Tax

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In this issue:

Negotiators unveil massive extenders package including some permanent business, individual provisions

House and Senate negotiators have released statutory language and a summary of a tax extenders agreement that would make permanent several business, individual, and charitable giving incentives that expired at the end of last year; renew a handful of provisions for five years; and extend dozens of other tax deductions, credits, and incentives through 2016. The agreement, which was released early on December 16, also would temporarily suspend the medical device excise tax enacted in the Patient Protection and Affordable Care Act of 2010 (PPACA).
URL: http://docs.house.gov/billsthisweek/20151214/121515.250_xml.pdf
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151215_1suppA.pdf

The legislation, which according to unofficial estimates could reduce federal receipts by $650 billion or more between 2016 and 2025, is still subject to approval in the House and Senate. Both chambers are expected to take up the measure in the coming days.

A high-level overview of the major provisions in the agreement is provided below. Additional details will appear in an upcoming edition of *Tax News & Views*.

Permanent provisions

Business: The agreement would permanently extend (and in some cases modify) the following provisions:

- The research and experimentation credit;
- Increased expensing limits under section 179;
- The subpart F exception for active financing income;

- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements;
- The minimum 9 percent low-income housing tax credit rate for nonfederally subsidized buildings;
- The employer wage credit for employees who are active duty members of the uniformed services;
- Provisions allowing passthrough character of interest-related dividends and short-term capital gains dividends from regulated investment companies (RICs) to foreign investors;
- RIC qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA); and
- The reduced recognition period for S corporation built-in gains tax.

Individual: For individuals, the agreement would permanently extend the:

- Itemized deduction for state and local general sales taxes in lieu of income taxes;
- Above-the-line deduction for classroom expenses paid by elementary and secondary school teachers;
- American Opportunity Tax Credit for higher education expenses;
- Parity for the income exclusion for employer-provided mass transit and parking benefits; and
- Enhancements to the earned income tax credit and child tax credit that were enacted in the American Recovery and Reinvestment Act of 2009 and scheduled to expire in 2017. These provisions were key to gaining Democratic support for the agreement; however, the agreement also provides for new safeguards to address Republican concerns about fraud and improper payments in these programs. The agreement does not include a provision sought by key House Democrats that would have indexed the child tax credit to inflation.

Charitable giving: Charitable giving incentives that would be made permanent (and in some cased modified) under the agreement include:

- Tax-free treatment of distributions from individual retirement plans by individuals age 70-1/2 and older for charitable purposes;
- The special rules for contributions of capital gain real property made for conservation purposes;
- The enhanced charitable deduction for contributions of food inventory;
- The modification of tax treatment of certain payments to controlling exempt organizations; and
- The basis adjustment to stock of S corps making charitable contributions of property.

Long-term extensions

Several other significant business provisions would not be made permanent but would receive multi-year extensions. The agreement would extend the following provisions for five years:

- Bonus depreciation and the election to accelerate alternative minimum tax credits in lieu of first-year bonus depreciation, phased down over five years and sunsetting in 2020. The agreement provides for 50 percent bonus depreciation in 2015, 2016, and 2017; 40 percent in 2018; and 30 percent in 2019.
- The lookthrough rule for payments between related controlled foreign corporations under the foreign personal holding company rules.
- The new markets tax credit and
- The work opportunity tax credit (expanded to make the credit available to employers who hire certain long-term unemployed individuals).

Two-year extensions

Dozens of other now-expired extenders provisions would be renewed through 2016, retroactive to the end of 2014.

Business: Notable business incentives gaining a two-year lease on life include provisions such as:

- Three-year depreciation for race horses two years old or older;
- The seven-year recovery period for motorsports entertainment complexes; and
- Special expensing rules for certain film and television productions.

Energy: Among the energy incentives that would be revived for two years are the:

- The credit for construction of new energy-efficient homes;
- Deduction for energy-efficient commercial buildings;
- Credit for energy-efficiency improvements to existing homes; and
- Incentives for biodiesel and renewable diesel.

Individual: For individuals, the agreement calls for two-year extensions of provisions such as:

- The above-the-line deduction for qualified tuition and related expenses;
- The gross income exclusion for discharge of indebtedness on a principal residence; and
- Deductibility of mortgage insurance premiums as qualified residence interest.

Medical device excise tax

The agreement also would suspend the PPACA's medical device excise tax for two years (2016 and 2017).

Proposals based on Brady's 'Plan B'

The agreement incorporates a number of proposals similar to those in the two-year fallback extenders plan that House Ways and Means Committee Chairman Kevin Brady, R-Texas, released on December 7, including provisions that would:

- Overhaul the rules governing the tax treatment of real estate investment trusts (REITs).
- Make technical corrections to recently enacted rules that streamline Internal Revenue Service audit procedures for large partnerships. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 37, Oct. 30, 2015.)
  URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151030_1.html
- Liberalize the rules governing tax-preferred section 529 education accounts.
- Make a variety of other targeted changes related to, among other things, the alcohol excise tax, the alternative tax for certain small insurance companies, and the treatment of income received under the Work Colleges Program.
- Make reforms to Internal Revenue Service operations and address taxpayer access to the federal Tax Court as well as Tax Court administration.

Other provisions

The agreement also includes, among other things:

- Many of the 17 noncontroversial targeted tax bills approved by the Senate Finance Committee in February. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 7, Feb. 13, 2015.)
  URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150213_2.html
- A Taxpayer Bill of Rights.

More tax changes coming as part of omnibus funding bill

Several renewable energy and health care taxes that have been at the center of negotiations between the two parties were not included in the extenders package but are addressed as part of a just-released omnibus spending bill.

The production tax credit for wind would be extended for five years while being phased down over that time. The solar energy credit likewise would be extended for five years (2018-2022) and phased down.

The omnibus also includes provisions related to two PPACA taxes: a one-year suspension of the health insurance tax and a two-year delay of the so-called “Cadillac” tax on certain high-cost employer-sponsored health insurance plans.

Next steps

The tax extenders package – along with the omnibus appropriations measure which includes additional tax provisions – now heads to the full House and Senate where lawmakers will attempt to clear both measures as their last orders of business before departing the Capitol for a holiday recess.

At press time, the exact timing for consideration of the measures was not clear, although it is expected the House will act first. Due to a rule in that chamber that generally requires legislation to be made publicly available for a certain period of time before it is voted on, it is anticipated that the House will consider the tax and spending bills on either December 17 or 18. Assuming House lawmakers successfully clear the measures, reports have indicated that the two bills may then be combined into a single piece of legislation in order to help expedite Senate consideration.

Although President Obama has in the past expressed strong opposition to legislation that would repeal or roll-back significant components of the PPACA, the delay of the Cadillac tax and the two-year suspension of the medical device excise tax included in the legislation unveiled December 16 are not expected to elicit veto threats from the White House.

Separately, on December 16 the two chambers are expected to pass, and the president is expected to sign, a continuing resolution – or short-term appropriations measure – to fund the government through December 22. Under the terms of a continuing resolution enacted last week, agency funding would otherwise lapse after December 16.

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