Ways and Means Committee Proposes Three Taxpayer Friendly Bills

With the debt ceiling debate resolved until after the 2024 elections, the House has pivoted to three bills of proposed tax changes. On June 9th, the House Ways and Means Committee released the Build It in America Act, Small Business Jobs Act and Tax Cuts for Working Families Act. These bills introduced by House Republicans will likely struggle to pass in the Democratic controlled Senate in their current form. There will likely be several modifications to these bills as they work the legislative process.

Build It in America Act

The Build It in America Act contains several taxpayer friendly proposals. The bill repeals several energy-related tax provisions added by the Inflation Reduction Act and modifies the Section 30D credit for certain electric vehicles to help offset the cost of the legislation.

Build It in America Act: Deduction For Research and Experimental Credits

The Tax Cuts and Jobs Act (TCJA) modified the cost recovery rules for research and experimental expenditures starting in tax years beginning after December 31, 2021. Starting in tax years after December 31, 2021, specified research or experimental expenditures are required to be capitalized and amortized over a five-year period (15 years if the research is conducted outside of the US). Research or experimental expenditures generally include all costs incurred in the experimental or laboratory sense related to the development or improvement of a product. These expenditures include the expenses incurred for software development.

The proposal suspends the application of these new rules for research and experimental expenditures beginning after December 31, 2021, and before January 1, 2026. As a result, research or experimental expenditures paid or incurred by a taxpayer in a trade or business will be fully deductible again. Taxpayers would be allowed to electively capitalize these expenditures.

What happens to taxpayers who have already filed a 2022 return capitalizing their research and experimental expenses? The language in the proposal has two elective transition rules that effected taxpayers will want to consider with their tax professional if the bill passes. There should be more guidance on this issue as the bill works through the legislative process.

Build It in America Act: Proposed Changes to Interest Expense Limitation

One of the biggest changes brought on by the TCJA was the 163(j) interest expense limitation rules. This rule generally limits the deductible business interest expense to 30% of the adjusted taxable income of the taxpayer (there are other considerations if you have business interest income or floor plan financing interest).

Prior to 2022, this adjusted taxable income calculation was similar to an EBITDA calculation because taxpayers were allowed to add back depreciation, amortization or depletion for their adjusted taxable income calculation. For tax years beginning after December 31, 2021, taxpayers are no longer allowed to add back depreciation, amortization or depletion to their adjusted taxable income calculation. The loss of the ability to add back depreciation, amortization and depletion results in more taxpayers being unable to deduct their business interest expense in the current year.

The proposed bill allows taxpayers to add back depreciation, amortization and depletion to their adjusted taxable income calculation until tax years beginning before January 1, 2026. The proposal is written to be effective for taxable years beginning after December 31, 2022. However, the proposal does include an elective transition rule that allows a taxpayer to apply the new rules to taxable years beginning after December 31, 2021.

Build It in America Act: Bonus Depreciation

One of the most taxpayer friendly changes in the TCJA was the creation of 100% bonus depreciation. The downside was that the bonus depreciation percentage decreased starting in 2023. Many tax professionals anticipated that bonus depreciation would eventually be adjusted once the phase out kicked in, although this proposal adjusts bonus depreciation earlier than many tax professionals expected.

The proposed bill allows for 100% bonus depreciation through 2025. The bonus depreciation drops to 20% in 2026 and then 0% (assuming it doesn't get extended again). Here is a comparison of the bonus depreciation percentages under the current law and under the proposed law.

Placed In Service Year	Bonus Depreciation % Under Current Law	Bonus Depreciation % Under Proposed Law
Sept. 28, 2017 - Dec. 31, 2022	100%	100%
2023	80%	100%
2024	60%	100%
2025	40%	100%
2026	20%	20%
2027	0%	0%
2028 and beyond	0%	0%

The Small Business Jobs Act: 1099 Threshold

1099 filing season is nobody's favorite time of year. Under the current law, every person engaged in a trade or business who makes certain payments aggregating $600 or more in any taxable year to a single payee in the course of such trade or business must report those payments to the IRS on a 1099-NEC or 1099-Misc. The proposal would increase the reporting threshold to $5,000 and index that dollar threshold to inflation after 2024. This is a welcome change that would reduce the amount of 1099s businesses need to file annually.

The Small Business Jobs Act: Other Notable Proposals

There are three changes to Section 1202 and qualified small business stock in this bill. Gains on the sale of qualified small business stocks held for five years or more can potentially be 100% excluded. The proposal also contains a tacked on holding period provision for stock acquired via a qualified convertible debt instrument. The proposal also extends the 1202 exclusion to S Corporation stock.

The below graphic is the applicable exclusion percentages for qualified small business stock acquired after the proposal goes into effect.

Hold Period	Exclusion %
At least 3 years	50%
At least 4 years	75%
5 or more years	100%

The proposal increases the maximum amount a taxpayer may expense under Section 179 to $2,500,00 and increases the phase-out threshold amount to $4,000,000.

The proposal creates a new category of Qualified Opportunity Zones called Qualified Rural Opportunity Zones. Don't go out buying property in rural areas just yet because stock, partnership interests, and property are required to be acquired after December 31, 2023.

The Tax Cuts for Working Families Act

Taxpayers who do not itemize deductions are entitled to a standard deduction that reduces adjusted gross income (AGI) by the amount of the standard deduction to arrive at taxable income. The proposed bill makes a few changes to the standard deduction, including renaming the deduction the "Guaranteed Deduction."

The standard deduction is already indexed to inflation and is adjusted annually. The proposal adds a new bonus guaranteed deduction for taxpayers beginning after December 31, 2023, and before January 1, 2026. This bonus deduction is in addition to the basic guaranteed deduction all taxpayers are entitled to. For taxable years beginning in 2024, the amount of the bonus guaranteed deduction is $2,000 for taxpayers who file single or married filing separate returns and $4,000 for taxpayers filing joint returns.

What's Next?

These bills are in the initial stages of the legislative process. It is unlikely that all the proposals in these bills will be able to pass the House, Senate and be approved by President Biden. These bills will likely need to be modified to get through Congress.

The proposed bills were put together by House Republicans. It is believed there is sufficient support in the House to pass these bills in their current form. However, the biggest roadblock for these bills will be the Democratic controlled Senate. Democrats would like to add an expansion to the child tax credit and limit any language that alters the energy credits. That could prove difficult since the Build It in America Act offsets the cost of its proposals by repealing the energy credits. President Biden could also veto any bills that pass the House and Senate.

These initial proposals start the conversation but there is a lot more work to do before any of these proposed bills are finalized. We will learn more in the next few weeks as these proposals work through the legislative process.