

Forbes

Tax Extenders—The Deal?

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DECEMBER 8, 2015

Late last night, the House Ways and Means Committee Chairman, Congressman Brady (R-TX), put out a proposed two-year extenders bill (along with a significant number of other provisions) that appears to be “the deal.” The chances of a bigger deal (permanency for a number of provisions) look at the moment to be filed under “a bridge too far.” Still, this is an impressive effort out of the gate by Chairman Brady as well as his Senate colleagues, Chairman Hatch (R-UT) and Senator Wyden (D-OR). Consideration of the legislation is anticipated for this week.

The proposed bill extends (going back to cover 2015 and going forward to cover 2016) all of the tax provisions that had expired—including a number near and dear to business (R&D Tax Credit; 179 expensing expanded further in 2016; and accelerated depreciation being the key ones) as well as individuals (including deduction of state and local sales tax and deductions for school teachers) and charities (IRA rollover and conservation easements). The bill keeps in place also a number of energy provisions (including biofuel, wind and energy-efficient buildings)

However, there are a number of important modifications to tax extenders as well as new provisions.

Improvements to R&D Tax Credit

Particularly good news is the changes to the R&D Tax Credit - allowing the R&D Tax Credit to be utilized by small businesses by removing the AMT barrier as well as increasing the credit amount overall. These changes to the R&D Tax Credit will help keep our economy competitive, create jobs and will be a huge boost for efforts to encourage greater business investment—a top priority for Chairman Brady. Credit to not only the chairman but also Senators Coons (D-DE), Grassley (R-IA), Roberts (R-KS) and Schumer (D-NY) for getting the common sense change of removing the AMT bar for the R&D Tax Credit. Small businesses should rejoice.

REIT

The legislation contains a number of provisions to address concerns regarding Real Estate Investment Trusts (REITs)—certainly an area of concern for the tax-writing committees.

IRS, Taxpayer Rights and Tax Court

The bill also provides for a number of reforms of the Internal Revenue Service (IRS)—in the wake of congressional concerns about activities at the IRS. Reforms include better education of IRS employees of taxpayer rights and appeals rights for adverse determinations of tax-exempt status. In addition, the legislation has a number of taxpayer friendly provisions regarding the Tax Court—especially innocent spouse.

Note for practitioners that the bill requires that the Tax Court conduct its proceedings in accordance with rules of Federal Rules of Evidence and also clarifies that the Tax Court is not an agency of, and is independent of, the executive branch—time to say goodbye to repeated efforts of IRS counsel to claim that the Tax Court is only to review for error/abuse of discretion?

New Provisions

A number of new small bipartisan provisions (many passed by the Senate by Chairman Hatch and Senator Wyden earlier this year) also were included in Chairman Brady's mark:

Captive Insurance Companies - Allowing the maximum premiums to be raised from \$1.2 million to \$2.2 million—however this is coupled with a number of anti-abuse provisions as well. We have been representing a lot of companies under exam by the IRS on captive insurance—those with captive insurance companies need to be paying very close attention.

Modification of Definition of Hard Cider. I don't know anything about this—but I am pleased that we are defining hard cider for purposes of alcohol excise taxes as a wine with an alcohol content of between 0.5 percent and 8.5 percent alcohol by volume with a carbonation level that does not exceed 6.4 grams per liter which is derived primarily from apples, apple juice concentrate, pears or pear juice concentrate in combination with water. Can I please come to the party to celebrate the wholly justified ending of this oppressive and hellish tax burden?

Exclusion of Amounts Received Under Work College Program - Work-study not subject to gross income.

Other commonsense noncontroversial changes include improvements in 529 accounts, rollovers of SIMPLE IRA, exclusion of payments to wrongfully incarcerated individuals and that enrolled agents can use the designation "enrolled agent," "EA" or "E.A."

All-in-all a good days work—potentially getting the tax laws extended crazy early (i.e. before the end of the year); some much-needed modifications and improvements to the tax extenders (especially the R&D Tax Credit); reforms of IRS; improve taxpayer rights; address Tax Court issues—and finally pass a number of bipartisan noncontroversial needed changes to the tax laws. A fine beginning for Chairman Brady, Chairman Hatch and Senator Wyden.



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SOURCE: http://www.forbes.com/sites/deanzerbe/2015/12/08/tax-extenders-the-deal/?utm_source=icontact&utm_medium=email&utm_campaign=forbes