



TaxNewsFlash

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Legislative update: Congress returns before election to unfinished business

Congress returned to Washington today, and may consider certain tax-related items and other pressing matters before it leaves at the end of September 2016. Congress is currently scheduled to return after the November 8th election for a possible “lame duck” session.

Among the items that Congress may address in the next few weeks include legislation in the following:

- Funding for government operations following the September 30th expiration of the current appropriations , likely via a Continuing Resolution,
- An income tax exclusion for U.S. Olympic medal winners
- Funding issues related to the Multiemployer Health Benefit Plan and the 1974 United Mine Workers of America Pension Plan
- Modifications to rules governing deductibility of medical expenses
- Other “non-controversial” tax items

Another issue being promoted by certain House Republicans is a bill for the impeachment of the IRS Commissioner John Koskinen.

Possible lame duck agenda

While the Senate Finance and House Ways and Means Committees may consider a number of tax-related items during the September session, it is likely that final resolution of most the items will be delayed until Congress is scheduled to return in November after the election. Other tax matters that could be considered during a post-

election Congressional session include tax technical corrections and a number of “tax extenders” (certain expiring tax preference items)..

Technical corrections

Possible tax technical corrections could be considered to clarify a number of recent tax laws, including the PATH Act and the Consolidated Appropriations Act, 2016. Among the technical corrections being considered are provisions that would clarify:

- That the alternative incremental research credit was not reinstated in the PATH Act
- That Code section 199(c)(3)(C)—concerning transportation costs of independent refiners—applies for purposes of calculating qualified production activities income under section 199(c) and calculating oil related qualified production activities income under section 199(d)(9)
- The definition of “control” of a partnership for purposes of the section 355(h)(2)(B) rules on spinoffs involving real estate investment trusts (REITs)

Also, clerical changes to the partnership audit rules might be considered.

Tax extenders

Legislation enacted at the end of 2015 (the “Protecting Americans From Tax Hikes Act of 2015” or the “PATH Act”) included measures that made permanent a number of the tax extenders—including the research credit and the rules for expensing of depreciable property under section 179. The PATH Act further extended certain expired provisions retroactively from the beginning of 2015 through 2019. However, there were certain tax extenders that were only temporarily extended (generally from January 1, 2014, through December 31, 2016) by the PATH Act. These items now expire at the end of this year, including:

- Credit for qualified fuel cell and stationary microturbine power plant property
- Credit for geothermal heat pump property, small wind property, and combined heat and power property
- Exclusion of income from discharge of qualified principal residence indebtedness (with a modification for discharges pursuant to a binding written agreement entered into before January 1, 2017)
- Shorter depreciation recovery periods for tangible property used predominantly in the active conduct of a trade or business (other than gaming) within an Indian reservation
- The general business credit for certain wages paid to a member of an Indian tribe (or the member’s spouse) for services within an Indian reservation, while the employee lives on or near the reservation

- Nonbusiness energy property credit (with modifications relating to energy efficiency for property placed in service after December 31, 2015)
- Credit for alternative fuel vehicle refueling property
- Second generation biofuel producer credit
- Incentives for biodiesel and renewable diesel
- Production credit for Indian coal facilities (with modifications removing the placed-in-service date limit, removing the nine-year limit, and allowing the credit to be claimed against AMT beginning in 2016)
- Production tax credit for certain renewable sources of electricity (for facilities for which construction has commenced by the end of 2016)
- Credit for construction of new energy efficient homes
- Cellulosic biofuels bonus depreciation
- Energy efficient commercial buildings deduction
- Special rule for sales or dispositions relating to FERC or state electric restructuring policy for qualified electric utilities
- Credits relating to alternative fuels
- Credit for fuel cell motor vehicles
- Credit for hybrid solar lighting system property
- Deduction for mortgage interest premiums
- Above-the-line deduction for qualified tuition
- The general business credit for amounts paid for the maintenance of certain railroad track owned or leased by a Class II or Class III railroad in the United States
- The general business credit allowed for certain training costs of a mine rescue team worker
- Authorization for credits for state or local qualified zone academy bonds used to support a school in an empowerment zone or enterprise zone
- The three-year depreciation recovery period for any race horse, regardless of its age when it is placed in service

- The seven-year depreciation recovery period for motorsports entertainment complexes, including land improvements, support facilities, and certain buildings used by the public in attending racing events
- The election to expense 50% of the cost of advanced mine safety training equipment in the year it is placed in service
- The election to expense up to \$15 million of the production costs of a film or television production, when at least 75% of the compensation of the production is for services performed in the United States by actors, production personnel, directors, and producers
- Deduction with respect to income attributable to domestic production activity in Puerto Rico
- Temporary increase in rum cover over limit
- American Samoa economic development credit

In addition, the PATH Act reinstated a 10% credit for the purchase of electric motorcycles in 2015 and 2016. The credit, which is capped at \$2,500 per qualifying vehicle, was in place prior to 2014, but was allowed to expire on December 31, 2013. The provision would apply only to two-wheel, not three-wheel, electric vehicles.

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