Fiscal cliff in 2025 looms large in JCT's latest expiring provisions report

A slew of temporary tax provisions set to lapse after 2025—many of which were enacted in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97)—accounts for more than 40 percent of the 94 tax "extenders" that expired, or are scheduled to expire, from 2022 through 2034, according to a recently released report from the Joint Committee on Taxation (JCT) staff.
URL: https://www.jct.gov/publications/2023/jcx-1-23/

A reckoning for the TCJA

The Tax Cuts and Jobs Act moved through a Republican-controlled Congress in 2017 under budget reconciliation rules which, among other things, prevented the measure from increasing federal deficits outside of the 10-year budget window (at that time covering 2018 through 2027). To meet that constraint, lawmakers designed the legislation to provide a mix of permanent tax cuts (generally focused on businesses) and temporary relief (generally focused on individuals and passthrough entities). As a result, under the measure as enacted, the bulk of the provisions on the individual side of the code are in effect only through 2025. Some of the headline tax relief provisions that are set to lapse include reduced tax rates on ordinary income; repeal of what's known as the "Pease" limitation on itemized deductions; increases in estate and gift tax exemption amounts, alternative minimum tax exemptions, the standard deduction, and the child tax credit; and the 20 percent deduction for certain passthrough business income.

Notable TCJA revenue-raising provisions that are scheduled to sunset after 2025 include the higher deduction percentages for global intangible low-taxed income (GILTI) and foreign-derived intangible income FDII), the limitation of the deduction for state and local taxes (SALT), and the repeal of the personal exemption.

Making the upcoming cliff even more precipitous is that fact that several significant non-TCJA tax incentives—such as lookthrough treatment of payments between certain related controlled foreign corporations, the new markets tax credit, the work opportunity tax credit, accelerated cost recovery for motorsports entertainment complexes, expensing of certain qualified film and live theatrical production costs, and the employer credit under section 45S for paid family and medical leave—that were renewed for five years under an omnibus tax-and-spending package enacted in December of 2020 are also scheduled to expire at the end of 2025.

The future of the TCJA tax cuts is likely to frame much of the tax policy debate in the 118th Congress, which got underway earlier this month. The Republican-controlled House, in line with the Commitment to America platform laid out ahead of the 2022 congressional midterms by now-Speaker Kevin McCarthy of California, is expected to pursue legislation this year that would permanently extend the temporary provisions benefiting individuals and passthrough entities, as well as enhance certain business-focused provisions, such as more generous bonus depreciation rules. The Democratic-controlled Senate, for its part, hopes to pursue legislation outlined last fall in President Biden's economic blueprint that would rescind TCJA benefits aimed at wealthier taxpayers (generally, those with incomes greater than $400,000) and large businesses. That blueprint also calls revisiting many of the revenue-raising provisions targeting businesses and upper-income individuals that were left out of the recently enacted Inflation Reduction Act, (P.L. 117-169), the roughly $740 billion tax-and-

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spending package that moved through a Democratic-controlled House and Senate under budget reconciliation rules this past August.
URL: https://www.speaker.gov/commitment/
URL: https://www.whitehouse.gov/wp-content/uploads/2022/09/Biden-Economic-Blueprint-Report-720PM-MASTER-DOC.pdf

It's worth noting, though, that any partisan tax legislation that emerges from one chamber in the current Congress is very likely to be ignored when it reaches the other side of the Rotunda. (For prior coverage of the legislative dynamic we can expect in the coming two years, see *Tax News & Views*, Vol. 24, No. 2, Jan. 13, 2023.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230113_1.html

Two tranches of Inflation Reduction Act clean energy incentives

The JCT report notes that the Inflation Reduction Act will come in for its own reckoning with the scheduled sunset of 14 clean energy tax incentives in 2024 and another 12 in 2032. These provisions generally are intended to reduce consumer energy costs, increase domestic energy security and manufacturing, and reduce greenhouse gas emissions. Some of these are new incentives that were created in the Inflation Reduction Act, while others were available under prior law but were extended—and in some cases enhanced—under the reconciliation measure.

Provisions expiring in 2024 include, among others, the beginning-of-construction date for renewable power facilities eligible to claim the renewable electricity production credit or the investment credit in lieu of the production credit; the beginning-of construction date for the increased credit for business solar property and the credit for fiber-optic solar property, fuel cell property, microturbine property, geothermal property, combined heat and power system property, small wind energy property, and waste energy recovery property; and incentives for biodiesel and renewable diesel, sustainable aviation fuel, and alternative fuel and alternative fuel mixtures.

Among the provisions sunsetting in 2032 are credits for carbon oxide sequestration; alternative fuel refueling property; nonbusiness energy property; clean hydrogen production; zero-emission clean nuclear production; advanced manufacturing production; and for new clean electric vehicles, previously owned electric vehicles, and commercial electric vehicles.

A detailed discussion of all the clean energy tax provisions in the Inflation Reduction Act is available from Deloitte Tax LLP.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/inflation-reduction-act-2022-clean-energy-incentives.html

Additional highlights

Examples of other provisions that are due to lapse in the coming years include: Airport and Airway Trust Fund excise taxes (in 2023); the advanced manufacturing investment credit, bonus depreciation, and the election to invest capital gains in an opportunity zone (in 2026); Highway Trust Fund excise taxes and the limitation on

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excess business losses for noncorporate taxpayers (in 2028); Superfund excise taxes (in 2031); and the residential clean energy credit and the beginning-of-construction date for the increased geothermal heat pump property credit (in 2034).

The JCT report also notes that a handful of tax provisions expired at the end of 2022, including the full deduction for business meals provided by a restaurant; the 50 percent rate for the railroad track maintenance credit; a special rule for health and dependent care flexible spending arrangements; and a temporary delay in designating multiemployer plans as being in endangered, critical, or critical and declining status. (In addition, it's worth noting that Congress also has been grappling with how to address two other tax code provisions that lapsed at the end of 2021 as a result of the changes enacted in the TCJA: the more generous business interest expense limitation under section 163(j) and the immediate deduction of research expenditures under section 174.)

No 'Blue Book' until at least mid-February, Barthold says

In other JCT news, Chief of Staff Thomas Barthold commented at a District of Columbia Bar Association conference January 25 that a "Blue Book" describing tax provisions in legislation enacted during the 117th Congress will not be released until the middle of next month at the earliest.

"Don't expect it by Valentine's," Barthold told the audience. In comments to *Tax Notes* after the conference, Barthold indicated that the report would be published sometime before the end of June.

Tax-related legislation that will be addressed in the Blue Book includes the Inflation Reduction Act, the Consolidated Appropriations Act, 2023 (P.L. 117-328), and the CHIPS and Science Act of 2022 (P.L. 117-167), all of which were enacted last year, as well as the American Rescue Plan Act (P.L. 117-2) and the Infrastructure Investment and Jobs Act (P.L. 117-58), both of which became law in 2021.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf
URL: https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf
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URL: https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf

The forthcoming report also will include some proposed technical corrections to the enacted legislation that are intended to address what Barthold described as "potential error[s] in . . . statutory language such that the language does not clearly reflect the intent of Congress."

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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