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Congress approves, president signs combined extenders, appropriations package

The House and Senate this week wrapped up work for 2015 by approving a massive legislative package (H.R. 2029) that combines a bill to renew dozens of expired tax deductions, credits, and incentives with omnibus appropriations legislation that sets spending levels for government agencies for the remainder of fiscal year 2016. The president signed the measure into law shortly after it reached his desk on December 18.

Overview of tax provisions

The Protecting Americans from Tax Hikes (PATH) Act – the extenders component of H.R. 2029 – makes permanent several lapsed business, individual, and charitable giving incentives, such as the research credit, the subpart F exception for active financing income, and tax-free IRA distributions for charitable contributions by individuals age 70-1/2 and older. It also renews a handful of provisions – such as bonus depreciation, the work opportunity and new markets credits, and production and investment tax credits for wind and solar energy – for five years. Other provisions are extended through 2016. In some cases, provisions are extended with modifications, while certain others are extended subject to a phase-out.

Beyond extenders, the PATH Act includes several provisions to overhaul the tax treatment of real estate investment trusts (REITs) and makes technical corrections to recently enacted legislation that streamlines procedures for Internal Revenue Service audits of large partnerships. It also includes a number of tax administration provisions related to IRS and Tax Court operations.

The PATH Act is largely unoffset and, according to preliminary estimates from the Joint Committee on Taxation (JCT) staff, will increase the federal deficit by $622 billion between 2016 and 2025.

URL: https://www.jct.gov/publications.html?func=startdown&id=4860

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The roughly $1.1 trillion Consolidated Appropriations Act, 2016 – the appropriations component of H.R. 2029 – also includes a few discrete tax provisions which the JCT staff estimates will increase the deficit by more than $57 billion between 2016 and 2025.
URL: https://www.jct.gov/publications.html?func=startdown&id=4859

The PATH Act and the omnibus appropriations bill also include provisions affecting the implementation of certain taxes enacted in the Patient Protection and Affordable Care Act of 2010 (PPACA).

Two bills merged into one

The House approved the PATH Act by a vote of 318-109 on December 17 and the omnibus appropriations package by a vote of 316-113 on December 18. The chamber then combined the two bills into a single package that was sent over to the Senate. The combined package cleared the Senate by a vote of 65-33 on December 18.

This report looks at significant extenders and other tax provisions in the H.R. 2029. A complete list of extenders provisions approved in the legislation is available from Deloitte Tax LLP. A technical explanation of all the provisions in the PATH Act is available from the JCT staff.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151218_1suppA.pdf
URL: https://www.jct.gov/publications.html?func=startdown&id=4861

Business extenders

Permanent extensions: The PATH Act permanently extends several business provisions retroactive to the end of 2014. It also modifies certain provisions prospectively.

Research and experimentation credit – Under the legislation, the research credit is made permanent. For taxable years beginning after 2015, the credit is modified to allow an eligible small business (as defined in section 38(c)(5)(C)) to claim the credit against both its regular tax and alternative minimum tax (AMT) liabilities. Beginning in 2016, certain small businesses also may claim the credit against the employer portion of their payroll tax liability, rather than against their income tax liability.

Significantly, the PATH Act does *not* include a provision from a permanent research credit bill (H.R. 880) approved in the House earlier this year that would have repealed the traditional credit calculation method and replaced it with the alternative simplified credit under section 41(c)(5) at an increased rate of 20 percent (up from 14 percent).

Increased expensing limits under section 179 – The bill makes permanent the increased expensing limit and phase-out threshold under section 179 – $500,000 and $2 million, respectively – which most recently lapsed at the end of 2014. (Under current law, those amounts have fallen to $25,000 and $200,000, respectively).

Additionally, the extenders bill permanently allows taxpayers to expense off-the-shelf computer software and qualified real property (i.e., qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) under section 179 – provisions that also lapsed at the end of 2014.

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For taxable years beginning after 2015, the bill (1) indexes the expensing limits to inflation, (2) repeals the limitation on the amount of section 179 property that can be attributable to qualified real property, and (3) adds air conditioning and heating units to the definition of qualifying property.

Subpart F exception for active financing income – The Path Act makes permanent, without modification, the exception from subpart F for certain foreign income derived in the active conduct of a banking, financing, securities, or insurance business.

Other business provisions made permanent – The legislation also makes permanent a handful of other business incentives, including the:

- Reduced recognition period (i.e., five years rather than 10) after which S corporations can avoid built-in gains tax following conversion from C corporation status;
- 100 percent gain exclusion for Qualified Small Business Stock, including the elimination of the exclusion as an AMT preference item;
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements;
- Minimum 9 percent low-income housing tax credit rate for nonfederally subsidized buildings;
- Regulated investment company (RIC) qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA); and
- Provisions allowing for an exemption from gross-basis tax and withholding on interest-related dividends and short-term capital gains dividends paid by RICs to foreign investors.

Long-term extensions: A handful of other business provisions receive longer-term, but not permanent, extensions. These include:

Bonus depreciation – The PATH Act extends bonus depreciation for qualified property placed in service over the next five years (i.e., through 2019), subject to a phase-out schedule: 50 percent bonus depreciation continues for 2015, 2016, and 2017, with the percentage falling to 40 percent in 2018, and 30 percent in 2019.

The bill also extends through 2019 the election to accelerate AMT credits in lieu of bonus depreciation, and beginning in 2016, increases the amount of unused AMT credits that may be claimed in lieu of bonus depreciation.

After 2015, the bill also allows bonus depreciation to be claimed on qualified improvement property regardless of whether the property is subject to a lease, and removes the requirement that an improvement be placed in service more than three years after the building was placed in service.

Finally, the legislation provides that, at the election of the taxpayer, certain trees, vines, and plants bearing fruit or nuts may be eligible for bonus depreciation in the year planted or grafted, rather than when they are placed in service (i.e., when they first reach an income-producing stage).

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CFC lookthrough rule – The bill extends through 2019, without modification, the application of the lookthrough rule which excludes from subpart F certain payments of interest, dividends, rents, and royalties between related controlled foreign corporations (CFCs) under the foreign personal holding company rules.

Work opportunity tax credit – Under the PATH Act, the work opportunity tax credit (WOTC) is extended through 2019 and expanded beginning in 2016 to include as a targeted group certain long-term unemployed individuals (i.e., those certified as having been unemployed at least 27 weeks). Employers who hire individuals from this new targeted group would be eligible to receive a credit of 40 percent of the first $6,000 in wages paid.

New markets tax credit – The bill extends the new markets tax credit through 2019 and permits up to $3.5 billion annually in qualified equity investments from 2015 through 2019. The carryover period for any unused credits is also extended five years (i.e., through 2024).

Two-year extensions: Several other business provisions are renewed through 2016, retroactive to the end of 2014, including the:

- Credit for maintenance of railroad tracks;
- Special expensing rules for certain film and television productions;
- Section 199 deduction with respect to income attributable to domestic production activities in Puerto Rico;
- Seven-year recovery period for motorsports entertainment complexes; and the
- Three-year recovery period for certain race horses.

Energy extenders

Provisions extending expired energy incentives are included in the PATH Act as well as in the omnibus appropriations bill.

Omnibus extenders provisions: Within the omnibus spending component of the package, Congress struck a deal to provide various extensions of the wind production tax credit (PTC), investment tax credit (ITC) in lieu of PTC, and the solar ITC in exchange for lifting the 40-year ban on crude oil exports. The crude oil provision emerged as a key Republican priority during negotiations.

- The legislation includes a five-year extension of the PTC for wind facilities with a phase out: 100 percent of the credit is available for projects on which construction begins by December 31, 2016; the credit is reduced to 80 percent of its value for projects on which construction begins in calendar year 2017; 60 percent for calendar year 2018; and 40 percent for calendar year 2019. The PTC is not extended for wind facilities on which construction begins after calendar year 2019.
- The ITC in lieu of PTC for wind is phased down over five years, corresponding to the wind PTC phase-down: a 30 percent ITC in lieu of PTC if construction begins before calendar year 2017; 24 for calendar year 2017; 18 percent for calendar year 2018; and 12 percent for calendar year 2019.

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- The ITC for solar commercial systems under section 48, which was scheduled to fall from 30 percent to 10 percent after 2016, will be at 30 percent for projects that begin construction by December 31, 2019. Projects that start construction in calendar year 2020 will get a 26 percent credit, dropping to 22 percent for facilities started in calendar year 2021. For those begun after December 31, 2021, and placed into service after December 31, 2023, there will be a permanent credit of 10 percent. The legislation provides a change from a placed-in-service deadline to a beginning-of-construction deadline, which is considered a favorable modification for those claiming the credit.
- The ITC for residential systems under section 25D, which was set to fall to zero after 2016, will phase out through 2021: 30 percent for projects placed in service through calendar year 2019; 26 percent for calendar year 2020; and 22 percent during calendar year 2021. (Note that this provision is still keyed to the date a project is placed in service and not to the beginning-of-construction date.)

PATH Act extenders provisions: Under the PATH Act, the PTC for other qualifying resources – biomass, trash, landfill gas, geothermal, and hydropower facilities – is extended for two years (for construction begun by December 31, 2016).

The ITC in lieu of PTC for biomass, trash, landfill gas, geothermal, and hydropower facilities is extended for two years at the full 30 percent.

The PATH Act extends the remaining expired energy provisions through 2016, generally without modifications.

Other energy-related provisions: The omnibus spending component includes a provision allowing independent refiners to exclude 75 percent of their oil transportation costs from the calculation of their section 199 manufacturing deduction in taxable years beginning after 2015, through 2021.

Charitable giving extenders

The PATH Act makes permanent several incentives to promote charitable giving by businesses and individuals.

Charitable contributions of food inventory: The legislation permanently extends the deduction for charitable contributions of food inventory and expands 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.

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The extension generally is effective for contributions made after December 31, 2014. The expanded incentives apply for tax years beginning after December 31, 2015.

Other charitable giving provisions: Several other charitable giving incentives are made permanent without additional modifications. These 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 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.

Individual extenders

Among the items in the PATH Act targeted at individual taxpayers is a provision that permanently extends the deduction for state and local sales taxes in lieu of a deduction for state and local income taxes. This is of particular interest to itemizers in states that do not impose an income tax.

Also made permanent is a provision providing parity for the income exclusion allowed for employer-provided commuter benefits, bringing mass transit benefits up to a maximum $250 per month (from $130), in line with parking benefits. Qualifying expenses provided by an employer are excluded from an employee’s gross income for income tax purposes and from an employee’s wages for employment tax purposes. This provision is retroactive to January 1, 2015.

The PATH Act also makes permanent 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 legislation; however, the PATH Act also provides for new safeguards to address Republican concerns about fraud and improper payments in these programs. The legislation does not include a provision sought by key House Democrats that would have indexed the child tax credit to inflation.

Notable among the items extended for 2015 and 2016 is one provision that allows individuals to exclude from income for tax purposes the debt forgiven by a bank on the short sale or foreclosure of a home and another that treats private mortgage insurance premiums as deductible interest payments.

Changes to implementation of PPACA taxes

Both the PATH Act and the omnibus appropriations components of H.R. 2029 include provisions that suspend or delay implementation of certain PPACA taxes:

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- **Medical device excise tax –** The medical device excise tax is suspended for sales in 2016 and 2017 (included in the PATH Act).
- **Cadillac tax –** Implementation of the so-called “Cadillac” tax on high-cost employer provided health insurance plans is delayed for two years, until 2020 (included in the omnibus appropriations section).
- **Annual fee on health insurance providers –** This fee is suspended for 2017 (also included in the omnibus appropriations section).

Internet tax moratorium

The omnibus spending component to H.R. 2029 includes a provision that extends the Internet Tax Freedom Act (ITFA) through October 1, 2016.

The ITFA, which was originally enacted in 1998, imposes a moratorium on state and local taxes on Internet access service and includes a grandfather clause to give states that were then taxing Internet access some time to transition to other sources of revenue. Since its enactment, the ITFA has received numerous short-term and long-term extensions.

The House voted to make the ITFA permanent (and require grandfathered Internet access taxes to be phased out by June 30, 2020) as part of a conference agreement on a Customs overhaul and trade enforcement bill (H.R. 644) it approved on December 11. The House also approved a permanent Internet tax moratorium earlier this year as well as in 2014.

The Customs bill has become bogged down in the Senate, however, as a result of objections by lawmakers who want to link action on Internet access taxes with provisions from the Marketplace Fairness Act (MFA) that are intended to make it easier for states to capture sales and use tax revenue from transactions involving on-line and other “remote” vendors that do not have an in-state physical presence. H.R. 644 does not address the tax treatment of remote sales, and MFA supporters threatened to mount procedural hurdles to the Customs enforcement bill that would require 60 votes to overcome. (A similar dynamic has stymied Senate action on other proposals to make the Internet tax moratorium permanent in recent years.)

Senate leaders decided on December 16 to delay consideration of the Customs legislation until next year – a development that led lawmakers to add the short-term ITFA extension to the omnibus appropriations package.

Provisions affecting REITs

In addition to extending expired tax deductions, credits, and incentives, the PATH Act includes a number of provisions addressing the tax treatment of REITs. One of these provisions appears intended to address concerns about possible erosion of the corporate tax base resulting from the use of REITs, while others move in the opposite direction and make REITs a more attractive investment vehicle, particularly to non-US investors. A few provisions make technical tweaks to current law.

Restrictions on tax-free spinoffs involving REITs: The legislation makes section 355 inapplicable if either the distributing or the controlled corporation is a REIT. Exceptions apply if

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(1) a REIT spins off another REIT or (2) a REIT that has been a REIT for three years spins off a taxable REIT subsidiary (TRS) in which it has held a controlling interest for three years, or a lower-tier TRS held by upper-tier TRSs meeting the three-year test. In addition, neither a distributing nor a controlled corporation in a good section 355 transaction is permitted to make a REIT election for 10 years following a tax-free spin-off transaction. *The provision does apply to distributions on or after December 7, 2015*, the date the provision was introduced, except for transactions described in private letter ruling requests pending before the IRS on this date.

Reduction in percentage limitation on assets of REIT which may be taxable REIT subsidiaries: The legislation reduces the current 25 percent limit on the value of TRS securities to 20 percent, effective for tax years beginning after 2017.

Prohibited transaction safe harbors: The legislation modifies the prohibited transaction safe harbor provisions, including deleting a requirement that they apply only to dealer property, effective retroactive to 2008. The legislation also liberalizes the current limitation of 10 percent of the aggregate fair market value or basis of its assets. The new limit is 20 percent of the aggregate fair market value or basis in the year of sale, not to exceed 10 percent determined over a three-year period. This permits a REIT in effect to take advantage of years in which it sold less than the maximum limit. This change applies for tax years beginning after the date of enactment.

Repeal of preferential dividend rule for publicly offered REITs: The legislation repeals the preferential dividend rules for publicly offered REITs (that is, listed REITs and public nontraded REITs that have to file with the SEC) for distributions in tax years beginning after 2014.

Authority for alternative remedies to address certain REIT distribution failures: The legislation gives the IRS authority to provide unspecified “appropriate” remedies for a preferential dividend distribution by REITs that are not publicly offered in lieu of treating the dividend as not qualifying for the REIT dividend deduction and not counting toward satisfying the requirement that REITs distribute 90 percent of their income every year. Such authority would apply if the preferential distribution is inadvertent or due to reasonable cause and not due to willful neglect. This provision applies to distributions in tax years beginning after 2015.

Limitation on designation of dividends by REITs: The legislation provides that the aggregate amount of dividends that can be designated as capital gain dividends or as qualified dividend income cannot exceed the dividends paid by the trust for the year, including dividends thrown back pursuant to section 858. It also authorizes the issuance of regulations or other guidance requiring that designations be proportional among shares. At present the proportionality requirement applies only among different classes of shares. The provision is effective for tax years beginning after 2015.

Debt instruments of publicly offered REITs and mortgages treated as real estate assets: Under the legislation, debt instruments issued by publicly offered REITs (that are unsecured and therefore not treated as real estate assets under current law) are treated as real assets for purposes of the 75 percent asset test. Interest payable on such instruments continues to be treated as qualified income under the 95 percent gross income test and not qualified under the 75 percent gross income test. Not more than 25 percent of a REIT’s assets can consist of such debt instruments. The provision is effective for tax years beginning after 2015.

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Asset and income test clarification regarding ancillary personal property: The legislation provides that if personal property leased along with real property meets the 15 percent test in current law for the rent attributable to the personal property to be treated as rents from real property, then the personal property would also be treated as real property for purposes of the 75 percent asset test. Furthermore, if a mortgage is secured by real property and also by personal property meeting the 15 percent test, the mortgage would be treated in its entirety as a good real estate asset for purposes of the 75 percent asset test, and interest on it would be treated in its entirety as mortgage interest for purposes of the 75 percent gross income test. This new treatment of mortgage collateral will as a practical matter avoid many of the issues that have arisen in connection with the acquisition of distressed debt. Note that the 15 percent is a cliff, as it is currently in the rules on leasing personal property. The provision is effective for tax years beginning after 2015.

Hedging provisions: The legislation expands the category of hedges the income from which is disregarded for the REIT income tests to include hedges that are entered into in order to partially or completely terminate previous hedges that are no longer serving as hedges. Importantly, it also liberalizes the identification requirements, so that REITs can make use of, for REIT purposes, the provision in the existing regulations under section 1221(a)(7) that mitigate inadvertent failures to identify. This provision is effective for taxable years beginning after 2015.

Modification of REIT earnings and profits calculation to avoid duplicate taxation: The legislation fixes several technical problems with section 562(e)(1) and section 857(d)(1) so that a REIT should be considered to have enough earnings and profits for purposes of computing its dividends-paid deduction to offset gains from sales of real property (without the current limit that the sales have to be within the taxable year) and other items. These modifications of earnings and profits are taken into account in determining the treatment of shareholders under section 301 as well, but there is a new limitation that should prevent shareholders from being taxed in a duplicative manner. The provision is effective for tax years beginning after 2015.

Treatment of certain services provided by taxable REIT subsidiaries: The legislation permits a TRS, as well as an independent contractor, to satisfy requirements as to operating foreclosed property under the foreclosure property rules and as to conducting marketing and development activities under the prohibited transaction safe harbor. It also clarifies that the 100 percent tax under section 857(b)(7), imposed where a TRS's deductions exceed arm's length amounts, applies where a TRS performs services for or on behalf of a REIT (other than services to the REIT's tenants, which are clearly covered under existing law). These provisions are effective for tax years beginning after 2015.

FIRPTA exception for certain stock of real estate investment trusts: The legislation amends the FIRPTA rules in a number of helpful ways. It increases, from 5 percent to 10 percent, the maximum ownership percentage for foreign owners of publicly traded REITs (and other entities) who are not subject to FIRPTA on sales of that stock or on capital gain distributions. It creates a new exception from FIRPTA for certain listed and traded investment entities owned by foreign persons in certain treaty countries. Finally, in applying the foreign ownership limitation for purposes of determining whether a REIT is a domestically controlled REIT, the legislation permits a publicly traded REIT to treat all of its own 5 percent-or-less shareholders as US persons unless it has actual knowledge to the contrary. If, and only if, a

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publicly traded REIT is a domestically controlled REIT under this standard, it would itself be treated as a US person for purposes of determining the status of a REIT in which it owns shares. If a REIT that is not publicly traded owns stock in another REIT, for purposes of determining the status of the second REIT, the stock owned by the first REIT is considered owned by a US person in the same proportion as the first REIT is itself owned by US persons. These rules generally apply to sales after the date of enactment and to REIT distributions after the date of enactment with respect to taxable years ending after the date of enactment.

Exception for interests held by foreign retirement or pension funds: The legislation creates an exemption from FIRPTA for any US real property interest held by a foreign pension fund or any entity 100 percent-owned by a foreign pension fund. This applies to dispositions and distributions after the date of enactment.

Increase in rate of withholding of tax on dispositions of United States real property interests: The legislation provides that the rate of withholding on dispositions of United States real property interests is increased from 10 percent to 15 percent. The increased rate of withholding, however, does not apply to the sale of a personal residence where the amount realized is $1 million or less. The provision is effective for dispositions occurring 60 days after the date of enactment.

Interests in RICs and REITs not excluded from definition of United States real property interests: The legislation provides that the “cleansing rule” (which applies to corporations that either have no real estate or have paid tax on their real estate transactions) applies only to interests in a corporation that is not a qualified investment entity. In addition, the legislation provides that the cleansing rule applies to stock of a corporation only if neither the corporation nor any predecessor of such corporation was a regulated investment company (RIC) or REIT at any time during the shorter of (1) the period after June 18, 1980 during which the taxpayer held such stock, or (2) the five-year period ending on the date of the disposition of the stock. The provision applies to dispositions on or after the date of enactment.

Dividends derived from RICs and REITs ineligible for deduction for US-source portion of dividends from certain foreign corporations: The PATH Act provides that for purposes of determining whether dividends from a foreign corporation (attributable to dividends from an 80-percent owned domestic corporation) are eligible for a dividend received deduction, dividends from RICs and REITs are not treated as dividends from domestic corporations, even if the RIC or REIT owns shares in a foreign corporation. The provision applies to dividends received from RICs and REITs on or after the date of enactment.

Extension of reduction in recognition period for built-in gains: The legislation makes permanent (effective for years beginning after 2014) the five-year recognition period for sales of assets under section 1374.

What’s not included: The package does *not* contain a provision included in earlier REIT reform proposals that would mandate deemed-sales elections under Treasury Reg. section 1.337(d)-7. Consequently, the package does not prevent REIT conversions, nor does it interfere with a REIT’s acquisition of a C corporation.

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The package also does *not* contain a limitation relating to contingent rents and interest that was included in the earlier package.

Partnership audit provisions

The PATH Act includes several technical corrections to rules streamlining Internal Revenue Service audits of large partnerships that were enacted earlier this year in the Bipartisan Budget Act of 2015. (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

In addition to some minor corrections and conforming changes, the partnership audit corrections:

- Provide that the Secretary will establish procedures for determining the imputed underpayment of a publicly traded partnership without regard to the portion attributable to a net decrease in a specified passive activity loss allocated to a specified partner, and for the partnership to take the net decrease into account as an adjustment in the adjustment year with respect to the specified partners. In other words, the publicly traded partnership can reduce the tax it might owe on an imputed underpayment by passive losses it can demonstrate that a partner (that would have been allocated additional income) has with respect to that publicly traded partnership.
- Extend the time period of limitations on making adjustments in the case of any notice of proposed partnership adjustment to 330 days (from 270 days).
- Amend section 6031(b) to eliminate the reference to electing large partnerships and provide that information required to be furnished by the partnership under section 6031(b) may not be amended after the due date of the return, except as provided in the procedures under section 6225(c), with respect to statements under section 6226, or as otherwise provided by the Secretary.

The provisions are effective as if included in section 1101 of the Bipartisan Budget Act of 2015.

Section 529 plan changes

The PATH Act includes a non-extender provision that liberalizes the rules for section 529 education savings plans by:

- Expanding the definition of qualified higher education expenses to include computer equipment and technology;
- Simplifying the treatment of distributions for individuals with multiple section 529 accounts; and
- Treating as a qualified expense any recontribution of tuition refunds if the recontribution is made within 60 days.

These changes generally take effect for distributions made or refunds after December 31, 2014.

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Other non-extender provisions

The PATH Act also includes a variety of targeted tax provisions that, among other things:

- Remove bond requirements and extend filing periods for certain taxpayers with limited alcohol excise tax liability (effective 90 days after enactment);
- Modify the definition of hard cider for purposes of the alcohol excise tax (effective for articles removed from the distillery or bonding facility during calendar years beginning after 2015);
- Provide that C corporation timber gains are subject to a tax rate of 23.8 percent (effective for taxable years beginning after December 31, 2015, and expires on December 31, 2016);
- Increase to $2.2 million (from $1.2 million) and index for inflation the maximum amount of annual premiums that certain small property and casualty insurance companies can receive and still elect to be exempt from tax on their underwriting income and instead be taxed only on taxable investment income, subject to anti-abuse rules (effective for tax years beginning after 2016);
- Provide that charitable contributions to an agricultural research organization are subject to higher individual limits (generally up to 50 percent of the taxpayer's contribution base) if the organization uses the contribution for agricultural research within four years of the contribution (effective for contributions made on or after the date of enactment);
- Allow ABLE accounts (tax-preferred savings plans for individuals with disabilities), which currently may be located only in the beneficiary's state of residence to be established in any state (effective for tax years beginning after December 31, 2014);
- Extend the current-law special rule for certain benefits paid by accident or health plans of a public retirement system to such benefits paid by plans established by or on behalf of a state or political subdivision (effective for payments after the date of enactment);
- Permit taxpayers to roll over amounts from an employer-sponsored retirement plan to a SIMPLE IRA (effective for contributions made after the date of enactment); and
- Clarify the effective date of Public Law 113-243 (amending the FAA Modernization and Reform Act of 2012) to allow certain airline employees to contribute amounts received in bankruptcy to an IRA without being subject to the annual contribution limit (effective as if included in Public Law 113-243).

Many of these provisions were approved in a series of noncontroversial targeted tax bills reported out of 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

Revenue provisions

The PATH Act is largely unoffset, although there are revenue-raising provisions included among the REIT reform proposals and the new program integrity enhancements for the child tax credit and earned income tax credit. In addition to these, the measure includes an assortment of revenue offsets that would:

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- Modify the deduction for energy-efficiency improvements to commercial buildings by updating energy-efficiency standards for eligible improvements to reflect new standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers, effective for property placed in service after December 31, 2015.
- Allow motion picture payroll services companies to be treated as the employer of their film and television production workers for federal employment tax purposes, effective for remuneration paid after December 31, 2015.
- Convert the measurement of the alternative fuel excise tax credit for liquefied natural gas and liquefied petroleum gas from 50 cents per gallon to 50 cents per energy equivalent of a gallon of diesel fuel (which is approximately 29 cents per gallon for liquefied natural gas and approximately 36 cents per gallon for liquefied petroleum gas), effective for fuel sold or used after December 31, 2015.
- 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, and 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 December 31, 2011.
- Clarify the valuation method for the early termination of certain charitable remainder trusts, effective for the termination of trusts after the date of enactment.
- Modify the related-party loss rules, which generally disallow a deduction for a loss on the sale or exchange of property to certain related parties or controlled partnerships, to prevent losses from being shifted from a tax-indifferent party (for example, a person not subject to US tax) to another party in whose hands any gain or loss with respect to the property would be subject to US tax. The provision generally is effective for sales and exchanges or property acquired after 2015.

Several of these proposed offsets were included in Ways and Means Chairman Brady's "Plan B" extenders package unveiled earlier this month and in the two-year extenders legislation that was approved by the Senate Finance Committee in July.

IRS reforms, Tax Court administrative provisions

The PATH Act makes several reforms to Internal Revenue Service operations related to:

- Taxpayer rights and protections when dealing with the IRS;
- Restrictions on the use of personal e-mail by IRS employees for official business,
- The treatment of organizations applying for tax-exempt status:
- The process for determining tax-exemptions of organizations under section 501(c)(4); and
- The gift-tax treatment of donations to tax-exempt organizations under sections 501(c)(4), 501(c)(5), and 501(c)(6).

The House approved all of these provisions in separate bills earlier this year.

Also in the legislation are provisions addressing taxpayer access to the federal Tax Court as well as Tax Court administration.

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A down payment on tax reform?

Congressional Republicans – particularly in the House – have argued in recent years that making selected tax extenders permanent will facilitate 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 the 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, indicated that he likewise intends to pursue that course.

A news release on the Ways and Means Committee Web site argues that PATH Act "lays the groundwork for historic reforms that will fix our broken tax code. Instead of spending months each year debating temporary tax extensions, Congress will be able to focus on the comprehensive tax reform we all agree our country needs. Americans deserve a simpler, fairer and flatter tax code that's built for growth, and this bill will help make that possible."

For his part, Ways and Means ranking Democrat Sander Levin of Michigan has criticized the deficit impact of the largely unpaid-for extenders package and argued in a recent "Dear Colleague" letter that passage of the PATH Act "severely harms" future tax reform efforts.

"Any 'revenue neutral' tax reform only has to bring in the lower amount of revenue. This would make it easier for Republicans to give businesses or wealthy individuals a tax cut in the future – since all these permanent business breaks do not have to be offset in tax reform," Levin wrote.

This debate is likely to continue into 2016 as Speaker Ryan pursues his stated goal of moving tax reform legislation in the House ahead of the upcoming elections to demonstrate the direction that a GOP-controlled Congress and White House would take on tax policy.

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