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Policy and politics of tax extenders in 2015

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Overview of the extenders debate

When the 114th Congress officially got underway this January, the leaders of the two congressional taxwriting committees stated that they wanted to avoid a repeat of last year's extenders process, which saw the House and Senate at odds over how to address dozens of already-expired tax deductions, credits, and incentives and a final package not enacted until late December, only to expire again a mere two weeks later.

Now, with the end of 2015 just a few weeks away, Congress once again finds itself in the same position it was in last year: some 50 temporary tax provisions have been expired for nearly a year, the two chambers have adopted disparate approaches to renewing them, and no apparent resolution is in sight.

This publication provides an overview of how the House and Senate approached the current extenders debate and discusses how that debate may unfold between now and the end of the year. It also includes a high-level comparison of the extenders proposals moving through the two chambers.

House approach

In the House, Republican leaders, as they did last year, opted to move permanent extensions of several discrete extenders provisions rather than the broad temporary package that Congress typically has approved in the past. So far this year, the House has approved measures that would permanently extend – and in some cases expand – the research credit, the state and local general sales tax deduction, increased section 179 expensing for small businesses, tax relief provisions targeting S corporations, and several charitable-giving provisions.

Also awaiting action on the House floor is legislation approved by the Ways and Means Committee in September that would permanently extend:

- 50 percent bonus depreciation;
- The subpart F exception for active financing income;
- Lookthrough treatment for payments between related controlled foreign corporations under the foreign personal holding company rules;
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements; and
- The above-the-line deduction for certain out-of-pocket classroom expenses paid by elementary and secondary school teachers.

The House has taken no action on dozens of other expired tax extenders, however.

None of the permanent extenders measures that have been approved in (or are awaiting action in) the House are offset. To this point, they have garnered little support from congressional Democrats and have drawn veto threats from President Obama.

Senate approach

Across the rotunda, the Senate Finance Committee has taken a more traditional approach to extenders. It approved legislation (S. 1946) in July that would extend most of the now-expired tax provisions through 2016, retroactive to the end of 2014.

The legislation is largely unoffset, reflecting Republicans' stated view that extensions of current law should not be paid for. However, the measure does include three revenue-raising provisions that are intended to offset the cost of modifications to current-law provisions.

The Finance Committee extenders package has not yet come up for a vote on the Senate floor.

Why the difference?

The House's strategy of moving permanent extenders provisions facilitates building the budget baseline to make tax reform a less expensive proposition for a future Congress. Specifically, building extenders into the budget baseline would make tax reform much easier because it would lower revenue targets and, in turn, give taxwriters more flexibility as they make decisions about what base broadeners would be necessary to achieve the desired level of rate reduction. Former Rep. Dave Camp, R-Mich., adopted that approach last year when he still helmed the Ways and Means Committee and his successor, Rep. Paul Ryan, R-Wis., continued that effort when he became the House's top taxwriter at the beginning of 2015. Although Ryan recently left the Ways and Means Committee to become speaker of the House, Rep. Kevin Brady, R-Texas, the newly elected Ways and Means chairman, has indicated that he likewise intends to push for permanent extenders.

Although there is some support in the Senate for making certain extenders permanent, the Finance Committee's decision to mark up another catch-all temporary extenders bill could be seen as an indication that leaders in that chamber believe the time is not ripe for action on tax reform. Indeed, Senate Majority Leader Mitch McConnell, R-Ky., has consistently argued that Republicans would be unlikely to negotiate a favorable deal with President Obama and that tax reform should be deferred until 2017 when a new administration is in the White House.

Finance Committee Chairman Orrin Hatch, R-Utah, began the extenders mark-up session in July by acknowledging that although there were likely enough votes to approve permanent extensions of some of the provisions, he "agreed to defer" this push in an effort to minimize contention and provide greater certainty to taxpayers. Ranking member Ron Wyden, D-Ore., noted that the long-term goal of the committee is comprehensive tax reform and an end to the annual ritual of renewing expired or expiring temporary provisions.

Although the prospects for some kind of congressional action on tax reform appeared to increase when the 114th Congress convened this past January, they diminished as the year wore on. Comprehensive tax reform was seen as a nonstarter after partisan differences on key individual income tax issues – notably, whether tax reform should be used to raise revenue and make the tax code more progressive – proved impossible to overcome. Discussions around so-called "business-only" tax reform faltered earlier this year due to concerns expressed by small-business groups as to how passthrough entities and sole proprietorships would fare, relative to their corporate peers, under an approach that lowered the corporate income tax rate but left individual income tax rates unchanged.

During the summer and into the early fall, then-Ways and Means Committee Chairman Ryan had hoped to move an international-only tax reform package that would have relied on certain one-time revenue from a deemed repatriation provision to help offset the cost of a long-term infrastructure spending measure. Although Ryan worked with Senate Finance Committee members Charles Schumer, D-N.Y., and Rob Portman, R-Ohio, in an effort to win support for his proposal across the Capitol, talks between Ryan and Schumer broke down after the two were unable to reach an agreement over highway spending levels. Republicans generally have been reluctant to support legislation that significantly increases highway spending above current levels, while Democrats have generally sought a more robust spending package to advance President Obama's infrastructure goals.

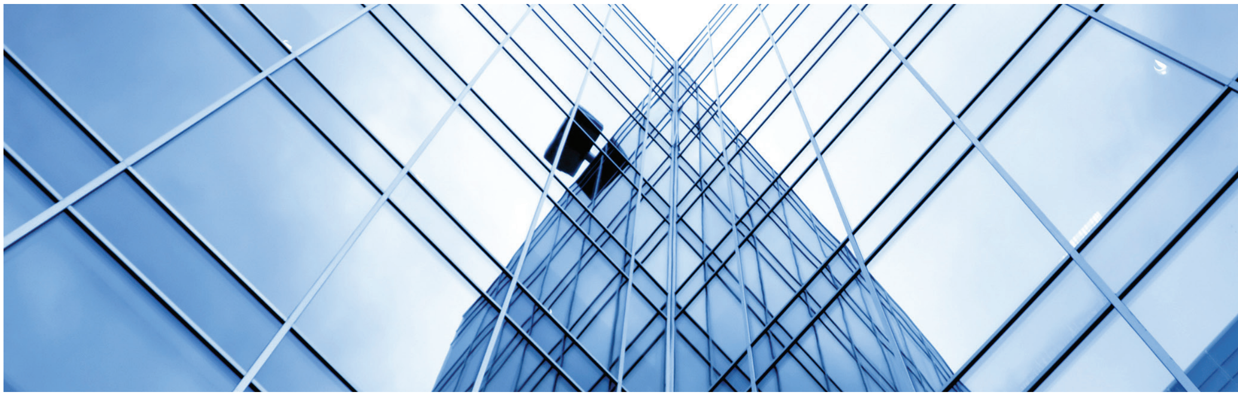
So what may happen?

We cannot say exactly how the extenders process may unfold this year, but it would appear the question is less whether Congress will act on extenders and more whether a package might include permanent extensions of some provisions.

Senate Republican leaders, facing a likely filibuster threat from Democrats and a veto threat from President Obama, have not taken up any of the unoffset permanent extenders bills sent over from the House, nor have they scheduled consideration of the two-year bill that was approved in the Finance Committee.

It remains possible, however, that we could see a permanent – or at least a long-term – extension of a few selected items as part of a broader temporary extenders package. For example, there may be enough support in Congress for a permanent research credit and a longer-term (if not permanent) extension of section 179 expensing; but Senate Democrats and the White House are likely to agree to those only if they receive other concessions from House Republicans.

Interest in such an approach remains high on both sides of the Capitol and both ends of Pennsylvania Avenue, though as is often the case, the key decisionmakers have different views as to what an "acceptable" deal that makes some of the provisions permanent should look like. In 2014, for example, President Obama walked away from a potential deal to permanently extend a number of provisions because it did not also make permanent certain temporary enhancements to the child tax credit and the earned income tax credit (EITC) that were enacted as part of the 2009 economic stimulus legislation and are set to expire in



2017. Key administration officials have made it clear that making these stimulus-era provisions permanent remains a White House priority in 2015.

It is an open question as to whether there is sufficient common ground to build support for a package that gives a short-term extension to most of the nearly five-dozen extenders but includes a longer (if not permanent) extension for a few select items. Republicans have been wary of extending the enhancements to the child tax credit and EITC, in part because of concerns about high error rates associated with them. Nevertheless, several key taxwriters are sufficiently interested in a package that makes some extenders permanent and they are exploring whether it is possible to craft measures that improve compliance and reduce fraud and abuse in those programs in a way that addresses GOP concerns, but without causing Democrats to feel that the essential anti-poverty features of those credits are being undermined.

There are, however, obstacles that have to be overcome in order for extenders to be addressed this year, including:

- The apparent lack of any progress to date between the chambers in resolving their very different approaches to extenders legislation.
- The desire by many House Republicans to ensure that certain expired tax provisions are not renewed. The production tax credit for electricity produced by wind and other renewable energy sources is an example of an extender that has some strong Republican opposition in the House but remains a high priority for many members of both parties, especially in the Senate.
- Concerns that acting on a full extenders package that a substantial bloc of House Republicans may not support could make it more difficult for newly minted Speaker Ryan to hold together the sometimes fractious coalitions within the GOP conference.

If an extenders bill moves as part of an omnibus government appropriations measure, there is also the potential concern that the underlying legislation could stall if conservative Republicans in the House or Senate insist on attaching controversial policy riders such as a provision that would defund Planned Parenthood.

There is ample bipartisan support to address many of the now-expired extenders prior to year-end, so we think the odds substantially favor passage of an extenders package before the end of the year. But like much in Washington today, what may be possible for policy reasons can be derailed for political reasons, making this an issue where sudden changes in fortune would not be surprising.

The tables that follow provide a high-level comparison of the extenders provisions moving through the House and Senate.

How the House and Senate extenders provisions stack up

The tables below compare the extenders provisions that have been approved in the separate bills that have cleared the House Ways and Means Committee – and, in some cases, the full House of Representatives – as of the date of this publication, and in the consolidated extenders package (S. 1946) approved by the Senate Finance Committee in July. (The Finance Committee bill has not yet received a vote on the Senate floor.) Unless otherwise indicated, provisions generally would be effective retroactively to December 31, 2014.

General business credits and incentives		
Provision	**House proposal**	**Senate Finance Committee proposal**
Research and experimentation credit	**[H.R. 880]** Permanently extend ***modified*** version of alternative simplified credit. Credit going forward would equal: **(1)** 20 percent of qualified research expenses for the tax year that exceed 50 percent of a taxpayer's average qualified research expenses in the three preceding tax years, plus **(2)** 20 percent of basic research expenses for the tax year that exceed 50 percent of a taxpayer's average basic research expenses in the three preceding tax years, plus **(3)** 20 percent of all expenses (without regard to a base amount) paid to an energy research consortium for research conducted for the taxpayer. The 10 percent credit would apply to taxpayers with no qualified research expenses in any of the preceding three tax years. The traditional 20 percent credit calculated using a base period would be repealed.	Extend through Dec. 31, 2016. ***Modify*** to: **(1)** allow a qualified small business to elect for any taxable year to claim a certain amount of its research credit as a payroll tax credit against its employer Social Security or OASDI liability rather than its income tax liability and **(2)** provide that for an eligible small business, the section 41 research credit for taxable years beginning after December 31, 2014 is a specified credit and thus may offset regular tax and AMT liabilities.
Bonus depreciation	**[H.R. 2510]** Extend permanently. ***Modify*** to **(1)** expand the provision for qualified improvement property by removing the requirement that improvement must be placed in service more than three years after the date the building was first placed in service and without regard to whether the property is subject to a lease; **(2)** make permanent the special rule for allocation of bonus depreciation to a long-term contract; **(3)** index prior-law $8,000 increase in depreciation deduction limitation for certain passenger automobiles to automobile price inflation; and **(4)** allow taxpayers to claim bonus depreciation on trees and vines bearing fruits or nuts. (Approved in the Ways and Means Committee but not yet voted on in the House.)	Extend through Dec. 31, 2016.

General business credits and incentives		
Provision	**House proposal**	**Senate Finance Committee proposal**
Election to accelerate AMT credits in lieu of first-year bonus depreciation	[H.R. 2510] Extend permanently. ***Modify*** to provide that bonus depreciation amount for a taxable year would be limited to the lesser of **(1)** 50 percent of the minimum tax credit for the first taxable year ending after Dec. 31, 2014 (determined before the application of any tax liability limitation), or **(2)** the minimum tax credit for the taxable year allocable to the adjusted net minimum tax imposed for taxable years ending before Jan. 1, 2015 (determined before the application of any tax liability limitation and determined on a first-in, first-out basis). For a partnership with a single corporate partner owning (directly or indirectly) more than 50 percent of the capital and profits interests in the partnership, each partner takes into account its distributive share of partnership depreciation in determining its bonus depreciation amount. (Approved in the Ways and Means Committee but not yet voted on in the House.)	Extend through Dec. 31, 2016.
Subpart F exceptions for active financing income	[H.R. 961] Extend permanently. (Approved in the Ways and Means Committee but not yet voted on in the House.)	Extend through Dec. 31, 2016.
Lookthrough treatment of payments between related CFCs under the foreign personal holding company rules	[H.R. 1430] Extend permanently. (Approved in the Ways and Means Committee but not yet voted on in the House.)	Extend through Dec. 31, 2016.
15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements	[H.R. 765] Extend permanently. (Approved in the Ways and Means Committee but not yet voted on in the House.)	Extend through Dec. 31, 2016.
Increased expensing limits ($500,000/$2 million) and expanded definition of section 179 property	[H.R. 636] Extend permanently. ***Modify*** to **(1)** permanently treat off-the-shelf computer software as qualifying property; **(2)** permanently treat qualified real property as eligible section 179 property; **(3)** remove limitation related to the amount of qualified real property that qualifies as section 179 property; and **(4)** strike language in section 179(d)(1) that excludes air conditioning and heating units from the definition of qualifying property.	Extend through Dec. 31, 2016. ***Modify*** to index expensing limits to inflation.

General business credits and incentives		
Provision	**House proposal**	**Senate Finance Committee proposal**
Credit for certain expenditures for maintaining railroad tracks	No provision	Extend through Dec. 31, 2016. ***Modify*** to provide that the definition of qualified railroad track maintenance expenditures applies to track owned or leased by a Class II or Class III railroad as of Jan. 1, 2015.
Mine rescue team training credit	No provision	Extend through Dec. 31, 2016.
Employer wage credit for activated military reservists	No provision	Extend through Dec. 31, 2016. ***Modify*** to (1) expand availability to employers of any size and (2) increase credit rate to 100 percent of eligible differential wage payments.
Three-year depreciation for race horses two years old or older	No provision	Extend through Dec. 31, 2016. Expand to apply to any race horse regardless of age when placed in service.
Seven-year recovery period for motorsports entertainment complexes	No provision	Extend through Dec. 31, 2016.
Accelerated depreciation for business property on an Indian reservation	No provision	Extend through Dec. 31, 2016. ***Modify*** to permit taxpayers to annually elect out of section 168(j) on a class-by-class basis for certain qualified property.
Placed-in-service date for partial expensing of certain refinery property	No provision	No provision
Election to expense advanced mine safety equipment	No provision	Extend through Dec. 31, 2016.
Special expensing rules for certain film and television productions	No provision	Extend through Dec. 31, 2016. ***Modify*** to include qualified live theatrical productions.
Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico	No provision	Extend through Dec. 31, 2016.
Treatment of certain dividends of regulated investment companies (RICs)	No provision	Extend through Dec. 31, 2016.
RIC qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA)	No provision	Extend through Dec. 31, 2016.
Special rules for qualified small business stock	No provision	Extend through Dec. 31, 2016.
Reduction in recognition period for S corporation built-in gains tax	[H.R. 636] Extend permanently.	Extend through Dec. 31, 2016.
Temporary increase in limit on cover over of rum excise tax revenues (from $10.50 to $13.25 per proof gallon) to Puerto Rico and the Virgin Islands	No provision	Extend through Dec. 31, 2016.
Determination of low-income housing credit rate for credit allocations with respect to nonfederally subsidized buildings	No provision	Extend through Dec. 31, 2016. ***Modify*** to establish 4 percent minimum credit rate for acquisition of existing housing that is not federally subsidized; existing housing that is also financed with tax-exempt bonds is considered federally subsidized for this purpose and is ineligible for 4 percent credit rate.
Treatment of military basic housing allowance under low-income housing tax credit	No provision	Extend through Dec. 31, 2016.

Energy tax incentives		
Provision	**House proposal**	**Senate Finance Committee proposal**
Beginning-of-construction date for renewable power facilities eligible to claim the electricity production credit or investment credit in lieu of the production credit	No provision	Extend through Dec. 31, 2016.
Credit for construction of new energy-efficient homes	No provision	Extend through Dec. 31, 2016.
Credit for energy-efficient appliances	No provision	No provision
Deduction for energy-efficient commercial buildings	No provision	Extend through Dec. 31, 2016. ***Modify*** to **(1)** permit tribal governments and nonprofits to allocate the deduction to the person primarily responsible for designing the property and **(2)** increase efficiency standards for qualifying buildings by 2016.
Credit for energy-efficiency improvements to existing homes	No provision	Extend through Dec. 31, 2016. ***Modify*** to **(1)** expand definition of qualifying property to include all roof and roof products meeting Energy Star guidelines; **(2)** include installation costs as an eligible expense for qualifying energy-efficiency improvements; and **(3)** revise certain energy-efficiency standards for qualifying property.
Alternative fuel vehicle refueling property (nonhydrogen refueling property)	No provision	Extend through Dec. 31, 2016.
Incentives for biodiesel and renewable diesel: **(1)** Income tax credits for biodiesel fuel, biodiesel used to produce a qualified mixture, and small agribiodiesel producers; **(2)** Income tax credits for renewable diesel fuel and renewable diesel used to produce a qualified mixture; **(3)** Excise tax credits and outlay payments for biodiesel fuel mixtures; **(4)** Excise tax credits and outlay payments for renewable diesel fuel mixtures	No provision	Extend through Dec. 31, 2016. ***Modify*** to: • Convert biodiesel fuels credit to a $1 per gallon production credit beginning Jan. 1, 2016, for fuel produced by the taxpayer in the US. (An eligible discretionary blender may claim the $1 per gallon mixture credit if given appropriate documentation by a biodiesel producer indicating they are forgoing the production credit.) • Convert biodiesel to a taxable fuel in 2016 with excise tax paid by the taxpayer eligible to elect the credit. (For eligible small biodiesel producers as currently defined in section 40A, the $1 per gallon credit would be worth an additional 10 cents per gallon consistent with section 40A(b)(4)(A). For the purposes of this proposal, a qualified discretionary blender is a diesel fuel blender registered with the IRS that blended 10 million or more gallons of biodiesel or renewable diesel in the previous calendar year.
Special rule for sales or dispositions to implement Federal Energy Regulatory Commission (FERC) or state electric restructuring policy	No provision	Extend through Dec. 31, 2016.
Incentives for alternative fuel and alternative fuel mixtures: **(1)** Excise tax credits and outlay payments for alternative fuel; **(2)** Excise tax credits for alternative fuel mixtures	No provision	Extend through Dec. 31, 2016.
Second generation biofuel producer credit (formerly cellulosic biofuel producer credit)	No provision	Extend through Dec. 31, 2016.

Energy tax incentives		
Provision	**House proposal**	**Senate Finance Committee proposal**
Special depreciation allowance for second generation biofuel plant property	No provision	Extend through Dec. 31, 2016.
Credit for production of Indian coal	No provision	Extend through Dec. 31, 2016.
Credit for two-wheeled plug-in electric vehicles	No provision	Extend through Dec. 31, 2016. (***Note:*** This provision expired at the end of 2013 and was left out of the Tax Increase Prevention Act of 2014, which was signed into law last December. The Finance Committee bill would reauthorize the credit for two-wheeled vehicles acquired in 2015 or 2016, but not 2014. The bill would not reauthorize the credit for three-wheeled plug-in vehicles which expired at the end of 2013 and was not renewed in last year's extenders law.)
Alternative motor vehicle credit for qualified fuel cell vehicles	No provision	Extend through Dec. 31, 2016.

Infrastructure, economic development, and community assistance provisions		
Provision	**House proposal**	**Senate Finance Committee proposal**
New markets tax credit	No provision	Extend through Dec. 31, 2016. ***Modify*** to adjust total credit allocation amount to $3.94 billion (from $3.5 billion) in calendar years 2015 and 2016.
Work opportunity tax credit	No provision	Extend through Dec. 31, 2016. ***Modify*** to make credit available to employers who hire individuals who have exhausted regular compensation benefits under state and federal unemployment compensation laws (40 percent credit on first $6,000 of wages paid per eligible employee).
Qualified zone academy bonds: allocation of bond limitation	No provision	Extend through Dec. 31, 2016. ***Modify*** to reduce private business contribution requirement to 5 percent (from 10 percent).
Empowerment zone incentives: **(1)** Designation of empowerment zone and additional empowerment zones; **(2)** Increased exclusion of gain on sale of qualified business stock of empowerment zone business; **(3)** Empowerment zone tax-exempt bonds; empowerment zone employment credit; **(4)** Increased section 179 expensing; **(5)** Nonrecognition of gain on rollover of empowerment zone investments	No provision	Extend through Dec. 31, 2016. ***Modify*** empowerment zone tax-exempt bond provision to expand the definition of an employee that is a resident of an empowerment zone for purposes of the 35 percent in-zone employment requirement.
Indian employment tax credit	No provision	Extend through Dec. 31, 2016.
American Samoa economic development credit	No provision	Extend through Dec. 31, 2016.

Individual tax incentives		
Provision	**House proposal**	**Senate Finance Committee proposal**
Deduction for state and local general sales taxes	[H.R. 622] Extend permanently.	Extend through Dec. 31, 2016.
Above-the-line deduction for qualified tuition and related expenses	No provision.	Extend through Dec. 31, 2016.
Parity for income exclusion for employer-provided mass transit and parking benefits	No provision.	Extend through Dec. 31, 2016. ***Modify*** to include bicycle-share commuting reimbursements.
Deduction for certain expenses of elementary and secondary school teachers	[H.R. 2940] Extend permanently. (Approved in the Ways and Means Committee but not yet voted on in the House.)	Extend through Dec. 31, 2016. ***Modify*** to index the deduction amount to inflation and treat teachers' professional development expenses as a deductible expense.
Discharge of indebtedness on principal residence excluded from gross income of individuals	No provision.	Extend through Dec. 31, 2016. ***Modify*** to provide that the exclusion is available for debt discharged after 2016 pursuant to an arrangement entered into and evidenced in writing before Jan. 1, 2017.
Premiums for mortgage insurance deductible as qualified residence interest	No provision.	Extend through Dec. 31, 2016.

Provisions governing charitable giving, tax-exempt entities		
Provision	**House proposal**	**Senate Finance Committee proposal**
Tax-free distributions from individual retirement plans by individuals age 70-1/2 and older for charitable purposes	**[H.R. 644]** Extend permanently.	Extend through Dec. 31, 2016.
Special rules for contributions of capital gain real property made for conservation purposes	**[H.R. 644]** Extend permanently.	Extend through Dec. 31, 2016.
Enhanced charitable deduction for contributions of food inventory	**[H.R. 644]** Extend permanently. ***Modify*** to: **(1)** increase contribution limit for C corps to 15 percent (from 10 percent) of taxpayer's net income for the taxable year, and increase limit for non-C corps to 15 percent of taxpayer's aggregate net income for the taxable year from all trades or businesses from which such contributions were made for the taxable year; **(2)** provide a five-year carryforward for qualifying food inventory contributions that exceed the 15 percent limit; and **(3)** add presumptions that certain taxpayers may use in determining the tax basis and the fair market value of donated food inventory. Generally effective for contributions made after the date of enactment, in taxable years ending after such date.	Extend through Dec. 31, 2016.
Modification of tax treatment of certain payments to controlling exempt organizations	No provision.	Extend through Dec. 31, 2016.
Basis adjustment to stock of S corps making charitable contributions of property	**[H.R. 636]** Extend permanently.	Extend through Dec. 31, 2016.

Revenue-raising provisions		
Provision	**House bill**	**Senate Finance Committee proposal**
Mortgage information reporting	No provision.	Require mortgage lenders to report the following additional information on returns filed with the IRS and statements furnished to borrowers for debt secured by real property: (1) amount of outstanding principal as of the beginning of the calendar year; (2) address of the property securing the mortgage; and (3) loan origination date. (Effective for returns and statements due after Dec. 31, 2016, determined without regard to extensions.)
Clean coal power grants	No provision.	Allow eligible noncorporate recipients to exclude from gross income and alternative minimum taxable income any grant, award, or allowance under the Clean Coal Power Initiative. Require taxpayers to make an up-front payment to the government of 1.18 percent of the value of the grant and reduce adjusted basis in depreciable property related to the grant. (Effective for payments received in taxable years beginning after Dec. 31, 2011.)
Alternative fuels	No provision.	Change the tax rate of liquefied natural gas to a rate based on its energy equivalent of a gallon of diesel and the tax rate of liquefied petroleum gas to a rate based on its energy equivalent of a gallon of gasoline; convert the alternative fuel excise tax credits and outlay payment provisions related to liquefied natural gas and liquefied petroleum gas to the same energy-equivalent basis used for purposes of the tax. (Effective for fuel sold or used after Dec. 31, 2014.)

Acknowledgements and Contacts

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