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Protecting Americans From Tax Hikes Act of 2015 (PATH)

-by Neil E. Harl*

In an unexpected surge in agreement in the Congress and the White House, the United States House of Representatives (by a vote of 318 to 109) and the United States Senate (by a vote of 65 to 33) passed and the President signed, a far-reaching (and costly) tax bill that extends several popular provisions, with a significant number of temporary tax provisions made permanent.[1]

The cost of the legislation has been estimated to total $622 billion. Notably, the legislation extended permanent status to several provisions that had been extended on a year-to-year basis for decades, mostly because of lack of political support. That alone marks this legislative accomplishment as, indeed, unusual.

In this article, we summarize the more significant changes in the Internal Revenue Code.

Provisions made permanent

The obvious headliner in this category is Section 179 expensing, which had been regularly extended for many years but not made permanent. The maximum deduction had been reduced from $500,000 to $25,000 for 2014 but, retroactive to January 1, 2015, the limit is once again elevated to $500,000 with a $2,000,000 phase-out *with those figures indexed for inflation beginning in 2016*.[2] The legislation also makes permanent the deduction for expensing "qualified real property"[3] as 15-year property for depreciation purposes with the $250,000 cap eliminated beginning in 2016.[4] The legislation also makes permanent the provision allowing off-the shelf computer software as I.R.C. § 179 property and allows taxpayers to *revoke* a Section 179 election without the Commissioner's consent. Revocations of Section 179 elections have been the province of Congress with that body regularly enacting amendments that allowed revocations without IRS approval.[5] The problem has been, since 2007, the lack of approval for late *elections* which has been the province of the Department of the Treasury which had been given authority to allow late elections but had failed to act.[6] It is disappointing that Congress did not take over late elections along with dealing on a permanent basis with late revocations.

The legislation makes permanent the election to claim an itemized deduction for state and local general sales taxes, in lieu of deducting state and local income taxes.[7]

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PATH also made permanent the American Opportunity Tax Credit (successor to the Hope Education Credit) which was scheduled to expire after 2017.[8]

The new legislation made permanent the reduced earned income threshold amount for the child tax credit.[9] Under the new Act, the child tax credit may be refundable up to $1,000 for qualifying dependents under age 17, to the extent of 15 percent of the taxpayer's earned income in excess of $3,000.

The 2015 Act makes permanent the increase ($5,000) in phaseout amount for the earned income credit for joint filers which was scheduled to expire after 2017.[10]

The 2015 legislation extended, permanently, the above-the-line deduction for school teachers' classroom expenses for both elementary and secondary teachers.[11] The legislation also indexes the allowance for inflation beginning in 2016 and includes "professional development expenses" (after 2015) among the expenses eligible for the deduction.

The Act extends, permanently, the provision for individuals age 70 ½ and older to make tax-free distributions from individual IRA accounts to a qualified charitable organization.[12]

The legislation also makes permanent the provision allowing contributions of real property for conservation purposes up to 50 percent of the contribution base.[13]

The new legislation makes permanent the five year period in which built-in gain is recognized following the conversion of a C corporation to an S corporation (the original provision was ten years but that was reduced to seven years and then to five years).[14] Gain that arose prior to the shift from C corporation status to S corporation status must be recognized by the S corporation during the recognition period. The period for recognition begins the first of the year in which the S corporation was formed.

Provisions extended

The 2015 Act extends bonus depreciation under a phase-out schedule through 2019 (a five year extension). The allowance is set at 50 percent for 2015 through 2017, at 40 percent in 2018 and at 30 percent in 2019.[15] The legislation broadens the eligibility for the deduction to include qualified improvement property and also permits certain trees, vines and plants bearing fruits and nuts to be eligible for bonus depreciation when grafted or planted. Notice that the expansion of eligibility for bonus depreciation does not extend to windbreaks and other instances where trees, vines and plants may be planted.

The Act extends the Work Opportunity Tax Credit through 2019 and enables employers to hire certain long-term unemployed individuals.[16]

The 2015 legislation continues, through 2016, the three year recovery period for race horses more than two years old and any other horse more than 12 years old when placed in service through 2016, eliminating the provision that, after 2014, race horses placed in service after 2014 were to be three year property if more than two years old at the time the horse is placed in service by the purchaser.[17]

The Act extends, through 2016, with modifications, the exclusion from gross income of the discharge of qualified principal residence indebtedness.[18] The exclusion has been limited to acquisition indebtedness with the amount boosted for purposes of this provision to $2,000,000 on a joint return, $1,000,000 on a separate return, and those limits continue through 2016.[19]

The legislation opens up the 2014 farm bill by removing marketing loan gains from the $125,000 per person payment limit for the commodity programs.

In conclusion

The provisions discussed here are only a few of the many items addressed in the 2015 legislation. Whether one approves of the various provisions enacted into law or not, and many are unhappy with the cost of the bill, some provisions of which are artfully camouflaged, the Congress and the President deserve credit for breaking the logjam in the legislative arena.

ENDNOTES

[1] Protecting Americans From Tax Hikes Act of 2015, Pub. L. No. 114-113, 114th Congress, First Session (2015).

[2] Act § 124, *amending* I.R.C. § 179.

[3] I.R.C. § 168(k)(3) (for "qualified restaurant property," "qualified leasehold improvement property" and "qualified retail improvements."

[4] Act § 123.

[5] I.R.C. § 179(c)(2); Treas. Reg. § 1.179-5(c).

[6] See Harl, "Can Section 179 Elections Be Made on Amended Returns After 2007?" 18 *Agric. L. Dig*. 161 (2007); Harl, "IRS Says Amendments to Regulations Needed for Late 179 Elections on Amended Returns After 2007," 19 *Agric. L. Dig*. 141 (2008).

[7] Act § 106, *amending* I.R.C. § 164(b)(5)(I).

[8] Act § 102, *amending* I.R.C. § 25A(i).

[9] Act § 101, *amending* I.R.C. § 24(a).

[10] Act § 103, *amending* I.R.C. § 32(b)(3).

[11] Act § 104, *amending* I.R.C. § 62(a)(2)(D).

[12] Act § 112, *amending* I.R.C. § 408(d)(8).

[13] Act § 111, *amending* I.R.C. §§ 170(h)(1), 170(b)(1)(B)(i).

[14] Act § 127, *amending* I.R.C. § 1374(d)(7).

[15] Act § 143, *amending* I.R.C. § 168(k).

[16] Act § 142, *amending* I.R.C. § 51.

[17] Act § 165.

[18] Act § 151, *amending* I.R.C. §§ 108(h), 108(a)(1)(E), 108(a)(1)(B, 108(a)(2)(C).

[19] I.R.C. § 108(a)(1)(E).