TAXES

5 Ways New Tax Changes Could Affect Small Business Owners in 2024

Popular tax provisions from the Tax Cuts and Jobs Act are sunsetting at the end of 2025.

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Nothing is certain in the new year--not even taxes.

In 2024, entrepreneurs will have to deal with a federal tax code that's largely in limbo. That's because the end of 2025 is set to usher in some major changes that are already causing jitters among business owners. Here are some of the major tax concerns and considerations that business owners should keep in mind during the new year.

The expiring Tax Cuts and Jobs Act

Even more than 2024, 2025 will be the crucial time for tax policy, according to eonomist Kimberly Clausing, who serves as the chair of tax policy and law at the University of California, Los Angeles School of Law. Clausing says she's not talking about the aftermath of the presidential election; she's referring to the expiration date for a large number of tax cuts implemented as part of the Tax Cuts and Jobs Act of 2017.

"Many of the less popular things were permanent by design, and then the more popular things were temporary," said Clausing, who spoke at a year-end tax forum hosted by the accounting and advisory firm Marcum last month.

Small business owners are most concerned with the sunsetting provisions from the Tax Cuts and Jobs Act, specifically losing the 199A pass-through deduction, according to NFIB Research Center executive director Holly Wade. The deduction allows households with income from pass-through businesses like sole proprietorships, partnerships and S corporations to deduct 20 percent of their qualified business income from their individual federal income taxes. Before the law went into effect, that business income was typically taxed at the same level as wages or salary income.

"That was hugely helpful in allowing small business owners to keep more of their profits to reinvest in their business," says Wade, who argues such a change would be a hit to small business owners already feeling the pressure of inflation. "Making [those tax provisions] permanent would go a long way in alleviating stress among small business owners and giving them some certainty on what cost pressures they look to expect in the next few years."

While the pass-through deduction has been hugely popular with business owners, some tax experts have criticized the policy for being overly complicated, unevenly applied across industries, and regressive with the benefits concentrated further up the income ladder. "I don't think we can afford those rate cuts. I don't think we can afford 199A," says Clausing, who formerly served as the Deputy Assistant Secretary for Tax Analysis at the Treasury Department under President Biden. "But the problem is there is going to be enormous pressure to extend things, and the things we're extending weren't necessarily good policy in the first place."

The NFIB plans to spend the next two years lobbying Congress to codify the TCJA provisions within the federal tax code, but entrepreneurs may not want to put all their hopes on lawmakers. This past year was one of the most unproductive legislative sessions in modern history, according to data compiled by the analytics Quorum and reported by Axios, and there will likely be even more political roadblocks facing tax policy in 2024.

With a looming presidential election likely to stall much of action on Capitol Hill next year, Clausing is not optimistic about any major tax reforms passing. "Anyone who's been paying any attention at all to the news has probably noticed more than the typical amount of congressional dysfunction of late," she says, adding there is the possibility of minor changes. "Democrats in Congress have made it quite clear that they're not interested in expanding business tax cuts without something that would also address child poverty...There is room for that bargain."

The consequences of higher rates

While the Federal Reserve has signaled that three interest rate cuts could be on the table for 2024, entrepreneurs will still be contending with a high rate environment in the new year, and that has tax consequences. Michael D'Addio, a principal at the accounting and advisory firm Marcum who has spent more than 40 years working in tax compliance and planning, says businesses looking to negotiate debt in this rate environment need to consider the potential tax implications first.

"While modification of debt sounds like a harmless transaction, can't possibly have tax consequences, it is extraordinarily complex," says D'Addio, who spoke at a year-end tax forum hosted by Marcum last month. He says some of the changes that can carry tax implications include the yield, the timing of payments, deferring a maturity date, and the security that underlies the debt. When in doubt, he says, talk to a tax professional early on, so there is enough time to evaluate options. "You need somebody to run some numbers to see whether there's going to be an unintended tax consequence."

The Employee Retention Credit deadline

2024 will mark four years since the start of the pandemic, but there are still some Covid stimulus measures available when it comes to taxes. Businesses have until April 15, 2024 to claim their 2020 Employee Retention Credit, a refundable tax credit that was designed to entice businesses to keep employees on payroll during the pandemic. While the IRS put a moratorium on processing new claims back in September, the window will likely reopen in the new year.

Before filing a claim, Marcum partner Andrew Finkle advises business owners to carefully scrutinize the ERC guidelines and make sure they meet the eligibility requirements. Much like PPP loans, the program has been ripe for abuse, he explains, so the IRS has tried to make an example out of bad actors and set stiff penalties for fraud.

"The IRS is all over this," says Finkle, who leads Marcum's national tax office services group and spoke at the firm's year-end tax forum. Business owners, he adds, should be wary of this new cottage industry of so-called ERC mills that promise to help business owners navigate the process. These companies charge high fees, and Finkle says don't aways give enough careful consideration to whether a business is actually eligible for the credit in the first place--leaving business owners holding the buck for any audits or penalties.

Will the Supreme Court blow up the entire tax code?

Ultimately, the federal tax code's fate in the new year could hinge on the U.S. Supreme Court--as one case before the high court has the potential to dismantle parts of existing tax law. Earlier this month, the justices heard oral arguments in *Moore v. United States*, a case that is challenging the constitutionality of a provision contained in the 2017 Tax Cuts and Jobs Act that imposed a one-time mandatory repatriation tax on foreign income accrued by companies between 1986 and 2017. The question before the court is whether income has to be realized before it can be taxed, and experts say that decision could have considerable consequences.

"The outcome of this case may severely constrain the ability of Congress to tax unrealized income - income that taxpayers have earned but have not yet received in the form of a cash distribution," wrote Eric Toder, Institute fellow at the Urban-Brookings Tax Policy Center, in an October report exploring the potential economic and fiscal impact of the case. "It could place several long-standing provisions of the current federal income tax at risk."