

Senate Changes to Proposed Legislation Would Permit Immediate Deduction of Domestic R&E Expenditures Permanently, in Some Cases Retroactively

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On June 16, the Senate Finance Committee (SFC) released revisions to the “One Big Beautiful Bill Act” (OBBBA) passed by the US House of Representatives on May 22. As described in [this June 4 Cooley client alert](#), the OBBBA included a temporary suspension of the capitalization requirement for domestic research and experimentation (R&E) expenditures, which would have permitted an immediate deduction of certain domestic R&E expenditures in tax years beginning after December 31, 2024, and before January 31, 2030. The SFC’s revisions to the OBBBA would permanently allow immediate deduction of domestic R&E expenditures in tax years beginning after December 31, 2024.

Historically, Section 174 of the Internal Revenue Code (IRC) permitted immediate deduction of all R&E expenditures. However, the Tax Cuts and Jobs Act of 2017 (TCJA) required taxpayers to capitalize R&E expenditures and amortize them over five years for R&E performed within the United States, or 15 years for R&E performed outside the United States, for tax years beginning on or after January 1, 2022. For additional background on the changes relating to IRC Section 174 and the treatment of R&E expenditures generally under the OBBBA, see our [June 4 alert](#). The SFC’s revisions to the OBBBA would permanently eliminate the capitalization requirement for domestic R&E expenditures in tax years beginning after December 31, 2024, and would allow some small businesses to elect to apply the change retroactively.

Transition rules

The SFC’s amendments direct the Department of the Treasury to promulgate rules permitting certain small businesses to elect to immediately deduct domestic R&E expenditures retroactively to taxable years beginning after December 31, 2021 (when the capitalization requirement under the TCJA first came into effect). In order to make such election, a business generally must not have average annual gross receipts exceeding \$31 million over the three tax years before its first tax year beginning after December 31, 2024. Taxpayers would be required to file amended tax returns for each taxable year affected by such election. Such election must be made within one year of the enactment of the OBBBA.

All taxpayers that have capitalized domestic R&E expenditures incurred after December 31, 2021, and before January 1, 2025, would be permitted to elect to accelerate the remaining amortization deductions for such expenditures over a one- or two-year period beginning in the first taxable year beginning after December 31, 2024.

If you have questions about how these changes may impact your company, we strongly suggest contacting a member of the Cooley tax team, your accountant or other tax advisor.

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