Brewers Association

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House and Senate Introduce Research and Development Legislation to Spur Innovation

April 19, 2023 by David Oksenhorn and Patrick O'Reilly of Marcum LLP, Katie Marisic of the Brewers Association

Independent breweries have long been recognized for their innovation. From the smallest taproom to a regional production brewery, the industry is constantly experimenting with different types of malted barley and hops and providing consumers with new and creative styles of beer. The Research and Development (R&D) tax credit helps incentivize their formulation development and gives breweries flexibility to try new things. The Brewers Association supports legislation that will give breweries the ability to deduct their R&D activity related expenditures in the tax year they are incurred.

The R&D tax credit is a federal tax subsidy that is available to companies investing in product development, formulations, recipes, and techniques. Many breweries can qualify assuming they meet the required criteria. For example, a brewery may have activities qualifying for the R&D tax credit related to the development of new or enhanced formulations of beer recipes as well as for development or enhancement of brewing processes. Qualifying expenses related to these activities may include wages paid to employees, supplies related to first run brew production, and payments made to third party contractors for consultation for development of new or enhanced beers and brewing processes.

Representatives Ron Estes (R-KS) and John Larson (D-CT) recently introduced the **American Innovation and R&D Competitiveness Act** , which would help support R&D investments while allowing for continued immediate deduction of research and experimental (R&E) expenditures in the year these costs are incurred. They join Senators Maggie Hassan (D-NH) and Todd Young (R-IN), who introduced similar legislation in the **American Innovation and Jobs Act** earlier this year. As of today, both tax proposals are pending further congressional evaluation.

Due to the 2017 Tax Cuts and Jobs Act (TCJA), effective January 1, 2022, domestic businesses having R&E expenditures must capitalize these costs over five years with a mid-year convention for U.S. costs and 15 years for expenses paid for costs overseas. The general R&E expenditures include wages, supplies, and contractor costs associated with R&D activities and additionally may include other costs (i.e., rent and utilities) which are more expansive than those qualifying and utilized for R&D tax credit calculations.

Prior to January 1, 2022, under Internal Revenue Code Section 174, taxpayers had the option of immediately expensing R&E expenses or electing to treat these expenses as deferred. If they deferred, they could amortize over a period of no less than 60 months, beginning with the month the taxpayer first realized benefits from the expenses. Under the current law, the current R&E expenses require capitalization. Thus, the United States has become the only country in the world that punitively treats R&E expenses in this manner. However, if either pending legislation is passed, both proposals would retroactively revert the R&D expensing convention to the year commencing January 1, 2022, and current deduction of expenditures into the future as incurred.

Breweries can learn more about the R&D tax credit at this year's **Craft Brewers Conference** in Nashville, by attending the **Tax Savings Opportunities for Breweries** seminar with Patrick O'Reilly, Principal and New England Food & Beverage Industry Leader and David Oksenhorn, CPA, Director with Marcum LLP.