House approves permanent extension of research credit, Senate expected to vote on package of temporary tax provisions

May 9, 2014

In brief
The House of Representatives today voted 274 to 131 to approve a bill (H.R. 4438) to permanently extend and modify on a retroactive basis the Section 41 research credit. Today’s House action marks the first time one chamber of Congress has voted to permanently extend the research credit since it was first enacted as a temporary provision in 1981. H.R. 4438 is estimated by Joint Committee on Taxation (JCT) staff to reduce federal revenues by $155.5 billion over 10 years.

The Senate next week is expected to continue consideration of the research credit and other expired business and individual tax provisions. Majority Leader Harry Reid (D-NV) has said he hopes to schedule a Senate floor vote next week on an $85 billion ‘tax extenders’ bill (S. 2260) approved by the Finance Committee on April 3, 2014. The Finance Committee bill would temporarily extend the research credit and more than 50 other expired or expiring tax provisions on a retroactive basis through the end of 2015.

Assuming the Senate passes a tax extenders bill, Congress will need to reconcile differences between the House and Senate bills on expired tax provisions before any final legislation can be sent to the White House for action by President Obama.

In detail
H.R. 4438 makes permanent the alternative simplified method for calculating the research credit and increases the rate for that method from 14 to 20 percent. The bill repeals the traditional ‘regular’ 20-percent research credit calculation method. The bill also makes permanent the credits for amounts paid for basic research and amounts paid to an energy consortium (both with credit rates of 20 percent), and changes the base period for the basic research credit from a fixed period to a three-year rolling average.

Note: The permanent research credit approved by the Ways and Means Committee does not include language from Chairman Camp’s tax reform discussion draft that would have excluded amounts paid for supplies or with respect to computer software development from qualifying for the credit. For a detailed summary of Chairman Camp’s tax reform discussion draft, see our February 28 WNTS Insight.

While the research credit has had bipartisan support since it was first enacted in 1981, H.R. 4438 was opposed by many House Democrats, who objected to the lack of offsets.
President Obama proposed a permanent research credit as part of his FY 2015 budget, but the White House on May 6 announced that President Obama would veto the House bill because of its effect on the federal deficit.

Click here for a copy of H.R. 4438 and click here for a copy of the Ways and Means Committee report for a detailed description of the bill.

**House Ways and Means Committee action on other expired tax provisions**

H.R. 4438 is the first of six separate permanent tax extender bills approved by the Ways and Means Committee to be acted on by the full House. In addition to a permanent research credit, the Ways and Means Committee on April 29 approved legislation that would permanently extend ‘look-through’ treatment for controlled foreign corporations (CFCs) (H.R. 4464), the Subpart F exceptions for active financing income (H.R. 4429), increased Section 179 ‘small business’ expensing limits (H.R. 4457), a reduced recognition period for S corporation built-in gains (H.R. 4453), and basis adjustments to stock of S corporations making charitable contributions of property (H.R. 4454).

These permanent ‘tax extender’ bills, approved by the Ways and Means Committee without revenue offsets, are estimated by Joint Committee on Taxation (JCT) staff to reduce federal revenues altogether by $310 billion over 10 years. For more details on the other Ways and Means Committee permanent tax extender bills, see our April 29 WNTS Insight.

The outlook for separate House votes on bills addressing other expired business and individual tax provisions is unclear at this time.

**Senate Finance Committee temporary tax extenders legislation**

The Finance Committee by a voice vote on April 3 approved the “Expiring Provisions Improvement Reform and Efficiency (EXPIRE)” Act, which retroactively extends for two years -- from January 1, 2014, through December 31, 2015 -- more than 50 business and individual tax provisions that expired at the end of 2013. The EXPIRE Act also extends for one year certain provisions that are scheduled to expire at the end of 2014.

Significant expired business provisions that would be extended under that bill through the end of 2015 include the research credit, CFC look-through, and the Subpart F active financing exceptions. The EXPIRE Act also would renew 50-percent ‘bonus’ depreciation for qualified property and would continue to allow an election to accelerate AMT credits in lieu of bonus depreciation. In addition, the bill includes a two-year extension of the renewable electricity production tax credit (PTC) and the election to claim the energy credit in lieu of the PTC.

**Note:** The EXPIRE Act includes a modification to the research credit that would allow qualifying start-up businesses to claim the credit against payroll taxes. This benefit would be capped at $250,000 per year and would be available only to companies less than five years old with less than $5 million in gross receipts. In addition, this amendment would allow certain taxpayers to offset the research credit against liability for the alternative minimum tax (AMT).

Individual tax provisions that would be extended through 2015 under the EXPIRE Act include the deduction for state and local sales taxes; the exclusion for discharge of indebtedness income on principal residences; parity in the exclusion for employer-provided mass transit and parking benefits; tax-free distributions from IRAs to certain public charities for individuals age 70-1/2 or older; and rules for contributions of capital gain real property made for qualified conservation purposes.

For more on the Senate Finance Committee bill, see our April 3 WNTS Insight.

**The takeaway**

It remains unclear when Congress may take final action to address tax extenders legislation.


Let’s talk
For a deeper discussion of how this might affect your business, please contact:

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