WRMarketplace
An AALU Washington Report

The *WRMarketplace* is created exclusively for AALU Members by the AALU staff and Greenberg Traurig, one of the nation's leading tax and wealth management law firms. The *WRMarketplace* provides deep insight into trends and events impacting the use of life insurance products, including key take-aways, for AALU members, clients and advisors.

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TOPIC: Protecting Americans from Tax Hikes (PATH) Act of 2015 – Your Own Personal "Cheat Sheet" of Notable Tax Extenders.

MARKET TREND: Creating Certainty: The PATH Act retroactively, and in many cases permanently, extends the availability of certain tax benefits for families, individuals, and businesses.

SYNOPSIS: The PATH Act, though primarily a tax extender package, offers significantly more than prior tax extender legislation by making several individual, charitable and business tax credits and deductions permanent, rather than subject to the uncertainty of annual renewal. Some of these permanent tax provisions include:

- Availability of a deduction for state and local sales taxes in lieu of state and local income taxes,
- Exclusion of up to $100,000 of qualified charitable distributions from IRAs of account holders at least age 70 ½,
- Extension of higher small business expensing limitation and phase-out amounts under Internal Revenue Code ("Code") §179, and
- The 100% exclusion of gain on the sale of qualified small business stock held over five years by non-corporate taxpayers.

The PATH Act also temporarily extends certain tax benefits for between two and five years, and includes a broad range of non-extender provisions addressing matters such as 529 accounts and the roll-over of employer-sponsored retirement plans to SIMPLE IRAs. The following "cheat-sheet" summarizes some of these noteworthy extenders and their applicable timeframes.

TAKE AWAY: The PATH Act offers a new degree of certainty to taxpayers by making numerous fundamental tax credits, deductions, and exclusions permanently available to individuals, families and businesses. The permanency of many of these tax extenders may incentivize desirable behaviors, like charitable giving, business research and development, and energy conservation. The tax relief extension provisions, coupled with non-extender provisions, offer security and guidance to taxpayers, as well as some much-needed flexibility to existing laws.

MAJOR REFERENCES: Protecting Americans from Tax Hikes Act of 2015; Committee on Ways and Means Section-by-Section Summary of Proposed "Protecting Americans from Tax Hikes Act of 2015."

In December 2015, taxpayers were facing uncertainty due to delays in passing a federal tax extender package to authorize the extension of certain expiring tax credits and deductions. Fortunately, on December 18, 2015, the President signed the PATH Act which, unlike prior tax extender packages, permanently extended several tax benefits for individuals and businesses, while providing two- and five-year extensions for others.

Even with extensive coverage of the Act, the significant number of tax provisions impacted and the varying timeframes for application can be difficult to navigate. Thus, the following provides a "cheat-sheet" summarizing some of the noteworthy extenders.

PATH ACT OF 2015 – NOTABLE TAX EXTENDERS & TIMEFRAMES			
	PERMANENT	2-YEAR	5-YEAR
INDIVIDUAL	**State/Local Sales Tax Deduction.** Deduction for state/local general sales taxes in lieu of state/local income taxes.[1] **Other Extenders.** Include tax treatment parity for various employer-provided transit benefit[2] and credits generally available for low-to-moderate income households (e.g., the Child Tax Credit and Earned Income Tax Credit).[3]	**Exclusion of Mortgage Debt.** Exclusion of discharged qualified principal residence debt (e.g., due to short sale, foreclosure, or loan modification) of up to $2 million from gross income.[4] **Deduction for Mortgage Insurance.** Treatment of mortgage insurance premiums as deductible mortgage interest.[5]	
BUSINESS/ INVESTMENT	**R&D Credit.** Credit for qualified business research/development expenditures.[6] As of 2016, eligible small businesses ($50 million or less in gross receipts) may take the credit against their payroll or alternative minimum tax (**AMT**) liability.[7] **§179 Expensing for Small Businesses.** Extension of: (1) higher small business expensing limitation and phase-out amounts ($500,000 and $2 million, respectively) with indexing as of 2016 and (2) allowance of expensing for computer software and qualified real property.[8] **Exclusion of Gain on Small Business Stock.** 100% exclusion of gain on sale of qualified small business stock held over 5 years	**Industry/Investment Specific Extenders.** Includes (1) railroad track maintenance credit, (2) mine rescue team training, (3) election to expense mine safety equipment, (4) film/television expensing, (5) qualified zone academy bonds, (6) empowerment zone tax incentives, and (7) 3- and 7-year recovery periods, respectively, for certain race horses and motorsports entertainment complexes.	**New Market Credits.** Annual allocation of $3.5 billion of tax credits through 2019.[14] **Work Opportunity Tax Credit.** Extends credit to employers who hire from certain eligible groups (e.g., veterans) and expands class of eligible employees to include qualified long-term (27 weeks or more) unemployed individuals hired by employers for a credit of up to 40% of generally the first $6,000 of wages.[15] **Bonus Depreciation.** Applies for new property acquired and

PATH ACT OF 2015 – NOTABLE TAX EXTENDERS & TIMEFRAMES			
	PERMANENT	2-YEAR	5-YEAR
	by non-corporate taxpayers.[9] ***S Corp. Built-In Gain Recognition Period.*** 5-year (versus 10-year) asset holding period for S corporation following conversion from C corporation to avoid tax on built-in gains.[10] **Other Extenders.** Includes tax treatment of certain regulated investment company (RIC) dividends,[11] 15-year cost recovery period for qualified leasehold/retail improvements and restaurant property,[12] and wage credits of up to 20% for employees called to active military duty.[13]		placed in service during 2015 through 2019 (with an added year for certain property with a longer production period), as follows: 50% for property placed in service in 2015, 2016 and 2017, 40% for 2018 and 30% for 2019.[16]
EDUCATION	**American Opportunity Tax Credit.** $2,500 credit for 4 years of post-secondary education to taxpayers with adjusted gross income (**AGI**) below $80,000 (single) and $160,000 (married joint filers).[17] **Teachers' Classroom Expenses.** Above-the-line deduction (up to $250, indexed as of 2016) for eligible expenses of teachers at elementary and secondary schools (includes professional development expenses as of 2016).[18]	**Deduction for Higher Education Expenses.** The above-the-line deduction for qualified tuition and related higher education expenses of up to $4,000 for taxpayers whose AGI does not exceed $65,000 ($130,000 for joint filers) or $2,000 for taxpayers whose AGI does not exceed $80,000 ($160,000 for joint filers).[19]	
CHARITABLE	**Charitable IRA Distributions.** Exclusion by individuals age 70½ or older of up to $100,000		

PATH ACT of 2015 – Notable Tax Extenders & Timeframes			
	Permanent	**2-Year**	**5-Year**
	from gross income per tax year for qualified charitable IRA distributions. **Real Property Conservation.** Charitable deduction for contributions of capital gain real property for conservation, including enhanced deduction for certain farmers and ranchers.[20] ***S Corp. Charitable Contributions.*** Pro rata basis adjustment in shareholder's S corporation shares for property charitably contributed by S corporation.[21] **Other Extenders.** Includes extension and modification of the charitable deduction for contributions of food inventory.[22]		
Energy Incentives		**Tax Credits/ Deductions** Includes (1) 10% of purchase amount (up to $500) for residential energy efficient improvement property, (2) 30% of cost paid for installation of qualified alternative fuel vehicle re-fueling property, (3) 10% of cost (up to $2,500) for 2-wheeled plug-in electric vehicles, (4) credit for construct of renewable electricity sources, (5) credit (up to $2,000) for	

PATH ACT OF 2015 – NOTABLE TAX EXTENDERS & TIMEFRAMES			
	PERMANENT	2-YEAR	5-YEAR
		construct of a new, qualifying energy-efficient home, and (6) above-the-line deduction for commercial building energy improvements.[23]	

BEYOND THE EXTENDERS

While the PATH Act focuses primarily on provisions for temporary and permanent extension and modification of tax incentives, over 80 unrelated provisions were integrated into the legislation. Several noteworthy non-extender provisions include:

- 529 Plans. Improvements to Code § 529 provisions that include the ***modification of the definition of qualified higher education expenses to include computer equipment and technology*** and the ***treatment of a refund of tuition paid with distributions from a 529 account as a qualified expense*** if the amount is re-contributed to the same 529 account within 60 days of the refund.

- Special Needs Planning. Adding flexibility to Code § 529A concerning ABLE accounts (tax-free savings accounts designed for disabled individuals to preserve their access to federal and state provided benefits) by eliminating the requirement that such accounts may only be located in the state of residence of the beneficiary. Accordingly, ***ABLE accounts may be set up with any state program*** determined to be best suited for the needs of the beneficiary.

- Retirement. Employer-sponsored retirement plans may be rolled over to SIMPLE IRAs provided such IRAs have existed for at least two years.[24]

- Charitable. The Act excludes from gift tax transfers made to organizations exempt from tax under (1) Code §501(c)(4) (e.g., nonprofit civic organizations operated exclusively for social welfare), (2) Code §501(c)(5) (e.g., exempt labor, agricultural or horticultural organizations), and (3) Code §501(c)(6) (e.g., chambers of commerce, business leagues, or real estate boards). The Act also clarifies the valuation method for the early termination of certain charitable remainder unitrusts (**CRUTs**), such as net income only CRUTs (**NICRUTs**) and net income CRUTs with a make-up feature (**NIMCRUTs**).

TAKE AWAY

The PATH Act offers a new degree of certainty to taxpayers by making numerous fundamental tax credits, deductions, and exclusions permanently available to individuals, families, and businesses. The permanency of many of these tax extenders may incentivize desirable behaviors such as charitable giving, business research and development, and energy conservation. The tax relief extension provisions, coupled with non-extender provisions, offer security and guidance to taxpayers, as well as some much-needed flexibility to existing laws.

NOTES

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[1] Code § 164(b)(5).
[2] The Act provides parity for the monthly income exclusion for employer-provided transit benefits (e.g., van pool benefits, transit passes, qualified parking, etc.). These benefits are excluded from an employee's wages for payroll tax purposes and from gross income for income tax purposes (Code § 132(f)(2)).
[3] The Child Tax Credit is a $1,000 credit. If the credit exceeds the taxpayer's tax liability, the taxpayer maybe eligible for a refundable credit equal to 15% of earned income in excess of a threshold amount. The Act permanently sets that threshold at $3,000, un-indexed for inflation (it was scheduled to revert to $14,000 in 2015) (Code § 24(d)(1)(B)). As for the Earned Income Tax Credit, the Act increases the income range for phase-out of this credit for married, joint filers by $5,000 (inflation-indexed). The credit percentage for taxpayers with 3 or more children is 45% (Code § 32(b)).
[4] Code § 108(a)(1)(E).
[5] Code § 163(h)(3)(E)(iv).
[6] Code § 41.
[7] Code § 38(c)(4)(b).
[8] Code § 179(b), (f). "Qualified real property" includes qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. The extender provision also treats air conditioning and heating units placed in service in tax years beginning after 2015 as eligible for expensing. The provision further modifies the expensing limitation with respect to qualified real property by eliminating the $250,000 cap beginning in 2016.
[9] Code § 1202(a)(4). There is also a permanent extension of the rule that eliminates such gain as an AMT preference item.
[10] Code § 1374(d)(7). Tax on such gain currently would apply at a 35% rate.
[11] Code § 871(k).
[12] Code § 168(e)(3)(E).
[13] Code § 45P. Prior to the enactment of the PATH Act, the credit only applied to employers with 50 or fewer employees.
[14] Code § 45D(f)(1)(G).
[15] Code § 51(c), (d).
[16] Code § 168(k). The Act continues to allow taxpayers to elect to accelerate the use of AMT credits in lieu of bonus depreciation under special rules for property placed in service during 2015. The provision modifies the AMT rules beginning in 2016 by increasing the amount of unused AMT credits that may be claimed in lieu of bonus depreciation. The provision also modifies bonus depreciation to include qualified improvement property.
[17] Code § 25A(i).
[18] Code § 62(a)(2)(D).
[19] Code § 222(e).
[20] Code § 170(b). Note that the provision also modifies the deduction beginning in 2016 to permit Alaska Native Corporations to deduct donations of conservation easements up to 100% of taxable income.
[21] Code § 1367(a)(2).
[22] The Act permanently extends the enhanced deduction for charitable contributions of inventory of apparently wholesome food for non-corporate business taxpayers. The Act modifies the deduction beginning in 2016 by increasing the limitation on deductible contributions of food inventory from 10% to 15% of a taxpayer's adjusted gross income (**AGI**) (15% of taxable income for a C corporation) per year (Code § 170(e)).
[23] See, respectively, Code §§ 694(c)(6)(C); 30C(g); 30D(g); 45(d); § 45L(g); and 179D(h).

[24] Code § 408(p)(1)(B).

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