Senate Finance Committee votes to renew select expired tax provisions

April 3, 2014

In brief

The Senate Finance Committee on April 3 approved legislation to extend certain business and individual tax provisions that expired at the end of 2013 and certain provisions that are scheduled to expire at the end of 2014.

In his opening statement, Finance Chairman Ron Wyden (D-OR) said many expired provisions are "well intentioned and ought to be permanent," and the fact that the committee is again marking up a temporary tax extenders bill "shows the urgency of tax reform." Chairman Wyden expressed his hope that "this will be the last tax extenders bill the committee takes up as long as I'm chairman."

In support of tax reform, the Finance Committee extenders bill includes a Sense of the Committee statement calling for action on comprehensive tax reform in the next Congress that would be concluded before the end of 2015 when the proposed tax extenders would expire, with a major focus on "fostering economic growth and lowering tax rates by broadening the tax base."

In detail

The Finance Committee by a voice vote on April 3 approved the "Expiring Provisions Improvement Reform and Efficiency (EXPIRE)" Act, that retroactively extends for two years -- from January 1, 2014 through December 31, 2015 – certain business and individual tax provisions that expired at the end of 2013. The EXPIRE Act also extends for one year certain provisions that are scheduled to expire at the end of 2014.

Significant expired business provisions that would be extended through the end of 2015 include the research credit, look-through treatment of payments between related controlled foreign corporations (CFCs), and the Subpart F active financing exception. The EXPIRE Act also would renew 50-percent "bonus" depreciation for qualified property and would continue to allow an election to accelerate AMT credits in lieu of bonus depreciation. The bill also includes a two-year extension of the renewable electricity production tax credit (PTC) and the election to claim the energy credit in lieu of the PTC.

Chairman Wyden originally had proposed to reduce the number of extended tax provisions in the "Chairman's mark" released on April 1, but restored several provisions in a modified Chairman's Mark released the morning of the Finance Committee's April 3 markup.

Additional business tax provisions that would be extended through 2015 include the following:

- New markets tax credit, with modifications
- Work opportunity tax credit, with modifications

- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements
- 7-year recovery period for motorsports entertainment complexes
- Increased expensing limitations and treatment of certain real property as section 179 property
- Special expensing rules for certain film, television, and theatrical productions
- Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico
- Treatment of certain dividends of regulated investment companies (RICs)
- Treatment of RICs as "qualified investment entities" under FIRPTA
- Special rules applicable to qualified small business stock
- Reduction in S corporation recognition period for built-in gains tax
- Basis adjustment of S corporations making charitable contributions of property
- Increase in limit on cover over of rum excise tax revenues to Puerto Rico
- Economic development credit for American Samoa
- Qualified zone academy bonds
- Enhanced charitable deduction for contributions of food inventory.

Additional energy tax provisions that would be extended through 2015 include the following:

- Credit for electric motorcycles
- Credit for construction of energy-efficient new homes
- Energy efficient commercial building deduction, with modifications.

Individual tax provisions that would be extended through 2015 include the following:

- Deduction for state and local sales taxes
- Exclusion for discharge of indebtedness income on principal residences
- Parity in the exclusion for employer-provided mass transit and parking benefits
- Tax-free distributions from IRAs to certain public charities for individuals age 70-1/2
- Contributions of capital gain real property made for qualified conservation purposes.

Tax provisions expiring in 2014 dealing with an alternate motor vehicle credit and multiemployer defined-benefit plans would be extended for one year through the end of 2015.

The Joint Committee on Taxation staff estimates that the Chairman's modified mark would reduce net tax revenues by $85.3 billion from 2014 through 2024.

The modified Chairman's mark includes three revenue-raising proposals, including a provision to collect unpaid taxes from payments made to Medicare providers, that together were estimated to raise $865 million over the same period.

Amendments considered by the Finance Committee

The Finance Committee approved several amendments to the EXPIRE Act as proposed by Chairman Wyden, including a proposal to modify the research credit to allow qualifying start-up businesses to claim the credit against payroll taxes. This benefit would be capped at $250,000 per year and would be available only to companies less than five years old with less than $5 million in gross receipts. In addition, this amendment would allow certain taxpayers to offset the research credit against liability for the alternative minimum tax (AMT).

Other amendments approved by the Finance Committee include:

- Modification of the qualified transportation benefit to include expenses associated with bike-sharing programs
- Two-year extension of empowerment zone tax incentives
- Extension of the Special Rule for Electronic Transmission Sales to Implement FERC or State Electric Restructuring
- Extension of Health Coverage for Displaced Workers
- Manufacturing Communities Tax Credit.

The Finance Committee by a vote of 6 to 18 rejected an amendment offered by Senator Pat Toomey (R-PA) to eliminate the proposed extension of the PTC and certain other renewable energy tax incentives.

Senator Toomey also offered an amendment to delay the medical device excise tax for two years. Chairman Wyden noted that in 2013 he supported an amendment to the Senate budget resolution for FY 2014 calling for repeal of the medical device tax, but ruled that that Senator Toomey's amendment was not germane to the consideration of expired tax provisions. The Finance Committee voted to uphold Chairman Wyden's ruling.

Several amendments were offered and then withdrawn by Finance Committee members who indicated their intent to pursue action on their proposals at a future date. These withdrawn amendments include the following:

- Senator Toomey proposed to make permanent 50-percent bonus depreciation.
- Senator Bob Casey (D-PA) proposed to make permanent 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
- Senator Bob Menendez (D-NJ) spoke in support of his amendment to encourage foreign investment in US real estate by reforming FIRPTA tax rules.
- Senator Maria Cantwell (D-WA) discussed her amendment to modify the beginning-of-construction date for Section 45 production tax credit or investment credit to include solar projects.
- Senator John Thune (R-SD) offered his amendment to make permanent the moratorium on state and local taxes on internet access scheduled to expire on November 1, 2014.
- Senator Richard Burr (R-SC) proposed to modify the excise tax on liquefied natural gas, noting that he would offer his proposal again when the Finance Committee considers a highway trust fund bill later this year.
- Senator Pat Roberts (R-KS) called for future action on his proposal to block proposed IRS regulations dealing with political activities by social welfare organizations.
- Senator Sherrod Brown (D-OH) spoke in favor of his proposal to strike CFC look-through extension from the EXPIRE Act.

Technical corrections

The Finance Committee also approved legislation providing for technical corrections and repeal of certain "deadwood" provisions.

The proposed technical corrections address a number of business tax provisions enacted since 2004, including proposals affecting the section 199 domestic manufacturing deduction, certain energy tax provisions, depreciation rules for leasehold improvements and smart meters, and regulated investment companies.

Click here for Senate Finance Committee material on the EXPIRE Act, JCT technical explanations and revenue estimates, and the bills dealing with technical corrections and "deadwood" provisions.

The takeaway

Approval of tax extenders legislation by the Senate Finance Committee is a significant step forward for efforts to renew expired business and individual tax provisions, but the timing of Senate action on the Finance tax extenders package is uncertain at this time.

Meanwhile, House Ways and Means Chairman Dave Camp (R-MI) recently announced that he plans to hold a series of hearings to "determine which extenders should be made permanent," with votes planned at future dates on "advancing permanent legislation" that "paves the way for tax reform." The House Ways and Means Committee has scheduled an April 8 hearing on the "benefits of permanent tax policy" to consider expired business tax provisions that either would be made permanent or would be provided long-term extensions under the discussion draft of the Tax Reform Act of 2014 released by Chairman Camp on February 26, 2014. For more on Chairman Camp's tax reform draft, see our WNTS Insight.

It remains unclear when Congress may take final action to address tax extenders legislation.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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