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House continues push for permanent extenders

House Republicans this week continued their efforts to get expired extenders provisions permanently embedded in the tax code as the chamber approved two unpaid-for bills that would make permanent increased expensing limits under section 179, tax relief provisions for S corporations, and incentives to encourage charitable giving.

Meanwhile, the Ways and Means Committee approved – also without offsets – legislation to permanently extend the research credit and the deduction for state and local general sales taxes.

Small business relief

The America's Small Business Tax Relief Act of 2015 (H.R. 636), which was approved February 13 by a vote of 272-142, would make permanent the now-expired enhanced small business expensing limit of $500,000 and phase-out threshold of $2 million under section 179. It also would permanently treat off-the-shelf computer software as qualifying property; permanently treat qualified real property as eligible section 179 property; remove the limitation related to the amount of qualified real property that qualifies as section 179 property; and strike the language in section 179(d)(1) that excludes air conditioning and heating units from the definition of qualifying property.

The bill cleared the Ways and Means Committee on February 4. As approved in the House, it incorporates two other measures approved at the February 4 Ways and Means mark-up that would permanently extend:

- The five-year recognition period for built-in-gains tax for S corporations and
- The basis adjustment for stock of an S corporation making charitable contributions of property.

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The legislation would be effective for taxable years beginning after December 31, 2014. According to estimates from the Joint Committee on Taxation (JCT) staff, it would reduce federal revenues by a combined total of $79.2 billion over 10 years.

Charitable giving

The America Gives More Act of 2015 (H.R. 644), which was approved February 12 by a vote of 279-137, would permanently extend the deduction for charitable contributions of food inventory and expand 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.

The proposal generally would be effective for contributions made after the date of enactment, in taxable years ending after the enactment date. The increase in the percentage limit to 15 percent for food inventory contributions by C corporations and the related carryover and coordination rules for those contributions would be effective for contributions made in taxable years ending after the date of enactment.

Additional provisions folded in: The House-passed legislation also incorporates provisions from separate charitable giving bills approved in the Ways and Means Committee last week that would:

- Permanently extend the exclusion from gross income for qualified charitable distributions from an individual retirement account for individuals age 70-1/2 and older, effective for distributions in taxable years beginning after December 31, 2014;
- Permanently extend the increased percentage limits and extended carryforward period for qualified conservation contributions effective for contributions made in taxable years beginning after December 31, 2014; and
- Simplify the excise tax on investment income of private foundations by replacing the current two-tiered rate structure with a single rate of 1 percent, effective for taxable years beginning after the date of enactment.

The JCT staff estimates that the legislation as approved would reduce federal revenues by roughly $14.3 billion over 10 years.

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On deck: Permanent research credit, state and local sales tax deduction

The House is expected in the near term to take up another set of permanent extenders approved along party lines in the Ways and Means Committee on February 12. (The House is out of session the week of February 16 and will return to Capitol Hill on February 24.)

Research credit: The American Research and Competitiveness Act of 2015 (H.R. 880), would make permanent a modified version of the now-expired alternative simplified method for calculating the research and experimentation tax credit effective for tax years beginning after December 31, 2014. Going forward, the credit would equal:

- 20 percent of qualified research expenses for the tax year that exceed 50 percent of a taxpayer's average qualified research expenses in the three preceding tax years, plus
- 20 percent of basic research expenses for the tax year that exceed 50 percent of a taxpayer's average basic research expenses in the three preceding tax years, plus
- 20 percent of all expenses (without regard to a base amount) paid to an energy research consortium for research conducted for the taxpayer.

A taxpayer that has no qualified research expenses in any of the preceding three tax years would be permitted to claim a reduced research credit at a rate of 10 percent.

The traditional 20 percent credit that was calculated using a base period would be repealed.

The legislation also would provide that in the case of an eligible small business (as defined in section 38(c)(5)(C)) the research credit determined under section 41 for taxable years beginning after December 31, 2014, is a specified credit and thus may be used to offset both regular and alternative minimum tax liability.

The bill would be effective for taxable years beginning after December 31, 2014. The JCT staff estimates that it would reduce federal revenues by $181.6 billion over 10 years.

Similar legislation was passed out of the committee and approved by the full House in the 113th Congress.

State and local sales tax deduction: The committee also approved legislation (H.R. 622) that would make permanent the expired provision allowing taxpayers to elect to deduct state and local sales taxes in lieu of state and local income taxes. The measure would be effective for taxable years beginning after December 31, 2014 and, according to the JCT staff, would reduce federal revenues by an estimated $41.6 billion over 10 years.

Expanded section 529 provisions: In addition to the two extenders measures, the committee approved by voice vote legislation (H.R. 529) sponsored by House taxwriters Lynn Jenkins, R-Kan., and Ron Kind, D-Wis., that would expand the current-law rules governing section 529 savings plans for higher education expenses by clarifying that computers are a qualified expense for section 529 account funds, permitting plan holders to re-deposit refunds from colleges without taxes or penalties under certain circumstances, and eliminating any requirement that the earnings portion of any distribution be determined by aggregating

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accounts. The bill would be effective for distributions made after December 31, 2014. The JCT staff estimates it would reduce federal revenues by $51 million over 10 years.

H.R. 529 was introduced January 26 following the president's announcement that his fiscal year 2016 budget blueprint would include a proposal to eliminate the tax-free treatment of certain withdrawals from section 529 plans. That proposal was subsequently withdrawn. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 4, Jan. 30, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150130_5.html

Offset wars continue

Many Democrats stated during committee mark-ups and on the House floor that while they supported the underlying policies in the permanent extenders proposals that have been brought up thus far in the 114th Congress, they could not vote to approve unpaid-for tax legislation that would add to the deficit. They also contended that expired tax provisions should be addressed as a bloc in the context of tax reform legislation that offsets the cost of permanent extenders by eliminating or scaling back other business and individual tax expenditures.

At the February 12 Ways and Means mark-up, for example, ranking Democrat Sander Levin of Michigan argued that moving unpaid-for extenders bills piecemeal is "antithetical" to tax reform.

"We should do these things together," he said.

Ways and Means Chairman Paul Ryan, R-Wis., countered that Congress's traditional practice of passing one-year extenders packages without offsets does nothing to grow the economy and provides no certainty for taxpayers. Advancing permanent, unoffset extensions of provisions that have bipartisan support "facilitates tax reform" by embedding them in the code and creating an "honest" picture of the budget baseline, he said.

Future prospects in doubt

Any permanent extenders provisions that clear the House currently appear to face an uncertain future on the other side of the Capitol. Senate Finance Committee Chairman Orrin Hatch, R-Utah, has not yet indicated when – or how – his panel will proceed with extenders legislation this year. Unoffset permanent extenders bills likely would find a receptive audience among the Republican majority in the Senate but also could face procedural challenges from Democrats.

For its part, the White House, as expected, indicated in separate statements on February 10 that the president's senior advisors would recommend that he veto the America's Small Business Tax Relief Act and the America Gives More Act if they reached his desk in their current form.

"If this same, unprecedented approach of making certain traditional tax extenders permanent without offsets were followed for the other traditional tax extenders, it would add $500 billion or

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more to deficits over the next ten years, wiping out most of the deficit reduction achieved through the American Taxpayer Relief Act of 2013," the White House said.

Congressional Republicans are unlikely to have the necessary two-thirds majority in each chamber to override a veto of permanent tax extenders legislation. (Although the America Gives More Act did clear the House by slightly more than a two-thirds margin, 13 Democrats did not vote on the bill, calling into question whether it could clear that hurdle if all 433 House members – there are currently two vacancies – are present and voting.)

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Finance Committee approves 'noncontroversial' tax bills, revisits 1986 Act

The Senate Finance Committee this week approved a package of miscellaneous targeted tax bills with minimal revenue impact and held a hearing to consider what Congress can learn from the process that led to the passage of the Tax Reform Act of 1986.

Mark-up

Finance Chairman Orrin Hatch, R-Utah, noted in his opening statement at the February 11 committee mark-up that he and ranking member Ron Wyden, D-Ore., agreed that any legislation to be considered during the session had to meet certain conditions: notably, it had to be "noncontroversial," have bipartisan support and no opposition from party leadership or the White House, and have little or no budgetary effect. Provisions which scored as losing revenue had to include an acceptable budget offset.

Hatch and Wyden also agreed that modifications to the so-called "tax extenders" – i.e., the package of several dozen business and individual tax preferences that was extended late last year but lapsed again on January 1, 2015 – were outside the scope of the mark-up and would be taken up at a later date.

The result was an eclectic mix of 17 bills submitted by committee members on both sides of the aisle. The panel approved the bills *en bloc* with a single voice vote.

The package includes provisions that would:

- With respect to foreign investments in publicly traded US real estate investment trust (REIT) stock, increase from 5 percent to 10 percent the maximum ownership a shareholder may possess without triggering US tax withholding upon disposition pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA), paid for in part by increasing the general rate of withholding tax on foreign dispositions of US real property interests from 10 percent to 15 percent;
- Provide a 10 percent investment tax credit for qualified waste-heat-to-power property placed in service before January 1, 2017;

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- Change the excise tax rates on liquefied natural gas and liquefied petroleum gas to rates based on their energy equivalent to diesel and gasoline, respectively;
- Exclude from gross income and alternative minimum taxable income any grant, award, or allowance made pursuant to section 402 of the Energy Policy Act of 2005 (related to criteria for federal financial assistance under the Clean Coal Power Initiative);
- Modify the alternative tax under section 831(b) applicable to small property and casualty insurance companies;
- Provide an exception to the private foundation excess business holdings rules for certain philanthropic business holdings in which all profits are distributed to the foundation;
- Modify the alcohol (e.g., distilled spirits, wine, beer) excise tax filing requirements for smaller producers, and remove the related bonding requirement for certain taxpayers;
- Modify the excise tax on, and the expand the definition of, hard cider;
- Provide special treatment for charitable contributions to qualifying agricultural research organizations;
- Clarify and expand the special exclusion rule under section 105(j) for reimbursements under health plans established in connection with a public retirement system;
- Improve access to, and administration of, the US Tax Court;
- Require the IRS to notify exempt organizations before revoking their exempt status for failing to file information returns;
- Permit the Secretary of the Treasury to promulgate regulations to regulate the conduct of enrolled agents in regard to their practice before the IRS, and to permit enrolled agents to use specified designations;
- Exclude from gross income amounts received under student work-learning-service programs;
- Truncate the collection period for taxpayers hospitalized for combat zone injuries;
- Exclude from gross income certain compensation received by public safety officers and their dependents; and
- Create a new tax credit for costs incurred by military spouses in order to transfer professional licenses or certifications to a new state as a result of a permanent change of station order.

Detailed descriptions of each bill, along with its 10-year revenue estimate, were provided by the Joint Committee on Taxation (JCT) and are available on the Finance Committee web site. The JCT documents indicate that several of the bills with net unoffset cost would be paid for by increasing the IRS levy rate on payments to tax-delinquent Medicare providers and suppliers from 30 percent to “an amount sufficient to offset the estimated revenue loss.”
URL: http://www.finance.senate.gov/hearings/hearing/?id=5499ed9f-5056-a032-5212-6b9d23e05a31

Next stop – Senate floor?: The fate of the Finance-reported package is unclear, although both Hatch and Wyden committed to working with Republican and Democrat leaders to secure time for its consideration on the Senate floor.

“My preference is that the bills be considered on the floor together as a package, but at a minimum they ought to be considered in a way that reflects both Democratic and Republican priorities,” Wyden said.

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Similar mark-ups ahead: Hatch, who indicated last month that he intends for the Finance Committee to take up noncontroversial legislation in the near term and then turn to more difficult issues, noted in his opening statement at the mark-up that he hopes the panel will take up additional bipartisan legislation in the future.

“While this is the first mark-up of its kind, it shouldn’t be the last,” he said.

Lessons from the ‘86 Act

In other developments, the panel received a history lesson as two of the Senate architects of the Tax Reform Act of 1986 returned for a February 10 hearing to discuss how they were able to help make that legislation a reality.

Former Finance Committee Chairman Bob Packwood, R-Ore., and former Finance Committee member Bill Bradley, D-N.J., pointed out how the political dynamics at the time of the 1986 Act were similar to those of today: the goal of reducing the rate while broadening the base animated the push for tax reform and a divided government made bipartisanship necessary for tax reform to succeed. (When the 1986 Act was moving through Congress, the GOP controlled the White House and the Senate while Democrats controlled the House.)

But Packwood and Bradley also discussed how things were different. Packwood explained that in 1986, there was more concern about fairness in the tax code than about income inequality. He also noted that President Reagan was committed to tax reform and had authorized his Treasury to work and negotiate with Congress to get a deal. Bradley agreed that meetings at the White House helped move things along.

Packwood explained that Reagan helped convince hesitant House Republicans to support the Democratic tax reform bill in that chamber, which allowed the measure to advance to the Republican-controlled Senate. Once the House-approved legislation reached the Senate, however, it moved outside of regular order, with a handful of Finance Committee members drafting a bill in a matter of days so that it could not be “picked apart” by interest groups. Packwood said this is probably more of a concern in 2015 than it was in 1986, when lobbyists had to wait for a pay phone in the hallway to relay news about what was happening rather than tweeting in real time from the back of the committee room.

Moving beyond issues of legislative process, both Packwood and Bradley agreed that reform would have to be comprehensive, taking into account both the individual and corporate tax systems. They also warned that there had to be agreement on whether tax reform should be revenue neutral or raise revenue.

If you cannot agree on revenue, “then you should work on something else,” Bradley said.

Wyden weighs in

Elsewhere on the tax reform front, Finance Committee ranking Democrat Ron Wyden told an audience at a tax policy forum in Washington February 12 that a tax code overhaul should make the code more progressive and equalize the taxation of wage and investment income.

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Wyden also noted that tax reform must raise revenue and that dynamic scoring and other “gimmicks” should be avoided.

He argued in favor of moving tax reform legislation through Congress under regular order and rejected the idea of invoking the budget reconciliation process, which would provide a fast-track procedure that would limit debate in the Senate and allow for passage of legislation in that chamber by a simple majority vote, as opposed to the 60 votes normally required to clear procedural hurdles.

Wyden also discussed options for addressing the May 31 expiration of the Highway Trust Fund, noting that his preferred approach would be to issue tax credit bonds for infrastructure such as the Build America Bonds program that was included in the 2009 stimulus legislation. He rejected the idea of funding infrastructure through a repatriation program, stating that voluntary repatriation is a revenue loser and mandatory repatriation is a political nonstarter. He also dismissed a gas tax increase as “regressive.”

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