



**Agricultural Law Press**

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# Agricultural Law Digest

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## The Tax Increase Prevention Act of 2014

-by Neil E. Harl\*

In what was a surprising development to many, after a hotly contested election in which the political control of the United States Senate was shifted to the Republican Party and the Republican representation increased in the United States House of Representatives, the United States Congress passed and the President on December 19, 2014 signed, the *Tax Increase Prevention Act of 2014, Pub. L. No. 113-295*, the so-called “extenders bill.” What many found surprising was that the one-year extension of provisions, through December 31, 2014, was made retroactive to January 1, 2013, which meant that the 2014 legislation had an effective life of 12 days to boost the economy, which was the apparent purpose of many of the provisions. The uncertainty existing throughout 2014 with respect to the provisions in the 2014 bill, was renewed on January 1, 2015.

This article summarizes the major tax provisions of widespread interest.

### Extension of “bonus” depreciation

The legislation extended for one year, through December 31, 2014, the authority to claim an additional depreciation allowance, commonly referred to as “bonus” depreciation, at the 50 percent level. The amendment boosts first year vehicle depreciation by \$8,000 to \$11,160. Under the amendment, property, to be eligible, must be placed in service before January 1, 2015. The provision was *not* made permanent, as had been discussed, but was given a one-year extension. The only substantive change was to change the rules for Federal long-term contracts. **Tax Increase Prevention Act of 2014 (hereinafter TIPA), Pub. L. No. 113-295, § 125, amending I.R.C. § 168(k)(2), effective January 1, 2014**

### Extension of increased expensing limitations under I.R.C. § 179

The 2014 Act returned the § 179 deduction to \$500,000 per year (retroactive to January 1, 2014) with a phase-out commencing, dollar for dollar, at \$2,000,000. The rate for 2014 prior to enactment of TIPA was \$25,000 with a phase-out beginning at \$200,000. That will be the 2015 allowance unless there is further change.

The provision extended the eligibility of computer software under the same terms as were in effect before TIPA was enacted for an additional year, through 2014.

The amendment also extended the eligibility for “qualified real property” (qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property) through 2014. **TIPA, § 127, amending I.R.C. § 179(a), (b), (d)**

### Extension of 15-year straight line depreciation for “qualified real property”

The Act extends the rules on 15-year straight-line depreciation for “qualified real property” (see above) for property placed in service after 2013 through 2014. **TIPA, § 122, amending I.R.C. § 168(e)(3)(E)**

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### **S corporation “built-in gains” tax**

The Act continued, through 2014, the reduction in the recognition period for S corporation built-in gains after the fifth taxable year (originally 10-years). **TIPA, § 138, amending I.R.C. § 1374(d)(7)(C)**

### **Basis adjustment for S corporation stock making charitable contributions of property**

The new law extends the basis adjustment of S corporation stock through 2014 where the S corporation made charitable contributions. The amendment applies to contributions made in taxable years beginning after December 31, 2013. **TIPA, § 137, amending I.R.C. § 1367(a)(2)**

### **Discharge of indebtedness for principal residence**

TIPA extended the exclusion from gross income of discharge of qualified principal residence indebtedness (up to \$2,000,000 of acquisition indebtedness on a joint return, \$1,000,000 on a separate return) for discharges of indebtedness after 2013 and before 2015. **TIPA, § 102, amending I.R.C. § 108(a)(1)(E)**

### **Extension of research credit**

The 2014 Act extends the research credit for amounts paid or incurred after December 31, 2013 and before January 1, 2015. **TIPA, § 111, amending I.R.C. § 41(h)(1)**

### **Extension of Work Opportunity Tax Credit**

The 2014 legislation extends the Work Opportunity Tax Credit through 2014 for “. . . individuals who begin work for the employer after December 31, 2013. **TIPA, § 119, amending I.R.C. § 51(c)(4)**

### **Contributions of food inventory**

The Act extends the enhanced charitable deduction for contributions to a food inventory for contributions after December 31, 2013, through 2014. **TIPA, § 126, amending I.R.C. § 170(e)(3)(C)**

### **Deduction for state and local general sales taxes**

The legislation extends the deduction for state and local general sales taxes through 2014 for “. . . taxable years beginning after December 31, 2013.” **TIPA, § 105, amending I.R.C. § 164(b)(5)(l)**

### **Qualified conservation contributions**

The 2014 legislation continues the deduction for qualified conservation contributions through 2014 at the 50 percent level. For a “qualified farmer or rancher” (the Act refers to “Certain Corporate Farmers and Ranchers” which is incorrect) the Act continues the deduction limit of 100 percent of adjusted gross income through December 31, 2014, so long as the donated property remains available for agricultural production. **TIPA, § 106, amending I.R.C. §§ 170(b)(1)(E)(vi), 170(b)(2)(B)(iii)**

### **Extension of the deduction for elementary and secondary teachers**

The Act extends the deduction for expenses of elementary and secondary school teachers with no change in amount (not to exceed \$250 per year). **TIPA, § 101, amending I.R.C. § 62(a)(2)(D)**

### **Extension of mortgage insurance premiums treated as qualified residence interest**

The new law extends the treatment of mortgage insurance premiums as interest on a residence for an additional year and applies to amounts paid or accrued after December 31, 2013. **TIPA, § 104, amending I.R.C. § 163(h)(3)(E)(iv)(I)**

### **Extension of tax-free distributions from IRAs for charitable purposes**

The 2014 legislation extends the provision allowing individuals age 70 1/2 or older to transfer up to \$100,000 of one’s IRA balance to a charitable organization without triggering income and without taking a charitable deduction. The amendment applies to taxable years beginning after December 31, 2013 but is not available for taxable years beginning after December 31, 2014. **TIPA, § 108, amending I.R.C. § 408(d)(8)(F)**

### **Classification of race horses as three-year property**

The Act extends the classification for eligible race horses as three year property for animals placed in service before January 1, 2015, and which are placed in service after December 31, 2014 and which are more than two years old at the time such horses are placed in service by the purchaser.

### **Extension of exclusion on small business stock**

The legislation extends the temporary exclusion of 100 percent of gain on qualifying small business stock. The amendment applies to stock acquired before January 1, 2015. **TIPA, § 136, amending I.R.C. § 1202(a)(4)**

### **Extension of credit for nonbusiness energy property**

The 2014 Act extends the credit for nonbusiness energy property which involves a 10 percent credit for qualified energy efficiency improvements and the amount of residential energy property expenditures paid or incurred during the year. The amendment applies to property placed in service after December 31, 2013. **TIPA, § 151, amending I.R.C. § 25C(g)**

### **Extension of second generation biofuel producer credit**

The 2014 legislation extends the credit through 2014. **TIPA, § 152, amending I.R.C. § 40(b)(6)(J)**

### **Extension of incentives for biodiesel and renewable diesel**

The new law extends the incentives for biodiesel and renewable diesel used as fuel. The amendment applies to fuel sold or used after December 31, 2013. The incentives do not apply to any sale or use after December 31, 2014. **TIPA, § 153, amending I.R.C. § 40A(g)**

### **Extension of credits for facilities producing energy from renewable sources**

The provision extends the credits through 2014 for wind facilities, closed-loop biomass systems, open-loop biomass facilities, geothermal energy, landfill gas facilities, trash facilities, qualified hydropower facilities and marine and certain hydrokinetic renewable energy facilities. **TIPA, § 155, amending I.R.C. § 45D(6), (7), (9), (11)(B)**

### **Extension of credit for energy-efficient homes**

The credit available to contractors for constructing energy-efficient homes was extended for an additional year and does not apply to new energy efficient homes acquired after December 31, 2014. **TIPA, § 156, amending I.R.C. § 45L(g)**

### **Extension of special allowance for second generation biofuel plant property**

The Act extends the depreciation allowance (generally 50 percent of the adjusted basis) for property used to produce second generation biofuels for an additional year if placed in service before January 1, 2015. **TIPA, § 157, amending I.R.C. § 168(1)(2)**

### **Extension of energy efficient commercial buildings deduction**

The Act extends the deduction based on the cost of energy

efficient commercial building property, calculated on \$1.80 per square foot, for an additional year (for property placed in service after December 31, 2013). **TIPA, § 158, amending I.R.C. § 179D(h)**

#### **Inflation adjustment for some civil penalties**

The 2014 Act authorizes the adjustment for inflation of penalties including – (a) the \$135 for failure to file a return or pay the tax under I.R.C. § 6651; (b) failure to file information returns and other documents under I.R.C. § 6652(c); (c) assessable penalties under

I.R.C. § 6695; (d) failure to file partnership returns (currently \$195 per partner per month for up to 12 months); (e) failure to file S corporation returns (currently \$195 per shareholder per month for up to 12 months); (f) failure to file correct information returns under I.R.C. § 6721(f)(1); failure to furnish correct payee statements under I.R.C. § 6722(f)(1). All of the amendments are effective for returns required to be filed after December 31, 2014. **TIPA, § 208**

## CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

### BANKRUPTCY

#### **FEDERAL TAX**

**DISCHARGE.** The debtor filed tax returns late for the years 1998, 1999, 2000, 2003, 2005, 2006, 2007, 2008, 2009, reported the wrong taxable income amount for the years 1998, 1999, 2000, 2001, 2003, and has not paid the tax liabilities in full for any of the tax years 1998 through 2008. The debtor filed for Chapter 7 in 2009 and received a discharge in 2011. The IRS filed post-bankruptcy for collection of the unpaid taxes, arguing that the taxes were not discharged under Section 523 for willful attempt to evade the taxes. The debtor presented evidence that the debtor suffered from type II bipolar disorder which prevented the debtor from having any willful mental state. The trial court ruled that the taxes were not discharged in the bankruptcy case because, during the time the taxes were unpaid, the debtor purchased several luxury items, transferred title in real and personal property to the debtor's spouse, filed returns late, and underreported income in many of those returns. On appeal, the appellate court affirmed in a decision designated as not for publication. **United States v. Stanley, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,102 (5th Cir. 2014), aff'g, 2013-2 U.S. Tax Cas. (CCH) (D. Miss. 2013).**

### FEDERAL FARM PROGRAMS

**DISASTER ASSISTANCE.** The CCC and FSA have issued interim regulations which implement changes to the Noninsured Crop Disaster Assistance Program (NAP) as required by the Agricultural Act of 2014 (the 2014 Farm Bill), including changes to eligible crops, provisions governing eligibility of native sod acreage, additional coverage levels, and waivers of service fees and premium reductions for beginning, limited resource, and socially disadvantaged producers. The rule also clarifies requirements for eligible types and causes of loss and expands coverage for eligible mollusk and other aquaculture losses. The rule clarifies that the Farm Service Agency (FSA) may set separate market prices for organic crops and for direct to consumer sales. The changes are

relatively minor and do not change the core purpose of NAP, which is to provide financial assistance to producers of non-insurable crops when low yield, loss of inventory, or prevented planting occurs due to a natural disaster. **79 Fed. Reg. 74561 (Dec. 15, 2014).**

**ORGANIC FOOD.** The AMS has issued proposed regulations which modify the organic assessment exemption regulations under 23 federal marketing orders and 22 research and promotion programs. The current regulations would be amended to allow persons that produce, handle, market, or import certified organic products to be exempt from paying assessments associated with commodity promotion activities, including paid advertising, conducted under a commodity promotion program administered by the AMS. The revised exemption would cover all “organic” and “100 percent organic” products certified under the National Organic Program regardless of whether the person requesting the exemption also produces, handles, markets, or imports conventional or nonorganic products. Under the current exemption, only persons that exclusively produce and market products certified as 100 percent organic are eligible for an exemption from assessments under commodity promotion programs. **79 Fed. Reg. 75005 (Dec. 16, 2014).**

### FEDERAL ESTATE AND GIFT TAXATION

**EXECUTOR LIABILITY FOR ESTATE TAX.** The decedent died in 2002 and the taxpayer was appointed executor. The executor hired an attorney to assist with administration of the estate. The estate was worth over \$2.6 million. However, the estate tax return was not filed until 2008, although the taxpayer was informed by counsel in 2003 that the estate tax return was late. In 2008, the IRS filed assessments of over \$2 million for income taxes, penalties and interest, most of which were paid. Between 2002 and 2008, the taxpayer made distributions from the estate which resulted in the estate not having sufficient funds to pay the remaining taxes, penalties and interest in excess of \$52,000. The IRS sought to assess the unpaid taxes against the taxpayer under I.R.C. § 6901(a)(1)(B). The taxpayer did not provide any evidence to rebut the IRS claim nor to prove that the taxpayer had reasonably relied on the advice of counsel; therefore, the court held that the taxpayer