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House taxwriters OK new tranche of permanent extenders provisions

The House Ways and Means Committee voted along party lines September 17 to pass a series of unpaid-for bills that would permanently extend a more generous version of the 50 percent bonus depreciation deduction for qualified property and make permanent other now-expired provisions benefiting certain multinational corporations, the restaurant and retail industries, and elementary and secondary school teachers.

All of these provisions were extended retroactively for one year last December and lapsed weeks later at the end of 2014.

The committee also approved two changes to the Patient Protection and Affordable Care Act that would allow a narrow religious exemption from the individual mandate for health insurance coverage and reinstate the prior-law definition of “medical care” for purposes of the exclusion for reimbursements for medical care under employer-provided accident and health plans and individual health savings accounts.

Bonus depreciation

One bill (H.R. 2510) approved by the committee 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, 2014. As approved, the legislation would make the deduction more generous by:

- Expanding the definition of “qualified leasehold improvement property” by removing the requirement that the improvement must be placed in service more than three years after the date the building was first placed in service;

- 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 bill also would make permanent the special rule for the allocation of bonus depreciation to a long-term contract. Further, it would provide for a permanent provision allowing corporations to elect to accelerate some alternative minimum tax credits in lieu of bonus depreciation. For purposes of calculating the limitations on these credits, 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, 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 January 1, 2015 (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, 2014. A transition rule would apply for a taxable year beginning before January 1, 2015, and ending after December 31, 2014.

The provision would reduce federal revenues by $280.7 billion over 10 years, according to estimates from the Joint Committee on Taxation (JCT) staff.

Active financing exception, CFC lookthrough

House taxwriters also approved separate measures that would permanently extend:

- The subpart F exception for active financing income (H.R. 961, JCT estimated 10-year revenue loss: $78 billion) and
- Lookthrough treatment for payments between related controlled foreign corporations (CFCs) under the foreign personal holding company rules (H.R. 1430, JCT estimated 10-year revenue loss: $21.8 billion).

Both bills would be effective for taxable years of foreign corporations beginning after December 31, 2014, and for taxable years of US shareholders with or within which such taxable years of such foreign corporations end.

Levin questions moving international provisions outside of international tax reform plan: During the mark-up, Ways and Means Committee ranking member Sander Levin, D-Mich., asserted that it was “not defensible” to address in a piecemeal fashion provisions related to international taxation, as it undermines the notion that the Ways and Means Committee – and the full Congress – will have a serious discussion of international tax reform this fall.

Committee Chairman Paul Ryan, R-Wis., responded by saying, “Obviously, we see it differently.”

Ryan has indicated that he hopes to move an international tax reform package this fall that would generate certain one-time revenue that could help fund a long-term infrastructure spending bill; but a number of factors have turned this effort into an uphill climb and it is now

less clear whether the Ways and Means Republicans will be able to move such a package through the House in the remaining months of the current legislative session. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 30, Sep. 11, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150911_1.html

Depreciation of restaurant and retail property

The Ways and Means panel also voted to permanently extend the use of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements, effective for property placed in service after December 31, 2014 (H.R. 765). The JCT staff has estimated the measure would reduce federal revenues by $28.4 billion over 10 years.

Deduction for teacher classroom expenses

Also approved at the mark-up was legislation (H.R. 2940) that would permanently extend the above-the-line deduction (maximum $250) for certain out-of-pocket classroom expenses paid by elementary and secondary school teachers, effective for taxable years beginning after December 31, 2014. The measure also would expand the current-law benefit by indexing the deduction cap for inflation going forward. The JCT staff pegs the estimated 10-year revenue loss at roughly $2.5 billion.

Partisan disagreement over offsets

The taxwriting panel's actions continue the strategy employed by Ways and Means Chairman Ryan – and former Chairman Dave Camp, R-Mich., in the 113th Congress – of making selected unpaid-for tax extenders provisions permanent and allowing others to expire (or remain expired) in advance of comprehensive tax reform. (The thinking is that building extenders into the budget baseline would make tax reform easier in the future because it would lower long-term federal 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 without further increasing the deficit.) Earlier this year, the committee approved several other permanent extenders, including the research and experimentation credit, the state and local tax deduction, increased section 179 expensing for small businesses, and several charitable-giving provisions, all of which subsequently won passage in the full House.

At the mark-up, Ways and Means Democrats contended, as they have in the past, that although they generally support making tax extenders permanent on policy grounds, they could not agree to increase the federal deficit by advancing proposals that are not offset. House taxwriter Bill Pascrell, D-N.J., attempted to offer an amendment to the teacher classroom-expense deduction that would offset the cost by taxing carried interest as ordinary income for private equity fund managers. However, the amendment was ruled nongermane to the bill. (Ways and Means Chairman Ryan has stated in the past that a re-examination of the tax treatment of carried interest income is unlikely outside the context of an overhaul of the individual tax rules – something he does not anticipate taking place before 2017. For prior coverage, see *Tax News & Views*, Vol. 16, No. 18, May 22, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150522_3.html

The Obama administration has routinely threatened to veto unpaid-for permanent extenders bills. Although the administration had not issued an official policy statement on the latest Ways and Means-approved measures at press time, White House Press Secretary Joshua Earnest commented on the high cost of the proposals, telling reporters September 17 that “the tax cuts Republicans are advancing today are four times larger…than the six-year shortfall of the Highway Trust Fund. So this is money that could be used to make a substantial investment in our infrastructure.”

Finance Committee taking a different approach to extenders

The Senate Finance Committee has taken a different approach from Ways and Means to tax extenders, approving in late July a package that would retroactively extend through 2016 most of the temporary tax deductions, credits, and incentives that expired at the end of last year. At the Finance mark-up, Chairman Orrin Hatch, R-Utah, stated that although there were likely enough votes on the committee to approve permanent extensions of some of the provisions, he “agreed to defer” this push in order to minimize contention and provide certainty to taxpayers. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 25, July 24, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150724_3.html

The JCT has estimated the Finance Committee bill, which is not offset, would reduce receipts by about $97 billion between 2016 and 2025 under traditional “static” revenue scoring methods but would result in a net decrease in federal receipts of $86.6 billion over the same period under the so-called “dynamic” scoring model.
URL: https://www.jct.gov/publications.html?func=startdown&id=4807

Outlook

The Ways and Means-approved bills are expected to win passage on the House floor, although it is currently unclear when they will be brought up for a vote. Also unclear is whether House taxwriters plan to mark up additional permanent extenders provisions in the coming weeks.

Senate Majority Leader Mitch McConnell, R-Ky., has not yet indicated when he intends to bring the Finance Committee extenders legislation to the Senate floor.

Ways and Means Committee Chairman Ryan and Finance Committee Chairman Hatch have both stated that they would prefer to avoid a repeat of last year’s extenders process, in which a final package did not reach the White House until late in December; however, the prospect of yet another partisan stalemate over permanency and offsets has prompted most observers to believe that enactment of extenders legislation is unlikely until closer to the end of 2015.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

Final section 871(m) regulations released

On September 17, 2015, the US Department of the Treasury and the IRS released final section 871(m) regulations. The regulations expand the scope of withholding on US-sourced dividend equivalents paid to non-US holders of equity linked instruments, including, but not limited to, swaps, listed and over-the-counter options, futures, forwards, structured notes, and convertible debt.
URL: https://www.federalregister.gov/articles/2015/09/18/2015-21759/dividend-equivalents-from-sources-within-the-united-states

Deloitte's 871(m) leadership team is currently reviewing the updated regulations and is developing a Point of View highlighting the changes.

Special edition Dbriefs webcast coming October 1

Additionally, on October 1, at 11:00 AM Eastern, Deloitte will host a special edition Dbriefs webcast focusing on the changes and updates in the regulations.

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— Craig Gibian
Business Tax Services, Washington National Tax
Deloitte Tax LLP

Eric Fox
Financial Services Tax Practice
Deloitte Tax LLP