

## **TAX PROVISIONS IN THE 2016 CONSOLIDATED APPROPRIATIONS ACT**

On December 18, the President signed into law the 2016 Consolidated Appropriations Act. The House, by a vote of 316 to 113, had approved the bill earlier in the day, and the Senate had swiftly passed the bill hours later by a margin of 65 to 33. In addition to funding the government through September 2016, the Appropriations Act also includes a number of tax provisions detailed in this *Hot Topic*.

### **Delay of “Cadillac” Excise Tax on High Cost Employer-Sponsored Health Coverage**

A 40% excise tax was scheduled to apply to high cost employer-sponsored health plans, effective, under pre-Act law, for tax years beginning after December 31, 2017. The tax is known as the “Cadillac tax” because it affects upper-end employer-sponsored insurance coverage. For 2018, plans subject to the tax were to be those that cost more than \$10,200 for single coverage and \$27,500 for non-single (e.g., family) coverage, with the thresholds indexed for inflation in subsequent years. The Cadillac tax will be imposed on the coverage provider - typically the health insurance provider or the entity that administers the plan benefits.

**New law.** The Act pushes back the effective date of the Cadillac tax by two years, such that it is now scheduled to go into effect for tax years beginning after December 31, 2019.

**Observation:** This tax has been subject to intense criticism and several repeal efforts by politicians on both sides of the aisle since its enactment. This delay arguably gives opponents another two years to work towards a repeal - or establishes a precedent for what could turn into a near-permanent postponement via successive delays.

### **Deductibility of Cadillac Tax on High Cost Employer-Sponsored Health Coverage**

Under pre-Act law, the Cadillac tax (see above) was a “nondeductible tax” and thus could not be deducted from the insurer's gross income (or the employer's gross income, in cases where the employer self-insures).

**New law.** The Act removes the Cadillac tax from the list of nondeductible taxes. So, when the tax goes into effect in 2020, payments will be deductible against income tax.

### **One-Year Suspension of the Annual Fee on Health Insurance Providers**

Under pre-Act law, effective for calendar years beginning after December 31, 2013, covered entities engaged in the business of providing health insurance with respect to U.S. health risks face an annual flat fee. The fee will be determined with respect to net premiums written after December 31, 2012, for health insurance for any U.S. health risk. The aggregate annual flat fee started at \$8 billion for 2014, rose to \$11.3 billion for 2015 and 2016, and was scheduled to be \$13.9 billion for 2017.

**New law.** The Act revises the effective date of the annual fee such that it applies to calendar years: (i) beginning after December 31, 2013, and ending before January 1, 2017; and (ii) beginning after December 31, 2017. In other words, it suspends the fee for 2017.

Absent further legislative change, the annual fee is scheduled to go into effect again for 2018 at \$14.3 billion and to be indexed in subsequent years by the rate of premium growth.

### **Production Tax Credit for Wind Facilities Retroactively Extended and Phased Out**

An income tax credit is allowed for the production of electricity from qualified energy resources at certain qualified facilities, including wind facilities.

Under pre-Act law, the construction of a qualifying facility had to begin before January 1, 2015.

**New law.** The Act retroactively extends the date before which construction of a qualifying wind facility must begin by five years, i.e., to January 1, 2020.

The Act also adds the following phaseout of the credit for wind facilities: for a facility, the construction of which begins after December 31, 2016, and before January 1, 2018, the credit is reduced by 20%; for a facility, the construction of which begins after December 31, 2017, and before January 1, 2019, the credit is reduced by 40%; and for a facility, the construction of which begins after December 31, 2018, and before January 1, 2020, the credit is reduced by 60%.

### **Wind Facility's Construction Date for Election to Take Energy Credit Instead of Production Tax Credit Extended and Phased Out**

A 30% business energy credit was allowed for certain energy property placed in service (fuel cell property, solar property and small wind energy property). A renewable electricity production credit is allowed for the production of electricity from qualified energy resources at qualified facilities. For qualified property that is part of qualified investment credit facilities, taxpayers can make an irrevocable election to take a 30% energy credit instead of the electricity production credit.

Under pre-Act law, the election was available for a qualified facility placed in service after 2008 and the construction of which began before January 1, 2015.

**New Law.** The Act retroactively extends the beginning construction requirement for a qualified wind facility so that the election is available for such a facility if its construction begins before January 1, 2020.

The Act also adds the following phaseout of the elected credit for wind facilities: for a facility, the construction of which begins after December 31, 2016, and before January 1, 2018, the credit is reduced by 20%; for a facility, the construction of which begins after December 31, 2017, and before January 1, 2019, the credit is reduced by 40%; and for a facility, the construction of which begins after December 31, 2018, and before January 1, 2010, the credit is reduced by 60%.

## **Solar Energy Credit Extended and Phased Out**

A taxpayer can claim a credit equal to 30% of the basis of eligible solar energy property placed in service during the year - i.e., equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for) a structure, or to provide solar process heat (but not for heating a swimming pool).

Under pre-Act law, this credit didn't apply to periods beginning after December 31, 2016.

**New law.** The Act extends and modifies the credit to apply to solar energy property, the construction of which begins before January 1, 2022.

The Act also adds a phaseout for the solar energy credit under which the "energy percentage" on which the credit is based is gradually reduced over five years, as follows: for property, the construction of which begins after December 31, 2019, and before January 1, 2021, the energy percentage is reduced from 30% to 26%; for property, the construction of which begins after December 31, 2020, and before January 1, 2022, the energy percentage is further reduced to 22%. For property, the construction of which begins after January 1, 2022, and which is not placed in service before January 1, 2024, the energy percentage is 10%.

## **Residential Energy-Efficient Solar Property Credit Extended and Phased Out**

The Code allows an individual to claim a 30% credit for qualified solar electric property expenditures made by him during the year. A qualified solar electric property expenditure is an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer. The Code also allows an individual to claim a 30% credit for "qualified solar water heating property expenditures" made by him during the year, as expenditures for property to heat water for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer, if at least half of the energy used by the property for that purpose is derived from the sun.

Under pre-Act law, these credits didn't apply to property placed in service after December 31, 2016.

**New law.** The Act extends the residential energy-efficient solar property credits for five years, to apply to property placed in service before January 1, 2022.

The Act also adds a phaseout for the residential energy-efficient solar property credits under which the "energy percentage" on which the credit is based is gradually reduced over five years, as follows: for property placed in service after December 31, 2016, and before January 1, 2020, the energy percentage is 30%; for property placed in service after December 31, 2019, and before January 1, 2021, the energy percentage is 26%; and for property placed in service after December 31, 2020, and before January 1, 2022, the energy percentage is 22%.

## **Favorable Treatment of Transportation Costs of Independent Refiners**

The Domestic Production Activities Deduction (DPAD) is computed on the basis of a taxpayer's "qualified production activities income" (QPAI). QPAI generally equals the taxpayer's domestic production gross receipts (DPGR) reduced by, among other things, the cost of goods

sold allocable to those receipts.

**New law.** A major non-tax provision in the Act is lifting the crude oil export ban - one consequence of which will be increased economic incentives to refine crude near ports or abroad, which could negatively impact refiners that aren't near ports.

To mitigate this effect, the Act provides temporary tax relief for certain independent refiners that are not "major integrated oil companies" by adding a new provision covering their oil transportation costs. Accordingly, in computing oil-related QPAI, the amount allocated to DPGR for costs related to the transportation of oil is 25% of the amount properly allocable thereunder (determined without regard to this new rule).

**Observation:** Lower costs of goods sold, for this purpose, means higher QPAI and thus a higher DPAD.

This relief applies to tax years that begin after December 31 2015, and before January 1, 2022.

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