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Some business tax breaks may disappear after 2022

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The Biden administration's determination to curtail or eliminate some valuable tax breaks, along with expiration dates baked into some provisions, has business owners worried. The future of President Joe Biden's proposals is still uncertain — and tax breaks have been known to get a second life — according to some experts who spoke with NJBIZ. Still, if it makes economic sense, they say, taxpayers may want to use 'em before they lose 'em.

"There's been so much uncertainty" about taxes that "it's difficult for business owners to make long-term plans," noted Dawn Rhodes, managing director in the Private Client Services Group at CBIZ Marks Paneth. But some changes are pretty certain, like a pullback in the ability to take "bonus depreciation" after the end of 2022.

"Businesses that plan to add assets eligible for Section 168(k) bonus depreciation may want to do so by Dec. 31," she said, referring to the ability to write off 100% of certain business assets in the year of acquisition, for federal tax purposes, instead of depreciating them over a longer period. The Tax Cuts and Jobs Act increased the 168(k) bonus depreciation percentage from 50% to 100% for qualified property and modified the definition of property that is considered to be qualified, which expanded the property eligible for bonus depreciation.

But under current regulations, the 100% write-off is only good through the end of this year — after that, the amount eligible for immediate expensing will generally be phased out over the next four years.

The gradual elimination of the federal bonus depreciation will affect "capital-intensive companies and the real estate industry," according to Robert McGuinness, a partner in Marcum LLP's Tax & Business Services department.

"Although the 2017 Tax Cuts and Jobs Act expanded bonus depreciation rules to allow a 100% write-off for certain property acquired after Sept. 27, 2017, and placed in service before Jan. 1, 2023, certain interior improvements made to nonresidential real property — known as 'qualified improvement property' — did not qualify," he explained. "But the CARES Act basically made qualified leasehold improvements eligible for this ‘bonus depreciation” — at least through the end of 2022, when the provision is scheduled to sunset.

Another COVID-related law, the Taxpayer Certainty and Disaster Tax Relief Act of 2020, temporarily superseded a TCJA provision that had imposed a 50% limit on the deductibility of business meals consumed at a restaurant. “During the time that the Tax Relief Act is in effect, companies can deduct the full 100% of qualified business meals provided by a restaurant, but that’s likely to revert back to 50% beginning Jan. 1, 2023,” McGuinness said. “Looking a bit further into the future, the Work Opportunity Tax Credit [a general business credit that’s usually up to $2,400 for wages paid to certain individuals] is scheduled to expire at the end of 2025. It’s possible this may be extended on a year-to-year basis, but there’s no guarantee.”

Other CPAs also sounded the alarm about disappearing tax breaks. “Many proposed changes are still in the talking stage,” according to Michael Karu, senior member of Levine, Jacobs & Co. LLC “But there is some anticipation that inheritance, and capital gains tax rates may be increased. “

Additionally, there may still be attempts made to eliminate the ability to make so-called “backdoor” Roth IRA contributions, Karu said, referring to the current ability of wealthy investors to legally circumvent income limits on contributing to a Roth IRA — which is generally not taxed upon distribution, provided certain conditions are met — by converting a traditional, pre-tax IRA to a Roth. Although they pay tax on the conversion, future earnings are generally shielded from tax upon distribution.

An employer payroll tax break is also on the way out, noted Phillip Goldstein, CEO of Goldstein Lieberman and Co. LLC. “Under Section 2302 of the CARES Act, certain employers may defer the deposit and payment of the employer’s portion of Social Security taxes and certain railroad retirement taxes,” he explained. “Generally, 50% of the eligible deferred amount had to be remitted by Dec. 31, 2021, and the balance has to be turned in by Dec. 31, 2022.”

Did business owners dodge a bullet?

The Build Back Better legislation sought by the Biden Administration went through many trials and tribulations during 2021, but it looks like U.S. Sen. Joe Manchin (D-W.Va.) ultimately isn’t getting on board with his fellow Democratic senators, noted CohnReznick Tax Partner Neil Becourtney, “making the prospects for passage rather dubious.”

The BBB legislation had floated “numerous tax proposals to help pay for the cost of the legislation, including increases in the top personal income tax rate to 39.6% and a corresponding increase in the top tax rate on qualified dividend and long-term capital gains income to 25%, an increase in the corporate tax rate from 21% to 26.5%, slashing the lifetime exemption for estate and gift taxes from its current [2022] $12,060,000 level, along with eliminating the step-up in basis upon death, and a net worth tax on billionaires,” he said.

But all of these proposals got scrapped “and were replaced by other proposals including a 5% surcharge on personal taxable in-come above $10 million and a second surcharge of 3% on personal taxable income above $25 million, a 15% minimum corporate tax on corporations with income above $1 billion and a 1% tax on stock buybacks,” Becourtney noted. “And let’s not forget about a sizable increase in the budget for IRS enforcement that was being proposed, to raise revenue to also help fund the cost of the legislation.”

But, he added, “At this point it is highly questionable whether any significant changes to the Federal tax code will be legislated that impact the 2022 tax year. On the other hand, there are some far-reaching changes stemming from prior federal tax legisla-tion that will impact businesses beyond 2022.”

The final year for 100% bonus depreciation on fixed asset additions is 2022, he said, and “Beginning in 2023, the bonus deprecia-tion rate is reduced 20% per year through 2027 after which it will no longer exist absent any legislative changes. Section 179, which also allows for an immediate write-off of fixed asset additions with certain restrictions, generally cannot result in a loss for the year and is limited to $1,080,000 for 2022 — indexed for inflation — and is phased out once qualifying fixed asset additions exceed $2.7 million [for 2022] continues beyond 2022.”

On a positive note, a federal tax credit for employers providing paid family and medical leave has been extended through 2025, under the Consolidated Appropriations Act of 2021, Goldstein added. Enacted as a two-year pilot program under the TCJA, the tax credit had been extended through 2020 by earlier appropriations legislation. “Now employers that provide paid family and medical leave that meets certain requirements can take a general business tax credit for 2021 through 2025. The temporary federal credit ranges from 12.5% to 25% of wages paid to qualifying employees for up to 12 weeks of family and medical leave per taxable year.”

But successful business owners and investors may be penalized under two provisions of the proposed Build Back Better Act, Goldstein noted. “According to the most recent version, the BBB Act would impose a surtax of 5% on personal income above $10 million and 3% on income above $25 million,” he said. “Additionally, under current law, the existing 3.8% net investment income tax applies only to passive investment income, like interest, dividends, and gains from the sale of stock. But a revised BBB Act proposal would expand the application of the tax to include income derived in the ordinary course of business or active business income for taxpayers with taxable income of $400,000 or more; or $500,000 for taxpayers filing jointly.”

Large companies are also targeted. “The proposed legislation would apply a 15% minimum tax on corporations whose financial statements reflect net income of more than $1 billion over a consecutive three-year period, regardless of their taxable income,” he said. But under the latest revisions, the effective date for this new alternative tax would be delayed until 2023.”