



Tax

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Ways & Means approves permanent bonus depreciation deduction, charitable giving extenders

The House Ways and Means Committee voted along party lines May 29 to pass a series of unpaid-for bills that would permanently extend more generous versions of the 50 percent bonus depreciation deduction for qualified property and the election to accelerate alternative minimum tax (AMT) credits in lieu of bonus depreciation, an enhanced deduction for charitable contributions of food inventory, and a handful of other charitable giving provisions that expired at the end of 2013.

The committee also approved two new provisions that would give individual taxpayers more flexibility regarding when they can claim deductions for charitable contributions and simplify the rules surrounding excise taxes on the investment income of private foundations.

The taxwriting panel's actions continue Chairman Dave Camp's, R-Mich., strategy of making selected tax extenders provisions permanent and allowing others to remain expired in advance of comprehensive tax reform. The committee on April 29 approved its first tranche of permanent extenders, including the research and experimentation credit, the subpart F exception for active financing income, lookthrough rules for payments between related controlled foreign corporations, the five-year recognition period for built-in-gains tax for S corporations, the basis adjustment for stock of an S corporation making charitable contributions of property, and the enhanced small business expensing limit (\$500,000) and phase-out threshold (\$2 million) under section 179. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 17, May 2, 2014.)

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140502_1.html

Bonus depreciation

One bill (H.R. 4718) approved by the committee at the May 29 mark-up would make permanent a modified version of the now-expired 50 percent additional first-year depreciation deduction for qualified property placed in service after December 31, 2013. As approved, the legislation would make the deduction more generous by:

- Expanding the definition of qualified property to include qualified retail improvement property;
- Making permanent the special rule for the allocation of bonus depreciation to a long-term contract;
- Indexing the current-law \$8,000 increase in the depreciation deduction limitation for certain passenger automobiles to automobile price inflation; and
- Allowing taxpayers to claim bonus depreciation on trees and vines bearing fruits or nuts.

The legislation also would provide for a permanent provision allowing corporations to elect to accelerate some AMT credits in lieu of bonus depreciation. Under the proposal, the 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 December 31, 2013, or (2) the minimum tax credit for the taxable year allocable to the adjusted net minimum tax imposed for taxable years ending before January 1, 2014 (determined before the application of any tax liability limitation and determined on a first-in, first-out basis). This provision generally would be effective for taxable years ending after December 31, 2013. A transition rule would apply for a taxable year beginning before January 1, 2014, and ending after December 31, 2013.

The expanded bonus depreciation provision would reduce federal revenues by nearly \$262.9 billion over 10 years and the expanded election to accelerate AMT credits in lieu of bonus of depreciation would reduce revenues by an additional \$24.5 billion over that same period, according to estimates from the Joint Committee on Taxation (JCT) staff.

The comprehensive tax reform discussion draft that Chairman Camp released in February explicitly calls for repealing bonus depreciation and paring back current-law accelerated depreciation rules (and other corporate tax expenditures) to buy down the corporate tax rate. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 9, Feb. 27, 2014.)

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140227_1.html

Charitable contributions for food inventory

The committee also approved legislation (H.R. 4719) that would permanently extend the deduction for charitable contributions of food inventory and expand it by:

- Increasing the contribution limit for C corporations to 15 percent (from 10 percent) of the taxpayer's net income for the taxable year, and increasing the limit for a taxpayer that is not a C corporation to 15 percent of the taxpayer's aggregate net income for the taxable year from all trades or businesses from which such contributions were made for the taxable year;
- Providing a five-year carryforward for qualifying food inventory contributions that exceed the 15 percent limit; and
- Adding presumptions that certain taxpayers may use in determining the tax basis and the fair market value of donated food inventory.

H.R. 4719 would be effective for contributions made after December 31, 2013, in taxable years ending after that date. The JCT estimates that the bill would decrease federal revenues by \$1.9 billion over 10 years. Camp's tax reform discussion draft explicitly calls for the repeal of this extender.

Other extenders provisions

Other bills approved in the May 29 mark-up would:

- Permanently extend the exclusion from gross income for qualified charitable distributions from an individual retirement account for individuals age 70-1/2 and older (H.R. 4619). This provision, which the JCT staff estimates would decrease revenues by \$8.4 billion over 10 years, is not included in Camp's tax reform discussion draft. It would be effective for distributions in taxable years beginning after December 31, 2013.
- Permanently extend the increased percentage limits and extended carryforward period for qualified conservation contributions (H.R. 2807). The JCT staff estimates it would cost \$990 million over 10 years. This proposal would be effective for contributions made in taxable years beginning after the date of enactment. A similar provision appears in Camp's tax reform discussion draft.

New provisions

In addition to addressing these expired provisions, the committee approved two new tax provisions that would:

- Provide individual taxpayers an election to deduct charitable contributions made after the close of their tax year but before the due date of the tax return, effective for contributions made in taxable years beginning after December 31, 2013 (H.R. 3134). The JCT staff estimates the measure would decrease federal revenues by \$2.8 billion over 10 years.

- Simplify the excise tax on investment income of private foundations by replacing the current two-tiered rate structure with a single rate of 1 percent (H.R. 4691). The measure would be effective for taxable years beginning after the date of enactment, and the JCT staff estimates it would decrease federal revenues by \$1.91 billion over 10 years.

Both provisions are also included in Camp's tax reform discussion draft.

Democratic concerns over offsets continue

The six approved bills would decrease federal revenues by a combined \$303 billion over 10 years, according to the JCT staff. As they did at the April 29 extenders mark-up, Ways and Means Democrats criticized Republicans for proposing permanent tax incentives without including pay-fors.

Ways and Means ranking Democrat Sander Levin of Michigan argued that while there is generally no disagreement on the merits of the specific extenders provisions, "it is a mistake to approach them in a way to make them permanent without considering their place in a broader framework and with a reckless disregard for their cost and their impact on other provisions, especially at a time with immense pressure on nondiscretionary programs." Levin also repeated concerns he raised at the April 29 extenders mark-up regarding the fate of temporary tax provisions such as the Work Opportunity Tax Credit, the American Opportunity Tax Credit, the New Markets Tax Credit, the exclusion from gross income for forgiveness of mortgage indebtedness, and renewable energy tax credits, which the committee has yet to address.

Although Democrats did not propose revenue offsets of their own at last month's mark-up, they did offer amendments to offset the cost of some of the current batch of extenders. But those amendments – notably, proposals to curb certain tax expenditures received by large integrated oil companies – were rejected as not germane to the underlying extenders legislation.

Levin, along with Democratic taxwriters Charles Rangel of New York, Ron Kind of Wisconsin, and Richard Neal of Massachusetts, suggested that the committee should pursue a two-year extenders package similar to the one approved by the Finance Committee on April 4.

In response to a question from Neal, Chairman Camp rejected that approach.

"I don't think we are going to accept what the Senate has done. I think we have a different view. They are happy with temporary policy. I'm not. And I think many House members are not and on appropriate policies I think we should make them permanent," Camp said.

Next steps

Camp is expected to hold additional extenders mark-ups in the near term, but has not indicated when they would take place or what specific provisions would be considered.

House Republican leaders have not yet laid out a detailed schedule for moving the extenders provisions that the Ways and Means Committee has approved so far. The House approved the permanent research credit on May 9 and reportedly will consider legislation to permanently extend the increased section 179 expensing limit and phase-out thresholds sometime after lawmakers return from their upcoming district work period. (The chamber will be in recess the week of June 2.)

Senate tax extenders bill remains stalled

Across the Capitol, the Senate was out of session for the Memorial Day holiday, but leaders were expected to continue negotiations behind the scenes on an agreement to advance legislation that would renew for two years nearly all of the 55 tax extenders provisions that expired at the end of 2013 at a 10-year cost of \$84 billion.

The Senate took up the extenders package on May 13. But the bill was pulled from the floor two days later when Republicans, who were locked in a dispute with Majority Leader Harry Reid, D-Nev., over whether they would be able to offer amendments, blocked a procedural motion that would have allowed it to move forward. Over 160 amendments have been filed by Democrats and Republicans alike; but the chief sticking point continues to be a Republican-sponsored

provision that would repeal the medical device excise tax enacted in the Patient Protection and Affordable Care Act (PPACA). Senate Finance Committee Chairman Ron Wyden, D-Ore., told reporters last week that he opposed allowing a vote on that amendment because it was not germane to the underlying extenders package; but he noted that that he would be willing to consider amendments directly related to the now-expired tax provisions, such as proposals to shrink or even eliminate the wind production tax credit or alternative fuels credits.

For his part, Reid has stated that he will not allow a vote on proposals to repeal the medical device excise tax or other provisions enacted in the PPACA. In a May 22 speech on the Senate floor, however, he said that he would be “more than happy to return to the tax extender bill” if Republicans offer “a reasonable list of germane amendments.”

Wyden and Finance Committee ranking Republican Orrin Hatch of Utah had hoped to spend some time over the recess crafting a deal that would allow for a limited number of amendments, but no signs of progress had been reported as of press time. The Senate will be back in session on June 2.

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JCT releases revenue estimates for anti-inversion bills

Recently introduced House legislation (H.R. 4679) that would permanently restrict the ability of U.S. companies to reorganize overseas in so-called inversion transactions would increase federal revenues by an estimated \$19.46 billion from 2015 to 2024, while a companion Senate bill (S. 2360) that would sunset after two years would raise \$791 million over the same period, according to May 23 estimates from the Joint Committee on Taxation staff.

URL: <http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/113-0927%20JCT%20Revenue%20Estimate.pdf>

H.R. 4679 was introduced May 20 by House Ways and Means Committee ranking member Sander Levin, D-Mich.; S. 2360 was introduced the same day by his brother, Senate Permanent Subcommittee on Investigations Chairman Carl Levin, D-Mich. Both bills would tighten the rules of section 7874 to provide that an inverted foreign corporation would be treated as a domestic corporation for U.S. tax purposes if it meets either an ownership test or a management and control test. (For details, see *Tax News & Views*, Vol. 15, No. 20, May 23, 2014.)

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140523_2.html

Both bills would be effective for transactions completed after May 8, 2014, the date that Senate Finance Committee Chairman Ron Wyden, D-Ore., publicly called for strengthening the current-law rules governing inversions. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 18, May 9, 2014.)

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140509_3.html

The anti-inversion legislation introduced in the House would be permanent if enacted in its current form. The Senate version, however, would expire after May 9, 2016. Sen. Levin explained in a May 20 floor statement that enacting temporary legislation would address the immediate concerns about inversions and give Congress time to adopt a permanent solution as a part of tax reform.

Neither bill appears likely to be enacted in the near term. House and Senate Republicans have so far shown little appetite for addressing inversions outside of a tax code overhaul that lowers corporate tax rates and moves toward a territorial system for taxing income of U.S. multinationals; moreover, they have not embraced the idea of making changes in this area with a retroactive effective date. For his part, Finance Committee Chairman Wyden has called for addressing inversions retroactively but has stated that a legislative fix likely would not be enacted outside of comprehensive tax reform. This is an issue that needs to be followed closely, however, as an increase in the number of companies attempting inversions could put additional political pressure on lawmakers to act. Congress has two must-pass tax bills on its agenda this year: the highway trust funds will need to be replenished this summer and extenders legislation is expected to be addressed later in 2014. Senate Democrats could seek to force votes on anti-inversion provisions by including them as offsets in one or both of these bills.

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