Deloitte.

Tax

Tax News & Views

November 26, 2014

In this issue:

Extenders in limbo after White House nixes potential deal

With Congress in recess for the Thanksgiving holiday, House and Senate negotiators were nearing an agreement November 25 on a tax extenders package that reportedly would make permanent the research credit, section 179 expensing, and several other temporary tax provisions that expired at the end of 2013; renew the bulk of the remaining expired provisions retroactively through the 2015; and phase out the section 45 production tax credit for wind and other forms of alternative energy.

But prospects for getting a bill quickly signed into law diminished later in the day when a White House spokesperson indicated that President Obama would veto the agreement in its current form because the benefits were, in the administration's view, too heavily skewed toward business taxpayers.

Permanent provisions

Although a detailed description was not available at press time, the developing agreement – which was negotiated between House Ways and Means Committee Chairman Dave Camp, R-Mich., and Senate Majority Leader Harry Reid, D-Nev. – reportedly provides that the following expired provisions would be made permanent, retroactive to December 31, 2013:

- The research and experimentation credit;
- Increased expensing limits ($500,000/$2 million) for section 179 property and the expanded definition of section 179 property;
- The reduced recognition period for S corporation built-in gains tax;
- The basis adjustment to stock of S corporations making charitable contributions of property;
- The deduction for charitable contributions of food inventory;
- The deduction for state and local sales taxes;
- The American opportunity tax credit;

- The income exclusion income for employer-provided mass transit and parking benefits;
- Tax-free distributions from individual retirement plans by individuals age 70-1/2 and older for charitable purposes; and
- Special rules for contributions of capital gain real property made for conservation purposes.

The House of Representatives approved permanent extensions of most of these provisions earlier this year but did not address the deduction for state and local sales taxes or the exclusion for employer-provided transportation benefits.

Two-year extensions

Most of the remaining temporary tax deductions, credits, and incentives that sunset at the end of last year would be retroactively extended through 2015.

Among the provisions that would gain a two-year lease on life under the emerging agreement are:

- Bonus depreciation and the election to accelerate alternative minimum tax credits in lieu of additional first-year depreciation;
- The subpart F exception for active financing income;
- Lookthrough treatment of 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;
- The deduction for energy-efficiency improvements to commercial buildings;
- The credit for construction of energy-efficient new homes;
- The deduction for energy-efficiency improvements to existing homes;
- The New Markets Tax Credit; and
- The Work Opportunity Tax Credit.

Renewable energy credit to be phased out

The agreement would phase out over several years a provision allowing renewable power facilities, including wind, to claim the electricity production tax credit or the investment credit in lieu of the production credit. (Details of how the phase-out would be structured were not available at press time.)

No revenue offsets

According to published reports, the agreement would not include any revenue offsets and, if enacted, would increase the deficit by upwards of $400 billion over 10 years (compared to the "current law" baseline used by the scorekeepers at the nonpartisan Joint Committee on Taxation, which assumes the expired provisions remain lapsed).

White House weighs in

Reported details of the agreement indicate it would not include the extension of two current-law provisions favored by the White House and some congressional Democrats that expand certain refundable benefits under the earned income tax credit and the child tax credit. (Those expanded benefits are currently set to expire in 2017.)

Treasury Secretary Jack Lew hinted on November 24 that omitting those provisions from an extenders package would be a deal breaker for the administration, stating in a news release that "any deal on tax extenders must ensure that the economic benefits are broadly shared" by businesses and the middle class.
URL: http://www.treasury.gov/press-center/press-releases/Pages/jl9708.aspx

As details of the proposed agreement leaked out in the press on November 25, a White House spokesperson confirmed in an e-mail to reporters that "the president would veto the proposed deal because it would provide permanent tax breaks to help well-connected corporations while neglecting working families."

Next steps unclear

It was unclear at press time how or whether the negotiators would revise the agreement to address the administration's concerns. Staff for Ways and Means Committee Chairman Camp indicated late November 25 that any future developments were unlikely to be announced before lawmakers return to Capitol Hill from the Thanksgiving recess.

The congressional lame duck legislative session is scheduled to resume on December 1 and the target adjournment date for the year is currently December 11.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP