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President Signs Permanent Tax Relief for Businesses and Working Americans

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On December 18th, the House and Senate wrapped up work for 2015 by approving a massive appropriations/legislative package (H.R. 2029) that combines the omnibus appropriations bill to fund the Federal government through September 30, 2016 with a bill to renew over fifty expired tax deductions, credits, and incentives. Later that day, President Obama signed the measure into law (PL 114-113). The "Protecting Americans from Tax Hikes (PATH) Act of 2015" includes a bipartisan package of expiring tax provisions that are either made permanent (such as the R&D tax credit), extended for five years with a phase-out (such as bonus depreciation), or extended for two years through the end of 2016 (such as certain renewal energy incentives and the deduction for energy efficiency improvements to commercial buildings). In addition to extenders, the PATH Act also includes a two-year moratorium (for 2016 and 2017) on the medical device tax imposed by the Affordable Care Act; provisions to overhaul the tax treatment of real estate investment trusts (REITs); technical corrections to recently enacted legislation that streamline procedures for Internal Revenue Service audits of large partnerships; and several tax administration provisions related to IRS and Tax Court operations.

Besides funding the government, the "Consolidated Appropriations Act, 2016" includes several tax provisions such as a five-year extension and phase-down of the wind production and investment tax credits and the 30% solar investment tax credit. The Act, because it lifts the forty year ban on crude oil exports, also includes a new provision designed to help offset the transportation costs of crude oil for east coast, independent refiners. In addition, the Act delays for two years the implementation of the excise tax on high cost employer provided health plans that was enacted in the Affordable Care Act.

A copy of the bill, a section-by-section summary from the Ways and Means Committee and a list of all the tax provisions included in H.R. 2029 are available on the VNF website.

Significant Tax Provisions

Research & Development Tax Credit – The credit is made permanent at the current rate of 14% with some modifications. Beginning in 2016, eligible small businesses ($50 million or less in gross receipts) may claim the R&D credit against alternative minimum tax (AMT) liability and certain "startup companies" (small businesses with less than $5,000,000 in gross receipts and in business less than five years) may use the R&D credit to reduce the employer's payroll tax liability. The PATH Act does not include the provision from H.R. 880 approved in the House earlier this year that would have repealed the traditional credit calculation method and replaced it permanently with the alternative simplified credit under section 41(c)(5) at an increased rate of 20 percent (up from 14 percent). *The legislative text for the R&D tax credit is in Section 121 of the "Protecting Americans from Tax Hikes Act of 2015" (Division Q of H.R. 2029).*

Bonus Depreciation – A five-year extension of 50% bonus depreciation with a phase-down is also included for depreciable property and equipment. For assets placed in service in 2015, 2016 & 2017, businesses will be able to write-off 50% of the cost of those assets as bonus depreciation. The percentage that qualifies for bonus depreciation drops to 40% for assets placed in service in 2018 and 30% in 2019. Bonus depreciation will not be available for property and equipment placed in service after December 31, 2019. The election to accelerate AMT credits in lieu of bonus depreciation is also extended through 2019, and beginning in 2016, the amount of unused AMT credits that may be claimed in lieu of bonus depreciation is increased. After 2015, bonus depreciation may be claimed on qualified improvement property regardless of whether the property is subject to a lease, and the requirement that an improvement be placed in service more than three years after the building was placed in service is removed. *The legislative text for bonus depreciation is in Section 143 of the "Protecting Americans from Tax Hikes Act of 2015" (Division Q of H.R. 2029).*

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Section 179 Expensing – The increased expensing limit of $500,000 and phase-out threshold of $2 million in new property and equipment for small businesses are made permanent. In addition, taxpayers are permanently allowed to expense off-the-shelf computer software and qualified real property (i.e., qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property). For taxable years beginning after 2015, the bill (1) indexes the expensing limits to inflation, (2) repeals the limitation on the amount of section 179 property that can be attributable to qualified real property, and (3) adds air conditioning and heating units to the definition of qualifying property.

The Wind Production Tax Credit (PTC) in Section 45 and Investment Tax Credit (ITC) Election in Section 48 – The Wind PTC and ITC are extended for five years, through December 31, 2019, with a phase-down. The full credit is allowed for facilities on which construction begins by December 31, 2016. For projects that begin construction after December 31, 2016 and before January 1, 2018, the credit amount is reduced by 20%. For projects that begin construction after December 31, 2017 and before January 1, 2019, the credit amount is reduced by 40%. For projects that begin construction after December 31, 2018 and before January 1, 2020, the credit amount is reduced by 60%. The credit would not be available for projects that begin construction after December 31, 2019. *The legislative text for the wind incentives is in Sections 301 & 302 of Division P of the "Consolidated Appropriations Act, 2016."*

The PTC and ITC with Respect to Facilities Producing Energy from Certain Renewable Resources - These facilities received the same two-year extension of the full credit as the Wind PTC/ITC, however they did not receive the three-year phase-down included for Wind. These credits now apply to facilities on which construction begins before January 1, 2017. The qualifying facilities for purposes of these credits include closed-loop biomass facilities, open-loop biomass facilities, geothermal facilities, landfill gas facilities, trash facilities, qualified hydro facilities, and marine & hydro kinetic renewable energy facilities. *The legislative text for this extension is in Section 187 of the "Protecting Americans from Tax Hikes Act of 2015" (Division Q of H.R. 2029).*

The Increased Investment Tax Credit (ITC) for Solar Electricity Production in Section 48 – The Solar ITC is extended for five years, through December 31, 2021, with a phase-down and "begin construction" language. The 30% credit rate is allowed for facilities on which construction begins by December 31, 2019. For projects that begin construction after December 31, 2019 and before January 1, 2021, the credit rate is reduced from 30% to 26%. For projects that begin construction after December 31, 2020 and before January 1, 2022, the credit rate is reduced to 22%. The credit rate would be 10% for projects that begin construction after December 31, 2021. The proposal also includes a placed in service deadline for solar projects on which construction begins before January 1, 2022: the credit percentage will be reduced to 10% for any project that is not placed in service before January 1, 2024. The ITC for residential solar electric property and water heating property are also extended for five years, through December 31, 2021, with a phase-down and the current "placed in service" language. *The legislative text for the solar incentives is in Sections 303 & 304 of Division P of the "Consolidated Appropriations Act, 2016."*

The ITC for Geothermal Heat Pump Property, Small Wind Property, Combined Heat and Power Property, and Business Installation of Qualified Fuel Cells and Stationary Microturbine Power Plants – These credits which don't expire until December 31, 2016 were not included in the extension of the Solar ITC. Senate Minority Leader Reid and House Minority Leader Pelosi have both said this was an oversight and should be corrected early in 2016. House Ways and Means Committee Chairman Kevin Brady (R-TX) has said the negotiations on the longer-term energy extenders in 2015 focused on the Wind PTC and the Solar ITC. He went on to say the House Ways and Means Committee would take a look at these energy tax extenders in 2016.

The Deduction for Energy-Efficiency Improvements to Commercial Buildings – This deduction is extended for two years and applies to improvements placed in service before January 1, 2017. In addition, the deduction is modified by updating the energy-efficiency standards for eligible improvements to reflect the 2007 standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers, effective for property placed in service after December 31, 2015. *The legislative text for the extension is in Section 160 and the modification to the efficiency standard is in Section 281 of the "Protecting Americans from Tax Hikes Act of 2015" (Division Q of H.R. 2029).*

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Future of Tax Reform

At the end of last year, House Republicans achieved their goal of making a "down payment" on tax reform by making several tax extenders permanent, including the R&D tax credit and Section 179 expensing. They believe including the costs of these extenders in the budget baseline would make tax reform easier for a future Congress. Specifically, including extenders in the budget baseline would reduce the revenue target giving tax writers more flexibility as they make decisions about what tax expenditures would have to be eliminated or reduced to achieve the desired level of rate reduction.

In a "House Floor Statement" available on the Ways and Means Committee Website, Chairman Brady (R-TX) states that "this bill serves as a path forward to pro-growth tax reform by ensuring that we will no longer have to spend months each year debating temporary tax extensions. Instead, Congress can focus on delivering a simpler, fairer and flatter tax code that's built for growth."

On the other hand, Rep. Sander Levin (D-MI), the Ways and Means ranking Democrat, in a December 16th "Dear Colleague" letter, criticized the deficit impact of the extenders package and its impact on future tax reform efforts. According to the letter, "The bill also severely harms any chance of real tax reform. Any 'revenue neutral' tax reform only has to bring in the lower amount of revenue. This would make it easier for Republicans to give businesses or wealthy individuals a tax cut in the future – since all these permanent business breaks do not have to be offset in tax reform."

The debate on tax reform is very likely to continue throughout 2016 and into the new Congress and a new Presidency in 2017. There is a chance the House could take some additional steps on tax reform in 2016, if Speaker Ryan pursues his stated goal of moving tax reform legislation in the House ahead of the November 2016 elections to demonstrate the direction that a GOP-controlled Congress and White House would take on tax policy.

For more information

If you need additional information on the tax provisions included in the Consolidated Appropriations Act, 2016 and the PATH Act (PL 114-113), extenders that could be considered in 2016, or comprehensive tax reform, please contact Michael Platner (mlp@vnf.com) or your relationship partner at Van Ness Feldman, LLP.

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