Tax Provisions that Expired in 2016 ("Tax Extenders")

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Summary

In the past, Congress has regularly acted to extend expired or expiring temporary tax provisions. Collectively, these temporary tax provisions are often referred to as "tax extenders." Most recently, in December 2015, Congress addressed tax extenders in the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016 (P.L. 114-113). This legislation extended all of the 52 provisions that had expired at the end of 2014. Unlike past tax extenders legislation, however, a number of provisions that had expired at the end of 2014 were made permanent. Several others were extended through 2019. Many provisions were temporarily extended for two years, through 2016.

Thirty-four temporary tax provisions expired at the end of 2016. Most of these provisions were extended for two years as part of the PATH Act. Options related to extenders in the 115th Congress include (1) extending all or some of the provisions that expired at the end of 2016 or (2) allowing expired provisions to remain expired. If temporary tax provisions that expired at the end of 2016 are extended, retroactive extensions may be considered so that tax incentives and provisions are available in 2017. In the past, retroactive extensions have been common for expired temporary tax provisions.

There are several reasons why Congress may choose to enact tax provisions on a temporary basis. Enacting provisions on a temporary basis provides legislators with an opportunity to evaluate the effectiveness of tax policies prior to expiration or extension. Temporary tax provisions may also be used to provide economic stimulus or disaster relief. Congress may also choose to enact tax provisions on a temporary rather than permanent basis due to budgetary considerations, as the foregone revenue from a temporary provision will generally be less than if it were permanent.

The provisions that expired at the end of 2016 are diverse in purpose. There are education- and housing-related provisions for individuals. For businesses, there are several provisions related to the territories, Indian tribes, and economic development, in addition to provisions for specific industries. There are also a number of energy-related tax provisions that expired at the end of 2016.

As lawmakers consider whether to extend expired tax provisions beyond 2016, cost is one factor. Since many provisions were made permanent in the PATH Act, a temporary extenders package for provisions that expired in 2016 would cost less than past extender packages. There are fewer provisions to extend, and many provisions with the largest revenue cost were made permanent in the PATH Act.

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Thirty-four temporary tax provisions expired at the end of 2016. Collectively, temporary tax provisions that are regularly extended as a group by Congress, rather than being allowed to expire as scheduled, are often referred to as "tax extenders."

There are several options for Congress to consider regarding temporary provisions. Provisions that expired at the end of 2016 could be extended. The extension could be retroactive. The extensions also could be short-term, long-term, or permanent. Another option would be to allow expired provisions to remain expired.

Congress may also choose to evaluate the extension of certain expiring provisions, in lieu of considering an extenders package that addresses most or all of the provisions scheduled to expire. Certain expiring energy-related provisions have received particular attention, as long-term extensions of certain energy tax benefits were provided for wind and solar, but not other technologies, in legislation enacted at the end of 2015.

In recent years, Congress has chosen to extend most, if not all, recently expired or expiring provisions as part of "tax extender" legislation. The most recent tax extender package, the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016 (P.L. 114-113), broke the typical practice of temporarily extending expiring provisions by making many expiring provisions permanent. Some contend that by making many temporary provisions permanent, the need to address extenders every year or two was negated.[1] Others have suggested that tax extenders might be addressed as part of tax reform.[2]

This report begins by reviewing the concept of tax extenders, and discusses criteria for evaluating expiring tax provisions. A list of tax provisions that expired at the end of 2016 is then provided. Information on past extensions of these expiring provisions is also provided. The report also briefly discusses recent tax extender legislation. As part of that discussion, information is included on provisions that were either made permanent or extended through 2019 in the most recent tax extenders legislation. The final sections of the report discuss the cost associated with extending expired provisions.

The Concept of "Tax Extenders"

The tax code presently contains dozens of temporary tax provisions. In the past, legislation to extend some set of these expiring provisions has been referred to by some as the "tax extender" package. While there is no formal definition of a "tax extender," the term has regularly been used to refer to the package of expiring tax provisions temporarily extended by Congress. Oftentimes, these expiring provisions are temporarily extended for a short period of time (e.g., one or two years). Over time, as new temporary provisions were routinely extended and hence added to this package, the number of provisions that might be considered "tax extenders" grew.[3] This trend was broken with the Consolidated Appropriations Act, 2016 (P.L. 114-113), which made permanent a

[1] Billy House, "Republicans Split Over Renewing Alternative-Energy Tax Breaks," *Bloomberg.com*, October 4, 2016, http://www.bloomberg.com/politics/articles/2016-10-04/republicans-split-over-renewing-alternative-energy-tax-breaks.

[2] Rebecca Kern, "Battle Lines Drawn Over Extending Energy Tax Credits," *Bloomberg BNA Daily Tax Report*, November 16, 2016.

[3] For a history of the tax extenders, see U.S. Congress, Senate Committee on Rules and Administration, *The Tax Extenders: How Congressional Rules and Outside Interests Shape Policy*, committee print, prepared by Congressional Research Service, 113th Cong., 2nd sess., December 2014, S. Prt. 113-30, pp. 441-456, available at http://www.gpo.gov/fdsys/pkg/CPRT-113SPRT89394/pdf/CPRT-113SPRT89394.pdf#page=453.

number of provisions that had been part of previous tax extender packages. As a result, there are fewer "tax extender" provisions that expired in 2016 than in previous years.

Evaluating Expiring Tax Provisions

There are various reasons Congress may choose to enact temporary (as opposed to permanent) tax provisions. Enacting provisions on a temporary basis, in theory, would provide Congress with an opportunity to evaluate the effectiveness of specific provisions before providing further extension. Temporary tax provisions may also be used to provide relief during times of economic weakness or following a natural disaster. Congress may also choose to enact temporary provisions for budgetary reasons. Examining the reason why a certain provision is temporary rather than permanent may be part of evaluating whether a provision should be extended.

Reasons for Temporary Tax Provisions

There are several reasons why Congress may choose to enact tax provisions on a temporary basis. Enacting provisions on a temporary basis may provide an opportunity to evaluate effectiveness before expiration or extension. However, this rationale for enacting temporary tax provisions is undermined if expiring provisions are regularly extended without systematic review, as is the case in practice. In 2012 testimony before the Senate Committee on Finance, Dr. Rosanne Altshuler noted that

> an expiration date can be seen as a mechanism to force policymakers to consider the costs and benefits of the special tax treatment and possible changes to increase the effectiveness of the policy. This reasoning is compelling in theory, but has been an absolute failure in practice as no real systematic review ever occurs. Instead of subjecting each provision to careful analysis of whether its benefits outweigh its costs, the extenders are traditionally considered and passed in their entirety as a package of unrelated temporary tax benefits.[4]

While most expiring tax provisions have been extended in recent years, there have been some exceptions. For example, tax incentives for alcohol fuels (e.g., ethanol), which can be traced back to policies first enacted in 1978, were not extended beyond 2011. The Government Accountability Office (GAO) had previously found that with the renewable fuel standard (RFS) mandate, tax credits for ethanol were duplicative and did not increase consumption.[5] Congress may choose not to extend certain provisions if an evaluation determines that the benefits provided by the provision do not exceed the cost (in terms of foregone tax revenue).

In recent years, some tax extender packages have included all (or nearly all) expiring provisions, while other packages have left some out, effectively allowing provisions to expire as scheduled. The tax extender package in the American Taxpayer Relief Act (ATRA; P.L. 112-240) did not include several provisions that had been extended multiple times in the past.[6] Most, but not all,

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[4] U.S. Congress, Senate Committee on Finance, *Extenders and Tax Reform: Seeking Long-Term Solutions*, Testimony of Dr. Rosanne Altshuler, 112th Cong., January 31, 2012, available at http://www.finance.senate.gov/hearings/hearing/?id=b1604e2e-5056-a032-52ff-dd661f9280f6.

[5] See U.S. Government Accountability Office, *Biofuels: Potential Effects and Challenges of Required Increases in Production and Use*, GAO-09-44, August 2009, http://www.gao.gov/new.items/d09446.pdf and U.S. Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP, March 2011, http://www.gao.gov/assets/320/315920.pdf.

[6] In addition to not including an extension of tax incentives for ethanol, ATRA did not include two charitable provisions, the enhanced deduction for donations of computer equipment and the enhanced deduction for book inventory to schools, which had first been enacted in 1997 and 2005, respectively. Other energy-related provisions that had been part of past tax extender packages but were not extended in ATRA included (1) the suspension of 100%-of-

expiring provisions were extended in the one-year, retroactive, tax extender bill enacted at the end of 2014, the Tax Increase Prevention Act (P.L. 113-295).[7] The most recent tax extender package, the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016 (P.L. 114-113), extended all expiring provisions. Unlike other recent extenders packages, the PATH Act included a permanent extension for many provisions. Other provisions were extended for five years, while most provisions were extended for two years, in more typical "tax extenders" practice.

Tax policy may also be used to address temporary circumstances in the form of economic stimulus or disaster relief. Economic stimulus measures might include bonus depreciation or generous expensing allowances.[8] Disaster relief policies might include enhanced casualty loss deductions or additional net operating loss carrybacks.[9] Other recent examples of temporary provisions that have been enacted to address special economic circumstances include the exclusion of forgiven mortgage debt from taxable income during the housing crisis of the late 2000s,[10] the payroll tax cut,[11] and the grants in lieu of tax credits to compensate for weak tax-equity markets during the economic downturn (the Section 1603 grants).[12] It has been argued that provisions that were enacted to address a temporary situation should be allowed to expire once the situation is resolved.[13]

Congress may also choose to enact tax policies on a temporary basis for budgetary reasons. If policymakers decide that legislation that reduces revenues must be paid for, it is easier to find resources to offset short-term extensions rather than long-term or permanent extensions.[14] Additionally, the Congressional Budget Office (CBO) assumes, under the current law baseline,

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net-income limitation on percentage depletion for oil and gas from marginal wells, first enacted in 1997; (2) the production tax credit (PTC) for refined coal, first enacted in 2004; and (3) the provisions that allowed for expensing of "brownfield" environmental remediation costs, first enacted in 1997. The estate tax look-through rule for regulated investment company (RIC) stock, first enacted in 2004, was also not extended.

[7] The credit for electric-drive motorcycles and three-wheeled vehicles were not included in P.L. 113-295. The provision was modified and extended in P.L. 114-113. Two other energy-related provisions were not extended past their January 1, 2014, termination date: the placed-in-service date for partial expensing of certain refinery property and the credit for energy efficient appliances.

[8] For a discussion of bonus depreciation in the context of tax extenders, see CRS Report R43432, *Bonus Depreciation: Economic and Budgetary Issues*, by (name redacted) . For background on these policies, see CRS Report RL31852, *The Section 179 and Bonus Depreciation Expensing Allowances: Current Law and Issues for the 114th Congress*, by (name redacted)

[9] For more information, see CRS Report R42839, *Tax Provisions to Assist with Disaster Recovery*, by (name redacted), (name redacted), and (name redacted)

[10] For more information, see CRS Report RL34212, *Analysis of the Tax Exclusion for Canceled Mortgage Debt Income*, by (name redacted) and (name redacted) .

[11] For more information, see CRS Report R42103, *Extending the Temporary Payroll Tax Reduction: A Brief Description and Economic Analysis*, by (name redacted) and (name redacted).

[12] For more information, see CRS Report R41635, *ARRA Section 1603 Grants in Lieu of Tax Credits for Renewable Energy: Overview, Analysis, and Policy Options*, by (name redacted) and (name redacted).

[13] This point was made in U.S. Congress, Senate Committee on Finance, *Extenders and Tax Reform: Seeking Long-Term Solutions*, Testimony of Dr. Rosanne Altshuler, 112th Cong., January 31, 2012, available at http://www.finance.senate.gov/hearings/hearing/?id=b1604e2e-5056-a032-52ff-dd661f9280f6 and U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Framework for Evaluating Certain Expiring Tax Provisions*, Testimony of Donald B. Marron, 112th Cong., June 8, 2012, available at https://waysandmeans.house.gov/UploadedFiles/Marron.pdf.

[14] U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Framework for Evaluating Certain Expiring Tax Provisions*, Testimony of Donald B. Marron, 112th Cong., June 8, 2012, available at https://waysandmeans.house.gov/UploadedFiles/Marron.pdf.

that temporary tax cuts expire as scheduled. Thus, the current law baseline does not assume that temporary tax provisions are regularly extended. Hence, if temporary expiring tax provisions are routinely extended in practice, the CBO current law baseline would tend to overstate projected revenues, making the long-term revenue outlook stronger. In other words, by making tax provisions temporary rather than permanent, these provisions have a smaller effect on the long-term fiscal outlook.[15]

Extenders as Tax Benefits[16]

Temporary tax benefits are a form of federal subsidy that treats eligible activities favorably compared to others, and channels economic resources into qualified uses. Extenders influence how economic actors behave and how the economy's resources are employed. Like all tax benefits, extenders can be evaluated by looking at the impact on economic efficiency, equity, and simplicity.[17] Temporary tax provisions may be efficient and effective in accomplishing their intended purpose, though not equitable. Alternatively, an extender may be equitable but not efficient. Policymakers may have to choose the economic objectives that matter most.

Economic Efficiency

Extenders often provide subsidies to encourage more of an activity than would otherwise be undertaken. According to economic theory, in most cases an economy best satisfies the wants and needs of its participants if markets allocate resources free of distortions from taxes and other factors. Market failures, however, may occur in some instances, and economic efficiency may actually be improved by tax distortions.[18] Thus, the ability of extenders to improve economic welfare depends in part on whether or not the extender is remedying a market failure. According to theory, a tax extender reduces economic efficiency if it is not addressing a specific market failure.

An extender is also considered relatively effective if it stimulates the desired activity better than a direct subsidy. Direct spending programs, however, can often be more successful at targeting resources than indirect subsidies made through the tax system such as tax extenders.[19]

Equity

A tax is considered to be fair when it contributes to a socially desirable distribution of the tax burden. Tax benefits such as the extenders can result in individuals or businesses with similar incomes and expenses paying differing amounts of tax, depending on whether they engage in tax-

[15] U.S. Congress, Senate Committee on Finance, *Extenders and Tax Reform: Seeking Long-Term Solutions*, Testimony of Dr. Rosanne Altshuler, 112th Cong., January 31, 2012, available at http://www.finance.senate.gov/hearings/hearing/?id=b1604e2e-5056-a032-52ff-dd661f9280f6.

[16] This section is adapted from out-of-print CRS Report RL32367, *Certain Temporary Tax Provisions that Expired in December 2009 ("Extenders")*, by (name reda cted) (available to congressional clients upon request).

[17] Using these "criteria for good tax policy" to evaluate tax extenders was discussed in U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Framework for Evaluating Certain Expiring Tax Provisions*, Testimony of Dr. Jim White, 112th Cong., June 8, 2012, available at https://waysandmeans.house.gov/UploadedFiles/White.pdf.

[18] Market failure occurs when the marginal benefit of an action does not equal the marginal cost. For example, polluting forms of energy production cause social costs that are not taken into account by the producer; hence, there is an argument for taxing this type of energy or, alternatively, subsidizing less-polluting firms.

[19] Stanley S. Surrey, "Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures," *Harvard Law Review*, vol. 83, no. 4 (February 1970), pp. 705-738.

subsidized activities. This differential treatment is a deviation from the standard of horizontal equity, which requires that people in equal positions should be treated equally.

Another component of fairness in taxation is vertical equity, which requires that tax burdens be distributed fairly among people with different abilities to pay. Extenders may be considered inequitable to the extent that they benefit those who have a greater ability to pay taxes. Those individuals with relatively less income and thus a reduced ability to pay taxes may not have the same opportunity to benefit from extenders as those with higher income. The disproportionate benefit of tax expenditures to individuals with higher incomes reduces the progressivity of the tax system, which is often viewed as a reduction in equity.

An example of the effect a tax benefit can have on vertical equity can be illustrated by considering two students claiming the above-the-line deduction for higher education expenses. Assume both students are single and have $1,000 in qualifying expenses. If one student has an income of $30,000, and the other student has an income of $60,000, the students would be in different tax brackets. The student with the lower income may fall in the 15% tax bracket, meaning the maximum value of the deduction would be $150 ($1,000 multiplied by 15%). The student with the higher income may fall in the 25% tax bracket, meaning the maximum value of the deduction would be $250 ($1,000 multiplied by 25%). Thus, the higher-income taxpayer, with presumably greater ability to pay taxes, receives a greater benefit than the lower-income taxpayer.

Simplicity

Extenders contribute to the complexity of the tax code and raise the cost of administering the tax system. Those costs, which can be difficult to isolate and measure, are rarely included in the cost-benefit analysis of temporary tax provisions. In addition to making the tax code more difficult for the government to administer, complexity also increases costs imposed on individual taxpayers. With complex incentives, individuals devote more time to tax preparation and are more likely to hire paid preparers.

Tax Provisions that Expired in 2016

Thirty-four temporary tax provisions expired at the end of 2016.[20] These provisions can be categorized as primarily affecting individuals or businesses, or being energy-related. These categorizations follow those used in past "tax extender" legislation.

Individual[21]

Four individual tax provisions expired at the end of 2016 (see **Table 1**). Three of these provisions have been included in recent tax extenders packages. The above-the-line deduction for certain higher education expenses, including qualified tuition and related expenses, was first added as a temporary provision in Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA,

[20] The Joint Committee on Taxation's list of provisions expiring at the end of 2016 includes 36 items. However, their list treats expiring components of the energy credit as three separate items. The Congressional Budget Office's list of provisions scheduled to expire at the end of 2016 includes 33 items. Their list combines the expiring energy credit components into one item (as is done in this report), but excludes the temporary increase in the limit on the amount of rum excise tax transferred or "covered over" to Puerto Rico and the United States Virgin Islands.

[21] More information on individual tax extender provisions can be found in CRS Report R43688, *Selected Recently Expired Individual Tax Provisions ("Tax Extenders"): In Brief*, by (name redacted) and (name redacted) and CRS Report R43449, *Recently Expired Housing Related Tax Provisions ("Tax Extenders"): In Brief*, by (name redacted) .

P.L. 107-16), but has regularly been extended since.[22] The other two individual extender provisions are housing-related. The provision allowing homeowners to deduct mortgage insurance premiums was first enacted in 2006 (effective for 2007).[23] The provision allowing qualified canceled mortgage debt income associated with a primary residence to be excluded from income was first enacted in 2007.[24] Both provisions were temporary when first enacted, but have been extended as part of the tax extenders in recent years.

The other individual provision that expired at the end of 2016 is one that allows taxpayers over age 65 to deduct medical expenses in excess of 7.5% of adjusted gross income (AGI). For most taxpayers, an itemized deduction for unreimbursed medical expenses is allowed to the extent that such expenses exceed 10% of AGI. The threshold for the unreimbursed medical expense deduction was increased from 7.5% to 10%, effective in 2013 for most taxpayers, as part of the Patient Protection and Affordable Care Act (P.L. 111-148). However, an exception from the increase for tax years 2013 through 2016 provided that, if either the taxpayer or their spouse was age 65 or older, the 7.5% threshold would apply during this four-year period.[25]

Three individual provisions that were previously included in the tax extenders were made permanent as part of the PATH Act. More information on provisions that were permanently extended can be found below (see **Table 2**).

Business[26]

Fourteen business tax provisions expired at the end of 2016 (see **Table 1**). All but one of these provisions have been included in recent tax extenders legislation. The largest of these provisions, as ranked by cost of the most recent two-year extension, are the empowerment zone tax incentives[27] and the credit for railroad track maintenance.[28] As discussed further below, however, the cost of extending expiring business-related provisions is less than in recent tax extenders packages. Many business-related extender provisions, particularly higher-cost provisions, were made permanent as part of the PATH Act.

Most of the business provisions scheduled to expire at the end of 2016 have been part of the tax code for close to a decade or longer. Several were first enacted in the 1990s, including the temporary increase in the limit on transfer or "cover-over" of rum excise tax revenues to Puerto

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[22] For more information, see CRS Report R41967, *Higher Education Tax Benefits: Brief Overview and Budgetary Effects*, by (name redacted) .

[23] For more information, see CRS Report R43449, *Recently Expired Housing Related Tax Provisions ("Tax Extenders"): In Brief*, by (name redacted) .

[24] Ibid.

[25] Overall, this provision was estimated to increase federal revenue by $15.2 billion over the 10-year budget window. The estimated revenue increase for 2017 was $2.5 billion, and the estimated revenue increase for 2018 was $3.7 billion. See U.S. Congress, Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 111th Congress*, March 2011, JCS-2-11.

[26] More information on business-related tax extenders can be found in CRS Report R43510, *Selected Recently Expired Business Tax Provisions ("Tax Extenders")*, by (name redacted), (name redacted), and (name redacted) and CRS Report R43541, *Recently Expired Community Assistance-Related Tax Provisions ("Tax Extenders"): In Brief*, by (name redacted)

[27] For more information, see CRS Report R43541, *Recently Expired Community Assistance-Related Tax Provisions ("Tax Extenders"): In Brief*, by (name redacted) and CRS Report R41639, *Empowerment Zones, Enterprise Communities, and Renewal Communities: Comparative Overview and Analysis*, by (name redacted) .

[28] For more information, see CRS Report R43510, *Selected Recently Expired Business Tax Provisions ("Tax Extenders")*, by (name redacted), (name redacted), and (name redacted) .

Rico and the Virgin Islands; the Qualified Zone Academy Bond allocation of bond limitation; the Indian employment tax credit; accelerated depreciation for business property on Indian reservations; and the empowerment zone tax incentives. Several others were first enacted in the mid-2000s, including the credit for railroad track maintenance; seven-year recovery for motorsport racing facilities; the domestic production activities deduction allowable for activities in Puerto Rico; the mine rescue team training credit; expensing for mine-safety equipment; and the special expensing rules for film and television production.

The one business provision expiring at the end of 2016 that has not been extended in past tax extender legislation was enacted at the end of 2015, as part of the Consolidated Appropriations Act, 2016 (P.L. 114-113). Specifically, the provision provides that for taxable years beginning in 2016, corporate qualified timber gains are subject to an alternative tax rate of 23.8%.[29]

Twelve business provisions that were previously part of the tax extenders were made permanent as part of the PATH Act. Five others were extended through 2019. The provisions that were made permanent tended to be those that, in the past, cost more to extend than provisions that remain part of the tax extenders (see **Table 2**).

Energy[30]

Sixteen energy tax provisions expired at the end of 2016 (see **Table 1**). Thirteen of these provisions were extended in the PATH Act. Of the energy tax provisions that were extended in the PATH Act, the largest, as ranked by cost of the most recent two-year extension, are the incentives for biodiesel and renewable diesel, the production tax credit (PTC) for nonwind technologies,[31] and the credit for nonbusiness energy property (also known as the credit for energy efficiency improvements to existing homes).[32] Most of the energy provisions that expired at the end of 2016 have been included in past tax extender legislation.

Division P of the Consolidated Appropriations Act, 2016 (P.L. 114-113) also included extensions of certain energy tax provisions. Specifically, the Section 48 business credit rates for certain solar property and Section 25D residential energy investment credits for certain solar property were extended through 2021 (with reduced rates in 2020 and 2021). The Section 48 business and Section 25D residential energy investment credits expire at the end of 2016 for most other types of qualifying property.[33] The production tax credit (PTC) for wind property was extended through 2019 (with reduced rates in 2017, 2018, and 2019). As noted above, the PTC for nonwind technologies was extended for two years, through 2016, in the PATH Act.

[29] This treatment for corporate timber gains, enacted for one year in P.L. 114-113, had an estimated revenue cost of $35 million.

[30] For more information on energy tax policy, including information on energy-related tax extenders, see CRS Report R43206, *Energy Tax Policy: Issues in the 114th Congress*, by (name redacted) and (name redacted) .

[31] For more information, see CRS Report R43453, *The Renewable Electricity Production Tax Credit: In Brief*, by (name redacted) .

[32] For more information, see CRS Report R42089, *Residential Energy Tax Credits: Overview and Analysis*, by (name r edacted) and (name redacted) .

[33] There is a permanent 10% tax credit for business solar and geothermal investments under Section 48. For more information on business energy investment tax credits, see CRS In Focus IF10479, *The Energy Credit: An Investment Tax Credit for Renewable Energy*, by (name redacted) . More information on the Section 25D tax credit for individual investments in renewable energy property can be found in CRS Report R42089, *Residential Energy Tax Credits: Overview and Analysis*, by (name redacte d) and (name redacted) .

For most nonsolar property, the business and residential investment tax credits are scheduled to expire at the end of 2016.[34] Many of the components of these credits that are set to expire at the end of 2016 were first added to the code, as temporary provisions, in the Energy Policy Act of 2005 (EPACT05; P.L. 109-58) and subsequently included in tax extenders legislation.[35] Under the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), certain temporary energy provisions were given long-term extensions, through 2016.

The PATH Act did not include permanent extensions of any expiring energy tax provisions. This is in contrast to individual, business, and charitable extenders, where a number of temporary provisions were made permanent.

[34] For businesses, there is a permanent 10% credit for geothermal property. The business energy credit is set to expire for hybrid solar lighting systems, geothermal heat pumps, small wind, combined heat and power, fuel cell, and stationary microturbine power plant property. The residential energy efficient property credit is set to expire for fuel cell plants, small wind energy property, and geothermal heat pump property.

[35] The expiration date for five-year cost recovery for certain energy property is linked to the expiration date of the energy credit, as provided in IRC Section 48.

Table 1. Tax Provisions that Expired at the End of 2016

(extensions in previous "tax extenders" legislation)

		P.L. 114-113		Extending Legislation							
	Cost of Permanent Extension - CBO Policy Alternatives Baseline (billions)	Extended in P.L. 114-113?	10-Year Cost Estimate of 2-Year Extension (billions)	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
Individual Provisions											
Above-the-Line Deduction for Qualified Tuition and Related Expenses	$2.2	Yes	$0.6	X	X	X	X	X			
Mortgage Insurance Premiums Treated as Qualified Residence Interest	$12.7	Yes	$2.3	X	X	X	[a]				
Exclusion of Discharge of Principal Residence Indebtedness from Gross Income for Individuals	$25.4	Yes	$5.1	X	X		X[b]				
Medical Expense Deduction Adjusted Gross Income (AGI) Floor of 7.5% for Individuals Age 65 and Over	$23.1	n/a									
Business Provisions											
Temporary Increase in Limit on Cover Over of Rum Excise Tax Revenues to Puerto Rico and the Virgin Islands	*	Yes	$0.3	X	X	X	X	X	X	X	X
Qualified Zone Academy Bonds - Allocation of Bond Limitation	$0.6	Yes	$0.2	X	X	X	X	X	X	X	X
Indian Employment Tax Credit	$0.8	Yes	$0.1	X	X	X	X	X	X	X	
Accelerated Depreciation for Business Property on Indian Reservations	$1.8	Yes[c]	$0.2	X	X	X	X	X	X	X	
American Samoa Economic Development Credit	$0.1	Yes	-i-	X	X	X	X	X			

	P.L. 114-113			Extending Legislation							
	Cost of Permanent Extension - CBO Policy Alternatives Baseline (billions)	Extended in P.L. 114-113?	10-Year Cost Estimate of 2-Year Extension (billions)	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
Credit for Railroad Track Maintenance	$2.1	Yes[c]	$0.4	X	X	X	X				
Seven-Year Recovery for Motorsport Racing Facilities	$0.4	Yes	$0.1	X	X	X	X				
Deduction Allowable with Respect to Income Attributable to Domestic Production Activities in Puerto Rico	$1.2	Yes	$0.2	X	X	X	X				
Mine Rescue Team Training Credit	$0.0	Yes	-i-	X	X	X	X				
Election to Expense Mine-Safety Equipment	$0.1	Yes	—	X	X	X	X				
Special Expensing Rules for Film and Television Production	$1.1	Yes	-i-	X	X	X					
Empowerment Zone Tax Incentives[d]	$3.1	Yes[c]	$0.5	X	X	X					
Three-Year Depreciation for Race Horses Two Years or Younger	$0.3	Yes	—	X							
Special Rate for Qualified Timber Gains	$0.4	n/a									
Energy Provisions											
Beginning-of-Construction Date for Non-Wind Facilities to Claim the Production Tax Credit (PTC) or the Investment Tax Credit (ITC) in Lieu of the PTC[e]	$2.8	Yes[c,f]	$1.4	X	X	g	h	g	h	h	h
Special Rule to Implement Electric Transmission Restructuring	$0.0	Yes	—	X	X	X	X	i			
Credit for Construction of Energy Efficient New Homes	$3.5	Yes	$0.8	X	X	X	X	X			
Energy Efficient Commercial Building Deduction	$2.1	Yes	$0.3	X			X[j]	X			
Credit for Section 25C Nonbusiness Energy Property	$6.5	Yes	$1.3	X	X	X[k]	X				

		P.L. 114-113		Extending Legislation							
	Cost of Permanent Extension - CBO Policy Alternatives Baseline (billions)	Extended in P.L. 114-113?	10-Year Cost Estimate of 2-Year Extension (billions)	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
Alternative Fuel Vehicle Refueling Property	$1.4	Yes	$0.1	X	X	X	X				
Incentives for Alternative Fuel and Alternative Fuel Mixtures	$7.4	Yes	$0.9	X	X	X	X				
Incentives for Biodiesel and Renewable Diesel[l]	$37.5	Yes	$2.6	X	X	X	X				
Second Generation (Cellulosic) Biofuel Producer Credit	$0.3	Yes	-i-	X	X						
Credit for Production of Indian Coal	$0.4	Yes[c]	$0.1	X	X						
Special Depreciation Allowance for Second Generation (Cellulosic) Biofuel Plant Property	$0.0	Yes	-i-	X	X[m]						
Alternative motor vehicle credit for qualified fuel cell vehicles[n]	$0.1	Yes	-i-								
Credit for two-wheeled plug-in electric vehicles	$0.0	Yes	-i-		X						
Energy Credit for Hybrid Solar Lighting Systems, Geothermal Heat Pumps, Small Wind, Combined Heat and Power, Fuel Cell, and Stationary Microturbine Power Plant Property[o]	$3.9	n/a					X[p]	X			
Five-Year Cost Recovery for Certain Energy Property	$4.9	n/a					X[p]	X			
Credit for Residential Energy Property[q]	$11.9	n/a					X[p]	X			

Source: CRS analysis of extending legislation; Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2016-2026*, January 4, 2017, JCX-1-17; Congressional Budget Office, *An Update to the Budget and Economic Outlook, Detailed Revenue Projections,* June 2017; and Joint Committee on Taxation, *Estimated Budget Effects of Division Q of Amendment #2 to the Senate Amendment to H.R. 2029 (Rules Committee Print 114-40), the "Protecting Americans from Tax Hikes Act of 2015,"* 114th Cong., December 16, 2015, JCX-143-15.

Notes: The cost of permanent extension is as reported by CBO for the 2018 to 2027 budget window. An "-i-" indicates an estimated revenue loss of less than $50 million between 2016 and 2025. A "*" indicates that the provision is not included in CBO's list of temporary tax provisions in the alternative fiscal policy scenario, although the provision does appear in JCT's list of expiring tax provisions. An "n/a" means consideration of extension was not applicable, for reasons explained in the text. For additional information on specific provisions, see U.S. Congress, Senate Committee on the Budget, *Tax Expenditures: Compendium of Background Material on Individual Provisions*, committee print, prepared by Congressional Research Service, 114th Cong., 2nd sess., December 2016.

a. This provision was extended as part of the Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142).

b. This provision was enacted as part of P.L. 110-142 and extended through 2012 in P.L. 110-343.

c. P.L. 114-113, in addition to extending this provision, also modified the provision.

d. Empowerment zone tax incentives include (1) designation of an empowerment zone; (2) empowerment zone tax-exempt bonds; (3) empowerment zone employment credits; (4) increased expensing under IRC Section 179; and (5) nonrecognition of gain on rollover of empowerment zone investments.

e. As part of ATRA, the expiration date for the renewable energy production tax credit (PTC) was modified such that facilities that were under construction but not yet placed in service by the end of 2013 would qualify. The option to claim the ITC in lieu of the PTC was not available prior to 2009.

f. P.L. 114-113 also extended the PTC for wind through 2019, with a phaseout starting in 2017. The cost of the PTC for wind, as enacted in P.L. 114-113, was $14.5 billion between 2016 and 2025.

g. The renewable energy PTC placed-in-service deadline was extended as part of the EPACT05 and as part of ARRA.

h. Prior to 2013, the renewable energy PTC expiration was a placed-in-service deadline. Historically, this placed-in-service deadline has been regularly extended as part of tax extenders legislation.

i. This provision was extended as part of the Energy Policy Act of 2005 (EPACT05; P.L. 109-58).

j. This provision was extended for five years, through 2013, in P.L. 110-343.

k. This provision was extended at a reduced rate of 10%, with the maximum credit reduced to $500. During 2009 and 2010, a 30% credit of up to $1,500 was available.

l. Tax incentives for biodiesel were introduced as part of the American Jobs Creation Act of 2004 (AJCA; P.L. 108-357).

m. In addition to extending this provision through 2013, ATRA expanded the definition of qualified cellulosic biofuel production to include algae-based fuels.

n. The alternative motor vehicle credit for qualified fuel cell vehicles was enacted as part of P.L. 109-58. When enacted, this provision was set to expire on December 31, 2014.

o. Solar and geothermal property has a permanent 10% tax credit. Increased credit rates for solar expire December 31, 2021.

p. The expiring provisions of the energy credit were extended for eight years, through 2016, in P.L. 110-343.

q. The credit for residential solar energy property is set to expire December 31, 2021.

Recent "Tax Extender" Legislation

The most recent "tax extenders" legislation was enacted as the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016 (P.L. 114-113). The PATH Act either extended or made permanent all of the 52 temporary tax provisions that had expired at the end of 2014.[36] As noted in **Table 1**, most of the provisions set to expire in 2016 were extended as part of the PATH Act.

The PATH Act, unlike other recent tax extender legislation, provided long-term extensions (through 2019) for a number of provisions, while making many other temporary tax provisions permanent. These changes are summarized in **Table 2**.

Of the six individual tax provisions that expired at the end of 2014, three were made permanent in the PATH Act. The provisions that were permanently extended were (1) the above-the-line deduction for teacher classroom expenses; (2) the deduction for state and local sales taxes;[37] and (3) a provision providing parity for exclusion of employer-provided mass transit and parking benefits. A permanent extension of the deduction for teacher classroom expenses had been approved by the House Committee on Ways and Means earlier in the 114th Congress. The 114th Congress had also passed legislation to make the deduction for state and local sales taxes permanent, before this provision was included in the PATH Act.[38]

Of the 30 business tax provisions that expired at the end of 2014, 12 were made permanent in the PATH Act, while another 5 were extended through the end of 2019. Many of these provisions had been extended multiple times. The research tax credit, for example, had been extended a total of 16 times since being enacted in 1981, before being modified and made permanent in the PATH Act.[39] Before being included in the PATH Act, stand-alone legislation was passed in the House in both the 113th and 114th Congresses that would have modified and made the research credit permanent. The exception under Subpart F for active financing income, which was first enacted in 1997, was another long-standing temporary provision made permanent in the PATH Act. The House Committee on Ways and Means had approved stand-alone legislation to make this provision permanent in both the 113th and 114th Congresses.

Provisions that were made permanent in the PATH Act, particularly the business provisions, included those with the largest revenue cost. The modification and permanent extension of the research credit had an estimated revenue cost of $113.2 billion over the 10-year budget window, while the costs associated with making permanent the exceptions under Subpart F for active financing income and the increase in expensing limits under Section 179 were $78.0 billion and $77.1 billion, respectively.[40] By contrast, it would cost no more than $3 billion to make permanent any single business provision scheduled to expire at the end of 2016.

[36] For more information, see CRS Report R43898, *Tax Provisions that Expired in 2014 ("Tax Extenders")*, by (name red acted) .

[37] For more information, see CRS Report RL32781, *Federal Deductibility of State and Local Taxes*, by (name red acted) and (name redacted).

[38] For more information on legislation that would have made extender provisions permanent that was either approved by the House Committee on Ways and Means, or passed the House, in the 114th Congress, see Table 3 in CRS Report R43898, *Tax Provisions that Expired in 2014 ("Tax Extenders")*, by (name redacted) .

[39] For more information, see CRS Report RL31181, *Research Tax Credit: Current Law and Policy Issues for the 114th Congress*, by (name redacted)

[40] For more information on the expensing limits under Section 179, see CRS Report RL31852, *The Section 179 and Bonus Depreciation Expensing Allowances: Current Law and Issues for the 114th Congress*, by (name redacted)

The PATH Act made permanent all four of the charitable provisions that had expired at the end of 2014 and were previously part of the tax extenders. The House had passed legislation in both the 113th and 114th Congresses that would have made these provisions permanent, but permanent extension was not enacted until the PATH Act.

As discussed above, the PATH Act provided a temporary extension for all energy-related provisions that expired at the end of 2016. Division P of the Consolidated Appropriations Act, 2016 (P.L. 114-113) included long-term extensions of certain tax benefits for wind and solar. However, no long-term or permanent extensions of energy-related provisions were included in the PATH Act.

Some of the provisions with longer-term extensions in the P.L. 114-113 included phaseouts. Specifically, the extension of 50% first-year bonus depreciation was subject to a phase down. The 50% bonus depreciation was extended through 2017, but the amount of qualifying investment that could be expensed is set to be reduced to 40% in 2018 and 30% in 2019.[41] There were also phase downs associated with the longer-term extensions of the tax credits for wind and solar. The PTC for wind was extended through 2019, although the credit amount was reduced by 20% for facilities beginning construction in 2017, 40% for facilities beginning construction in 2018, and 60% for facilities beginning construction in 2019.[42] The 30% ITC for business solar was extended through 2019 and the deadline changed from a placed-in-service deadline to a construction start date. The business solar ITC was set to be 26% for facilities beginning construction in 2020, and 22% for facilities beginning construction in 2021, so long as these facilities are placed in service before the end of 2023.[43] The business solar ITC is scheduled to return to 10% in 2022. The tax credit for residential solar was extended through 2021, with a phaseout starting in 2020.

The Tax Increase Prevention Act of 2014 (P.L. 113-295), passed late in the 113th Congress, made tax provisions that had expired at the end of 2013 available to taxpayers in the 2014 tax year. The act extended most (but not all) expiring tax provisions, and most of the provisions extended in P.L. 114-113 had been included in past tax extenders legislation. The cost of the tax extenders package enacted as P.L. 113-295 was estimated to be $41.6 billion over the 10-year budget window. Earlier in the 113th Congress, the Senate Finance Committee had reported a two-year extenders package. The House had also passed legislation that would have made permanent certain expiring provisions. Ultimately, the one-year retroactive extenders legislation is what was passed by the 113th Congress.[44]

[41] Extending 50% expensing or bonus depreciation through the budget window would cost an estimated $247.7 billion between 2018 and 2027. See Congressional Budget Office, *An Update to the Budget and Economic Outlook, Detailed Revenue Projections,* June 2017.

[42] Extending the PTC for wind beyond 2019 would cost an estimated $6.9 billion in the 2018 to 2027 budget window (with no cost before 2022). See Congressional Budget Office, *An Update to the Budget and Economic Outlook, Detailed Revenue Projections,* June 2017.

[43] Extending the construction start date for the business solar ITC would cost an estimated $7.4 billion in the 2018 to 2027 budget window (with no cost before 2024). See Congressional Budget Office, *An Update to the Budget and Economic Outlook, Detailed Revenue Projections,* June 2017.

[44] For more information on tax extender legislation in the 113th Congress, see CRS Report R43898, *Tax Provisions that Expired in 2014 ("Tax Extenders")*, by (name redacted) .

Table 2. Tax Extender Provisions Made Permanent or Extended Through 2019

(extensions in previous "tax extenders" legislation)

	P.L. 114-113		Extending Legislation							
	Extended?	10-Year Cost Estimate (billions)	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
Individual Provisions										
Above-the-Line Deduction of up to $250 for Teacher Classroom Expenses	Permanent[c]	$2.9	X	X	X	X	X	X		
Deduction for State and Local General Sales Taxes	Permanent	$42.4	X	X	X	X	X			
Parity for Exclusion for Employer-Provided Mass Transit and Parking Benefits	Permanent	$1.8	X	X	X					
Business Provisions										
Tax Credit for Research and Experimentation Expenses	Permanent[c]	$113.2	X	X	X	X	X	X	[a]	X
Work Opportunity Tax Credit	2019[c]	$9.0	X	X[b]	X	[d]	X	X	X	X
Exceptions under Subpart F for Active Financing Income	Permanent	$78.0	X	X	X	X	[e]	[e]	X	X
New Markets Tax Credit	2019	$2.6	X	X	X	X	X			
15-Year Straight-Line Cost Recovery for Qualified Leasehold, Restaurant, and Retail Improvements	Permanent	$20.3	X	X	X	X	X			
Look-Through Treatment of Payments Between Related Controlled Foreign Corporations under the Foreign Personal Holding Company Rules	2019	$7.8	X	X	X	X				
Modification of Tax Treatment of Certain Payments under Existing Arrangements to Controlling Exempt Organizations	Permanent	$0.1	X	X	X	X				
Treatment of Certain Dividends of Regulated Investment Companies ("RICs")	Permanent	$1.4	X	X	X	X				

	P.L. 114-113		Extending Legislation							
	Extended?	10-Year Cost Estimate (billions)	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
RIC Qualified Investment Entity Treatment under FIRPTA	Permanent	$0.8	X	X	X	X				
Employer Wage Credit for Activated Military Reservists	Permanent[c]	$0.2	X	X	X					
Exclusion of 100% Gain on Certain Small Business Stock	Permanent	$8.8	X	X	X					
Increase in Expensing to $500,000 / $2,000,000 and Expansion of Definition of Section 179 Property	Permanent[c]	$77.1	X	X	[f]					
Bonus Depreciation[g]	2019[c]	$11.3	X	X	X	[g]		[g]	[g]	
Reduction in S Corporation Recognition Period for Built-In Gains Tax	Permanent	$1.5	X	X						
Election to Accelerate AMT Credit in Lieu of Bonus Depreciation	2019	$17.0	X	X						
Minimum Low-Income Housing Tax Credit (LIHTC) Rate for non-Federally Subsidized Buildings (9%)	Permanent	-i-	X	X[h]						
Treatment of Military Basic Housing Allowances under LIHTC[i]	Permanent	$0.1	X	X						
Charitable Provisions										
Enhanced Charitable Deduction for Contributions of Food Inventory	Permanent[c]	$2.2	X	X	X	X	[j]			
Tax-Free Distributions From Individual Retirement Accounts for Charitable Purposes	Permanent	$8.8	X	X	X	X				
Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property	Permanent	$0.6	X	X	X	X				
Special Rules for Contributions of Capital Gain Real Property for Conservation Purposes	Permanent[c]	$1.2	X	X	X	[k]				

Source: CRS analysis of extending legislation and Joint Committee on Taxation, *Estimated Budget Effects of Division Q of Amendment #2 to the Senate Amendment to H.R. 2029 (Rules Committee Print 114-40), the "Protecting Americans from Tax Hikes Act of 2015,"* 114th Cong., December 16, 2015, JCX-143-15.

Notes: An "-i-" indicates an estimated revenue loss of less than $50 million between 2016 and 2025.

a. The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170) extended the research credit through June 30, 2004. The credit was next extended by the Working Families Tax Relief Act of 2004 (P.L. 108-311).

b. The expiration date of the Work Opportunity Tax Credit for qualified veterans was extended through December 31, 2012, as part of P.L. 112-56. Under P.L. 112-240 the expiration date was extended through December 31, 2013, for all eligible employees.

c. P.L. 114-113, in addition to extending this provision, also modified the provision. The provision is set to phase down after 2017, with 50% of the cost of investment allowed to be expensed in 2017, 40% in 2018, and 30% in 2019. Extending 50% expensing or bonus depreciation through the budget window would cost $247.7 billion between 2018 and 2027.

d. The Work Opportunity Tax Credit was extended through August 31, 2011, as part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2008 (P.L. 110-28).

e. The exceptions under Subpart F for active financing income were extended for five years as part of the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147) and for two years by the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222).

f. The Small Business Jobs Act of 2010 (P.L. 111-240) set the maximum amount a taxpayer can expense at $500,000, with the phaseout threshold raised to $2 million, for tax years 2010 and 2011. The Tax Relief Act of 2010 set the expensing limit at $125,000 for 2012, with a phaseout threshold of $500,000. For background on Section 179 expensing, see CRS Report RL31852, *The Section 179 and Bonus Depreciation Expensing Allowances: Current Law and Issues for the 114th Congress*, by (name redacted)

g. Under ATRA, 50% bonus depreciation was extended for one year. The Job Creation and Worker Assistance Act of 2002 (P.L. 107-147) created the initial bonus depreciation allowance of 30%. The allowance was increased to 50% and extended as part of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA; P.L. 108-27). Under the Economic Stimulus Act of 2008 (P.L. 110-185) bonus depreciation was reinstated at 50%. Bonus depreciation was again extended as part of the American Recovery and Reinvestment Act (ARRA; P.L. 111-5), the Small Business Jobs Act (P.L. 111-240), and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312). For more on the history of this provision, see CRS Report RL31852, *The Section 179 and Bonus Depreciation Expensing Allowances: Current Law and Issues for the 114th Congress*, by (name redacted)

h. The Housing and Economic Recovery Act of 2008 (HERA, P.L. 110-289) temporarily changed the LIHTC rate to not less than 9% for new construction placed in service before December 31, 2013. The American Taxpayer Relief Act of 2012 (ATRA, P.L. 112-240) extended the 9% floor for credit allocations made before January 1, 2014.

i. This provision was enacted as part of the Housing and Economic Recovery Act of 2008 (P.L. 110-289).

j. This provision was extended as part of the Pension Protection Act of 2006 (P.L. 109-280).

k. This provision was extended for two years, from 2007 through 2009, as part of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234).

The American Taxpayer Relief Act (ATRA; P.L. 112-240) extended dozens of temporary provisions that had either expired at the end of 2011, or were set to expire at the end of 2012. The provisions that had expired at the end of 2011 were extended retroactively. The cost of the tax extenders package enacted as part of ARRA was estimated to be $73.6 billion over the 10-year budget window. Several provisions that were considered “traditional extenders”—that is, they had been extended multiple times in the past—were not extended under ATRA.[45]

The Cost of Extending Expired Tax Provisions

As lawmakers consider whether to extend expired tax provisions beyond 2016, cost is one factor. Since many provisions were made permanent in the PATH Act, a temporary extenders package for provisions that expired in 2016 would cost less than past extender packages. There are fewer provisions to extend, and many provisions with the largest revenue cost were made permanent in the PATH Act.

Cost of Extensions Enacted in P.L. 114-113

In total, the extensions of expiring provisions or tax extenders in P.L. 114-113 are estimated to reduce federal revenues by $628.8 billion between 2016 and 2025. Of that cost, nearly one-third ($202.1 billion) is attributable to extensions of provisions that were scheduled to expire in 2017 (the reduced earnings threshold for the refundable portion of the child tax credit; the American Opportunity Tax Credit; and modifications to the earned income tax credit) and the two-year moratorium on the medical device excise tax. Thus, the cost of extending the “tax extender” provisions was an estimated $426.8 billion between 2016 and 2025.

Of the total cost of the tax extenders in P.L. 114-113, $559.5 billion, or 89% of the total cost, was associated with permanent extensions. The estimated cost of permanent extension of “tax extender” provisions (provisions that had expired in 2014 and were made permanent in P.L. 114-113) was $361.4 billion.

Of the total cost of tax extenders in P.L. 114-113, a small portion, $17.7 billion (or less than 3%) was for the two-year extension of provisions that had expired in 2014 through 2016.

Cost of Extending Provisions that Expired in 2016

As discussed above, most provisions that expired at the end of 2016 were previously extended for two years in the PATH Act. Overall, the cost of temporary extensions of extenders provisions in the PATH Act was estimated to be $17.7 billion over the 10-year budget window (see **Table 3**). This estimate does not include the cost of temporarily extending provisions set to expire at the end of 2016 that were not extended in the PATH Act.

Another option, instead of a short-term extension, is to provide long-term extensions of, or make permanent, tax provisions that are currently temporary. Federal revenues would be reduced by an estimated $158.0 billion over the 10-year budget window, if all temporary tax provisions that expired at the end of 2016 were made permanent (see **Table 3**). This, however, would remove the mechanism that short-term extensions introduce, mainly forcing policymakers to periodically reconsider extension of temporary provisions.

[45] For more information, see CRS Report R43124, *Expired and Expiring Temporary Tax Provisions (“Tax Extenders”)*, by (name redacted) .

Table 3. Cost of Extending Provisions that Expired in 2016

(billions of dollars)

Type of Extension	10-Year Cost
Two-Year PATH Act Extension of Provisions that Expired in 2016 and Were Extended in the PATH Act	$17.7
Make Permanent All Provisions that Expired at the End of 2016	$158.0
Make Permanent All Provisions Previously Extended for Two Years in the PATH Act[a]	$113.8

Source: CRS analysis of Congressional Budget Office, *An Update to the Budget and Economic Outlook, Detailed Revenue Projections,* June 2017; and Joint Committee on Taxation, *Estimated Budget Effects of Division Q of Amendment #2 to the Senate Amendment to H.R. 2029 (Rules Committee Print 114-40), the "Protecting Americans from Tax Hikes Act of 2015,"* 114th Cong., December 16, 2015, JCX-143-15.

a. See **Table 1** for information on expired provisions that were previously extended in the PATH Act.

Appendix. List of Previous "Tax Extender" Legislation

There is no formal definition of "tax extenders" legislation. Over time, "tax extenders" legislation has come to be considered legislation that temporarily extends a group of expired or expiring provisions. Using this characterization, below is a list of what could be considered "tax extenders" legislation. Using this list, tax extenders have been addressed 17 times. The package of provisions that are included in the tax extenders has changed over time, as Congress has added new temporary provisions to the code, and as certain provisions are either permanently extended or given temporary extension in other tax legislation.

- Consolidated Appropriations Act, 2016 (P.L. 114-113)
- Tax Increase Prevention Act of 2014 (P.L. 113-295)
- American Taxpayer Relief Act of 2012 (P.L. 112-240)
- Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)
- Emergency Economic Stabilization Act of 2008 (P.L. 110-343)
- Tax Relief and Health Care Act of 2006 (P.L. 109-432)
- Working Families Tax Relief Act of 2004 (P.L. 108-311)
- Job Creation and Worker Assistance Act of 2002 (P.L. 107-147)
- Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170)
- Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277)
- Taxpayer Relief Act of 1997 (P.L. 105-34)
- Small Business and Job Protection Act of 1996 (P.L. 104-188)
- Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66)
- Tax Extension Act of 1991 (P.L. 102-227)
- Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508)
- Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239)
- Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)

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