

TAX TAKE: Should I Stay or Should I Go: Could a Tax Package Be Added to the China Competition Bill?

Tax Alert

05.16.2022

Last Thursday, the bipartisan House and Senate conference committee for what has come to be known as the China competition bill had its [kick-off meeting](#), seeking to reconcile the differences between the House's America COMPETES Act and the Senate's United States Innovation and Competition Act (USICA) and with the goal of passing a final product in the coming weeks. One key question currently being considered by Congress is: Will the conference committee add a tax package to the bill?

During recent consideration of the China competition bill, the Senate passed [90-5](#) Senator Maggie Hassan's (D-NH) [motion to instruct conferees](#) to include research and development (R&D) tax credit legislation (S. 749) in a tax title to the bill. [S. 749](#), introduced last year by Senators Hassan and [Todd Young \(R-IN\)](#) with overwhelming bipartisan and [bicameral support](#), would expand the R&D tax credit and restore full expensing for eligible expenditures.

While a motion to instruct conferees is non-binding on a conference committee, the strong bipartisan vote on Senator Hassan's motion does signal the Senate's significant interest in addressing the R&D tax legislation in the final conference product. And that raises the question – if S. 749 is included in the China competition bill, does that open the door to including additional tax proposals?

When the House and Senate were considering their respective China competition bills, tax policy didn't feature in their deliberations. But as this year progresses and members realize that the China competition bill might be the last major economic bill to pass before the November elections, this could be their last chance to enact any type of tax legislation before the end of year. That is why some [top Senate](#) and House tax-writers, who are part of the conference committee and will have a major role in the final product, are now advocating for inclusion of not only R&D tax credit legislation, but also [tax incentives for the semiconductor industry](#).

While the justification for including an investment tax credit provision (and an R&D provision, for that matter) in the China competition bill is that it rationally relates to the larger issues the bill hopes to address, that alone does not seem to be a strong enough reason to add tax title. Moreover, there is the very real concern that if the conference committee opens the door to one or two tax provisions, [other members](#) will surely line up with tax proposals important to their states and congressional districts. That is how a tax package can develop and grow rapidly in Congress.

Despite the potential interest in adding a tax title, other obstacles remain. The conference negotiations are expected to be complex given the significant differences between the House and Senate bills and negotiators may be reluctant to add the additional complexity associated with incorporating a tax title. Further, some Democrats may be resistant to include business tax incentives without also including individual tax incentives (such as the expanded child tax credit), which would not only increase the cost of a tax title but also likely incur Republican opposition. Republicans, on the other hand, may be of the mindset that tax items are better addressed in a post-election lame duck bill. In this regard, House Committee on Ways and Means Ranking Member Kevin Brady (R-TX) stated in [his remarks](#) at the conference committee kick-off meeting, "I see no need for a tax title in this Conference Report, especially one favoring a single industry."

The timeline for the China competition conference committee is uncertain, but congressional leadership is keen to pass a final bill by the summer. Therefore, it is important to monitor the conference and whether the consideration of adding a tax package ultimately stays or goes. **#TaxTake**

Upcoming Speaking Engagements and Events

Marc will present "Federal Tax Policy Update," at the [Manufacturers Alliance Tax Council Spring Meeting](#) on May 19.

Loren will present "Multilateralism: The New Mode," a panel discussion at the [TCPI 2022 Annual Symposium](#) on May 19.

On May 19, Marc and Jorge will present " [2022 Federal Tax Policy Update](#)," a webinar sponsored by TEI Chicago, the National Association of Black Accountants (NABA), and The Association of Latino Professionals For America (ALPFA) Chicago.

On June 1, Loren will co-chair "Domestic Recent Tax Developments and Changes in the Tax Environment," a panel discussion at the [IFA USA-Italy Joint Meeting](#).

Loren will speak on the "International Tax Update" panel at the [2022 Texas Federal Tax Institute Annual Conference](#) in San Antonio on June 8.

The information contained in this communication is not intended as legal advice or as an opinion on specific facts. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. For more information, please contact one of the senders or your existing Miller & Chevalier lawyer contact. The invitation to contact the firm and its lawyers is not to be construed as a solicitation for legal work. Any new lawyer-client relationship will be confirmed in writing.

This, and related communications, are protected by copyright laws and treaties. You may make a single copy for personal use. You may make copies for others, but not for commercial purposes. If you give a copy to anyone else, it must be in its original, unmodified form, and must include all attributions of authorship, copyright notices, and republication notices. Except as described above, it is unlawful to copy, republish, redistribute, and/or alter this presentation without prior written consent of the copyright holder.