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Extenders Supplement

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EXTENDERS SUPPLEMENT

THE PATH ACT GENERALLY

On December 18, 2015, the President signed the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act).

PATH makes permanent several provisions of the law that have been subject to several rounds of extenders. It also extends several provisions through 2019 and others through 2016.

California conformity

The only provision of the PATH Act to which California conforms is the exclusion from gross income for qualified charitable distributions from IRAs. See page 7 below. (IRC §408(d)(8)(F); R&TC §17501(b))

INDIVIDUALS

ADJUSTMENTS TO GROSS INCOME

Educator expenses (Page 1-13)

The above-line deduction for educator expenses is made permanent. Moreover, it is enhanced in two ways:

- The $250 maximum amount will be indexed for inflation in tax years ending after 2015; and
- Qualifying expenses will include costs incurred in taking professional development courses. (Act §104)

Tuition deduction (Page 1-17)

The tuition deduction is extended retroactively to 2015 and through 2016. (Act §153)

ITEMIZED DEDUCTIONS

State and local general sales tax deduction (Page 1-20)

The deduction for state and local sales tax is made permanent. (Act §106)

Deduction of mortgage insurance premiums (Page 1-21)

The deduction of mortgage insurance premiums is extended retroactively to 2015 and through 2016. (Act §152)

Charitable contributions (Page 1-30)

The liberalized rules for qualified conservation contributions are made permanent. (Act §111)

INDIVIDUAL TAX CREDITS

Child Tax Credit (Page 1-37)

The enhanced Child Tax Credit is made permanent. Prior to the Act, the refundable portion of the Child Tax Credit was 15% of the amount by which the taxpayer's earned income exceeds $3,000. This provision is made permanent. (Act §101)

Due diligence requirements

The Act requires that paid preparers will be subject to the same due diligence requirements to which they are currently subject with respect to the Earned Income Tax Credit and the same penalty of $500. (Act §208)

Comment

Presumably, the IRS will develop a form similar to Form 8867, Paid Preparer's Earned Income Credit Checklist, for purposes of the Child Tax Credit. Alternatively, they may modify Form 8867 to accommodate both credits.

American Opportunity Tax Credit (Page 1-38)

The American Opportunity Tax Credit is made permanent. (Act §102)

Due diligence requirements

The Act requires that paid preparers will be subject to the same due diligence requirements to which they are currently subject with respect to the Earned Income Tax Credit and the same penalty of $500. (Act §208)

Comment

Presumably, the IRS will develop a form similar to Form 8867, Paid Preparer's Earned Income Credit Checklist, for purposes of the American Opportunity Tax Credit. Alternatively, they may modify Form 8867 to accommodate both credits.

Note that, under the Trade Preferences Extension Act of 2015, taxpayers are no longer allowed to claim the credit unless the taxpayer is in possession of Form 1098-T, Tuition Statement. This change is effective for tax years beginning in 2015.

Nonbusiness Energy Property Credit (Page 1-42)

The credit is extended for two years to apply to property placed in service after December 31, 2004, and before January 1, 2017. Minor modifications are made to the definitions of qualified property. (Act §181)

Earned Income Tax Credit (Page 1-46)

The enhanced credit for taxpayers with three or more qualifying children is made permanent. (Act §103) In addition, the Act prohibits an individual from retroactively claiming the credit by amending a return in any prior year in which the individual for whom the credit is claimed did not have a valid Social Security number. (Act §204)

BUSINESS

BONUS DEPRECIATION (PAGE 4-4)

The Act retroactively extends 50% bonus depreciation for two years. Thus, it applies to qualified property placed in service before January 1, 2018 (before January 1, 2019, for certain longer-lived property and transportation property). (Act §143)

After 2017, bonus depreciation is phased down:

- 40% in 2018; and
- 30% in 2019.

Qualified improvement property

Bonus depreciation is enhanced to include as qualified property certain improvements to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date that building was first placed in service. (Act §143(b)(2)) Such improvements do not include:

- The enlargement of the building;
- Any elevator or escalator; or
- The internal structural framework of the building.

IRC §179 (PAGE 4-4)

The Act retroactively makes permanent the $500,000 expense limitation and the $2 million phaeout threshold. (Act §124) In addition, both limitations will be indexed for inflation for taxable years beginning after 2015.

IRC §179 for real estate (Page 4-4)

IRC §179 for qualified real estate is made permanent. (Act §124(c)) As a consequence, the limitation on carryovers of disallowed expensing to tax years beginning after 2015 is removed.

In addition, the $250,000 limitation with respect to qualifying real property is eliminated.

Other IRC §179 provisions (Page 4-5)

Computer software (Page 4-5)

Computer software as qualifying property for IRC §179 purposes is made permanent. (Act §124(b))

Revoke election (Page 4-5)

The ability to revoke an IRC §179 election without the consent of the IRS is made permanent. (Act §124(d))

Heating and air conditioning units now qualifying property

The Act provides that, for property placed in service after December 31, 2015, heating and air conditioning units are treated as eligible property for purposes of IRC §179. (Act §124(e))

Restaurant property, leasehold improvements, and qualified retail improvement property (Page 4-5)

The Act retroactively makes permanent the 15-year straight-line recovery period for qualified real estate. (Act §123)

Luxury car caps (Page 4-7)

For vehicles placed in service after December 31, 2015, and before January 1, 2018, the Act provides that the limitations under IRC §280F for passenger cars that are qualified property are increased by $8,000. (Act §143(b)(1))

2015 limitations (Page 4-8)

Thus, the first-year limit for a passenger automobile placed in service in 2015 is $11,160. For a light van or truck, the limit is $11,460.

Phase-downs after 2017

The $8,000 increase will be phased down after 2017:

- $6,400 in 2018; and
- $4,800 in 2019.

After 2019, there will be no increase unless Congress acts to extend bonus depreciation.

TRANSPORTATION FRINGE BENEFITS (PAGE 4-21)

The Act makes permanent the monthly exclusion amounts for transit passes and van pool benefits so that they match the exclusion for qualified parking benefits. (Act §105) Thus, the maximum amounts for 2015 will be $255.

SMALL BUSINESS STOCK (PAGE 4-32)

The Act makes permanent the exclusion of 100% of the gain on small business stock under IRC §1202. (Act §126) Thus, qualifying stock purchased on or after September 28, 2010, will qualify for the 100% exclusion.

BUILT-IN GAINS (PAGE 4-33)

The Act makes permanent the five-year holding period for purposes of computing built-in gain on the conversion of a corporation from a C corporation to an S corporation under IRC §1374(d). (Act §127)

BUSINESS CREDITS (PAGE 4-38)

Research Credit (Page 4-38)

The Act makes permanent the Research Credit. (Act §121)

Applicable against AMT

The Act enhances the credit for eligible small businesses ($50 million or less in gross receipts). For tax years that begin after December 31, 2015, a qualifying taxpayer may claim the credit against the alternative minimum tax. (Act §121(b))

Applicable against FICA

The Act further enhances the credit for even smaller eligible small businesses ($5 million or less in gross receipts). For tax years beginning after December 31, 2015, a qualifying taxpayer may claim up to $250,000 per year of the credit against employer FICA tax liability. (Act §121(c))

OTHER BUSINESS PROVISIONS (NOT IN TEXT)

Expensing costs of film and TV production

The Act retroactively extends the expensing deduction under IRC §181 for productions beginning before January 1, 2017. In addition, the deduction is enhanced to include certain "qualified live theatrical productions." (Act §169)

Seven-year write-off of motorsport racing track facilities

The Act retroactively extends the seven-year straight-line cost recovery period for motorsports entertainment facilities under IRC §168(i)(15)(D)). Thus, the shortened write-off applies to qualifying facilities placed in service before January 1, 2017. (Act §166)

Three-year depreciation on racehorses

The Act retroactively extends three-year depreciation on racehorses under IRC §168 for racehorses placed in service before January 1, 2017. (Act §165)

Accelerated depreciation for business property on Indian reservations

The Act retroactively extends accelerated depreciation of property on an Indian reservation under IRC §168(j)(8) for property placed in service before January 1, 2017. (Act §167)

50% expensing of mine safety equipment

The Act retroactively extends the election to treat 50% of the costs of mine safety equipment under IRC §179E as an expense in the year the equipment is placed in service. (Act §163)

S corporation shareholder basis adjustment for charitable contributions

The Act makes permanent the rule first established under the Pension Protection Act of 2006 that says that a shareholder's basis in his S corporation stock is reduced by the adjusted basis of property contributed to a charity rather than the property's fair market value. (IRC §1367(a)(2); Act §115)

Enhanced deduction for food inventory

The enhanced deduction for food inventory under IRC §170(e)(3)(C)(iv) is made permanent. In addition, the limitation on deductible contributions of food inventory is increased from 10% to 15% of taxable income. (Act §113)

Differential wage payments

The credit for employers that pay differential wages — payments to employees for periods that they are called to active duty with the U.S. military — is made permanent. In addition, for tax years beginning after December 31, 2015, the Act removes the 50-employee limitation; that is, an employer of any size will be eligible for the credit. (IRC §45P; Act §122)

Work Opportunity Tax Credit

The Act retroactively extends the WOTC so that it applies to qualified workers who begin work for the employer before January 1, 2019. (Act §142)

In addition, with respect to workers who begin work after December 31, 2015, the credit also applies to employers who hire qualified long-term unemployed individuals (those who have been unemployed for 27 weeks or more). The credit for long-term unemployed workers is 40% of the first $6,000 of wages. (IRC §51(d)(1)(J); Act §142(b))

New Markets Credit

The Act retroactively extends the New Markets Credit under IRC §45D through 2019. In addition, it provides up to $3.5 billion in qualified equity investments for each calendar year from 2015 through 2019. The carryover period for unused credits is extended through 2024. (Act §141)

Indian Employment Credit

The Act retroactively extends the credit under IRC §45A to tax years beginning before January 1, 2017. (Act §161)

Alternative Fuel Vehicle Refueling Property Credit

The Act retroactively extends the credit under IRC §30C to apply to property placed in service after December 31, 2014, and before January 1, 2017. (Act §182)

Credit for Two-Wheeled Electric Plug-In Vehicles

The Act retroactively extends the credit under IRC §30D(g) to apply to property acquired after December 31, 2014, and before January 1, 2017. (Act §183)

The credit for three-wheeled vehicles was not extended.

New Energy Efficient Home Credit

The Act retroactively extends the credit under IRC §45L to apply to homes acquired before January 1, 2017. (Act §188)

Credit for Fuel Cell Vehicles

The Act retroactively extends the credit under IRC §30B to apply to vehicles acquired before January 1, 2016. (Act §193)

REAL ESTATE

PRINCIPAL RESIDENCE COD EXCLUSION (PAGE 7-1)

The Act retroactively extends the exclusion for cancellation of debt on a qualified principal residence so that it applies to debts discharged before January 1, 2017. In addition, the Act modifies the exclusion to apply to discharges that occur in 2017 if the discharge is pursuant to a written agreement entered into in 2016. (IRC §108(a)(1)(E); Act §151)

RETIREMENT

TRANSFER OF IRA FUNDS DIRECTLY TO CHARITY (PAGE 8-3)

The Act makes permanent the ability of individuals at least 70½ years old to exclude from gross income qualified charitable distributions from IRAs of up to $100,000 per year. (IRC §408(d)(8)(F); Act §112)

California conformity

California conforms to this provision. (R&TC §17501(b))

§529 PLANS (PAGE 8-26)

§529 rules are enhanced in the following ways:

- Computer technology and equipment are permanently allowed as qualified higher education expenses for purposes of §529; and
- Individuals are allowed a 60-day "rollover" period for nonqualified distributions; that is, the law will give individuals up to 60 days to re-deposit the distribution into a qualifying account for that individual without the distribution being taxable. (Act §302)