

ENERGY TAX PROVISIONS IN THE "PROTECTING AMERICANS FROM TAX HIKES" ACT

Late on December 18, Congress passed and the President signed into law a bipartisan, bicameral agreement was reached on tax extenders - i.e., the 50 or so temporary tax provisions that are routinely extended by Congress on a one- or two-year basis - and numerous other tax provisions in the "Protecting Americans from Tax Hikes (PATH) Act of 2015" (the Act). The agreement, which makes permanent many of the individual and business extenders and contains provisions on Real Estate Investment Trusts (REITs), IRS administration and the Tax Court, and miscellaneous other provisions. This Special Study explains the energy provisions that are retroactively extended by the Act.

Nonbusiness Energy Property Credit Retroactively Extended and Modified

For qualified energy property placed in service before January 1, 2015, a taxpayer could claim a credit up to a \$500 lifetime limit (with no more than \$200 from windows and skylights) over the aggregate of the credits allowed to the taxpayer for all earlier tax years ending after December 31, 2005. The credit equaled the sum of: (1) 10% of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during the tax year, and (2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during the tax year. The credit for residential energy property expenditures couldn't exceed: (i) \$50 for an advanced main circulating fan; (ii) \$150 for any qualified natural gas, propane, or hot water boiler; and (iii) \$300 for any item of energy-efficient building property.

Qualified energy efficiency improvements were energy efficient building envelope components, such as (a) insulation materials or systems specifically and primarily designed to reduce heat loss/gain, that met criteria set by the International Energy Conservation Code (IECC); or (b) exterior windows, skylights or doors, or any metal roof with pigmented coating or asphalt roof with cooling granules specifically designed to reduce heat gain, installed on a dwelling unit that met certain Energy Star program requirements.

Under pre-Act law, the credit wasn't available for property placed in service after December 31, 2014.

New law. The Act retroactively extends the nonbusiness energy property credit for two years, to apply to property placed in service after December 31, 2014, and before January 1, 2017. The Act allows a credit of 10% of the amount paid or incurred by the taxpayer for qualified energy improvements, subject to new requirements, up to \$500.

Alternative Fuel Vehicle Refueling Property Credit Retroactively Extended

A taxpayer could, for property placed in service before January 1, 2015, claim a 30% credit for the cost of installing *non-hydrogen* alternative vehicle refueling property for use in the taxpayer's trade or business (up to \$30,000 maximum per year per location) or installed at the taxpayer's principal residence (up to \$1,000 per year per location).

Under pre-Act law, this provision didn't apply to property placed in service after December 31, 2014.

Observation: Under current law, *hydrogen-related* property remains eligible for the credit through 2016.

New law. The Act retroactively extends the alternative fuel vehicle refueling property credit for two years, to apply to property placed in service after December 31, 2014, and before January 1, 2017.

Credit for 2-Wheeled Electric Plug-in Vehicles Retroactively Extended

A taxpayer could, for vehicles purchased before January 1, 2015, claim a 10% credit on the purchase of certain electric powered 2- or 3-wheeled vehicles manufactured primarily for use on public streets, roads and highways and capable of at least 45 miles per hour. To qualify, a vehicle had to be a 2-wheeled (e.g., motor scooter) or 3-wheeled vehicle propelled to a significant extent by a rechargeable battery with a capacity of at least 2.5 kilowatt hours. The maximum credit was \$2,500.

Under pre-Act law, this credit didn't apply to vehicles purchased after December 31, 2013.

New law. The Act extends the credit for vehicles that have two wheels (i.e., electric motorcycles) acquired after December 31, 2014, and before January 1, 2017 (i.e., the credit lapsed for purchases in 2014). The credit for electric three-wheeled vehicles isn't extended.

Second Generation Biofuel Producer Credit Retroactively Extended

A producer of qualified biofuel produced after December 31, 2008, could claim a credit, as part of the alcohol fuel credit, for each gallon of "qualified second generation biofuel production". The credit was equal to the "applicable amount" (\$1.01) for each gallon of qualified second generation biofuel production.

Under pre-Act law, this credit didn't apply to second generation biofuel produced after December 31, 2014.

New law. The Act retroactively extends the second generation biofuel producer credit for two years, i.e., to production after December 31, 2008, and before January 1, 2017.

Biodiesel and Renewable Diesel Tax Credits Retroactively Extended

For fuels sold or used before January 1, 2015, the biodiesel and renewable diesel credit was allowed as a component of the general business income tax credit for fuels sold or used in the U.S. The biodiesel portion of the credit consisted of three parts: a \$1.00 per gallon biodiesel mixture credit, a \$1.00 per gallon biodiesel credit, and a 10¢ per gallon small agri-biodiesel producer credit. Renewable diesel, i.e., diesel fuel created from biomass, qualified for the above two \$1.00 credits.

Under pre-Act law, these credits weren't available for fuels sold or used after December 31, 2014.

New law. The Act retroactively extends the biodiesel fuels income tax credit for two years, i.e., through December 31, 2016.

Biodiesel Mixture Excise Tax Credit Retroactively Extended

A producer of biodiesel and renewable diesel fuel mixtures could claim an excise tax credit against the removal-at-terminal excise tax for fuels sold or used in the U.S. equal to 50¢ multiplied by the number of gallons of alternative fuel or gasoline gallon sold or used by the taxpayer.

Under pre-Act law, the credit didn't apply to any sale, use, or removal of fuel after December 31, 2014.

New law. The Act retroactively extends the excise tax credit for two years so that it applies to sales or use of biodiesel mixtures through December 31, 2016.

The Act also requires the IRS to issue guidance, within 30 days of enactment, for claims involving credits refunds during 2015.

Biodiesel Mixture Excise Tax Refund Provisions Retroactively Extended

A producer of biodiesel mixtures was entitled to an excise tax refund (or income tax credit) equal to the amount by which the sum of the fuel mixture excise tax credit components exceeded their removal-at-terminal excise tax liability.

Under pre-Act law, the credit didn't apply to any biodiesel mixture sold or used after December 31, 2014.

New law. The Act retroactively extends the excise tax credit for two years so that it applies to sales or use of biodiesel mixtures through December 31, 2016.

The Act also requires the IRS to issue guidance, within 30 days of enactment, for claims involving credits during 2015.

Production Credit for Indian Coal Facilities Retroactively Extended and Modified

A credit was available for the production of Indian coal sold to an unrelated third party from a qualified facility for a 9-year period beginning January 1, 2006, and ending December 31, 2014. The credit amounts were indexed annually for inflation using 2005 as the base year. The credit amount for 2014 was \$2.317 per ton.

A qualified Indian coal facility is a facility placed in service before January 1, 2009, that produces coal from reserves that, on June 14, 2005, were owned by a Federally recognized tribe of Indians or were held in trust by the U.S. for a tribe or its members.

Under pre-Act law, the credit for Indian coal production wasn't available for production after December 31, 2014.

The Indian coal production credit was treated as a "specified credit" (which can offset 100% of AMT) during the 4-year period beginning on the later of: (1) January 1, 2006, or (2) the date the facility was placed in service by the taxpayer.

New law. The Act retroactively extends for two years, through 2016, the \$2 per ton production tax credit for coal produced on land owned by an Indian tribe, if the facility was placed in service before 2009. A coal facility is allowed only nine years of credit. The Act modifies the credit beginning in 2016 by removing the placed-in-service-date limitation, removing the 9-year limitation, and allowing the credit to be claimed against the AMT.

Renewable Electricity Production Credit Extended

An income tax credit was allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit"). Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources.

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

New Law. The Act retroactively extends by two years the date by which construction of a qualifying facility must begin, i.e., to before January 1, 2017.

Facility's Construction Date Extended for Election to Take Energy Credit Instead of Production Tax Credit

A 30% business energy credit is allowed under for certain energy property placed in service (fuel cell property, solar property, and small wind energy property). A renewable electricity production credit is allowed (as extended; see above) 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 so that the election is available for a qualified facility which is placed in service after 2008 and the construction of which begins before January 1, 2017.

New Energy Efficient Home Credit Extended

An eligible contractor could, for homes acquired before January 1, 2015, claim a credit of

\$2,000 or \$1,000 (depending on the projected level of fuel consumption) for each qualified new energy efficient home constructed by the contractor and acquired by a person from the contractor for use as a residence during the tax year.

Under pre-Act law, the new energy efficient home credit didn't apply to homes acquired after December 31, 2014.

New law. The Act retroactively extends the credit for energy-efficient new homes for two years, i.e., to homes acquired before January 1, 2017.

Bonus Depreciation for Second Generation Biofuels Property Extended

Qualified second generation biofuel plant property qualified for first-year 50% bonus depreciation and an exemption from the alternative minimum depreciation adjustment. Qualified second generation biofuel plant property is depreciable property which was used in the U.S. solely to produce second generation biofuel, the original use of which commenced with the taxpayer, which is acquired by the taxpayer by purchase, and which was placed in service by the taxpayer before January 1, 2015. Second generation biofuel generally is liquid fuel derived by or from any qualified feedstocks and that meets EPA registration requirements.

Under pre-Act law, this provision didn't apply to depreciable property placed in service by the taxpayer after December 31, 2014.

New law. The Act retroactively extends for two years the allowance for biofuel plant property to apply to property placed in service before January 1, 2017.

Energy Efficient Commercial Building Property Deduction Extended

A deduction was allowed in an amount equal to the cost of "energy efficient commercial building property" (described in the bill summary as "energy efficient improvements to lighting, heating, cooling, ventilation, and hot water systems of commercial buildings") placed in service during the tax year. The maximum deduction for any building for any tax year was the excess (if any) of the product of \$1.80, and the square footage of the building, over the aggregate amount of the deduction for the building for all earlier tax years.

Under pre-Act law, this deduction didn't apply to property placed in service after December 31, 2014.

New law. The Act retroactively extends the deduction for two years, for property placed in service before January 1, 2017.

Deferral of Gain on Sales of Electric Transmission Property Retroactively Extended

A vertically integrated electric utility could elect to defer over eight years gain on sales of: (i) property used in the trade or business of providing electric transmission services; or (ii) any stock or partnership interest in an entity whose principal trade or business consists of providing electric transmission services to Federal Energy Regulatory Commission (FERC)-approved independent transmission companies.

Under pre-Act law, this deferral didn't apply to sales that took place after December 31, 2014.

New law. The Act retroactively extends the gain deferral provision for two years, for dispositions after December 31, 2014 and before January 1, 2017.

Alternate Fuels & Mixtures Excise Tax Credit Extended

A 50¢-per-gallon (or gasoline gallon equivalent for non-liquid fuel) excise tax credit was allowed against retail fuel excise tax liability for alternative fuel sold for use or used by a taxpayer. A credit was also allowed against removal at terminal excise tax liability for alternative fuel used to produce an alternative fuel mixture for sale or use in the taxpayer's trade or business. A taxpayer could claim an excise tax refund (or, in some cases, a credit against income tax) to the extent the taxpayer's alternative fuel or mixture excise tax credit exceeded the taxpayer's liability.

Under pre-Act law, the alternative fuel and alternative fuel mixture excise tax credit, and the refund rules, generally didn't apply for any sale or use after December 31, 2014 (after Sept. 30, 2015, for all fuels involving liquefied hydrogen).

New law. The Act retroactively extends the alternative fuel and alternative fuel mixture tax incentives through December 31, 2016.

Credit for Fuel Cell Vehicles Retroactively Extended

A taxpayer could claim a credit is for vehicles propelled by chemically combining oxygen with hydrogen and creating electricity. The base credit was \$4,000 for vehicles weighing 8,500 pounds or less. Heavier vehicles could get up to a \$40,000 credit, depending on their weight. An additional \$1,000 to \$4,000 credit was available to cars and light trucks to the extent their fuel economy exceeded the 2002 base fuel economy set forth in the Code.

Under pre-Act law, this provision didn't apply to property placed in service after December 31, 2014.

New law. The Act extends the fuel cell vehicle credit for two years, through December 31, 2016.

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