BLANK ROME LLP
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# Tax

## Congress Passes Protecting Americans from Tax Hikes (Path) Act of 2015, Making Many Tax Extenders Permanent

**Action Item: The recently enacted PATH Act contains key tax provisions for businesses and individuals alike, including permanently expanding Section 179 of the Internal Revenue Code; extending the availability of "bonus-depreciation"; modifying key business tax credits; adding several notable provisions applicable to REITs; extending several energy tax credits through 2016; and incentivizing charitable giving. Businesses and individuals are advised to review the provisions and evaluate the Act's impact on their 2016 tax planning.**

### Background

Lost in the 2015 holiday shuffle, on December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act (the "Act"), warmly referred to as the PATH Act. The Act retroactively reinstated expired tax extender provisions that were beneficial to both businesses and individuals, and also made several tax extender provisions permanent.

Below is a summary of key provisions included within the Act.

### Section 179 Expensing

The Act permanently extends Section 179 of the Internal Revenue Code of 1986, as amended (the "Code"), which provides taxpayers with an election to expense certain depreciable business assets ("Section 179 Property") as opposed to subjecting such assets to normal depreciation schedules. This tax-favorable provision of the Act provides that a taxpayer may elect to expense up to $500,000 of Section 179 Property, with such amount being subject to inflation for tax years beginning in 2016. The Section 179 election is phased out for taxpayers placing more than $2 million of Section 179 Property into service, with such amount also being subject to inflation for tax years beginning in 2016. Without any further congressional action, the Section 179 expense limitation for 2015 and beyond was $25,000, and the phase-out amount was $200,000.

The Act also modifies a few other aspects of Section 179, all of which benefit taxpayers, including:

- permanently extending the specials rules that allow expensing of computer software and qualified real property,
- eliminating the $250,000 cap with respect to qualified real property, and
- allowing air conditioning and heating units to be expensed under Section 179.

## Bonus Depreciation

The Act extends the availability of so-called "bonus depreciation." First-year "bonus depreciation" currently permits taxpayers to take a depreciation expense equal to 50 percent of the depreciable basis of the property placed in service. A taxpayer may claim bonus depreciation, despite also having elected to expense such property under Section 179.

By way of example, if a taxpayer placed Section 179 Property in service with a value of $1,000,000, and is not otherwise subject to the Section 179 phase-out described above, then the taxpayer would be eligible to expense $500,000 under Section 179, and $250,000 as bonus depreciation (*i.e.,* 50 percent of the remaining $500,000 cost of the Section 179 Property) for a total deduction of $750,000. The remaining $250,000 of the Section 179 Property is depreciable under normal depreciation schedules, including whatever depreciation is available in the year the property is placed in service, above and beyond the $750,000 of Section 179 expense and bonus depreciation.

The Act extends 50 percent bonus depreciation for most property until the 2018 tax year, at which point in time the bonus depreciation amount is scheduled to be reduced to 40 percent. In 2019, bonus depreciation is scheduled to further be reduced to 30 percent for most property.

## Other Business Provisions

The Act includes numerous business tax provisions that will be utilized by businesses of all types and sizes, including the following:

- **Cost Recovery:** The Act amended Section 168(e)(3)(E) of the Code to permanently permit a 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements for property placed in service after December 31, 2014.
- **Small Business Stock:** The Act permanently extends the provisions allowing for exclusion of taxable gain on the sale of qualified small business stock acquired after the enactment of the Creating Small Business Jobs Act of 2010 and held for five years.
- **Built-In Gains Tax Recognition Period for S Corporations:** The Act provides that an S corporation must hold its assets for only five years following conversion from a C corporation to avoid the tax on built-in gains. The recognition period was previously ten years.
- **Medical Device Tax:** The Act provides for a moratorium on the 2.3 percent excise tax imposed on the sale of medical devices during the 2016 and 2017 calendar years.

## Business Tax Credits

Below is a summary of some of the business tax credits modified by the Act.

- **R&D Credit:** The Act permanently extends the R&D credit. Beginning in 2016, eligible small businesses (those with $50 million or less in gross receipts) may claim the credit against their alternative minimum tax ("AMT") liability. Additionally, the Act temporarily extends a provision that allows startups with gross receipts of less than $5 million to use the R&D credit to offset their payroll tax liability; this credit is capped at $250,000 and was extended for five years.
- **Employer Wage Credit:** Beginning in 2016, any employer whose employee is an active duty member of the military is eligible for the 20 percent tax credit. Previously this credit applied only to employers with 50 or fewer employees.

- **New Markets Tax Credits ("NMTCs"):** The Act authorizes the allocation of $3.5 billion in NMTCs for each year from 2015 through 2019.
- **Work Opportunity Tax Credit:** The Act extends the credit through 2019 and modifies the credit beginning in 2016 to apply to employers who hire qualified long-term unemployed individuals (e.g., those who have been unemployed for 27 weeks or more) and increases the credit with respect to such long-term unemployed individuals to 40 percent of their first $6,000 of wages.

## REIT Provisions

The Act included several notable provisions applicable to Real Estate Investment Trusts ("REITs"):

- A spinoff involving a REIT will generally qualify as tax-free only if immediately after the distribution both the distributing and controlled corporation are REITS. Following a tax-free spinoff, neither the distributing nor controlled corporation would be permitted to elect REIT treatment for ten years following the spinoff. This restriction applies to distributions after December 6, 2015, but does not apply to any distribution pursuant to a transaction described in a ruling request initially submitted to the IRS on or before December 7, 2015, that has not been withdrawn, issued, or denied in its entirety as of such date.
- Effective for tax years beginning in 2017, the securities of one or more taxable REIT subsidiaries held by a REIT may not represent more than 20 percent of the value of the REIT's assets (down from 25 percent under current law).
- For publicly offered REITS, the preferential dividend rule is repealed effective for distributions in tax years beginning after 2014.

## Individual Provisions

The Act permanently increased the maximum monthly exclusion amount for transit passes and van pool benefits to $175. This benefit is excluded from an employee's wages for payroll tax purposes and from gross income for income tax purposes.

The Act provides the following additional provisions applicable to individuals:

- **School Teachers:** The $250 above-the-line deduction available to elementary and secondary school teachers for eligible expenses is permanently extended and indexed to inflation. Eligible expenses now also includes professional development expenses.
- **Income Tax Deductions:**
  - A taxpayer has the option to claim an itemized deduction for state and local general sales taxes in lieu of an itemized deduction for state and local income taxes.
  - Above-the-line deductions for qualified tuition and related expenses for higher education are retroactively extended through 2016.

## Energy Tax

The Act extends several energy tax credits through 2016, including those for (1) purchases of nonbusiness energy property, (2) alternative fuel vehicle refueling property, (3) two-wheeled plug-in electric vehicles, (4) second generation biofuel producers, (5) the production tax credit for diesel fuel created from biomass, (6) biodiesel mixtures, (7) small agri-biodiesel producers, (8) the production tax credit for coal produced on land owned by an Indian tribe, (9) the production tax credit for certain renewable sources of energy facilities whose construction has begun by the end of 2016, (10) manufacturers of energy-efficient residential homes, (11) alternative fuels and alternative fuel mixtures, and (12) purchases of new qualified fuel cell motor vehicles.

## Charitable Giving Incentives

The Act incentivizes charitable giving by permanently extending several key provisions:

- Individuals at least 70½ years of age may exclude up to $100,000 from gross income of qualified charitable distributions from Individual Retirement Accounts ("IRAs").
- Non-corporate business taxpayers receive an enhanced deduction for charitable contributions of inventory of "apparently wholesome food." Beginning in 2016, the limitation on deductible contributions of food inventory is increased from 10 percent to 15 percent of the taxpayer's adjusted gross income.
- A shareholder in a S corporation will have his/her basis in the stock of an S corporation reduced by the shareholder's pro rata share of the adjusted basis of the property contributed by the S corporation for charitable purposes.

**If you have any questions regarding the Act, or its impact on your tax planning, please contact a member of our Business Tax Group.**

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