Ways and Means chairman unveils 'economic growth' tax package

House Ways and Means Committee Chairman Jason Smith, R-Mo., on June 9 released three bills which, taken together, form the basis of what he has characterized as a tax package focused on economic growth that is intended to mitigate the adverse impact of some business-focused tax code changes that were enacted in the Tax Cuts and Jobs Act and other recent legislation, spur small business manufacturing and investment, pare back clean energy tax incentives that became law as part of last year's Inflation Reduction Act, help US-based businesses remain competitive internationally, and offer individuals some relief from the effects of inflation by temporarily increasing the standard deduction.

The Tax Cuts for Working Families Act, the Small Business Jobs Act, and the Build it in America Act are expected to be consolidated into a single package during a Ways and Means Committee mark-up scheduled for June 13.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/06/H.R.-3936-Bill-Text51.pdf
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/06/H.R.-3937-Bill-Text-1.pdf
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/06/H.R.-3938-Bill-Text-1.pdf

Business-friendly tax code changes

The Ways and Means legislation includes several provisions that the panel's Republicans contend will expand jobs and investment as well as simplify the tax code and reduce recordkeeping burdens for small businesses.

Research expenditures, business interest limitation, bonus depreciation: The legislation would temporarily reverse certain tax code changes enacted the Tax Cuts and Jobs Act (TCJA) by:

- Permitting certain research expenditures to be deducted immediately rather than amortized over a number of years, effective for expenditures that are paid or incurred in tax years beginning after December 31, 2021, and before January 1, 2026. (The TCJA requires amortization of these expenditures as of January 1, 2022.)
- Permitting companies to calculate their adjusted taxable income, for purposes of the limitation on deductions of net business interest expense, generally based on earnings before interest, taxes, depreciation, depletion, and amortization (EBITDA) for taxable years beginning after December 31, 2022 (and, if elected, for taxable years beginning after December 31, 2021), and before January 1, 2026. (The TCJA dropped the EBITDA standard and replaced it with earnings before interest and taxes, or "EBIT," beginning in 2022.)
- Permitting 100 percent bonus depreciation for most qualified property placed in service after December 31, 2022, and before January 1, 2026. (The TCJA reduced the bonus depreciation rate 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.) The legislation would retain 20 percent bonus depreciation for most qualified property placed in service after December 31, 2025, and before January 1, 2027.

These proposals enjoyed varying degrees of bipartisan support last year and lawmakers had hoped to include them in a year-end tax package during the lame duck session that followed the 2022 congressional midterm elections; however, they ultimately were left out of the omnibus spending legislation that Congress approved in late December.

1099 reporting thresholds: The Ways and Means legislation would repeal the more stringent Form 1099-K reporting thresholds imposed on third-party settlement organizations under the American Rescue Plan in 2021. That legislation reduced the dollar threshold for the reporting requirement from $20,000 to $600 and eliminated the 200-transaction threshold, with the changes effective for calendar years after 2021; however, the Treasury Department announced late last year in Notice 2023-10 that it would delay enforcement of the new rules until after 2023. The Ways and Means legislation would restore the prior-law thresholds as if the American Rescue plan provision were never enacted.
URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf

It also would increase the general Form 1099 reporting threshold to $5,000 (from $600) effective for payments made after December 31, 2023, with annual adjustments for inflation after calendar year 2024.

Small business incentives: For small businesses, the Ways and Means legislation would expand the expensing limitation under section 179 to $2.5 million (from $1 million under current law) effective for property placed in service in taxable years beginning after December 31, 2023.

It also would expand the exclusion from gain from qualified small business stock under section 1202 by:

- Providing a new 50 percent exclusion for stock held at least three years, and a 75 percent exclusion for stock held at least four years. Stock held at least five years would continue to be eligible for a 100 percent exclusion.
- Expanding qualification to S corporations.
- Allowing investors to add their holding period for qualified convertible debt to the holding period required to qualify for the exclusion.

These provisions generally would be effective for stock acquired and debt instruments issued after the date of enactment.

Energy provisions

The Ways and Means legislation would significantly pare back the clean energy tax incentives enacted in last year's Inflation Reduction Act and terminate the current-law Superfund tax.

Clean energy production and investment: The legislation would repeal the clean electricity production credit and the clean electricity investment credit.

Clean vehicles: The legislation would return the clean vehicle credit to the pre-Inflation Reduction Act parameters. Thus, new qualified plug-in electric drive motor vehicles would be eligible for a credit with a base credit of $2,500 increasing up to $7,500 depending on kilowatt-hour battery capacity. Other provisions would reinstate a 200,000 vehicle per manufacturer limitation, including previously qualifying vehicles and limit the credit to individuals with adjusted gross income less than $150,000 and married filers with adjusted gross income less than $300,000. The legislation would limit the credit to cars with a manufacturer's suggested retail price (MSRP) of $55,000 or less and vans, SUVs, and pickup trucks with a MSRP of less than $80,000.

The legislation would disallow the credit for (1) vehicles which have batteries that contain less than 80 percent critical minerals extracted or processed in the United States or in any country which the United States has a free trade agreement, (2) vehicles for which less than 100 percent of the value of the components contained in the battery were manufactured or assembled in North America, and (3) vehicles placed in service after December 31, 2024, that contain critical minerals extracted or processed by a foreign entity of concern.

The credit for previously owned clean vehicles and the credit for qualified commercial clean vehicles would be repealed.

Superfund tax: The Ways and Means legislation would also repeal the superfund tax on crude oil received at US refineries and petroleum products entered the United States for consumption, use, or warehousing after December 31, 2022. It also would repeal the authorization for the Hazardous Substance Superfund to borrow from the General Fund through repayable advances.

Maintaining international competitiveness

The legislation includes provisions intended to make it easier for US-based companies to move their supply chains out of China and make it more difficult for individuals or entities from certain foreign-adversary nations to purchase US agricultural land.

Election to disregard certain foreign tax credit regulations: The legislation includes a proposal introduced earlier this week by House GOP taxwriter Kevin Hern of Oklahoma that would allow taxpayers to make an election to essentially opt out of certain regulations recently issued by the Treasury Department that critics argue are overly stringent in the determination of what constitutes a creditable foreign tax and that may discourage companies from moving operations closer to the US.

In general, those regulations restrict companies from claiming a foreign tax credit on certain digital service taxes, but also go further by limiting foreign tax credits on levies by countries that do not yet have a tax treaty with the US.

Importantly, the election allowed under the Ways and Means legislation would apply only to "Western Hemisphere" taxes, which are defined in the bill as taxes paid or accrued to US possessions and foreign countries—except Cuba and Venezuela—that are located in North, Central, or South America.

The election would be available for tax years beginning after December 31, 2021, and before January 1, 2027.

Excise tax on land sales to certain foreign purchasers: The legislation also includes a proposal introduced by Texas Republican taxwriter Beth Van Duyne on June 9 that would expand an existing tax on sales of US land to foreign purchasers by imposing a 60 percent excise tax on purchasers from a "country of concern"—that is, a country engaged in what the committee describes as "a long-term pattern of conduct significantly adverse to the national security of the United States, including the People's Republic of China (not including Taiwan), the Russian Federation, Iran, North Korea, Cuba, and the regime of Nicolas Maduro in Venezuela."

This provision would apply to acquisitions after the date of enactment.

Expanding Opportunity Zones

The Ways and Means legislation would permit the designation of certain rural persistent poverty community population census tracts as qualified rural opportunity zones, generally following the structure created under the TCJA's Opportunity Zone program.

The legislation also would implement reporting requirements for qualified opportunity zones that, for procedural reasons, were left out of the TCJA and also apply them to qualified rural opportunity zones. Penalties would be imposed for noncompliance with these requirements.

Tax relief for individuals

On the individual side of the tax code, the Ways and Means package proposes to increase the standard deduction for individuals by $4,000 for joint filers and $2,000 for single filers on 2024 and 2025 tax returns, with an adjustment for inflation in 2025. The deduction amount would be subject to phase-outs that begin with income greater than $400,000 for joint filers and income greater than $200,000 for single taxpayers.

Next steps

The legislation is likely to be favorably reported out of committee at the June 13 mark-up along party lines and to eventually win passage—also along party lines—if it is brought up for a vote on the House floor.

Even though some of the business provisions in the measure have bipartisan support—most notably, those related to the treatment of research expenditures—Democrats have maintained that their "aye" votes for those tax code changes are preconditioned on pairing them with a long-term extension of the more generous child tax credit rules that were enacted in the American Rescue Plan Act and expired at the end of 2021. Ways and Means Chairman Smith has stated in the past that he would be open to expanding the child tax credit if it is coupled with work requirements, but the just-released legislation includes no such provision.

Ways and Means Committee ranking member Richard Neal, D-Mass., panned the GOP legislation in a statement released on June 9, characterizing it as providing "retroactive corporate tax cuts, next-to-nothing for the most vulnerable children and families, and sneaking in favors for Big Oil."

The legislation in its current form also is likely to fall flat in the Democratic-controlled Senate. Finance Committee Chairman Ron Wyden, D-Ore., commented at a small business roundtable the panel held this week that full expensing of research expenditures has his "full support"; however, he cautioned that "Democrats . . . can support extending it as long as Congress also passe[s] tax cuts for working families. That has been the underlying bipartisan approach for dealing with expiring tax provisions for many years."

It’s also worth noting that congressional Democrats would not be likely to support—nor would President Biden sign—legislation that attempts to dismantle the clean energy programs enacted in last year’s Inflation Reduction Act. House Republicans called for repealing many of those provisions during the recent negotiations over increasing the federal debt limit, but the president rejected that demand and the final agreement, enshrined in the just-enacted Fiscal Responsibility Act of 2023, left the clean energy package untouched.

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