted to disregard any amount of depreciation or amortization expense that is taken into account in the taxpayer's applicable financial statement with respect to such property and qualified wireless spectrum and substitute the amount taken into account in computing regular tax.

This provision would be effective for taxable years beginning after December 31, 2022.

A detailed discussion of the new book-minimum tax is available from Deloitte Tax LLP.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-10-august-2022.pdf

Excise tax on stock buybacks

The measure would add new Internal Revenue Code section 4501 to provide that a covered corporation is subject to a tax equal to 1 percent of the fair market value of any stock of the corporation that is repurchased by such corporation during any taxable year (subject to certain exceptions).

A covered corporation means a domestic corporation, the stock of which is traded on an established securities market. For purposes of calculating the tax, the fair market value of the repurchased stock is reduced by the fair market value of any stock issued by the covered corporation during the taxable year, including stock issued or provided to employees of the covered corporation and employees of specified affiliates. Purchases of covered corporation stock by specified affiliates would be treated as repurchased by the covered corporation. The tax also would apply to repurchases of stock of certain foreign corporations. New section 4501 would apply to repurchases of stock made after December 31, 2022.

A detailed discussion of the stock buyback excise tax is available from Deloitte Tax LLP.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220812_1_suppA.pdf

IRS funding boost to improve taxpayer compliance

The Inflation Reduction Act would invest $80 billion toward boosting IRS resources, in line with the administration's long-term goal of strengthening tax collection and enforcement on large corporations and high-income earners as part of an effort to address the "tax gap"—the difference between the amount of taxes owed to the federal government and the amount paid and collected on a timely basis.

The appropriated funds are designed to provide a sustained, multi-year commitment to rebuilding the IRS over the next decade. Treasury and the IRS have stated generally that they would use these funds to grow

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manageably (no more than around 10 percent annually), but also ensure that they have certain funding in place to make investments with large fixed costs—such as modernizing information technology, improving data analytic approaches, and hiring and training agents dedicated to complex enforcement activities. Treasury's Office of Tax Analysis estimates that over the next decade the changes proposed in this legislation would shrink the tax gap by about 10 percent, raising at least $700 billion in additional tax collections net of investments.

IRS funding breakdown: Here's how the $80 billion in mandatory appropriations would be allocated across the Service's four program areas:

- $45.6 billion for enforcement;
- $25.3 billion for operations support;
- $4.8 billion for business systems modernization; and
- $3.2 billion for taxpayer services.

How will the IRS use the additional $45.6 billion in enforcement funds?: The additional enforcement funds in the legislation will be used to address noncompliance in areas such as large corporate and global high-net-worth taxpayers, passthrough entities, and multinational taxpayers with international tax issues. The IRS is looking to put in place sophisticated, specialized teams that are able to review complex structures and identify areas of noncompliance.

While additional staffing will serve to focus enforcement scrutiny on high-income taxpayers and the businesses they own, the individuals performing these examinations will require the necessary skills, training, and experience to analyze tax returns that are highly complex.

The bill expressly states that the additional funds are not intended to increase taxes on any taxpayer with a taxable income below $400,000.

Extension of excess business loss limitation

Under current law, section 461(l) limits the recognition of aggregate trade or business deductions and losses for noncorporate taxpayers to an amount equal to aggregate trade or business gross income and gain plus a threshold amount of generally $250,000 ($500,000 for married taxpayers filing jointly), indexed for inflation. The disallowed excess business loss (EBL) is carried forward to the next taxable year and treated as a net operating loss (NOL) governed by section 172. Special limitations apply with respect to trade or business capital gains and losses, along with applying these rules to partnerships and S corporations. These rules are scheduled to expire for any taxable year beginning after January 1, 2027.

The Inflation Reduction Act would extend these rules for two years, through taxable years beginning before January 1, 2029. (It does not include modifications to section 461(l) that were proposed in the House-passed Build Back Better legislation.) This provision was added as an amendment during Senate consideration of the

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measure and is intended to offset revenue that was lost when senators adopted a separate amendment to narrow the scope of the aggregation rules in the book-minimum tax.

Superfund excise tax

The legislation would reinstate the Hazardous Substance Superfund Excise Tax at the rate of 16.4 cents per barrel, with an annual adjustment for inflation. This tax would apply in addition to the current 9 cents-per-barrel Oil Spill Liability Excise Tax. The reinstated tax would become effective on January 1,2023 and expire on December 31, 2032.

The Hazardous Substance Superfund Excise Tax is imposed on crude oil received at a United States refinery, and petroleum products (including crude oil) entered into the United States for consumption, use, or warehousing.

Additionally, the Superfund Excise Tax is imposed on any domestic crude oil that is used in or exported from the United States on which no Superfund tax was previously paid. For crude oil received at a US refinery, the operator of the refinery is liable for the tax. For imported petroleum products, the person entering the product into the United States for consumption, use, or warehousing is liable for the tax. For crude oil used or exported, the person using or exporting the crude oil is liable for the tax. The Hazardous Substance Superfund Excise Tax will be reported on IRS Forms 720 and 6627 and will primarily impact companies currently paying the Oil Spill Liability Excise Tax.

Extension of Black Lung Disability Trust Fund tax

The bill would permanently extend the tax imposed on the sale of coal, which finances the Black Lung Disability Trust Fund, effective for sales in calendar years beginning after the date of enactment.

Excise tax on certain pharmaceutical manufacturers

The bill includes a provision that, broadly speaking, would require pharmaceutical manufacturers to negotiate with the federal government to determine maximum prices for certain selected prescription drugs and insulin products offered under Medicare. Pharmaceutical manufacturers that do not participate in the mandatory price-setting program would be subject to a new "manufacturers excise tax" that would apply to all sales by a manufacturer, producer, or importer of those products that are subject to a negotiated price cap. The tax rate initially would be set at 65 percent and would increase incrementally, up to a maximum of 95 percent, for taxpayers that fail to meet certain compliance benchmarks that are laid out in the bill.

The provision would be effective for sales after the date of enactment.

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Clean-energy tax incentives

On the incentive side, the Inflation Reduction Act includes a number of tax and nontax provisions that are intended to bring down consumer energy costs, increase American energy security, and reduce greenhouse gas emissions, with the goal of putting the US on a path to roughly 40 percent emissions reduction by 2030.

Certain tax credits proposed in the legislation include a direct-pay option as well as transferability provisions.

Reducing consumer energy costs: The bill would extend a number of tax credits aimed at bringing down the cost of residential energy-efficiency improvements such as heat pumps, rooftop solar systems, and electric HVAC systems and water heaters.

The measure also calls for a $4,000 credit to make it more affordable for certain lower- and middle-income individuals to purchase used clean-energy vehicles. A credit of up to $7,500 would be available for the purchase of new clean-energy vehicles. (Sen. Manchin had contended that similar incentives in earlier iterations of the Build Back Better legislation were focused on more expensive vehicles that were intended to appeal primarily to affluent taxpayers.)

Promoting American energy security and domestic manufacturing: The measure includes tax and nontax provisions intended to improve reliability of the US energy grid and promote domestic clean-energy manufacturing.

Among the tax-focused provisions are production tax credits to accelerate US manufacturing of solar panels, wind turbines, and critical minerals processing. Also included is an investment tax credit to build clean technology manufacturing facilities that produce electric vehicles, wind turbines, solar panels, and similar clean-energy property.

Decarbonizing the economy: The bill calls for an array of tax and nontax provisions aimed at reducing emissions from energy production, transportation, industrial manufacturing, buildings, and agriculture.

Specifically, it includes tax credits for clean sources of energy and energy storage, tax credits for clean fuels and clean commercial vehicles to reduce emissions within the transportation sector, and tax credits to reduce emissions from industrial manufacturing processes.

Supporting farmers, forestland owners, and rural communities: The bill calls for investments in clean-energy development in rural communities, including through tax credits to support the domestic production of biofuels and to build the infrastructure needed for sustainable aviation fuel and other biofuels.

Promoting environmental justice: To support the goal of expanding environmental justice efforts, many of the clean-energy tax credits in the bill include either a bonus rate or set-aside for investments in economically distressed communities.

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A detailed discussion of the clean-energy package is available from Deloitte Tax LLP.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220812_1_suppB.pdf

Other tax relief provisions

The Inflation Reduction Act includes a handful of incentives targeted to certain small businesses, low- and moderate-income individuals who purchase health care insurance on one of the Affordable Care Act exchanges, and farmers.

Research credit against payroll tax for small businesses: A qualified small business may elect under current-law section 41(h) to apply up to $250,000 of its research credit computed under section 41 against the employer portion of its FICA payroll tax liability imposed under section 3111(a) for up to five tax years. A qualified small business is a partnership, corporation, or person with gross receipts of less than $5 million for the current tax year and no gross receipts for any taxable year preceding the five-taxable-year period ending with the current taxable year.

The legislation would increase the amount of research credit that can be applied against payroll tax liability from $250,000 to $500,000 for years beginning after December 31, 2022. Additionally, the legislation provides that the first $250,000 of the credit limitation will be applied against the FICA payroll tax liability and the second $250,000 of the limitation will be applied against the employer portion of Medicare payroll tax liability imposed under section 3111(b).

Affordable Care Act premium enhancements: The bill would extend through 2025 temporary provisions that reduce an individual's or family's share of premiums used in determining the amount of the premium-assistance credit under the Patient Protection and Affordable Care Act and make the credit available to taxpayers with incomes above 400 percent of the federal poverty line for the applicable family size.

These premium-assistance enhancements were enacted in 2021 as part of the American Rescue Plan and are scheduled to expire at the end of this year.

Income exclusion for certain assistance to farmers: The legislation generally provides that certain payments to farmers and ranchers authorized in the American Rescue Plan Act of 2021 would not be included in the gross income of the payee, and any otherwise-allowable deductions would continue to be deductible notwithstanding the tax-free treatment of the payment.

Revenue and distributional impacts

In advance of the House vote, the Joint Committee on Taxation on August 9 released updated revenue estimates and distributional tables that take into account the changes made to the Senate version of the Inflation Reduction Act prior to its passage in that chamber.
URL: https://www.jct.gov/publications/2022/jcx-18-22/
URL: https://www.jct.gov/publications/2022/jcx-19-22r/

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Revenue impact: The JCT estimates that the bill as approved would increase federal receipts by nearly $91 billion (net) between 2022 and 2031, up from a net increase of $68.2 billion in its "very preliminary" estimate of the original Schumer-Manchin proposal.
URL:
https://www.finance.senate.gov/imo/media/doc/7.29.22%20Estimate%20of%20Manchin%20Schumer%20agreement.pdf

Perhaps the most notable change on revenue side relates to the minimum tax on adjusted financial statement income of certain corporations. According to the JCT, that provision is now expected to raise roughly $222 billion over the next decade—a significant drop from the $313 billion in the proposal as originally introduced, and a reflection of changes made to the bill (discussed above) that granted relief from the minimum tax for accelerated depreciation deductions and modified the aggregation rules.

The revenue lost from the changes to the minimum tax—and from the decision to a drop a provision in the original Senate proposal that would have tightened the tax rules around carried interest income—was largely replaced by the new 1 percent excise tax on certain corporate stock buybacks, which the JCT estimates will increase federal receipts by about $74 billion over the 10 years, and by the extension of the excess business loss rules under section 461(l), which the JCT projects will generate nearly $53 billion over the budget window.

Distributional impact: On the distribution side, JCT's latest analysis paints a slightly better picture for Democrats than did comparable JCT projections released by Senate Finance Committee Republicans on July 30 which showed, with some small exceptions, that taxpayers at all income levels—even those below the $400,000 threshold often cited by the Biden administration as a group that should be held harmless from tax increases—would face a net tax hike over the next decade under the Inflation Reduction Act. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 27, Aug. 5, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220805_1.html

The new estimates indicate that taxpayers at income levels below $200,000 generally would see somewhat sizable tax cuts over the next few years, attributable primarily to the extension (through 2025) of enhanced tax credits to obtain health coverage under the Affordable Care Act. Taxpayers with incomes above that level would bear net tax increases on account of the corporate book-minimum tax, the stock buyback excise tax, and the extension (through 2028) of the excess business loss limitation for certain passthrough business owners.

In the latter half of the decade, however, the JCT sees those fortunes reversing, with lower-income taxpayers facing small tax increases (due mainly to the expiration of those enhanced Affordable Care Act subsidies) and higher-income taxpayers seeing modest tax cuts (a result that may be attributable to the expiration of the excess business loss rule).

Also factoring into these estimates—and contributing to the projections of tax hikes at the lower end of the income spectrum—is a longstanding technical assumption by the JCT about the relative incidence of the corporate tax between equity owners and employees.

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JCT's distributional tables also do not factor in nontax provisions of the legislation—mainly, enabling Medicare to negotiate the prices of certain prescription drugs—that Democrats argue will redound chiefly to the benefit of lower-income individuals.

CBO estimate still pending: For its part, the Congressional Budget Office has not yet released an official revenue score for the Inflation Reduction Act as approved. In an August 11 update sent to Senate Budget Committee Chairman Bernie Sanders, I-Vt., and ranking member Lindsey Graham, R-S.C., CBO Director Phillip L. Swagel notes that "it will be a few weeks before [the agency] can fully analyze and estimate" the budgetary effects of the tax provisions in the legislation. The update does include a table showing the estimated budget impact on the bill's nontax titles, however.
URL: https://www.cbo.gov/system/files/2022-08/Honorable_Bernie_Sanders.pdf

What's left on this year's tax policy agenda?

Passage of the Inflation Reduction Act essentially closes out an item that has dominated the tax policy discussion since January of 2021, when President Biden took office and both chambers of Congress came under Democratic control. But lawmakers still face a formidable to-do list for 2022 when they return from their summer recess after Labor Day. Among the more notable priorities are:

- Completing work on the 12 spending bills to fund the federal government for fiscal year 2023, which begins October 1. The House so far has approved a "minibus" of six appropriations bills, including a Financial Services and General Government package that proposes a $1 billion boost IRS funding for the coming fiscal year—on top of the special 10-year, $80 billion allocation included in the Inflation Reduction Act. The timeline for considering the remaining six House spending measures has not been announced, however. (For prior coverage, *Tax News & Views*, Vol. 23, No. 24, July 22, 2022.) Senate Democratic appropriators recently released 12 proposed spending measures of their own—and are eyeing an IRS budget increase similar to the one approved in the House—but the path forward for those measures is not yet clear. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 27, Aug. 5, 2022.) If the two chambers can't agree on a unified spending plan by the October 1 deadline, then they'll need to approve a continuing resolution that keeps the government's doors open by funding federal departments and agencies at fiscal year 2022 levels.
  URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220722_3.html
  URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220805_2.html
- Approving another round of retirement security protections that would build on 2019's SECURE Act. The House passed a bipartisan "SECURE 2.0" bill this past March. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 13, Apr. 1, 2022.) The Senate Finance Committee cleared its version of a SECURE 2.0 package—also with bipartisan support—in June. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 22, June 24, 2022.) The JCT estimates that both bills would generate relatively modest increases in federal receipts over the 10-year budget window.
  URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220401_1.html
  URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220624_1.html
- Reversing a change within tax code section 174—originally enacted as part of the Tax Cuts and Jobs Act—that, as of January 1 of this year, requires certain research expenditures to be amortized over a

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number of years rather than deducted currently. Members of both parties have advocated for this change to be repealed. A provision in the House-passed Build Back Better legislation (but not included in the Inflation Reduction Act) that would have retained expensing for an additional four years before requiring amortization was estimated by the JCT to increase the deficit by about $4 billion over the 10-year budget window.

- Renewing a variety of expired and expiring temporary tax “extenders” provisions benefiting businesses and individuals. While the Inflation Reduction Act addresses a number of temporary provisions related to renewable energy and energy efficiency, others remain lapsed or are set to lapse. (A complete list of temporary provisions—that does not reflect changes resulting from the soon-to-be-enacted energy policies in the Inflation Reduction Act—is available from the JCT staff.)
  URL: https://www.jct.gov/publications/2022/jcx-1-22/

Enhanced child tax credit: Many congressional Democrats are expected to push for a long-term extension of enhancements to the child tax credit that were enacted in 2021 as part of the American Rescue Plan and expired at the end of 2021. The House-approved Build Back Better legislation would have extended the enhanced credit through 2025 and made other modifications to make it more generous; but that provision drew criticism in the Senate from Republican members—as well as from Sen. Manchin—so it was left out of the Inflation Reduction Act and its supporters instead will be looking to include it in a package that can attract bipartisan support later this year.

Interest expense limitation, bonus depreciation: Lawmakers also might seek to reverse two other tax code changes (in addition to the section 174 provision) that were enacted in the Tax Cuts and Jobs Act. The first change, which took effect at the beginning of this year, requires companies to calculate their net income, for purposes of the limitation on deductions of net interest expense, based on earnings before interest and taxes (EBIT) as opposed to earnings before interest, taxes, depreciation, depletion, and amortization (EBITDA). The second change calls for the bonus depreciation rate for most qualified property to be reduced to 80 percent beginning in 2023, with additional reductions in each successive year until it reaches 20 percent in 2026 and falls to zero thereafter. (A slightly different phase-out schedule applies to certain longer-lived and transportation property.)

Tight pre-election calendar could mean post-election lame duck session: It is unclear just how much Congress can accomplish in September and October with the midterm elections looming and lawmakers eager to hit the campaign trail. The current calendars call for the House to recess for the election season on September 30 and the Senate to leave October 21. That means there is a distinct possibility that action on any tax priorities in the remaining months of 2022 might be pushed off to a post-election lame duck session.

— Prepared by the tax professionals in the Washington National Tax practice
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