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Senate approves one-year tax extenders package; president's signature expected

The Senate voted 76-16 on December 16 to approve a one-year retroactive extension of most – but not all – of the temporary tax deductions, credits, and incentives that expired at the end of last year. The approved extenders bill, which cleared the House of Representatives on December 3, now heads to the White House for President Obama's signature.

Wyden votes 'no'

Support for the Tax Increase Prevention Act of 2014 (H.R. 5771) was bipartisan, with 45 Democrats and 31 Republicans voting in favor of the measure. (Eight Democrats and eight Republicans voted against it).

One notable "no" vote was cast by Finance Committee Chairman Ron Wyden, D-Ore., who in floor remarks shortly before the balloting began commented that the tax relief in the package would be short-lived since the extenders provisions would be renewed only through the end of this year. Wyden moved a two-year extenders bill through the Finance Committee in April and had tried in recent weeks to negotiate with House leaders for a longer-term extension of the expired provisions.

"This debate takes place against the backdrop of positive economic news showing unemployment is down and wages are up – the kind of news Congress should build on by providing certainty and predictability for families and businesses. But that's not what the bill before the Senate today does," Wyden said.

A few days later than planned

Senate leaders had hoped to wrap up work on the extenders package and adjourn for the year by December 12. But those plans were upended by procedural wrangling over other issues –

namely, a long-term government funding bill and a series of judicial and executive nominations from the White House – that kept the Senate in Washington for a rare Saturday session on December 13 and into the new work week. (The Senate passed the $1.1 trillion government funding measure late December 13 by a vote of 56-40, two days after it was approved in the House. For details on the provisions of that bill, see *Tax News & Views*, Vol. 15, No. 39, Dec. 12, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141212_2.html

Highlights of extended provisions

Among the dozens of expired provisions that would be renewed through the end of 2014 under the extenders legislation are:

- The research and experimentation credit;
- Bonus depreciation and the election to accelerate alternative minimum tax credits in lieu of additional first-year depreciation;
- Increased expensing limits ($500,000/$2 million) for section 179 property and the expanded definition of section 179 property;
- 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 production tax credit for wind and other alternative forms of energy;
- The credit for alternative fuel vehicle refueling property;
- 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;
- The Work Opportunity Tax Credit;
- 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;
- Tax-free distributions from individual retirement plans by individuals age 70-1/2 and older for charitable purposes;
- Special rules for contributions of capital gain real property made for conservation purposes;
- The deduction for state and local sales taxes; and
- The income exclusion for employer-provided mass transit and parking benefits.

Under the approved legislation, none of the extenders provisions is modified from prior law.

Provisions not renewed

The bill would *not* renew a handful of provisions related to, among other things, expensing of certain refinery property, manufacturing of energy-efficient appliances, and health insurance tax credits for certain unemployed individuals.

Other provisions extended

In addition to addressing most of the expired 2013 extenders, H.R. 5771 would extend through 2015 two current-law provisions scheduled to sunset at the end of this year that (1) permit multiemployer defined benefit pension plans to take an additional five years to amortize funding shortfalls and (2) provide special rules allowing severely underfunded multiemployer plans to start or stop using the shortfall funding method without obtaining approval from the Treasury Department. (These provisions were originally enacted under the Pension Protection Act of 2006.)

The legislation also includes provisions that would correct technical or clerical errors in various tax laws enacted over the last several years and strike so-called “deadwood” provisions from the tax code.

Complete list

A complete list of provisions that would be renewed under the legislation – and those that would not – is available from Deloitte Tax LLP.
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141216_1suppA.pdf

No revenue offsets

The extenders provisions are not offset and, according to estimates from the Joint Committee on Taxation (JCT) staff, would decrease federal revenues by roughly $42 billion over 10 years (compared to the “current law” baseline used by JCT scorekeepers, which assumes the expired provisions remain lapsed).
URL: https://www.jct.gov/publications.html?func=startdown&id=4677

ABLE Act provisions

The extenders legislation also includes provisions from the Achieving a Better Life Experience (ABLE) Act of 2014 (H.R. 647), a measure with broad bipartisan and bicameral support that would authorize the creation of tax-preferred savings accounts for use by certain individuals with disabilities and their caregivers to pay for certain qualified disability expenses. (The House merged the ABLE Act into the extenders bill after passing both measures on December 3.)

Qualified ABLE accounts: The ABLE Act would allow individuals to establish and contribute to “qualified ABLE accounts” – to benefit eligible individuals who are blind or have a disability – in a “qualified ABLE program” which would be set up by individual states. Qualified ABLE accounts and qualified ABLE programs would be treated for income tax purposes in a similar manner as accounts in a qualified tuition program under section 529.

Contributions to an ABLE account would not be deductible but earnings would accumulate on a tax-deferred basis. Beneficiaries would be limited to one account, and total annual contributions to any one account could be made up to the gift tax exclusion amount (currently $14,000 and adjusted annually for inflation). Funds in the account could be used to pay for "qualified disability expenses" for education (including higher education), a primary residence, transportation, obtaining and maintaining employment, health and wellness, assistive technology, and other personal support expenses. Distributions from an account would not be includable in the gross income of a beneficiary to the extent that the distribution does not exceed the beneficiary's qualified disability expenses for the taxable year. Distributions and account balances would also be disregarded in some situations for determinations under federal means-tested assistance programs.

Offsets: The JCT staff has estimated that qualified ABLE programs would reduce federal revenues by roughly $2 billion over 10 years. When the ABLE Act cleared the House Ways and Means Committee in late July, it contained no offsets, but committee Chairman Dave Camp, R-Mich., promised that he would find bipartisan pay-fors. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 29, Aug. 1, 2014.)
URL: https://www.jct.gov/publications.html?func=startdown&id=4676
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140801_3.html

Under the approved legislation, the revenue losses from the ABLE Act programs would be recouped through a combination of assorted tax offsets and spending reductions. Among the tax-related offsets are three provisions that are identical or similar to offsets included in the extenders package that was approved by the Senate Finance Committee in April but never brought to the Senate floor. These provisions would:

- Increase from 15 percent to 30 percent the levy against payments to a Medicare provider to collect unpaid taxes. (The Finance Committee extenders package called for increasing the levy to 100 percent.) The JCT staff estimates that the House-approved provision would increase federal revenues by $241 million over 10 years.
- Index for inflation civil penalties for certain failure-to-file requirements under the Internal Revenue Code (estimated 10-year revenue gain: $115 million).
- Exclude from additional withholding tax on personal holding company income certain dividends received from foreign subsidiaries (estimated 10-year revenue gain: $14 million).

The legislation also includes an offset that would raise the Inland Waterways Trust Fund excise tax on fuel powering commercial cargo vessels from 20 cents to 29 cents per gallon for an estimated 10-year revenue gain of $260 million. (A similar provision was included in an Obama administration budget package.) Another offset would allow the IRS to certify professional employee organizations (PEOs), thus allowing the PEOs to be solely responsible for withholding and remitting their customers' employment taxes (estimated 10-year revenue gain: $8 million).

Next stop: White House

Although the White House has not issued an official statement of administration policy on the legislation, President Obama is expected to sign it into law.

Shortly before Thanksgiving, Obama scuttled an emerging agreement between Ways and Means Committee Chairman Camp and Senate Majority Harry Leader Reid, D-Nev., that reportedly proposed to make the research credit and several other corporate tax provisions permanent but did not include long-term extensions of two current-law provisions that expand certain refundable benefits under the earned income tax credit and the child tax credit. At the time, administration officials explained that the proposed deal was, in their view, too heavily skewed toward corporate taxpayers. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 36, Nov. 27, 2015.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141126_1.html

Since then, the president has signaled that although he would continue to reject any deal that permanently extends business tax credits without also providing long-term extensions of tax incentives benefiting middle-class families, he would accept shorter-term alternatives. Speaking to an audience at the Business Roundtable December 3, the president stated that "as a general rule, we are open to short-term extensions of many of those [temporary] provisions to make sure that all of you are able to engage in basic tax planning at least for the next couple of years, and are not having to scramble during tax time, figuring out what exactly the rules are."

The president also noted that the administration would "like to see if some of those tax extender provisions, including things that I strongly support like research and development, are incorporated into a broader, comprehensive tax reform package"; but he cautioned that comprehensive tax reform would also have to include "some provisions that benefit working families."

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