‘CHIPs’ bill with tax break for US semiconductor makers becomes law

President Biden on August 9 signed into law bipartisan legislation designed to boost domestic semiconductor manufacturing and encourage US research activities. However, while the measure provides an investment tax credit intended to promote domestic production of semiconductors, it does *not* include a provision that would retroactively permit expensing for research expenditures under tax code section 174.

The CHIPS Act of 2022 (H.R. 4346: text; section-by-section summary) cleared the Senate on July 27 on a 64-33 vote and was passed in the House a day later by a margin of 243-187.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220722_2_suppA.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220722_2_suppB.pdf

25 percent investment tax credit plus funding for domestic chip makers

The CHIPS legislation, which the nonpartisan Congressional Budget Office (CBO) estimates will cost roughly $80 billion over 10 years, leans heavily on direct funding aimed at building, expanding, and modernizing domestic semiconductor facilities, along with boosting funding for research and development programs administered by the Department of Commerce.
URL: https://www.cbo.gov/system/files?file=2022-07/hr4346_chip.pdf

On the tax side, the bill creates a 25 percent investment tax credit (under new tax code section 48D) for “qualified property”—generally, tangible and depreciable or amortizable property—that is constructed or acquired new by the taxpayer and is integral to the operation of a facility for which the primary purpose is the manufacture of semiconductors or equipment used in semiconductor manufacturing. The provision also allows taxpayers, including partnerships and S corporations, to elect to take the credit under a direct-pay option similar to the direct-pay provisions for delivering certain clean-energy tax incentives in the House-approved version of the Build Back Better Act and in the Inflation Reduction Act, the budget reconciliation measure that was recently approved by the House and Senate and is on its way to the White House for President Biden’s signature. (See separate coverage in this issue for details on the Inflation Reduction Act.)

The credit, which carries a 10-year cost of roughly $25 billion according to CBO, generally is available for property placed in service after December 31, 2022, and for which construction begins before January 1, 2027.

Expensing of research expenditures left out

Though the policy maintains broad bipartisan support, the newly enacted CHIPS legislation does not include language aimed at reversing a change within 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 than deducted currently.

As a result, stakeholders hoping for congressional action on a section 174 fix likely will have to wait at least until the post-midterm election lame duck session, when that and a number of other potential revenue measures (related to retirement tax policy and certain expired and expiring provisions known as “tax extenders”) may be in play as part of a potential year-end tax-and-appropriations package. (See separate coverage of the Inflation Reduction Act in this issue for a discussion of the post-Labor Day agenda in Congress.)

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