

SELECTED KEY INDIVIDUAL AND BUSINESS TAX PROVISIONS IN THE PATH ACT OF 2015

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act) and the omnibus fiscal year 2016 budget bill. This legislation was widely anticipated as there were many individual and business tax provisions which expired at the end of 2014. Many of these provisions had come up for renewal every year or two which lead to uncertainty for many taxpayers. The PATH Act not only extended a majority of these provisions, several were made *permanent* or were enhanced beginning in 2016.

Below is a summary of selected significant tax provisions contained in this legislation. If you have questions on how these provisions will affect you or your business please call us.

KEY INDIVIDUAL TAX PROVISIONS

KEY PERMANENT EXTENDERS FOR INDIVIDUALS

Many provisions of the tax code affecting individuals that frequently come up for renewal were made permanent in the extender legislation including:

CHARITABLE DISTRIBUTIONS FROM IRAs -

Individuals age 70½ or older can make tax-free distributions of up to \$100,000 per year from their individual retirement accounts.

ADDITIONAL CHILD TAX CREDIT - The refundable credit calculation will maintain the \$3,000 income threshold which had been scheduled to revert back to \$10,000 in 2017.

AMERICAN OPPORTUNITY CREDIT - The enhancements to the credit were made permanent including provisions which increased the maximum credit from \$1,800 (indexed for inflation) for the first two years of post-secondary education to \$2,500 for the first four years. The definition of qualified expenses, credit refundability, and income phase-out thresholds were also made permanent.

STATE AND LOCAL TAX DEDUCTION - State and local sales taxes may be claimed as itemized deductions in lieu of state and local income taxes.

EARNED INCOME CREDIT - The increased 45 percent credit for taxpayers with 3 or more qualifying children and the \$5,000 increase in the phase-out range for joint filers which has been available since 2009 was made permanent.

CONSERVATION CONTRIBUTIONS -

The special rule allowing deductions for conservation contributions of qualified capital gain real property of up to 50% of adjusted gross income was made permanent including the 15 year carryover period for excess contributions. There are also enhanced deduction limitations for certain farmers, ranchers and Alaska Native Corporations.

TRANSIT BENEFITS PARITY - The amount excludable from employees' wages for transit passes and vanpools will continue to be the same as the amount that is excludable from employees' wages for qualified parking benefits. In 2016 the monthly amount is \$255 for transit passes and vanpools combined and \$255 for qualified parking. The excludable amount will be indexed for inflation.

TEACHERS' DEDUCTION - Eligible educators will continue to be able to deduct up to \$250 of qualified out of pocket expenses paid during the year as an above the line deduction instead of as an itemized deduction for unreimbursed employee business expenses. This amount will be indexed for inflation beginning in 2016 and the definition of qualified expenses was expanded to include professional development expenses.

KEY TEMPORARY EXTENDERES AFFECTING INDIVIDUALS

MORTGAGE INSURANCE PREMIUMS - Mortgage premium insurance payments will continue to be treated as qualified residence interest through 2016.

TUITION AND FEES DEDUCTION - The above the line deduction for qualified tuition and fees for post-secondary education have been extended through 2016.

MORTGAGE DEBT EXCLUSION - The exclusion from income from cancellation of mortgage debt on a principal residence of up to \$2 million (\$1 million for married taxpayers filing separately) is extended through 2016. Additionally, discharge of qualified residence interest in 2017 will be excludable if made under a binding written agreement entered into in 2016.

OTHER KEY PROVISIONS AFFECTING INDIVIDUALS

ENHANCEMENTS TO 529 PLANS - Purchases of certain computer equipment, software and internet access to be used by a qualified beneficiary while enrolled at an eligible institution will now be a qualified expense. Additional changes allow redepositing tuition refunds within 60 days without penalty and repeal aggregation rules used to

calculate the portion of distributions required to be included in income.

REFUND DELAYS - Beginning after 2016, refunds for overpayment of taxes for taxpayers claiming the Earned Income Credit (EIC) or Additional Child Tax Credit will not be issued before February 15.

KEY BUSINESS TAX PROVISIONS

KEY PERMANENT CHANGES FOR BUSINESS

R&D CREDIT - The research tax credit was retroactively extended to 2015 and made permanent. In addition, several enhancements to the credit will be available to taxpayers beginning in 2016. Some of the enhancements include:

- Eligible small businesses, generally those with no more than \$50 million in average gross receipts for the prior 3 years, will be able to utilize the research credit against the alternative minimum tax.
- Qualified small businesses will be able to apply the research credit against their payroll tax liabilities. Qualified small businesses are generally corporations (including S corporations) and partnerships with gross receipts of less than \$5 million in the current tax year that also did not have any gross receipts prior to the five tax years ending with the taxable year.

under Section 179 will continue to be \$500,000 when the total amount of qualifying property purchased is less than \$2 million dollars. Both amounts will be indexed for inflation beginning in 2016. The ability to revoke a Section 179 expense election without IRS consent and eligibility of off-the-shelf computer software were also retroactively reinstated and made permanent.

Beginning in 2016 qualified real property that may be expensed will no longer be capped at \$250,000 and heating and air conditioning units will be eligible.

100 PERCENT GAIN EXCLUSION ON QUALIFIED SMALL BUSINESS STOCK - The 100-percent exclusion allowed for gain on the sale or exchange of qualified small business stock held for more than five years by non-corporate taxpayers is made permanent including the rule that eliminates such gain as an AMT preference item.

SECTION 179 EXPENSING - The dollar amount of purchases of qualified property that may be expensed

S CORPORATION BUILT-IN GAINS TAX - The five-year period for recognition of corporate level built-in gains tax following conversion from a C to an S corporation is made permanent.

15 YEAR STRAIGHT-LINE DEPRECIATION FOR QUALIFIED REAL PROPERTY - Qualified leasehold improvements, restaurant property and retail improvements will continue to be treated as 15 year property.

EMPLOYER WAGE CREDIT FOR ACTIVATED MILITARY RESERVISTS - The 20% credit for employers who make eligible differential wage payments to employees called to active duty is made permanent and beginning in 2016 the credit is expanded to include employers with more than 50 employees.

KEY TEMPORARY EXTENDERS FOR BUSINESS

BONUS DEPRECIATION - The rules allowing the 50% of eligible property to be expensed in the year the asset is placed in service was extended through 2017 and modified to include qualified improvement property in 2017. Qualified improvement property is generally improvements to the interior portion of commercial and rental buildings. Additionally, certain fruit and nut bearing trees and plants will be eligible when planted or grafted rather than when placed in service beginning in 2017. The election to accelerate the use of AMT credits in lieu of bonus depreciation is also extended and the amount of credits that may be claimed is increased. After 2017 bonus depreciation will be phased out as follows:

- 2015 - 2017 : 50% bonus depreciation
- 2018 : 40% bonus depreciation allowed
- 2019 : 30% bonus depreciation allowed
- 2020 : No bonus depreciation allowed

OTHER PERMANENT BUSINESS EXTENDERS:

- Treatment of certain dividends of regulated investment companies (RICs)
- The subpart F exception for active financing income
- Charitable deductions for the contribution of food inventory
- Tax treatment of certain payments to controlling exempt organizations
- Basis adjustment in stock when an S corporation makes charitable contributions of property
- Minimum low-income housing tax credit for non-federally subsidized buildings
- Military housing allowance exclusion in determining a low-income tenant
- RIC qualified investment entity treatment under FIRPTA

OTHER TEMPORARY BUSINESS EXTENDERS:

- The Work Opportunity Credit (WOTC) is extended through 2019. The Act also enhances the WOTC for employers that hire certain long-term unemployed individuals.
- The Act authorizes allocation of \$3.5 billion of New Markets Tax Credits through 2019.
- The Act extends through 2019 the look-through treatment for payments of dividends, interest, rents, and royalties between related controlled foreign corporations under the foreign personal holding company rules.
- Empowerment Zones incentives were extended through 2016
- Various industry specific provisions were extended through 2016 including the railroad track maintenance credit, film/television expensing, various mining industry provisions, special recovery periods for certain racehorses and motorsports entertainment complexes and others.

OTHER BUSINESS PROVISIONS

MEDICAL DEVICE EXCISE TAX - The 2.3% excise tax on qualified medical devices enacted in the Affordable Care Act ("Obamacare") is deferred until 2018.

INFORMATION RETURNS DEADLINES -

Beginning for returns due in 2017, W-2s and certain 1099's reporting employee wages or non-employee compensation will be due to be filed by January 31st, the date statements are due to be provided to payees, and are will longer eligible for the extended filing date for electronically filed returns.

"CADILLAC" PLANS - The PATH Act delays for two years the ACA excise tax on high-dollar health care plans, known as "Cadillac" plans. The PATH Act also provides that payments of the tax will be deductible against income tax. The ACA imposes the excise tax

where the aggregate cost of qualified employer-sponsored health insurance coverage exceeds certain dollar amounts. The excise tax had been scheduled to apply to tax years beginning after December 31, 2017

NEW RULES FOR CAPTIVE INSURANCE COMPANIES

- New rules will apply to captive insurance companies beginning in 2017. While the maximum amount of premium income eligible to be exempt from tax will be increased from \$1.2 million to \$2.2 million (indexed for inflation), such companies will now be required to meet either a diversification test requiring that no more than 20% of the companies premiums can come from one policy holder or an ownership test that requires 98% identical ownership of the captive insurance company and any insured businesses or assets.

ENERGY INCENTIVE EXTENDERS

Several energy incentive provisions were extended through 2016 including:

THE RESIDENTIAL ENERGY PROPERTY CREDIT - A credit of up to 10 percent of certain energy efficiency improvements (up to a maximum of \$500) is available.

THE PRODUCTION TAX CREDIT - This credit for wind energy is extended through 2016 at the current rates but then phases out 20% per year from 2017 to 2019 and is eliminated in 2020.

THE ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION - This has been extended through 2016 and the energy efficient standards have been updated.

SOLAR PROPERTY CREDITS EXTENDED - The Solar Investment Tax Credit and the Credit for Qualified Residential Solar Property have both been extended but will be phased out until they are eliminated after 2021.