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The Cheer of the Holidays May Have Arrived in Washington—a Bit Earlier Than Expected

By Larry Brant on 12.18.15 | Posted in Internal Revenue Service, Legislation, Tax Laws, Tax Procedure

The Protecting Americans from Tax Hikes Act of 2015 Passes Both the U.S. House of Representatives and the U.S. Senate

Late in the day on December 15, 2015, the U.S. House of Representatives passed the Protecting Americans from Tax Hikes Act of 2015 (the "Act"). The Act, which represents a $622 billion tax package, revives many taxpayer-friendly provisions of the Code that expired a year ago.

The Act passed the House with a vote of 318 to 109. Voting in favor of the Act were 77 Democrats and 241 Republicans.

The Act moved to the U.S. Senate, where it was presented along with a comprehensive spending bill. As expected, the Senate voted in favor of the legislation today by a vote of 65 to 33. Consequently, the Act moves from Congress to the desk of President Obama. Most commentators expect that he will promptly sign the Act into law, as his administration has shown strong support.

In anticipation of President Obama signing the Act into law, the following is a brief overview of some of the most important provisions:

Business Provisions of the Act

The Act includes several business taxpayer provisions, including:

- **Built-In Gains Tax Recognition Period Reduced.** The Act retroactively and permanently sets the recognition period under Code Section 1374(d)(7) at five years.

- **S-Corporation Charitable Contributions.** The Act retroactively and permanently extends Code Section 1367(a)(2) that had expired on December 31, 2014. Consequently, if an S-

Corporation contributes money or property to a charity, each shareholder may take into account his or her pro-rata share of the fair market value of the contributed property in determining his or her income tax liability. In other words, the contribution flows through to the shareholders. Likewise, the shareholder gets to reduce the basis in his or her stock by his or her pro-rata share of the corporation's adjusted basis in the contributed property (rather than by the amount of the charitable deduction that flowed through to him or her). This provision should be a benefit to charities.

- **Research Credit.** The research credit allowed under Code Section 41(h) was retroactively and permanently extended. It had already expired as of December 31, 2014.

- **RIC Interest and Related Dividends and Short-Term Capital Gain Dividends.** The Act retroactively and permanently extends the rules contained in Code Section 871(k), exempting from gross income and the withholding tax the interest-related dividends and short-term capital gain dividends received from a regulated investment company. These provisions had expired as of December 31, 2014.

- **Small Business Stock.** Under Code Section 1202(a)(4), assuming certain requirements were met, a taxpayer prior to this year was allowed to exclude all gain from the disposition of qualified small business stock acquired after September 27, 2010, but before January 1, 2015. The exclusion applied for both regular income tax and alternative minimum tax purposes. The Act permanently and retroactively extended this provision for stock acquired after December 31, 2014.

- **New Markets Tax Credit.** The Act retroactively extends the new markets tax credit under Code Section 45D(f) through the end of 2019. Unless extended or made permanent, it will expire on December 31, 2019.

- **15-Year Straight-Line Cost Recovery for Qualified Leasehold Improvements.** The Act permanently extends the 15-year recovery period for qualified leasehold improvements, qualified restaurant property and qualified retail improvement property.

- **Section 179 Expensing.** The Act permanently and retroactively extends the small business expensing limitation and phase-out amounts that were in effect from 2010 to 2014. Consequently, for 2015 forward, the Code Section 179 deduction limit is $500,000.

Likewise, the deduction phase-out commences at $2 million. Both the limitation and the phase-out threshold will be indexed for inflation beginning next year. This provision of the Act also extends 50% bonus depreciation through the end of 2019.

Individual Provisions of the Act

The Act includes several individual taxpayer provisions, including:

- **Enhanced child tax credit.** The Act makes the child tax credit, with a $3,000 un-indexed threshold, permanent. The threshold was scheduled to rise to $10,000 and be indexed for inflation. The Act eliminates the threshold increase and the index for inflation.

- **American Opportunity Tax Credit.** The Act makes the American Opportunity Tax Credit permanent.

- **Mass Transit.** The Act permanently extends the employee exclusion for employer-provided mass transit. Now, the exclusion ceiling is equivalent to the employer-provided parking exclusion (*i.e.*, $250 per month).

- **State and Local Sales Tax Deduction.** The Act permanently extends the life of Code Section 164(b)(5) so that a taxpayer who itemizes his or her deductions may elect to deduct state and local general sales and use taxes in lieu of state and local income taxes. Under Code Section 164(b)(5)(I), this provision, absent the Act, expired on December 31, 2014.

- **Nontaxable IRA Transfers to Eligible Charities.** The Act makes Code Section 408(d)(8)(F) permanent. Consequently, individuals who are at least 70½ years of age may exclude from gross income qualified charitable distributions from IRA's, subject to an annual cap of $100,000.

- **Home Mortgage Debt Discharge Exclusion.** Under Code Section 108(a)(1)(E), prior to this year, an individual taxpayer could exclude from gross income the discharge of indebtedness from a qualified personal residence, up to $2 million for married taxpayers filing jointly, and $1 million for single taxpayers or married taxpayers filing separately. This provision of the Code expired on December 31, 2014. The Act, however, gives it new life, albeit for a brief period of time. The provision will now expire on December 31, 2016, unless extended or made permanent.

Many taxpayers and tax advisors feared that no extenders act would not be passed by the end of 2015. Fortunately, lawmakers were able to reach a compromise. We expect President Obama will sign the Act into law well before the end of the year. Stay tuned!

Tags: President Obama, Protecting Americans from Tax Hikes (PATH) Act, taxpayer provisions