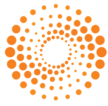

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SPECIAL REPORT: TAX INCREASE PREVENTION ACT OF 2014 EXTENDS MANY TAX BREAKS THROUGH 2014 AND PROVIDES FOR NEW TAX-FAVORED "ABLE" ACCOUNTS FOR DISABLED INDIVIDUALS

The year-end tax package H.R. 5771—signed into law by the President on December 19—includes the "Tax Increase Prevention Act of 2014" (TIPA), which extends a host of expired or expiring individual, business, and energy provisions. These "extenders" are a varied assortment of more than 50 individual and business tax deductions, tax credits, and other tax-saving laws which have been on the books for years but which technically are temporary because they have a specific end date. The new legislation generally extends these tax breaks, most of which expired at the end of 2013, for one year through 2014. In addition, the legislation provides for a new type of tax-advantaged savings program to help in meeting the financial needs of disabled individuals, the "Achieving a Better Life Experience" (ABLE) program, and also contains several other miscellaneous provisions.

While this long-awaited legislation generally resolves the uncertainty of whether the extender tax breaks will be available for 2014, their fate will soon be uncertain again as they are again set to expire at the end of that year. The justification for making the extension for only one year was apparently to allow each of the extenders to be individually examined and dealt with in a less time-constrained environment and as part of a greater tax reform effort, and perhaps made permanent or allowed to remain expired. However, whether and when that occurs, and whether the political landscape in the coming year makes tax reform more of a reality, remains to be seen.

This Special Report provides a thorough briefing on the extender provisions broken down by type (i.e., individual, business, etc.), valuable information on the new "ABLE" accounts, and coverage of other tax changes made by the new legislation. It is a valuable resource for tax professionals in describing what tax breaks are available to their businesses and clients for 2014, and also provides a list of provisions that practitioners will want to track throughout the coming year to see if they are extended beyond 2014.

INDIVIDUAL PROVISIONS

ABOVE-THE-LINE DEDUCTION FOR EDUCATOR EXPENSES EXTENDED

Eligible elementary and secondary school teachers may claim an above-the-line deduction for up to $250 per year of expenses paid or incurred for books, certain supplies, computer and other equipment, and supplementary materials used in the classroom.

Under pre-Act law, the educator expense deduction didn't apply for expenses paid or incurred in tax years after 2013.

New law. TIPA retroactively extends the educator expense deduction one year so that it applies to expenses paid or incurred in tax years through 2014. (Code Sec. 62(a)(2)(D), as amended by Act Sec. 101(a))

EXCLUSION FOR DISCHARGED HOME MORTGAGE DEBT EXTENDED

Discharge of indebtedness income from qualified principal residence debt, up to a $2 million limit ($1 million for married individuals filing separately) is excluded from gross income.

Under pre-Act law, this exclusion didn't apply to any debt discharged after Dec. 31, 2013.

New law. TIPA extends this exclusion for one year so that it applies to home mortgage debt discharged before Jan. 1, 2015. (Code Sec. 108(a)(1)(E), as amended by Act Sec. 102(a))

INCREASE IN EXCLUDIBLE EMPLOYER-PROVIDED MASS TRANSIT AND PARKING BENEFITS EXTENDED

Parity for transit commuter transportation and parking benefits extended through 2014.

Under pre-Act law, for 2014, an employee may exclude from gross income up to: (1) $250 per month for qualified parking, and (2) $130 a month for transit passes and commuter transportation in a commuter highway vehicle (including van pools). However, notwithstanding the applicable statutory limits on the exclusion of qualified transportation fringes (as adjusted for inflation), for any month beginning before Jan. 1, 2014, a parity provision required that the monthly dollar limitation for transit passes and transportation in a commuter highway vehicle had to be applied as if it were the same as the dollar limitation for that month for employer-provided parking ($245 for 2013).

New law. TIPA extends for one year the parity provision, through 2014. Thus, for 2014, it increases the monthly exclusion for employer-provided transit and vanpool benefits to $250 — the same as for the exclusion for employer-provided parking benefits. (Code Sec. 132(f)(2), as amended by Act Sec. 103(a))

MORTGAGE INSURANCE PREMIUMS AS DEDUCTIBLE QUALIFIED RESIDENCE INTEREST EXTENDED

Mortgage insurance premiums paid or accrued by a taxpayer in connection with acquisition indebtedness with respect to the taxpayer's qualified residence are treated as deductible qualified residence interest, subject to a phase-out based on the taxpayer's adjusted gross income (AGI). The amount allowable as a deduction is phased out ratably by 10% for each $1,000 by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction isn't allowed if the taxpayer's AGI exceeds $110,000 ($55,000 in the case of married individual filing a separate return).

Under pre-Act law, this provision only applied to premiums paid or accrued before Jan. 1, 2014 (and not properly allocable to any period after that date).

New law. TIPA retroactively extends this provision for one year so that a taxpayer can deduct, as qualified residence interest, mortgage insurance premiums paid or accrued before Jan. 1, 2015 (and not properly allocable to any period after 2014). (Code Sec. 163(h)(3)(E), as amended by Act Sec. 104(a))

STATE AND LOCAL SALES TAX DEDUCTION EXTENDED

Option to deduct state and local general sales and use taxes extended through 2014.

Taxpayers who itemize deductions may elect to deduct state and local general sales and use taxes instead of state and local income taxes.

Under pre-Act law, this choice was unavailable for tax years beginning after Dec. 31, 2013.

New law. TIPA retroactively extends this provision for one year so that itemizers can elect to deduct state and local sales and use taxes instead of state and local income taxes for tax years beginning before Jan. 1, 2015. (Code Sec. 164(b)(5)(I), as amended by Act Sec. 105(a))

LIBERALIZED RULES FOR QUALIFIED CONSERVATION CONTRIBUTIONS EXTENDED

A taxpayer's aggregate qualified conservation contributions (i.e., contributions of appreciated real property for conservation purposes) are allowed up to the excess of 50% of the taxpayer's contribution base over the amount of all other allowable charitable contributions (100% for qualified farmers and ranchers), with a 15-year carryover of such contributions in excess of the applicable limitation.

Under pre-Act law, these rules didn't apply to any contribution made in a tax year beginning after Dec. 31, 2013, and contributions made thereafter were to be subject to the otherwise applicable 30% limit for capital gain property (50% limit for qualified farmers and ranchers).

New law. TIPA retroactively extends for one year the 50% and 100% limitations on qualified conservation contributions of appreciated real property so that they apply to contributions made in tax years beginning before Jan. 1, 2015. (Code Sec. 170(b)(1)(E) and Code Sec. 170(b)(2)(B), as amended by Act Sec. 106(a) and 106(b))

ABOVE-THE-LINE DEDUCTION FOR HIGHER EDUCATION EXPENSES EXTENDED

Eligible individuals can deduct higher education expenses— i.e., "qualified tuition and related expenses" of the taxpayer, his spouse, or dependents— as an adjustment to gross income to arrive at adjusted gross income. The maximum deduction is $4,000 for an in individual whose AGI for the tax year doesn't exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for individuals who don't meet the above AGI limit, but whose adjusted gross income doesn't exceed $80,000 ($160,000 in the case of a joint return). No deduction is allowed for an individual whose adjusted gross income exceeds the relevant adjusted gross income limitations, for a married individual who does not file a joint return, or for an individual for whom a personal exemption deduction may be claimed by another taxpayer for the tax year.

Under pre-Act law, this deduction wasn't available for tax years beginning after Dec. 31, 2013.

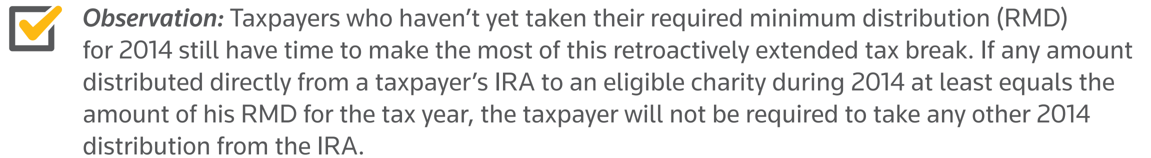
New law. TIPA retroactively extends the qualified tuition deduction for one year so that it can be claimed for tax years beginning before Jan. 1, 2015. (Code Sec. 222(e), as amended by Act Sec. 107(a))

NONTAXABLE IRA TRANSFERS TO ELIGIBLE CHARITIES EXTENDED

Taxpayers who are age 70 1/2 or older can make tax-free distributions to a charity from an Individual Retirement Account (IRA) of up to $100,000 per year. These distributions aren't subject to the charitable contribution percentage limits since they are neither included in gross income nor claimed as a deduction on the taxpayer's return.

Under pre-Act law, these rules didn't apply to distributions made in tax years beginning after Dec. 31, 2013.

New law. TIPA retroactively extends this provision for one year so that it's available for charitable IRA transfers made in tax years beginning before Jan. 1, 2015. (Code Sec. 408(d)(8)(F), as amended by Act Sec. 108(a))



Observation: Taxpayers who haven't yet taken their required minimum distribution (RMD) for 2014 still have time to make the most of this retroactively extended tax break. If any amount distributed directly from a taxpayer's IRA to an eligible charity during 2014 at least equals the amount of his RMD for the tax year, the taxpayer will not be required to take any other 2014 distribution from the IRA.

BUSINESS PROVISIONS

RESEARCH CREDIT EXTENDED

The research credit equals the sum of: (1) 20% of the excess (if any) of the qualified research expenses for the tax year over a base amount (unless the taxpayer elected an alternative simplified research credit); (2) the university basic research credit (i.e., 20% of the basic research payments); (3) 20% of the taxpayer's expenditures on qualified energy research undertaken by an energy research consortium.

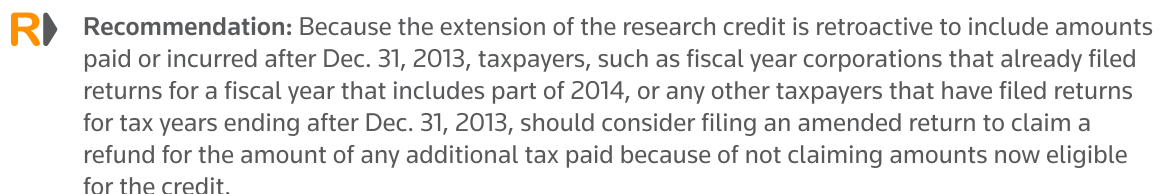
Retroactive extension of the research credit may affect already-filed returns of fiscal year corporations for a tax year that includes part of 2014

The base amount is a fixed-base percentage of the taxpayer's average annual gross receipts from a U.S. trade or business, net of returns and allowances, for the 4 tax years before the credit year, and can't be less than 50% of the year's qualified research expenses. The fixed base percentage for a non-startup company is the percentage (not exceeding 16%) that taxpayer's total qualified research expenses are of total gross receipts for tax years beginning after '83 and before '89. A 3% fixed-base percentage applies for each of the first 5 tax years in which a "startup company" (one with fewer than 3 tax years with both gross receipts and qualified research expenses) has qualified research expenses.

A taxpayer can elect an alternative simplified research credit equal to 14% of the excess of the qualified research expenses for the tax year over 50% of the average qualified research expenses for the three tax years preceding the tax year for which the credit is being determined. If a taxpayer has no qualified research expenses in any one of the three preceding tax years, the alternative simplified research credit is 6% of the qualified research expenses for the tax year for which the credit is being determined.

Under pre-Act law, the research credit didn't apply for amounts paid or accrued after Dec. 31, 2013.

New law. TIPA retroactively extends the research credit for one year to apply to amounts paid or accrued before Jan. 1, 2015. (Code Sec. 41(h)(1), as amended by Act Sec. 111(a))



Recommendation: Because the extension of the research credit is retroactive to include amounts paid or incurred after Dec. 31, 2013, taxpayers, such as fiscal year corporations that already filed returns for a fiscal year that includes part of 2014, or any other taxpayers that have filed returns for tax years ending after Dec. 31, 2013, should consider filing an amended return to claim a refund for the amount of any additional tax paid because of not claiming amounts now eligible for the credit.

WORK OPPORTUNITY TAX CREDIT EXTENDED

The work opportunity tax credit (WOTC) allows employers who hire members of certain targeted groups to get a credit against income tax of a percentage of first-year wages up to $6,000 per employee ($3,000 for qualified summer youth employees). Where the employee is a long-term family assistance (LTFA) recipient, the WOTC is a percentage of first and second year wages, up to $10,000 per employee. Generally, the percentage of qualifying wages is 40% of first-year wages; it's 25% for employees who have completed at least 120 hours, but less than 400 hours of service for the employer. For LTFA recipients, it includes an additional 50% of qualified second-year wages.

The maximum wages that can be used to calculate the WOTC for hiring a qualifying veteran generally is $6,000. However, they can be as high as $12,000, $14,000, or $24,000, depending on factors such as whether the veteran has a service-connected disability, the period of his or her unemployment before being hired, and when that period of unemployment occurred relative to the WOTC-eligible hiring date.

Under pre-Act law, wages for purposes of the WOTC didn't include any amount paid or incurred to: veterans or non-veterans who began work after Dec. 31, 2013.

New law. TIPA retroactively extends the WOTC so that it applies to eligible veterans and nonveterans who begin work for the employer before Jan. 1, 2015. (Code Sec. 51(c)(4)(B), as amended by Act Sec. 119(a))

INDIAN EMPLOYMENT CREDIT EXTENDED

The Indian employment credit is 20% of the excess, if any, of the sum of qualified wages and qualified employee health insurance costs (not in excess of $20,000 per employee) paid or incurred (other than paid under salary reduction arrangements) to qualified employees (enrolled Indian tribe members and their spouses who meet certain requirements) during the tax year, over the sum of these same costs paid or incurred in calendar year '93.

Under pre-Act law, the credit didn't apply for any tax year beginning after Dec. 31, 2013.

New law. TIPA retroactively extends the Indian employment credit for one year to tax years beginning before Jan. 1, 2015. (Code Sec. 45A(f), as amended by Act Sec. 114(a))

NEW MARKETS TAX CREDIT EXTENDED

A new markets tax credit applies for qualified equity investments to acquire stock in a community development entity (CDE). The credit is: (1) 5% for the year in which the equity interest is purchased from the CDE and for the first two anniversary dates after the purchase (for a total credit of 15%), plus (2) 6% on each anniversary date thereafter for the following four years (for a total of 24%).

Under pre-Act law, there was a $3.5 billion cap on the maximum annual amount of qualifying equity investments for 2010, 2011, 2012 and 2013. However, a carryover was allowed where the credit limitation for a calendar year exceeded the aggregate amount allocated for the year, but no amount could be carried over to any calendar year after 2018.

New law. TIPA retroactively extends the new markets tax credit for one year, through 2014. It provides up to $3.5 billion in qualified equity investments for the 2014 calendar year. The carryover period for unused new markets tax credits is also extended for one year, through 2019. (Code Sec. 45D(f), as amended by Act Sec. 115(a) and 115(b))

DIFFERENTIAL WAGE PAYMENT CREDIT FOR EMPLOYERS EXTENDED

Eligible small business employers that pay differential wages— payments to employees for periods that they are called to active duty with the U.S. uniformed services (for more than 30 days) that represent all or part of the wages that they would have otherwise received from the employer— can claim a credit. This differential wage payment credit is equal to 20% of up to $20,000 of differential pay made to an employee during the tax year. An eligible small business employer is one that: (1) employed on average less than 50 employees on business days during the tax year; and (2) under a written plan, provides eligible differential wage payments to each of its qualified employees. A qualified employee is one who has been an employee for the 91-day period immediately preceding the period for which any differential wage payment is made.

Under pre-Act law, the credit was not available for differential wages paid after Dec. 31, 2013.

New law. TIPA retroactively extends the credit for one year to differential wages paid before Jan. 1, 2015. (Code Sec. 45P(f), as amended by Act Sec. 118(a))

ENHANCED DEDUCTION FOR FOOD INVENTORY EXTENDED

A taxpayer engaged in a trade or business is eligible to claim an enhanced deduction for donations of food inventory. A C corporation's deduction equals the lesser of (a) basis plus half of the property's appreciation, or (b) twice the property's basis, for contributions of food inventory that was apparently wholesome food — i.e., meant for human consumption and meeting certain quality and labeling standards. For a taxpayer other than a C corporation, the aggregate amount of contributions of apparently wholesome food that may be taken into account for the tax year can't exceed 10% of the taxpayer's aggregate net income for that tax year from all trades or businesses from which those contributions were made for that tax year.

Under pre-Act law, this enhanced charitable deduction didn't apply for contributions after Dec. 31, 2013.

New law. TIPA retroactively extends the apparently wholesome food contribution rules for one year to contributions made before Jan. 1, 2015. (Code Sec. 170(e)(3)(C)(iv), as amended by Act Sec. 126(a))

DOMESTIC PRODUCTION ACTIVITIES DEDUCTION RULES FOR PUERTO RICO EXTENDED

Under the Code Sec. 199 domestic production activities deduction, a taxpayer is allowed a deduction from taxable income (or adjusted gross income, in the case of an individual) that is equal to 9% of the lesser of the taxpayer's qualified production activities income (QPAI) or taxable income for the tax year. QPAI is generally domestic production gross receipts (DPGR) reduced by the sum of: (1) the costs of goods sold that are allocable to those receipts; and (2) other expenses, losses, or deductions which are properly allocable to those receipts. The amount of the deduction for a tax year is limited to 50% of the wages paid by the taxpayer, and properly allocable to DPGR, during the calendar year that ends in the tax year. Wages paid to bona fide residents of Puerto Rico generally are not included in wages for purposes of computing the wage limitation amount.

A taxpayer has DPGR from: (1) any sale, exchange or other disposition, or any lease, rental or license, of qualifying production property manufactured, produced, grown or extracted by the taxpayer in whole or in significant part within the U.S.; (2) any sale, exchange, etc., of qualified films produced by the taxpayer; (3) any sale, exchange or other disposition of electricity, natural gas, or potable water produced by the taxpayer in the U.S.; (4) construction activities performed in the U.S.; or (5) engineering or architectural services performed in the U.S. for construction projects located in the U.S.

Under pre-Act law, for the first eight years of a taxpayer beginning after Dec. 31, 2005 and before Jan. 1, 2014, Puerto Rico was included in the term "U.S." in determining DPGR, but only if all of the taxpayer's Puerto Rico-sourced gross receipts were taxable under the federal income tax for individuals or corporations. In computing the 50% wage limitation, the taxpayer was allowed to take into account wages paid to bona fide residents of Puerto Rico for services performed in Puerto Rico.

New law. TIPA extends the special domestic production activities rules for Puerto Rico for one year through 2014. Under the Act, these special rules for Puerto Rico apply for the first nine tax years of a tax-payer beginning after Dec. 31, 2005 and before Jan. 1, 2015. (Code Sec. 199(d)(8)(C), as amended by Act Sec. 130(a)))

SUBPART F EXCEPTION FOR ACTIVE FINANCING INCOME EXTENDED

The U.S. parent of a foreign subsidiary engaged in a banking, financing, or similar business is eligible for deferral of tax on that subsidiary's earnings if the subsidiary is predominantly engaged in that business and conducts substantial activity with respect to the business. The subsidiary also has to pass an entity level income test to demonstrate that the income is active income and not passive income. Thus, this income from the active conduct of a banking, financing or similar business, or from the conduct of an insurance business (collectively referred to as "active financing income") is excluded from the definition of Subpart F income.

Under pre-Act law, this exception applied for tax years of foreign corporations beginning after Dec. 31, '98 and before Jan. 1, 2014, and tax years of U.S. shareholders with or within which such tax years of the foreign corporations end.

New law. TIPA retroactively extends the exclusions for active financing income for one year to tax years of a foreign corporation beginning after Dec. 31, 2013 and before Jan. 1, 2015, and tax years of U.S. shareholders with or within which such tax years of foreign corporations ended. (Code Sec. 953(e)(10) and Code Sec. 954(h)(9), as amended by Act Sec. 134(a) and 134(b))

LOOK-THROUGH RULE FOR PAYMENTS BETWEEN RELATED CFCS UNDER FOREIGN PERSONAL HOLDING COMPANY INCOME RULES EXTENDED

For tax years beginning before Jan. 1, 2014, dividends, interest, rents, and royalties received by one controlled foreign corporation (CFC) from a related CFC are not treated as foreign personal holding company income (FPHCI) to the extent attributable or properly allocable to non-subpart-F income, or income that was not effectively connected with the con duct of a U.S. trade or business of the payor (look-through treatment).

Under pre-Act law, this look-thru rule applied to tax years of foreign corporations beginning after Dec. 31, 2005 and before Jan. 1, 2014, and to tax years of U.S. shareholders with or within which such tax years of foreign corporations ended.

New law. TIPA retroactively extends the exclusions for active financing income for one year to tax years of a foreign corporation beginning after Dec. 31, 2013 and before Jan. 1, 2015, and tax years of U.S. shareholders with or within which such tax years of foreign corporations ended. (Code Sec. 953(e)(10) and Code Sec. 954(h)(9), as amended by Act Sec. 134(a) and 134(b))

REDUCTION IN S CORP RECOGNITION PERIOD FOR BUILT-IN GAINS TAX EXTENDED

An S corporation generally is not subject to tax, but instead passes through its income to its shareholders, who pay tax on their pro-rata shares of the S corporation's income. Where a corporation that was formed as a C corporation elects to become an S corporation (or where an S corporation receives property from a C corporation in a nontaxable carryover basis transfer), the S corporation is taxed at the highest corporate rate (currently 35%) on all gains that were built-in at the time of the election if the gain is recognized during a recognition period.

Under pre-Act law, for S corporation tax years beginning in 2012 and 2013, the recognition period was five years (instead of the generally applicable ten year period). Thus, the recognition period was the 5-year period beginning with the first day of the first tax year for which the corporation was an S corporation (or beginning with the date of acquisition of assets if the rules applicable to assets acquired from a C corporation applied). If an S corporation disposed of such assets in a tax year beginning in 2012 or 2013 and the disposition occurred more than five years after the first day of the relevant recognition period, gain or loss on the disposition wasn't taken into account in determining the net recognized built-in gain.

New law. TIPA provides that for determining the net recognized built-in gain for tax years beginning in 2014, the recognition period is a 5-year period— the same rule that applied to tax years beginning in 2012 and 2013. (Code Sec. 1374(d)(7)(C), as amended by Act Sec. 138(a))

EXCLUSION OF 100% OF GAIN ON CERTAIN SMALL BUSINESS STOCK EXTENDED

A taxpayer may exclude all of the gain on the disposition of qualified small business stock acquired after Sept. 27, 2010 and before Jan. 1, 2014. None of the excluded gain is subject to the alternative minimum tax.

Under pre-Act law, the exclusion was to be limited to 50% of gain for stock acquired after Dec. 31, 2013, and 7% of the excluded gain was to be an alternative minimum tax preference.

New law. The Act extends the 100% exclusion and the exception from minimum tax preference treatment for one year (i.e., for stock acquired before Jan. 1, 2015). (Code Sec. 1202(a)(4), as amended by Act Sec. 136(a))

LOWER SHAREHOLDER BASIS ADJUSTMENTS FOR CHARITABLE CONTRIBUTIONS BY S CORPORATIONS EXTENDED

Before the Pension Protection Act of 2006 (PPA), if an S corporation contributed money or other property to a charity, each shareholder took into account his pro rata share of the fair market value of the contributed property in determining his own income tax liability. The shareholder reduced his basis in his S stock by the amount of the charitable contribution that flowed through to him. The PPA amended this rule to provide that the amount of a shareholder's basis reduction in S stock by reason of a charitable contribution made by the corporation is equal to his pro rata share of the adjusted basis of the contributed property.

Under pre-Act law, the PPA rule did not apply for contributions made in tax years beginning after Dec. 31, 2013.

New law. TIPA retroactively extends the PPA rule for one year so that it applies for contributions made in tax years beginning before Jan. 1, 2015. (Code Sec. 1367(a)(2), as amended by Act Sec. 137(a))

SPECIAL RULE FOR PAYMENTS TO A CHARITY FROM A CONTROLLED ENTITY EXTENDED

For 2006–2013, interest, rent, royalties, and annuities paid to a tax-exempt organization from a controlled entity are excluded from the unrelated business taxable income (UBTI) of the tax-exempt organization, to the extent the payment reduced the net unrelated income (or increased any net unrelated loss) of the controlled entity.

For payments made pursuant to a binding written contract in effect on Aug. 17, 2006 (or renewal of such a contract on substantially similar terms), the above rule applies only to the portion of payments received or accrued in a tax year that exceeds the amount of the payment that would have been paid or accrued if the amount of such payment had been determined under the principles of Code Sec. 482 (i.e., at arm's length). A 20% penalty applies to that excess.

Under pre-Act law, these rules didn't apply to payments received or accrued after Dec. 31, 2013.

New law. TIPA retroactively extends these rules for one year, so that they apply for payments received or accrued by a tax-exempt organization through Dec. 31, 2014. (Code Sec. 512(b)(13)(E)(iv), as amended by Act Sec. 131(a))

QUALIFIED ZONE ACADEMY BOND LIMITATION EXTENDED

Qualified zone academy bonds are qualified tax credit bonds designed to allow low-income populations to save on interest costs associated with public financing school renovations, repairs, and teacher training. A taxpayer holding a qualified zone academy bond on the "credit allowance date" is entitled to a credit.

Under pre-Act law, except for carryovers of unused issuance limitations, the national bond volume limitation was $400 million for 2011, 2012, and 2013.

New law. TIPA provides that the national bond volume limitation is $400 million per year for 2011 through 2014. (Code Sec. 54E(c)(1), as amended by Act Sec. 120(a))

EXEMPTION FOR RIC INTEREST-RELATED DIVIDENDS AND SHORT-TERM CAPITAL GAINS DIVIDENDS EXTENDED

Under pre-Act law, a regulated investment company (RIC) may designate and pay (1) interest-related dividends out of interest that would generally not be taxable when received directly by a nonresident alien individual or foreign corporation and (2) short-term capital gains dividends out of short-term capital gains. RIC dividends designated as interest-related dividends and short-term capital gains dividends are generally not taxable when received by a nonresident alien individual or foreign corporation and aren't subject to the withholding tax imposed on nonresident alien individuals and foreign corporations.

Under pre-Act law, these provisions didn't apply to dividends with respect to any tax year of a RIC beginning after Dec. 31, 2013.

New law. TIPA retroactively extends the rules exempting from gross basis tax and withholding tax the interest-related dividends and short-term capital gain dividends received from a RIC, for dividends with respect to tax years of a RIC beginning before Jan. 1, 2015. (Code Sec. 871(k), as amended by Act Sec. 132(a))

TREATMENT OF RIC AS QUALIFIED INVESTMENT ENTITY EXTENDED

Gain from the disposition of a U.S. real property interest (USRPI) by a foreign person is treated as income effectively connected with a U.S. trade or business and is subject to tax and to Code Sec. 1445 withholding under the Foreign Investment in Real Property Tax Act (FIRPTA) provisions. A USRPI does not include an interest in a domestically controlled "qualified investment entity."

Under pre-Act law, before Jan. 1, 2014, a RIC that met certain requirements could be treated as a "qualified investment entity."

New law. TIPA retroactively extends the inclusion of a RIC within the definition of a "qualified investment entity" for one year, through Dec. 31, 2014. (Code Sec. 897(h)(4)(A), as amended by Act Sec. 133(a)) The change made by Act. Sec. 133(a) generally takes effect on Jan. 1, 2014, but the Act doesn't impose a withholding requirement under Code Sec. 1445 for any payment made before its enactment (i.e., Dec. 19, 2014). A RIC that withheld and remitted tax under Code Sec. 1445 on distributions made after Dec. 31, 2013 and before the enactment date isn't liable to the distributee for such withheld and remitted amounts. (Act Sec. 133(b))

EMPOWERMENT ZONE TAX BREAKS EXTENDED

The designation of an economically depressed census tract as an "Empowerment Zone" renders businesses and individual residents within such a Zone eligible for special tax incentives.

Under pre-Act law, Empowerment Zone designations expired on Dec. 31, 2013.

New law. TIPA extends for one year, through Dec. 31, 2014, the period for which the designation of an empowerment zone is in effect. (Code Sec. 1391(d) , as amended by Act Sec. 139(a)) Thus, the Act extends for one year the empowerment zone tax incentives, including: the 20% wage credit under Code Sec. 1396; liberalized Code Sec. 179 expensing rules ($35,000 extra expensing and the break allowing only 50% of expensing eligible property to be counted for purposes of the investment-based phaseout of expensing); tax-exempt bond financing under Code Sec. 1394; and deferral under Code Sec. 1397B of capital gains tax on sale of qualified assets sold and replaced.

For a designation of an empowerment zone, the nomination for which included a termination date of Dec. 31, 2013, termination shall not apply with respect to that designation if the entity which made such nomination amends the nomination to provide for a new termination date in such manner as IRS may provide. (Act Sec. 139(b))

MISCELLANEOUS OTHER PROVISIONS REPEALED, MODIFIED, OR EXTENDED

TIPA retroactively extends:

... the low-income housing 9% credit rate freeze for allocations made before Jan. 1, 2015. (Code Sec. 42(b)(2)(A), as amended by Act Sec. 112(a))

... for one year through 2014 a provision under which the basic housing allowance of a military member is excluded from income for purposes of determining the individual's qualification as a "low-income tenant" for purposes of the low-income housing tax credit program. (Sec. 3005 of the Housing Assistance Tax Act of 2008, as amended by Act Sec. 113(a))

... the railroad track maintenance credit for one year through 2014. (Code Sec. 45G(f), as amended by Act Sec. 116(a))

... the mine rescue team training credit for one year through 2014. (Code Sec. 45N(e), as amended by Act Sec. 117(a))

... the increase in the $10.50 per gallon limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands for one year through 2014. (Code Sec. 7652(f), as amended by Act Sec. 140(a))

... the possessions tax credit for American Samoa for one year through 2014. (119(a) of the Tax Relief and Health Care Act of 2006, as amended by Act Sec. 141(a))

... automatic extension of amortization periods for multiemployer defined benefit pension plans (Code Sec. 431(d)(1)(C), as amended by Act Sec. 171)

... shortfall funding method for plans in endangered or critical status. (sec. 221(c) of the Pension Protection Act of 2006, P.L. 109-280, as amended by Act Sec. 172)

Observation: Although the majority of the provisions extended by TIPA were only extended through 2014, the above two provisions relating to multiemployer defined benefit pension plans were extended through 2015.

DEPRECIATION AND EXPENSING PROVISIONS

BONUS FIRST-YEAR DEPRECIATION EXTENDED

Under pre-Act law, Code Sec. 168(k) generally allows an additional first-year depreciation deduction (also called bonus first-year depreciation) equal to 50% of the adjusted basis of qualified property acquired and placed in service after Dec. 31, 2011, and before Jan. 1, 2014 (before Jan. 1, 2015 for certain longer-lived and transportation property). The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes, but is not allowed for purposes of computing earnings and profits. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. A taxpayer may elect out of additional first-year depreciation for any class of property for any tax year. In general, an asset qualifies for the bonus depreciation allowance if:

... It falls into one of the following categories: property to which the modified accelerated cost recovery system (MACRS) rules apply with a recovery period of 20 years or less; computer software other than computer software covered by Code Sec. 197; qualified leasehold improvement property; or certain water utility property.

... It is placed in service before Jan. 1, 2014. (Certain long-production-period property and certain transportation property may be placed in service before Jan. 1, 2015)

...Its original use commences with the taxpayer. Original use is the first use to which the property is put, whether or not that use corresponds to the taxpayer's use of the property.

Under pre-Act law, these bonus depreciation provisions didn't apply to property placed in service after Dec. 31, 2013 (Dec. 31, 2014 for certain longer-lived and transportation property).

New law. TIPA extends 50% first-year bonus depreciation for one year so that it applies to qualified property acquired and placed in service before Jan. 1, 2015 (before Jan. 1, 2016 for certain longer-lived and transportation property). (Code Sec. 168(k)(2), as amended by Act Sec. 125(a)) A conforming change is made to Code Sec. 460(c)(6)(B) (relating to 50% bonus depreciation not being taken into account as a cost in applying the percentage of completion method for certain federal long-term contracts).

Observation: The Act also retroactively revives and extends through 2014 the Code Sec. 168(e)(3)(E)(iv) rule treating qualified leasehold improvement property as 15-year property. See discussion below. Thus, such property is eligible for a bonus 50% first-year depreciation deduction if placed in service before Jan. 1, 2015.

Observation: The Act also extends through 2014 the rules treating qualified restaurant property (Code Sec. 168(e)(3)(E)(v)) and qualified retail improvement property (Code Sec. 168(e)(3)(E)(ix)) as 15-year property. See discussion below. These types of property also are eligible for 50% bonus first-year depreciation under Code Sec. 168(k) if they also meet the definition of qualified leasehold improvement property.

FIRST-YEAR DEPRECIATION CAP FOR 2014 AUTOS AND TRUCKS BOOSTED BY $8,000

Under the luxury auto dollar limits of Code Sec. 280F, depreciation deductions (including Code Sec. 179 expensing) that can be claimed for passenger autos are subject to dollar limits that are annually adjusted for inflation. For passenger automobiles placed in service in 2014, the adjusted first-year limit is $3,160. For light trucks or vans, the adjusted first-year limit is $3,460. Light trucks or vans are passenger automobiles built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis that are subject to the Code Sec. 280F limits because they are rated at 6,000 points gross (loaded) vehicle weight or less.

The applicable first-year depreciation limit is increased by $8,000 (not indexed for inflation) for any passenger automobile that is "qualified property" under the bonus depreciation rules of Code Sec. 168(k) and which isn't subject to a taxpayer election to decline bonus depreciation.

Under pre-Act law, qualified property didn't include property placed in service after Dec. 31, 2013 (except for certain aircraft and certain long-production-period property that had, instead, a Dec. 31, 2014 placed-in-service deadline). Thus, under pre-Act law, the $8,000 boost in first-year depreciation allowances wasn't available for new cars and trucks purchased after 2013.

New law. TIPA provides that the placed-in-service deadline for "qualified property" is Dec. 31, 2014 (Dec. 31, 2015 for aircraft and long-production-period property). (Code Sec. 168(k)(2), as amended by Act Sec. 125)

Observation: Thus, for a passenger auto that is qualified property under Code Sec. 168(k), (and isn't subject to the election to decline bonus depreciation and AMT depreciation relief), the Act extends the placed-in-service deadline for the $8,000 increase in the first-year depreciation limit from Dec. 31, 2013 to Dec. 31, 2014.

Illustration: T, a calendar year taxpayer, places a new $40,000 vehicle into service in his business on Jan. 5, 2014. Assume that the vehicle is an auto that is "qualified property" (and an election to decline bonus depreciation and AMT depreciation relief doesn't apply to the vehicle). T is allowed first-year depreciation for 2014 of $11,160 ($3,160 general first-year allowance for 2014 plus $8,000). If the vehicle were instead a light truck or van, T is allowed first-year depreciation for 2014 of $11,460 (the $3,460 general first-year allowance for 2014 plus $8,000).

EXTENDED CHOICE TO FOREGO BONUS DEPRECIATION AND CLAIM CREDITS INSTEAD

Code Sec. 168(k)(4) generally permits a corporation to increase the AMT credit limitation by the bonus depreciation amount with respect to certain property placed in service after Dec. 31, 2010 and before Jan. 1, 2014 (Jan. 1, 2015 in the case of certain longer-lived and transportation property) if it forgoes bonus depreciation on that property.

Under pre-Act law, the above provision didn't apply to such property placed in service after Dec. 31, 2013 (Dec. 31, 2014 in the case of certain longer-lived and transportation property).

New law. TIPA Act extends for one year the election to increase the AMT limitation in lieu of bonus depreciation so that it applies to property placed in service before Jan. 1, 2015 (Jan. 1, 2016 in the case of certain longer-lived and transportation property). For property placed in service after Dec. 31, 2013, in tax years ending after that date, the Act provides a similar option to corporations with respect to "round four extension property," generally, property newly eligible for 50% bonus first-year depreciation under the Act's one-year extension provision, i.e., property placed in service after 2013 and before 2015 (before 2016 for the aircraft and long-production-period property). (Code Sec. 168(k)(4)(d) and Code Sec. 168(k)(4)(J), as amended by Act Sec. 125(c))

The Act further provides that a corporation that has an election in effect to claim minimum tax credits in lieu of bonus depreciation with respect to round three extension property (generally, property that was newly eligible for 50% bonus first-year depreciation under the 2012 Taxpayer Relief Act) is treated as having an election in effect for round four extension property, unless the corporation chooses otherwise. (Act Sec. 125(c)(2)(ii)) A corporation that does not have an election in effect with respect to round three extension property may also elect to claim minimum tax credits in lieu of bonus deprecation for round four extension property.

BOOSTED EXPENSING AMOUNTS FOR 2014

Under Code Sec. 179, a taxpayer, other than an estate, a trust, or certain noncorporate lessors, may elect to deduct as an expense, rather than to depreciate, up to a specified amount of the cost of new or used tangible personal property placed in service during the tax year in the taxpayer's trade or business. The maximum annual expensing amount generally is reduced dollar-for-dollar by the amount of Code Sec. 179 property placed in service during the tax year in excess of a specified investment ceiling. Amounts ineligible for expensing due to excess investments in expensing-eligible property can't be carried forward and expensed in a subsequent year. Rather, they can only be recovered through depreciation. The amount eligible to be expensed for a tax year can't exceed the taxable income derived from the taxpayer's active conduct of a trade or business. And any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding tax years.

For tax years beginning in 2013: (1) the dollar limitation on the expensing deduction was $500,000; and (2) the investment-based reduction in the dollar limitation began to take effect when property placed in service in the tax year exceeds $2,000,000 (the investment ceiling). Under the 2013 limits, the Code Sec. 179 deduction didn't phase out completely until the cost of expensing-eligible property exceeded $2,500,000 ($2,000,000 (investment ceiling) + $500,000 (dollar limit)).

Under pre-Act law, for tax years beginning after 2013, the maximum expensing limit dropped to $25,000, and the investment ceiling dropped to $200,000. Thus, the Code Sec. 179 deduction phased out completely when the cost of expensing-eligible property exceeded $225,000 ($200,000 (investment ceiling) + $25,000 (dollar limit)).

In general, under pre-Act law, property is eligible for Code Sec. 179 expensing if it is:

... tangible property that's Code Sec. 1245 property (generally, machinery and equipment), depreciated under the MACRS rules of Code Sec. 168, regardless of its depreciation recovery period;

... for any tax year beginning in 2010, 2011, 2012, or 2013, up to $250,000 of qualified real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property); or

... off-the-shelf computer software, but only if placed in service in a tax year beginning before 2014.

Under pre-Act law, for tax years beginning before 2014, an expensing election or specification of property to be expensed may be revoked without IRS's consent, but, if revoked, can't be reelected.

New law. TIPA retroactively extends for one year the increased $500,000 maximum expensing amount under Code Sec. 179 and the increased $2 million investment-based phaseout amount. Thus, these increased amounts will continue to apply for qualified property placed in service in tax years beginning after Dec. 31, 2013 and before Jan. 1, 2015. For qualified property placed in service in tax years beginning after 2014, the maximum expensing amount is again scheduled to drop to $25,000 and the investment-based phaseout amount is scheduled to drop to $200,000. (Code Sec. 179(b), as amended by Act Sec. 127)

The Act also provides that:

Boosted expensing limit of $500,000 applies for 2014 instead of scheduled drop to $25,000.

... Off-the-shelf computer software is expensing-eligible property if placed in service in a tax year beginning before 2015 (a 1-year extension). (Code Sec. 179(d)(1)(A)(ii))

... For tax years beginning before 2015 (also a 1-year extension), an expensing election or specification of property to be expensed may be revoked without IRS's consent. But, if such an election is revoked, it can't be made again. (Code Sec. 179(c)(2))

... For any tax year beginning in 2010, 2011, 2012, 2013, 2014, or 2014, up to $250,000 of qualified real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) is eligible for expensing under Code Sec. 179. (Code Sec. 179(f)(1))

Observation: The expensing break is enhanced by the de minimis safe harbor in the capitalization regs that allows businesses to elect to expense their outlays for "lower-cost" business assets. Under this safe harbor, which applies to an amount paid during the tax year to acquire or produce a unit of property (UOP), or acquire a material or supply, and generally applies to amounts paid in tax years beginning on or after Jan. 1, 2014, qualifying businesses with an applicable financial statement (AFS) can, assuming the UNICAP rules don't apply, expense eligible property if the amount paid doesn't exceed $5,000 per invoice (or per item as substantiated by the invoice). If the taxpayer does not have an AFS, the same rule applies except that the amount paid for eligible property can't exceed $500 per invoice (or per item as substantiated by the invoice). Both the $5,000 and $500 amounts can be changed by published IRS guidance.

Observation: Under Code Sec. 179(d)(1)(A)(i), "section 179 property" generally is any tangible property to which Code Sec. 168 applies. Thus, assets to which the de minimis election applies (and which aren't capitalized and depreciated) should not be counted in determining either the Code Sec. 179 maximum expensing limit or the investment ceiling.

Illustration: MidCorp, a calendar year corporation that has an AFS, has a written accounting policy at the beginning of 2014, which it follows, to expense amounts paid for property costing $5,000 or less. In 2014, it pays $750,000 to buy 500 computers at $1,500 each, and $250,000 to buy 50 high-speed network printers at $5,000 each. Each computer and printer is a UOP, and the amounts paid for them meet the requirements for the de minimis safe harbor. During 2014, MidCorp also spends a total of $1,000,000 on other equipment and business assets that are not eligible for the de minimis safe harbor and instead must be capitalized. MidCorp elects to apply Reg § 1.263A-1(f) (i.e., the de minimis safe harbor rule) to amounts paid in tax years beginning on or after Jan. 1, 2013. Under the final regs, MidCorp should be able to deduct $1.5 million of the total cost of its machinery and equipment purchases during 2014 ($1 million under the de minimis safe harbor, and $500,000 under the Code Sec. 179 expensing election).

15-YEAR WRITEOFF FOR QUALIFIED LEASEHOLD AND RETAIL IMPROVEMENTS AND RESTAURANT PROPERTY EXTENDED

Qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property that was placed in service before Jan. 1, 2014 was included in the 15-year MACRS class for depreciation purposes— that is, such property was depreciated over 15 years under MACRS.

Under pre-Act law, the above rules didn't apply to property placed in service after Dec. 31, 2013.

New law. TIPA retroactively extends for one year the inclusion of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property in the 15-year MACRS class. Such property qualifies for 15-year recovery if it is placed in service before Jan. 1, 2015. (Code Sec. 168(e)(3)(E), and Code Sec. 168(e)(8)(E), as amended by Act Sec. 122(a))

7-YEAR WRITEOFF FOR MOTORSPORT RACING TRACK FACILITIES EXTENDED

A short 7-year cost recovery period applies to property used for land improvement and support facilities at motorsports entertainment complexes.

Under pre-Act law, the short writeoff period only applied for property placed in service on or before Dec. 31, 2013.

New law. TIPA retroactively extends for one year the 7-year straight line cost recovery period for motorsports entertainment complexes. The quick writeoff applies to qualifying motorsports entertainment complexes placed in service before Jan. 1, 2015. (Code Sec. 168(i)(15)(D), as amended by Act Sec. 123(a))

EXPENSING ELECTION FOR COSTS OF FILM AND TV PRODUCTION EXTENDED

Taxpayers may elect to expense production costs of qualified film and television (TV) productions in the U.S. Expensing doesn't apply to the part of the cost of any qualifying film or TV production that exceeded $15 million for each qualifying production. The limit is $20 million if production expenses were "significantly incurred" in areas (1) eligible for designation as a low-income community or (2) eligible for designation by the Delta Regional Authority (a federal-state partnership covering parts of certain states) as a distressed county or isolated area of distress.

Under pre-Act law, these rules didn't apply to qualified film and TV productions beginning after Dec. 31, 2013.

New law. TIPA retroactively extends for one year the expensing election for costs of film and TV production. The election applies to qualified film and TV productions beginning before Jan. 1, 2015. (Code Sec. 181(f), as modified by Act Sec. 129)

MISCELLANEOUS OTHER PROVISIONS EXTENDED

In addition to the above, TIPA retroactively extends the following provisions for one year:

... Classification of certain race horses as 3-year property, for horses placed in service before Jan. 1, 2015 (regardless of age when placed in service). (Code Sec. 168, as modified by Act Sec. 121(a))

... Accelerated depreciation for business property on an Indian reservation, for property placed in service before Jan. 1, 2015. (Code Sec. 168(j), as modified by Act Sec. 124(a))

... Election to treat 50% of the cost of any qualified mine safety equipment as an expense in the tax year in which the equipment is placed in service, for property placed in service before Jan. 1, 2015. (Code Sec. 179E, as modified by Act Sec. 128)

ENERGY PROVISIONS

NONBUSINESS ENERGY PROPERTY CREDIT EXTENDED

For qualified energy property placed in service before 2014, a taxpayer may 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 Dec. 31, 2005. The credit equals 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 can'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.

Under pre-Act law, the credit wasn't available for property placed in service after Dec. 31, 2013.

New law. TIPA retroactively extends the nonbusiness energy property credit for one year, to apply to property placed in service after Dec. 31, 2013, and before Jan. 1, 2015. (Code Sec. 25C(g)(2), as amended by Act Sec. 151(a)) Thus, taxpayers can claim a credit on the cost of qualified energy efficiency improvements and residential energy property expenditures, with a lifetime credit limit of $500 ($200 for windows and skylights), for property placed in service through 2014. (Code Sec. 25C(g)(2), as amended by Act Sec. 151)

SECOND GENERATION BIOFUEL PRODUCER CREDIT EXTENDED

A producer of qualified biofuel produced after Dec. 31, 2008, can claim a credit, as part of the alcohol fuel credit, for each gallon of "qualified second generation biofuel production." The credit is 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 Dec. 31, 2013.

New law. TIPA retroactively extends the second generation biofuel producer credit for one year, i.e., to production after Dec. 31, 2008 and before Jan. 1, 2015. (Code Sec. 40(b)(6)(H), as amended by Act Sec. 152(a))

BIODIESEL AND RENEWABLE DIESEL TAX CREDITS EXTENDED

The biodiesel and renewable diesel credit is 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 consists 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, qualifies for the two above $1.00 credits.

In addition, an excise tax credit is allowed against a taxpayer's removal-at-terminal excise tax liability under Code Sec. 4081. The credit equals $1.00 per gallon of biodiesel used by the taxpayer in producing a biodiesel mixture for sale or use in the taxpayer's trade or business. If the biodiesel mixture excise tax credit exceeds the taxpayer's liability under Code Sec. 4081, the taxpayer, subject to certain limitations, is allowed an excise tax refund equal to the amount of that excess credit.

Under pre-Act law, these credits weren't available for fuels sold or used after Dec. 31, 2013.

New law. TIPA retroactively extends all of the above rules for one year, i.e., through Dec. 31, 2014. (Code Sec. 40A(g), as amended by Act Sec. 153(a))

PRODUCTION CREDIT FOR INDIAN COAL FACILITIES EXTENDED

A credit is available for the production of Indian coal sold to an unrelated third party from a qualified facility for a eight-year period beginning Jan. 1, 2006, and ending Dec. 31, 2013. The credit amounts are indexed annually for inflation using 2005 as the base year. The credit amount for 2013 is $2.308 per ton.

A qualified Indian coal facility is a facility placed in service before Jan. 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 2014.

New law. TIPA retroactively extends the production credit for Indian coal facilities under Code Sec. 45(e)(10) for one year (through Dec. 31, 2014). (Code Sec. 45(e)(10)(A), as amended by Act Sec. 154(a))

RENEWABLE ELECTRICITY PRODUCTION CREDIT EXTENDED

An income tax credit is 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 Jan. 1, 2014.

New Law. TIPA Act retroactively extends the date by which construction of a qualifying facility must begin, for one year, i.e., to Dec. 31, 2014. (Code Sec. 45(d), as amended by Act Sec. 155(a))

NEW ENERGY EFFICIENT HOME CREDIT EXTENDED

An eligible contractor can claim a credit of $2,000 or $1,000 (depending on the projected level of fuel consumption) for each qualified new energy efficient home that is 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 Dec. 31, 2013.

New law. TIPA retroactively restores and extends the credit for energy-efficient new homes for one year, i.e., to homes acquired before Jan. 1, 2015. (Code Sec. 45L(g), as amended by Act Sec. 156(a))

BONUS DEPRECIATION FOR SECOND GENERATION BIOFUELS PROPERTY EXTENDED

Qualified second generation biofuel plant property qualifies 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 tax-payer, which is acquired by the taxpayer by purchase, and which was placed in service by the taxpayer before Jan. 1, 2014. Second generation biofuel generally is liquid fuel that is derived by or from any qualified feedstocks and meets EPA registration requirements.

Under pre-Act law, this provision didn't apply to depreciable property placed in service by the taxpayer after Dec. 31, 2013.

New law. TIPA retroactively extends for one year the allowance for biofuel plant property under Code Sec. 168(l), to apply to property placed in service before Jan. 1, 2015. (Code Sec. 168(l)(2)(A), as amended by Act Sec. 157(a))

ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION EXTENDED

A deduction is allowed in an amount equal to the cost of an "energy efficient commercial building property" placed in service during the tax year. The maximum deduction for any building for any tax year is the excess (if any) of the product of $1.80, and the square footage of the building, over the aggregate amount of the deduction under Code Sec. 179D(a) for the building for all earlier tax years.

Under pre-Act law, this deduction didn't apply to property placed in service after Dec. 31, 2013.

New law. TIPA retroactively restores and extends the deduction for one year, for property placed in service before Jan. 1, 2015. (Code Sec. 179D(h), as amended by Act Sec. 158(a))

DEFERRAL OF GAIN ON SALES OF ELECTRIC TRANSMISSION PROPERTY REINSTATED AND EXTENDED

A vertically integrated electric utility may 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 Dec. 31, 2013.

New law. TIPA retroactively restores and extends the gain deferral provisions for one year, for dispositions after Dec. 31, 2013 and before Jan. 1, 2015. (Code Sec. 451(i)(3), as amended by Act Sec. 159(a))

BIODIESEL MIXTURE EXCISE TAX CREDIT EXTENDED

A producer of biodiesel and renewable diesel fuel mixtures can claim an excise tax credit against the Code Sec. 4081 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 Dec. 31, 2013.

New law. TIPA retroactively extends the excise tax credit for one year so that it applies to sales, use, or removal of biodiesel mixtures through Dec. 31, 2014. (Code Sec. 6426(c)(6), as amended by Act Sec. 160(a)(1))

The changes made by Act. Sec. 160 generally apply to fuel sold or used after Dec. 31, 2013. The Act directs IRS to issue guidance, within 30 days of the enactment date (i.e., not later than Jan. 18, 2015), that sets out procedures and deadlines for claiming the credit for periods after Dec. 31, 2013 and before the Dec. 19, 2014 enactment date.

BIODIESEL MIXTURE EXCISE TAX REFUND PROVISIONS EXTENDED

A producer of biodiesel mixtures is 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 Code Sec. 4081 removal-at-terminal excise tax liability.

Under pre-Act law, the credit didn't apply to any biodiesel mixture sold or used after Dec. 31, 2013.

New law. TIPA retroactively extends the excise tax credit for one year so that it applies to sales or use of biodiesel mixtures through Dec. 31, 2014. (Code Sec. 6427(e)(6)(B), as amended by Act Sec. 160(a)(2))

ALTERNATE FUELS & MIXTURES EXCISE TAX CREDIT EXTENDED

A 50¢-per-gallon (or gasoline gallon equivalent for non-liquid fuel) excise tax credit is allowed against the Code Sec. 4041 retail fuel excise tax liability, for alternative fuel sold for use or used by a taxpayer. A credit is also allowed against the Code Sec. 4081 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 may 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 exceeds the taxpayer's Code Sec. 4041 or Code Sec. 4081 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 Dec. 31, 2013 (after Sept. 30, 2014, for all fuels involving liquefied hydrogen).

New law. TIPA retroactively extends the alternative fuel and alternative fuel mixture tax incentives through Dec. 31, 2014 (including those related to hydrogen). (Code Sec. 6426(d)(5) and Code Sec. 6426(e)(3), as amended by Act Sec. 160(b)(1); Code Sec. 6427(e)(6), as amended by Act Sec. 160(b)(2)) The amendments that pertain to hydrogen apply to fuel sold or used after Sept. 30, 2014. (Act Sec. 160(d)) The Act further directs IRS to issue guidance within 30 days of the enactment date (i.e., not later than Jan. 18, 2015) setting out procedures and deadlines for claiming the credit for periods after Dec. 31, 2013 and before the Dec. 19, 2014 enactment date. (Act Sec. 160(e))

"ABLE" ACCOUNTS FOR THE DISABLED

NEW TAX-ADVANTAGED ABLE ACCOUNTS

The new legislation also establishes new tax-favored accounts to assist persons with disabilities.

Under pre-Act law, there wasn't a tax-advantaged savings program specifically targeted to persons with disabilities, that was similar, for example, to a qualified tuition program (QTP, or 529 plan). A QTP provides taxpayer favorable rules for paying qualified higher education expenses. Under a QTP, a person can make nondeductible cash contributions on behalf of a designated beneficiary to an account established by a state. The earnings on the contributions build up tax-free, and distributions from the QTP are excludable to the extent used to pay qualified higher education expenses. A 10% additional tax is imposed on distributions that are includible in gross income. But the contributor can do either of the following without tax consequences: a) change the beneficiary to be a member of the prior beneficiary's family, or b) roll over amounts from one QTP to another for the same beneficiary or for a beneficiary who is a member of the prior beneficiary's family.

A "qualified disability trust"— a disability trust described in Sec. 1917(c)(2)(B)(iv) of the Social Security Act, all the beneficiaries of which are determined to be disabled (within the meaning of Sec. 1614(a)(3) of the Social Security Act)— may be used to provide financial assistance to a disabled person (the trust beneficiary) without disqualifying the beneficiary for certain government benefits. Amounts distributed to a child who is a beneficiary of a qualified disability trust are treated as earned income for purposes of the "kiddie" tax and so aren't taxed at parents' tax rates.

New law. For tax years beginning after Dec. 31, 2014, TIPA allows states to establish tax-exempt "Achieving a Better Life Experience" (ABLE) accounts to assist persons with disabilities in building an account to pay for qualified disability expenses. Similar to a QTP, a tax exemption would be allowed for an ABLE program; amounts in an ABLE account would accumulate on a tax-exempt (or, in some cases, tax-deferred) basis.

General rules on taxation of the ABLE program. A qualified ABLE account is generally exempt from income tax but is subject to the tax imposed by Code Sec. 511 on the unrelated business income of tax-exempt organizations. (Code Sec. 529A(a)) A "qualified ABLE program" (see below) is subject to the excise tax on non-plan tax-exempt entities that are parties to prohibited tax shelter transactions and subsequently listed transactions. (Code Sec. 4965(c)(8), as amended by Act Sec. 102(e)(3) Div B)) Any person may make contributions to an ABLE account. (Summary of H.R. 647) Contributions to an ABLE account aren't deductible for income tax purposes.

QUALIFIED ABLE PROGRAM DEFINED

A qualified ABLE program is a program established and maintained by a state or state agency or instrumentality that: (Code Sec. 529A(b)(1))

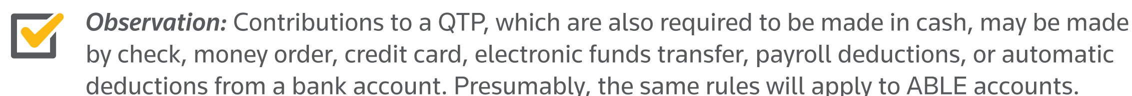
... (a) provides that non-cash contributions and contributions that exceed the annual contribution limit won't be accepted. (Non-cash contributions won't violate this rule if they are returned before the return due date). Except in the case of a rollover contribution from another account, an ABLE program must limit the aggregate contributions from all contributors for a tax year to the amount of the annual Code Sec. 2503(b) gift tax exclusion for that tax year ($14,000 for 2015, adjusted annually for inflation). (Code Sec. 529A(b)(2)) A 6% excise tax is imposed on excess contributions to an ABLE account; (Code Sec. 4973(a)(6), as amended by Act Sec. 102(b)(1) Div B))

... (b) provides separate accounting for each designated beneficiary; (Code Sec. 529A(b)(3))

... (c) limits the designated beneficiary's investment direction to no more than two times in a calendar year; (Code Sec. 529A(b)(4))

... (d) prohibits the use of any interest or any portion of an interest in the program as security for a loan; (Code Sec. 529A(b)(5)) and

...(e) provides adequate safeguards to prevent excess aggregate contributions. (Code Sec. 529A(b)(6))



Observation: Contributions to a QTP, which are also required to be made in cash, may be made by check, money order, credit card, electronic funds transfer, payroll deductions, or automatic deductions from a bank account. Presumably, the same rules will apply to ABLE accounts.

The program must limit a designated beneficiary to one ABLE account. (Code Sec. 529A(b)(1)(B)) If an ABLE account is established for a designated beneficiary, no account later established for that beneficiary is treated as an ABLE account. (Code Sec. 529A(c)(4))

WHO CAN BE A BENEFICIARY OF AN ABLE ACCOUNT

The program must allow an ABLE account to be established only for a beneficiary who is a resident of either the state that maintains the program (a "program state") or of a contracting state (Code Sec. 529A(b)(1)(C)) that hasn't established an ABLE program but has entered into a contract with a program state to provide the contracting state's residents with access to the program state's ABLE program. (Code Sec. 529A(e)(7))

The designated beneficiary of an ABLE account is an eligible individual who established the account and is its owner. (Code Sec. 529A(e)(3)) An individual is an eligible individual for a tax year if, during that tax year:

... the individual is entitled to benefits based on blindness or disability under the Social Security disability insurance program (title II of the Social Security Act) or the SSI program (title XVI of the Social Security Act), and that blindness or disability occurred before the date on which the individual reached age 26, (Code Sec. 529A(e)(1)(A)) or

... a "disability certification" for the individual has been filed with IRS for the tax year. (Code Sec. 529A(e)(1)(B))

A disability certification is one made by the eligible individual or his parent or guardian, that certifies that:

(1) the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind, within the meaning of Sec. 1614(a)(2) of the Social Security Act (Code Sec.529A(e)(2)(A)(i)(I)), and

(2) that blindness or disability occurred before the date on which the individual attained age 26. (Code Sec. 529A(e)(2)(A)(i)(II))

The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment(s), signed by a licensed physician meeting the criteria of Sec. 1861(r)(1) of the Social Security Act. (Code Sec. 529A(e)(2)(A))

Distributions from, and other amounts coming out of, ABLE accounts. No amount of a distribution from an ABLE account is includible in gross income if distributions from the account don't exceed the designated beneficiary's "qualified disability expenses." (Code Sec. 529A(c)(1)(B)(i)) Qualified disability expenses are any expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary. (Code Sec. 529A(e)(5)) They include:

... education,

... housing,

... transportation,

... employment training and support,

... assistive technology and personal support services,

... health, prevention, and wellness,

... financial management and administrative services,

... legal fees,

... expenses for oversight and monitoring,

... funeral and burial expenses, and

... other expenses that are approved under IRS regulations and consistent with Code Sec. 529A's purposes. (Code Sec. 529A(e)(5))

If the distributions exceed the qualified disability expenses, then the amount otherwise includible in gross income is reduced by an amount that bears the same ratio to the distributed amount as the qualified disability expenses bear to that amount. (Code Sec. 529A(c)(1)(B)(ii)) Distributions from a qualified ABLE program are includible in the distributee's gross income under the Code Sec. 72 annuity rules to the extent not excluded from gross income under any other income tax provision. (Code Sec. 529A(c)(1)(A))

A taxpayer who receives a distribution from a qualified ABLE program that's includible in gross income is subject to an additional 10% tax on the includible part. (Code Sec. 529A(c)(3)(A)) An exception to this rule applies to the distribution of certain contributions made during the tax year on the designated beneficiary's behalf. (Code Sec. 529A(c)(3)(C))

A payment or distribution from an ABLE account isn't taxable to the extent that the amount received is paid, no later than the 60th day after the date of the payment or distribution, into another ABLE account for the benefit of the designated beneficiary or an eligible individual who's a family member of the designated beneficiary. (Code Sec. 529A(c)(1)(C)(i))

A change in the designated beneficiary of an interest in a qualified ABLE program during a tax year isn't treated as a taxable distribution if the new beneficiary is both an eligible individual for the tax year and a member of the family of the former beneficiary. (Code Sec. 529A(c)(1)(C)(ii))

Upon the death of an eligible individual, any amounts remaining in the account (after Medicaid reimbursements) would go to the deceased's estate or to a designated beneficiary and would be subject to income tax on investment earnings, but not to the 10% penalty. (Code Sec. 529A(c)(3)(B))

EXCEPT FOR SSI, ABLE ACCOUNTS DISREGARDED FOR FEDERAL MEANS-TESTED PROGRAMS

Federal means-tested programs typically include income and resource limits that are designed to target benefits to individuals with limited income and other financial resources. These limits vary from program to program or, for state-administered programs such as Medicaid, from state to state. For example, the supplemental security income (SSI) program, which is federally-administered, has a $2,000 resource limit for individuals. In most states, SSI receipt confers Medicaid eligibility. When SSI recipients have income and resources over the limit, their SSI benefits are suspended but they remain eligible for Medicaid.

New law. Amounts in an individual's qualified ABLE account (including earnings), contributions to the individual's account, and distributions to pay qualified disability expenses are disregarded for purposes of determining an individual's eligibility for, or the amount of, any assistance or benefit authorized by any federal means-tested program. This rule overrides any other federal law that requires those amounts to be taken into account. (Act Sec. 103(a) Div B)

However, in the case of the SSI program, distributions from an ABLE account for housing expenses are considered income; and amounts (including earnings) in an ABLE account in excess of $100,000 are considered a resource of the designated beneficiary. (Act Sec. 103(a) Div B) The SSI benefits of an individual who has excess resources because the individual's ABLE account balance exceeds $100,000 aren't terminated. Instead, the benefits are suspended (Act Sec. 103(b)(1) Div B) until the individual's balance falls below $100,000. (Committee Report) The suspension of SSI benefits doesn't apply for purposes of Medicaid eligibility. (Act Sec. 103(b)(2) Div B)

Observation: 32 states and the District of Columbia provide that anyone who is eligible for SSI benefits is also eligible for Medicaid. In those states, an individual would remain eligible for Medicaid during any period where his ABLE account balance exceeded $100,000 and thus his SSI benefits were suspended.

For purposes of determining SSI eligibility, states must submit to the Commissioner of Social Security, in the manner specified by the Commissioner, monthly electronic statements on relevant distributions and account balances from all ABLE accounts. (Code Sec. 529A(d)(4), as added by Act Sec. 102(a) Div B)) This requirement is effective for tax years beginning after Dec. 31, 2014. (Act Sec. 102(e)(1) Div B)

SOME ABLE ACCOUNTS GET BANKRUPTCY EXEMPTION

Property of a bankruptcy estate doesn't include funds placed in an ABLE account no later than 365 days before the filing date of the bankruptcy petition. (11 USCS 541(b)(10) as amended by Act Sec. 104(a) Div B), but only if the designated beneficiary of the account was the debtor's child, stepchild, grandchild, or step-grandchild for the tax year for which funds were placed in the account. (11 USCS 541(b)(10)(A)) And, the exclusion is limited to $6,225 for funds placed in all ABLE accounts having the same designated beneficiary no earlier than 720 days nor later than 365 days before the filing date. (11 USCS 541(b)(10)(C)) Other rules limit this exemption; one such rule provides that no exemption is provided for contributions in excess of the annual contribution limit, which, as discussed under "Qualified ABLE program defined," above, is equal to the annual gift tax exclusion amount. (11 USCS 541(b)(10)(B))

These provisions apply to bankruptcy cases begun under title 11 of the U.S. Code on or after the date of enactment (i.e., Dec. 19, 2014). (Act Sec. 104(d) Div B)

OTHER NON-EXTENDER TAX PROVISIONS

In addition to its ABLE account provisions, Division B of the Act contains the following non-extender provisions, all but the first of which are considered to be revenue offsets:

INVESTMENT DIRECTION RULE FOR 529 PLANS

The Code provides that a program isn't treated as a QTP unless it provides that any contributor to, or designated beneficiary under, the program may not directly or indirectly direct the investment of any contributions to the program (or any earnings on the contributions). (Code Sec. 529(b)(4)) However, in Notice 2001-55, 2001-39 IRB 299, as modified by Notice 2009-1, 2009-2 IRB 250, IRS announced that it expects that final regs will provide that a program won't violate the above no-investment-direction rule if it allows a change in the investment strategy once per calendar year and/or upon a change in the designated beneficiary of the account.

New law. For tax years that begin after Dec. 31, 2014, the Act allows Code Sec. 529 QTPs to permit investment direction by an account contributor or designated beneficiary up to two times per year. (Act Sec. 105 Div B)

INLAND WATERWAYS TRUST FUND FINANCING RATE

Subject to various exemptions, the inland waterways fuel tax is imposed on any liquid used during any calendar quarter by any person as a fuel in a vessel in commercial waterway transportation. The tax consists of two components, one of which is the 20¢ per gallon inland waterways trust fund financing rate. (Code Sec. 4042(b)(1), Code Sec. 4042(b)(2)(A))

New law. For fuel used after Mar. 31, 2015, the Act increases this financing rate to 29¢ per gallon. (Act Sec. 205 Div B)

CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS

Under current law, when a business contracts with a professional employer organization (PEO) to administer its payroll functions, the business customer remains responsible for all withholding taxes with respect to its employees. Thus, even though the PEO pays the employees, the customer remains liable if the PEO fails to withhold or remit the taxes or otherwise comply with related reporting requirements.

New law. For wages paid by a certified PEO for services performed by an employee on or after January 1 of the first calendar year beginning more than 12 months after enactment (Jan. 1, 2016), the Act authorizes IRS to certify qualifying PEOs, which would allow the PEO to become solely responsible for the customer's employment taxes. To be certified by IRS, a PEO has to satisfy various requirements— such as reporting obligations, posting a bond in case the PEO fails to satisfy its employment tax withholding and payment obligations, and submitting audited financial statements— intended to ensure that the PEO properly remits wages and employment taxes. The PEO is also subject to an annual fee of $1,000. (Act Sec. 206 Div B) IRS would be required to establish the PEO certification program not later than six months before this effective date (presumably, by July 1, 2015).

EXCLUSION OF DIVIDENDS FROM CONTROLLED FOREIGN CORPORATIONS FROM THE DEFINITION OF PERSONAL HOLDING COMPANY INCOME

Under current law, the personal holding company tax, i.e., an additional 20% tax on personal holding company income (Code Sec. 541), applies to the retained passive income of corporations that are majority-owned by five or fewer individuals and more than 60% of whose income consists of certain types of passive income (Code Sec. 542) such as dividends, interest, and royalties— including dividends derived from an active trade or business of a foreign subsidiary (Code Sec. 543(a)(1)).

New law. For tax years ending on or after the date of enactment (i.e., Dec. 19, 2014), the Act excludes

dividends received from a foreign subsidiary from personal holding company income, though the dividends would remain subject to corporate income tax. (Act Sec. 207 Div B)

INFLATION ADJUSTMENT FOR CERTAIN CIVIL PENALTIES

Tax penalties generally do not contain inflation-adjustment provisions. Exceptions to this general rule apply under Code Sec. 6721(f) (failure to file correct information returns) and Code Sec. 6722(f) (failure to furnish correct payee statements), for which an inflation adjustment applies every five years.

New law. For returns required to be filed after Dec. 31, 2014, the Act indexes for inflation each calendar year the fixed-dollar civil tax penalties under current law for:

(1) failure to file a tax return or to pay tax (Code Sec. 6651);

(2) failure to file certain information returns, registration statements, and certain other statements (Code Sec. 6652);

(3) failure of a paid preparer to meet certain obligations (Code Sec. 6695);

(4) failure of a partnership (Code Sec. 6698) or an S corporation (Code Sec. 6699) to file a return; and

(5) failure to file correct information returns (Code Sec. 6721(f)) and payee statements (Code Sec. 6722(f)). (Act Sec. 208 Div B)

INCREASE IN CONTINUOUS LEVY

The effect of a levy on "specified payments" payable to or received by a taxpayer is continuous from the date the levy is first made until the levy is released, if the levy is approved by IRS. (Code Sec. 6331(h)(1)) Specified payments include certain government payments and certain amounts otherwise exempt from levy. (Code Sec. 6331(h)(2)) With exceptions not relevant here, this continuous levy attaches to up to 15% of any specified payment due to the taxpayer. (Code Sec. 6331(h)(1))
New law. For payments made after 180 days after the date of enactment (i.e., after June 17, 2015), IRS is authorized to continuously levy up to 30% of specified payments to a Medicare provider. (Act Sec. 209 Div B)

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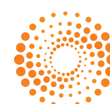

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