Morrison Cohen

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Retroactive Tax Legislation Could Throw 2023—Or Even 2022—Tax Filings into Disarray

The Tax Relief for American Families and Workers Act of 2024 (H.R. 7024) (the "bill") passed in the House on January 31, 2024, and is currently pending in the Senate. The bill includes retroactive changes that could throw taxpayers' 2023—or even 2022—tax filings unexpectedly into disarray. With promises of increased depreciation and deductions, businesses may be interested in keeping an eye on the progression of the bill and how the proposed retroactive changes may reduce or otherwise impact their past tax obligations. Proposed retroactive changes include:

1. **Retroactive Extension of 100% Bonus Depreciation for Qualified Property Placed into Service in 2023 through 2026**

   Changes in tax law in 2017 temporarily allowed taxpayers to immediately expense qualified property placed in service after September 27, 2017 in the year in which the property was placed in service, and raised the rate for bonus depreciation to 100%. The 100% bonus depreciation rate expired for most qualified property placed into service after December 31, 2022, and is currently generally limited to 80% bonus depreciation for property placed into service during 2023, 60% for 2024, and will be 40% for 2025. The bill proposes to extend the amount of time for taxpayers to take advantage of 100% bonus depreciation by extending the 100% rate to apply retroactively to 2023 and through 2025.

2. **Retroactive Loosening of Business Interest Deduction Limitation**

   Under current law, deductions for business interest expense are generally only allowed up to the sum of: (i) business interest income, (ii) 30% of the adjusted taxable income (ATI), and (iii) interest expense relating to certain automobile loans for the tax year. For tax years 2018 through 2021, taxpayers were permitted to increase their ATI by the amount of any deductions for depreciation, amortization, or depletion (i.e., effectively turning ATI into EBITDA). However, when this allowance expired on January 1, 2022 (i.e., effectively turning ATI into EBIT), taxpayers generally had more restrictive limitation on their ability to claim interest deductions than when ATI was determined based on EBITDA. The bill would permit taxpayers to deduct a higher amount of business interest by using EBITDA in ATI calculations retroactively to 2022 (if elected by the taxpayer) and through 2025.

3. **Retroactive Extension of Deductions for Domestic Research and Experimental Expenditures**

   Currently, domestic research and experimental costs paid or incurred in tax years beginning after December 31, 2021 are required to be capitalized and amortized over a five-year period, while foreign expenditures are required to be amortized over a 15-year period. Prior to this change, taxpayers were allowed to deduct domestic research and experimental expenditures in the year the expenditure was paid or incurred. The bill proposes to delay to December 31, 2025 the five-year amortization requirement for domestic research and experimental expenditures, thus allowing taxpayers to deduct such expenditures for tax years 2022 through 2025 in the year in which such expenditures were paid or incurred.

As the Senate returns after a two-week recess, we will be monitoring the progress of this legislation, including when the $78 billion tax bill will be brought to the Senate floor.

Key Contacts

Our Tax team is available to help businesses determine how the Tax Relief for American Families and Workers Act of 2024 and its proposed changes may reduce or otherwise impact their past tax obligations, as well as assist with compliance if the bill is passed.

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