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Certified Public Accountants

**2015**

**PROTECTING AMERICANS FROM TAX HIKES  
ACT OF 2015**

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## **PROTECTING AMERICANS FROM TAX HIKES ACT OF 2015**

### **INTRODUCTION**

Waiting until the last minute, Congress passed the *Protecting Americans From Tax Hikes Act Of 2015 (PATH Act)* on December 18, 2015 and the President signed the Act the same day. This so-called *extenders* bill is far more substantial than similar legislation seen in previous years. The *PATH Act* extends *permanently* over 20 business and individual tax breaks (that had previously expired or were scheduled to expire in the near future); revives several popular tax breaks for 5 more years (through 2019); and, extends many others for 2 years (through 2016). In addition, the *ACT*: enhances several of the previously-expired tax breaks; makes several changes to how the IRS is administered; enacts various changes to the tax rules for real estate investment trusts (REITS); and, contains other miscellaneous changes. Several members of Congress have stated that they are hoping the *PATH Act* will pave the way for bigger tax changes in 2016 and 2017. Of course, only time will tell.

We are sending you this letter to highlight the impact of the *PATH Act* on the most significant individual and business tax breaks that had previously expired at the end of 2014.

### **SELECTED “INDIVIDUAL” TAX BREAKS MADE “PERMANENT”**

The following individual tax breaks had expired at the end of 2014. However, the *PATH Act* retroactively reinstates these provisions for 2015 and makes the provisions *permanent* for future years: **1)** School Teachers’ Deduction (up to \$250) for Certain School Supplies; **2)** Election to Deduct State and Local Sales Taxes; **3)** Enhanced American Opportunity Tax Credit up to \$2,500 for Qualified Tuition; **4)** Enhanced “Refundable” Child Tax Credit up to \$1,000 for Dependents under Age 17; **5)** Enhanced Earned Income Tax Credit (EITC); and **6)** Expanded Deduction and Carryover Limits for Charitable Contributions of Conservation Easements. *In addition*, the Act made the following popular temporary tax break *permanent*:

- **Qualifying IRA Transfers To Charities.** For the past several years, we have had a popular (but temporary) rule that allowed an individual, who is at least age 70½, to have the individual’s IRA trustee make a qualifying transfer of up to \$100,000 from his or her IRA *directly to a qualified charity*, and exclude the distribution from the individual’s income. The IRA transfer to the charity also counted toward the individual’s “required minimum distribution” (RMD) for the year. Although this provision expired after 2014, the *Path Act* retroactively reinstates the provision for 2015 and makes this provision permanent. *Therefore, this provision is available for 2015 and future years.*

### **SELECTED “INDIVIDUAL” TAX BREAKS EXTENDED “THROUGH 2016”**

The following **individual** tax breaks had expired after 2014. However, the *PATH Act* retroactively reinstates these tax breaks **for 2015 and 2016**: **1)** Deduction (up to \$4,000) for Qualified Higher Education Expenses; and **2)** Deduction for Mortgage Insurance Premiums as Qualified Residence Interest. **In addition**, the following are several other tax breaks extended by the *Act through 2016*:

- **Income Exclusion For Discharge Of Qualified Principal Residence Indebtedness.** A special rule allowing you to exclude from income the discharge (e.g., forgiveness) of all or a portion of a mortgage loan (not exceeding \$2 million) that you incurred to purchase, construct, or substantially improve your principal residence, expired after 2014. The *PATH Act* generally extends this exclusion to discharges that occur **through the end of 2016**.

**Planning Alert!** The exclusion also applies to qualifying debt **discharged after 2016** if the discharge is made under a binding written agreement **entered into before 2017**.

**Tax Tip.** This exclusion could potentially apply to debt forgiveness involving the “short sale” or foreclosure of your principal residence.

- **Credit For Energy-Efficient Improvements To Principal Residence.** The temporary 10% credit (with a life-time cap of \$500) for qualified energy-efficient home improvements expired after 2014. The *PATH Act* extends this credit for qualifying installations **made through December 31, 2016**.

**Planning Alert!** The current 30% credit for installing a qualifying solar water heater, solar electric generating property, a geothermal heat pump, or a small wind energy property in or on your residential property did not expire after 2014, however, it is **scheduled to expire after 2016**.

### **SELECTED “BUSINESS” TAX BREAKS MADE “PERMANENT”**

The following business tax breaks had expired at the end of 2014. However, the *PATH Act* retroactively reinstates these provisions for 2015 and makes the provisions **permanent** for future years: **1)** 15-Year (Instead of 39-Year) Depreciation Period for “Qualified” Leasehold Improvement Property, Restaurant Property, and Retail Improvement Property; **2)** Employer Differential Wage Credit for Payments to Military Personnel; **3)** Enhanced Charitable Contribution Rules for Qualifying Business Entities Contributing Food Inventory; **4)** Favorable S Corporation Charitable Contribution Provisions Involving Capital Gain Property; **5)** Parity Between Employer-Provided Parking and Transportation Fringe Benefits; **6)** 5-Year (Instead of 10-Year) *Recognition Period* for S Corporation Built-in Gains Tax; **7)** Exclusion of 100% of Gain on the Sale of Certain Small Business Stock for Both Regular Tax and AMT Purposes; and

8) Research and Development Credit (the *Act* also enhances the credit for certain small businesses after 2015). ***In addition***, the *Act* made the following popular temporary business tax break ***permanent***:

**Expanded Section 179 Deduction.** For tax years beginning in 2010 through 2014, the maximum Section 179 up-front deduction for the cost of qualifying new or used depreciable tangible personal property (e.g., business equipment, computers, etc.) was \$500,000. In addition, the phase-out of the 179 deduction began once qualifying 179 property acquisitions exceeded \$2,000,000. However, for tax years beginning after 2014, the maximum Section 179 deduction was scheduled to be \$25,000 and the phase out of the deduction was to begin once qualifying 179 acquisitions exceeded \$200,000. In addition, for purchases in 2010 through 2014, a taxpayer could elect for up to \$250,000 of “*qualified real property*” (discussed below) to be Section 179 property. However, no Section 179 deduction was to be allowed for *qualifying real property* for tax years beginning after 2014. The *PATH Act* makes the “***expanded***” Section 179 deduction permanent (i.e., the \$500,000 Section 179 cap; the Section 179 deduction for “qualified real property;” and the \$2,000,000 phase-out threshold). The *Act* also permanently allows taxpayers to take the Section 179 deduction for off-the-shelf computer software and to make or modify the Section 179 election on an amended return. In addition, for property placed-in-service in tax years beginning ***after 2015***, the *PATH Act* permanently indexes the Section 179 caps for inflation and removes the \$250,000 cap for “*qualified real property*.”

- **Separate \$250,000 Cap For “*Qualified Real Property*” Eliminated.** Traditionally, the up-front Section 179 deduction has been allowed only for depreciable, tangible, personal property, such as equipment, computers, vehicles, etc. However, taxpayers may “elect” to treat up to \$250,000 of “qualified *real property*” as §179 property for property **placed-in-service in tax years beginning in 2010 through 2015**. “Qualified Real Property” includes property within any of the following three categories: **1) Qualified Leasehold Improvement Property** (generally capital improvements to the interior portion of certain leased buildings that are used for nonresidential purposes); **2) Qualified Retail Improvement Property** (generally capital improvements made to certain buildings which are open to the general public for the retail sale of tangible personal property); and **3) Qualified Restaurant Property** (generally capital expenditures for the improvement, purchase, or construction of a building, if more than 50% of the building’s square footage is devoted to the preparation of, and seating for, the on-premises consumption of prepared meals).

**Tax Tip!** The *PATH Act* removes the \$250,000 cap for *Qualified Real Property* placed-in-service in ***tax years beginning after 2015***. Thus, for a calendar-year taxpayer, *Qualified Real Property placed-in-service after December 31, 2015* would be subject to the overall Section 179 cap of \$500,000 (as indexed for inflation).

**Caution!** The \$500,000 overall cap is reduced by any Section 179 deduction taken for *Qualified Real Property*.

- **When Considering The Section 179 Election Don't Overlook The Recently-Increased "De Minimis Safe Harbor" For Writing Off Certain Business Property!** The recently-released capitalization regulations, which were first effective in 2014, initially allowed taxpayers without "*applicable financial statements*" (i.e., financial statement filed with the SEC, certified audited financial statement, or financial statement required to be provided to the Federal or a State government – other than a tax return) to make a "*de minimis safe harbor*" election to deduct immediately, purchases of individual items of tangible business property (including materials and supplies) not exceeding \$500 each. *Generally effective for tax years beginning after 2015*, the IRS has recently increased this safe harbor limit *from \$500 to \$2,500*. The threshold for taxpayers with an "*applicable financial statement*" was not changed, and remains at \$5,000.

**Planning Alert!** Deductions under this safe harbor are not impacted by the Section 179 deduction (discussed above) or its dollar limits. Thus, the Section 179 deduction is allowed *in addition to* the purchases deducted under this *de minimis safe harbor*, and there is no overall aggregate dollar limit on the total amount of deductions taken under this safe harbor.

**De Minimis Safe Harbor Election.** This election is made annually (by attaching a statement to a timely filed—including extensions—original Federal income tax return). To qualify for the safe harbor, the taxpayer generally must have an *accounting procedure* (as of the beginning of the year) to expense the cost of assets costing less than a specified amount for "*nontax*" purposes as well as for tax purposes. If the taxpayer has an "*applicable financial statement*," the accounting procedure *must be in writing*. For taxpayers that do not have an "*applicable financial statement*" (most small and mid-sized business), the "*beginning of the year*" accounting procedure referred to above does not have to be in writing. However, having a written procedure may better document your "expensing procedure" in case of an IRS audit.

**Planning Alert!** In certain situations, the IRS may allow audit protection for the new \$2,500 threshold for tax years beginning before 2016. Please call our firm if you need additional information.

### **SELECTED "BUSINESS" TAX BREAKS EXTENDED THROUGH 2019**

The following **business** tax breaks had expired after 2014. However, the *PATH Act* retroactively reinstates these tax breaks *for 2015 and continues the breaks through 2019*:

**First-Year 168(k) Depreciation Deduction Extended Through 2019.** The 50% first-year 168(k)

bonus depreciation deduction expired for qualifying property placed-in-service after 2014. The *PATH Act* extends the 168(k) deduction for *qualifying* “new” business property placed-in-service **through December 31, 2019** (through December 31, 2020 for certain long-production-period property and qualifying noncommercial aircraft), as follows: **1) A 50% *bonus* depreciation allowance for qualified property placed-in-service *in 2015 through 2017*; 2) A 40% *bonus* depreciation allowance for qualified property placed-in-service *in 2018*; and 3) A 30% *bonus* depreciation allowance for qualified property placed-in-service *in 2019*.**

- **Qualifying 168(k) Bonus Depreciation Property.** Generally, property qualifies for the 168(k) depreciation deduction if it is purchased *new* and is either a “qualified leasehold improvement,” or has a depreciable life for tax purposes of *20 years or less* (e.g., machinery and equipment, furniture and fixtures, cars and light general purpose trucks, sidewalks, roads, landscaping, depreciable computer software, farm buildings, and qualified motor fuels facilities).
- ***PATH Act* Expands 168(k) Bonus Depreciation After 2015.** The *PATH Act* expands the 168(k) bonus depreciation to include: **1) “Qualified Improvement Property”** (if placed-in-service *after 2015*), which is generally a capital improvement to the interior of an existing commercial building (provided the improvement is not attributable to enlarging the building, elevators or escalators, or the internal structure framework of the building), and **2) Certain trees, vines, and plants bearing fruit or nuts when planted or grafted** (if planted or grafted after 2015), rather than when placed-in-service.
- **168(k) Depreciation Deduction For Passenger Automobiles, Trucks, And SUVs.** The maximum annual depreciation deduction (including the Section 179 deduction) for most *business automobiles* is capped at certain dollar amounts. For a business auto first placed-in-service in *calendar year 2015*, the maximum first-year depreciation deduction is generally capped at \$3,160 (\$3,460 for trucks and vans not weighing over 6,000 lbs). However, Congress previously increased the first-year depreciation cap by \$8,000 for 2008 through 2014 for qualifying new vehicles otherwise qualifying for the 168(k) depreciation deduction. The *PATH Act* extends this \$8,000 increase in the first-year depreciation deduction limitation to 2015 through 2017. For new vehicles placed-in-service after 2017, the increase in the depreciation limit will be \$6,400 for 2018, \$4,800 for 2019, and no increase for 2020 and subsequent years.
- **Election For C Corporations To Exchange Bonus Depreciation For Refundable AMT Credits.** For property placed-in-service during 2015, the *PATH Act* allows C corporations to elect to accelerate the use of AMT credits in lieu of bonus depreciation under special rules. Generally, for tax years beginning after 2015 and before 2020, the *Act* modifies the AMT rules by increasing the amount of unused AMT credits that may be claimed in lieu of bonus depreciation.

**Work Opportunity Tax Credit Extended Through 2019.** For the past two decades, many employers have taken advantage of the popular Work Opportunity Tax Credit (WOTC) by hiring certain qualified individuals. This credit previously expired for *qualified individuals* who began work after 2014. The *PATH Act* retroactively reinstates the WOTC for 2015 and continues the WOTC for qualifying individuals who ***begin work before 2020***. In addition, with respect to individuals who begin work for an employer after 2015, the Act provides a new credit equal to 40% of the first \$6,000 wages paid to a *qualified long-term unemployed individual* (i.e., a new employee who has been unemployed for 27 weeks or more).

**Tax Tip.** To encourage employers to hire more military veterans, in 2011 Congress added an expanded ***“qualified veteran”*** category to the types of employees that qualify for the WOTC. Depending on the “tax” classification of the ***“qualified veteran,”*** the maximum credit runs from \$2,400 to \$9,600, provided the *qualified veteran* is hired ***after November 21, 2011 and before 2020***. In addition, unlike the WOTC allowed for other qualifying employees, tax-exempt employers (other than government agencies) that hire ***“qualified veterans” after November 21, 2011 and before 2020***, may receive a ***“refundable”*** credit of 65% of the credit allowed to taxable employers.

**Planning Alert!** To qualify for the WOTC, all employers (including tax-exempt employers who hire “qualified veterans”) must have the new worker complete IRS **Form 8850** (“Pre-Screening Notice and Certification Request for the Work Opportunity Credit”) and submit that form to the state employment security agency ***no later than 28 days*** after the employee begins work. You can locate Form 8850 at [www.irs.gov](http://www.irs.gov). The instructions to the form provide detailed information on the categories of workers who qualify for the WOTC (including the definition of a ***“qualified veteran”***).

### **SELECTED “BUSINESS” TAX BREAKS EXTENDED THROUGH 2016**

The *PATH Act* retroactively reinstates the following tax breaks for businesses ***for 2015 and extends the provisions through 2016:***

- 1) Deductions for Certain Energy-Efficient Commercial Buildings;
- 2) Credit for Certain Energy-Efficient New Homes;
- 3) 7-Year Depreciation Period for Certain Motor Sports Racetrack Property;
- 4) A Host of Tax Benefits for Qualified Energy-Efficient Expenditures and for Qualifying Investments in Empowerment Zones; and
- 5) A 3-Year Depreciation Period for Certain Race Horses.

**FINAL COMMENTS REGARDING THE “PATH ACT OF 2015”**

This letter does not address all tax provisions contained in the *PATH Act*, but only highlights previously-expired tax breaks that were extended. Please contact us if you are interested in a tax topic that is not discussed in this letter. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. Our firm closely monitors these changes. In addition, please call us if you need additional information.

**Note:** The information contained in this letter represents a general overview of selected tax provisions contained in the *PATH Act*, and should not be relied upon without an independent, professional analysis of how any of these provisions may apply to a specific situation.

**Circular 230 Disclaimer:** Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of **1)** avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions, or **2)** promoting, marketing, or recommending to another party any transaction or matter addressed herein.