

New interim guidance addresses mandatory capitalization and amortization of specified research expenditures

The Treasury Department and Internal Revenue Service on September 8 released Notice 2023-63, which provides taxpayers with interim guidance on the requirement to capitalize and amortize specified research and experimental (SRE) expenditures under section 174.

URL: <https://www.irs.gov/pub/irs-drop/n-23-63.pdf>

TCJA-mandated changes

The guidance addresses a revenue offset in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) that generally requires SRE expenditures under section 174 to be amortized over five years (15 years in the case of foreign expenditures) rather than deducted immediately as under prior law. The TCJA provision took effect beginning in 2022.

URL: <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>

Although there has been bipartisan support in Congress for retroactively delaying (or even repealing) this change in the treatment of SRE expenses, efforts thus far to get relief enacted into law have been unsuccessful. In the 117th Congress, Democrats included a provision to delay the implementation of the amortization requirement in their “Build Back Better” legislation, which cleared the House in the fall of 2021 but subsequently stalled in the Senate, and that provision was left out of the Inflation Reduction Act (P.L. 117-169), the successor to “Build Back Better” that was enacted in August of 2022. Lawmakers also were unable to work out a deal to add a section 174 fix to the Consolidated Appropriations Act, 2023 (P.L. 117-328), the omnibus federal appropriations and tax package that Congress approved and President Biden signed into law at the end of last year.

URL: <https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc>

URL: <https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf>

In the current Congress, Republicans on the House Ways and Means Committee approved a largely business-focused tax relief package in June that includes a provision that would delay mandatory capitalization and amortization of SREs through 2025, retroactive to January 1, 2022. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 24 June 16, 2023.) The path forward for the Ways and Means legislation has been unclear, however, as Chairman Jason Smith, R-Mo., addresses disagreements among Republicans over whether or not it also should include relief from the TCJA’s \$10,000 cap on the deduction for state and local income and property taxes. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 29, Sep. 8, 2023.)

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230616_1.html

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230908_1.html

Highlights of the interim guidance

Notice 2023-63 addresses certain computation rules; the scope of costs considered SRE expenditures; software development; research performed under contract; disposition, retirement, or abandonment of property resulting from SRE expenditures; the treatment of SRE expenditures under section 460; and the treatment of SRE expenditures incurred as part of a qualified cost sharing arrangement under Treasury Reg. section 1.482-7.

In general, taxpayers may rely on the rules described in the notice for SRE expenditures paid or incurred in taxable years beginning after December 31, 2021, provided that the taxpayer applies all the rules in the notice and applies them in a consistent manner. Note however, that taxpayers may not rely on the rules pertaining to the disposition, retirement, or abandonment of property (section 7) with respect to property that is contributed to, distributed from, or transferred from a partnership. It is anticipated that the forthcoming proposed regulations would apply for taxable years ending after September 8, 2023.

More discussion to follow

Additional details on Notice 2023-63 will be provided in a forthcoming tax alert from Deloitte Tax LLP.

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