

## Timing of Guidance for Research Amortization Still in Question

by Nathan J. Richman

It isn't clear how long proposed research amortization regulations will be delayed if Congress passes its retroactive relief proposal, according to Scott Vance, IRS associate chief counsel (income tax and accounting).

Vance confirmed at a Tax Executives Institute conference March 18 that if Congress passes the Tax Relief for American Families and Workers Act of 2024 (H.R. 7024), the regulatory focus on the changes to section 174 would shift from proposed regs to procedural guidance.

However, Vance couldn't say to *Tax Notes* how much of a delay taxpayers should expect for the proposed regs if Congress retroactively reverses those changes.

Vance reiterated expectations of releasing the section 174 regs by the end of the second quarter of 2024. He said that he doesn't want the proposed regs to come out too late in the extended tax filing season.

The Tax Cuts and Jobs Act, in order to pay for other tax cuts, changed section 174 from a regime allowing immediate deduction of research expenses to an amortization scheme extending the cost recovery to five years for domestic research and 15 years for offshore activities. The changes took effect for tax years beginning after 2021.

While the Senate hasn't acted on H.R. 7024, the House-passed bill would create a new provision to provide retroactive relief for domestic research activities.

Vance said he's proceeding as if Plan A were for the bill to stall and the regulators to continue their work on the TCJA changes to section 174. Plan B would be for Congress to enact the proposed relief, making procedural guidance more urgent than the substantive proposed regs, he said.

Still, even if Congress passes its retroactive relief bill, some of the substantive issues — and the need to address them — won't change, according to Vance. For example, there will still be questions regarding the definition of software because of the TCJA's direct inclusion of the term in section 174, he said. He added, however, that

there's hope for an approach in the proposed regs that accounts for the changes in the computer software environment over the last few decades.

There are also contract research questions — particularly the danger of both parties to a contract having to amortize — that won't go away, Vance said.

If Congress doesn't act, taxpayers shouldn't expect any more subregulatory guidance in notices or revenue procedures before the proposed regs, Vance said, adding that the plan is to release one batch of proposed regs providing substantive guidance along with some accompanying procedural guidance.

While Vance said the IRS and Treasury want to be cautious about possibly disrupting section 41 research credits in the section 174 guidance, the plan isn't to include changes to the credit regs in the upcoming proposed regs. ■