November 30, 2018

The House-Proposed Tax Cut: Amendment to H.R. 88

On November 26, 2018, Chairman Kevin Brady of the House Ways and Means Committee released the "Retirement, Savings, and Other Tax Relief Act of 2018." The bill was reported to the House on November 28, 2018. The measure is an amendment to a minor bill already passed by the House and Senate, H.R. 88.

The proposed bill has six major parts: (1) the extension of expiring provisions (the "extenders"), (2) disaster relief, (3) provisions for retirement plans, (4) benefits for start-up firms, (5) some technical corrections to the 2017 tax revision (P.L. 115-97) and clarifications, and (6) a set of reforms to the Internal Revenue Service (IRS). This latter set of IRS provisions relating largely to tax administration is not addressed in this In Focus.

The proposal is estimated to cost $54.1 billion in revenue losses from FY2019 to FY2028, with a small $1.4 billion saving in spending.

Some of the provisions were in a prior tax package passed by the House in September 2018. See CRS In Focus IF10977, *Tax Reform 2.0: The Ways and Means Tax Proposals*, by Jane G. Gravelle.

Extenders

A number of tax provisions that have been enacted on a temporary basis are extended or, in one case, made permanent, and in another extended and phased out. Expiring provisions are listed in CRS Report R45347, *Tax Provisions That Expired in 2017 ("Tax Extenders")*, by Molly F. Sherlock. Specific provisions are discussed in CRS Report R44925, *Recently Expired Individual Tax Provisions ("Tax Extenders"): In Brief*, coordinated by Molly F. Sherlock; CRS Report R44930, *Business Tax Provisions that Expired in 2017 ("Tax Extenders")*, coordinated by Molly F. Sherlock; and CRS Report R44990, *Energy Tax Provisions That Expired in 2017 ("Tax Extenders")*, by Molly F. Sherlock, Donald J. Marples, and Margot L. Crandall-Hollick.

The bill extends through 2018 all of the provisions that expired at the end of 2017, with some exceptions. First, the bill makes the railroad track maintenance credit permanent but reduces the rate from 50% to 30%. Second it extends through 2021 and then phases out over the next three years the $1.00 per gallon credit for biodiesel fuel. Two of the extenders, the special rate for capital gains on timber and the production activity deduction for Puerto Rico were made obsolete because of changes in the 2017 tax revision (P.L. 115-97). The one-year extensions include three individual provisions, nine business provisions outside of energy, and 12 energy provisions.

In addition to these extenders, the bill extends the 9 cent per barrel tax on oil that funds the oil spill liability trust fund and the increased excise tax rate on coal that funds the black lung liability trust fund through 2019. More on these provisions can be found in CRS In Focus IF10823, *The Oil Spill Liability Trust Fund Tax: Reauthorization Issues and Legislation in the 115th Congress*, by Jonathan L. Ramseur; and CRS Report R45261, *The Black Lung Program, the Black Lung Disability Trust Fund, and the Excise Tax on Coal: Background and Policy Options*, by Scott D. Szymendera and Molly F. Sherlock.

The revenue cost of provisions in this section totals $29.9 billion for FY2019-FY2028; $16.9 billion of the loss is due to the biodiesel credit, $7.1 billion is due to the extension of excise credits and payments for alternative fuels, and $1.4 billion is due to the extension of the exclusion from income of the discharge of indebtedness on principal residence.

Disaster Relief

This section of the bill provides tax benefits for disasters including Hurricanes Florence and Michael; Typhoons Mangkhut and Yutu; the Mendocino, Camp, and Woolsey California wildfires; the Kilauea volcanic eruption and earthquake; and Hawaii severe storms, flooding, landslides, and mudslides. The tax benefits include access to retirement accounts without penalties, employee retention credits, temporary suspension of limits for charitable contributions, increased casualty loss deductions, and the option to use the prior-year earnings for purposes of the child credit and the earned income tax credit. For a discussion of disaster relief provisions used in the past, see CRS In Focus IF10730, *Tax Policy and Disaster Recovery*, by Molly F. Sherlock. The disaster relief provisions lose $3.8 billion in revenue from FY2019 to F72028 primarily due to the increased casualty loss deduction.

Retirement and Savings

This section provides a series of rule revisions. Many of these retirement provisions were in H.R. 6757 (passed by the House on September 27, 2018). They include simplifications to benefit multi-employer plans; relaxing certain notification requirements for electing a safe harbor status for 401(k) retirement saving plans; treating taxable non-tuition fellowships and stipends as compensation for Individual Retirement Accounts (IRA contributions cannot exceed compensation); repealing the prohibition on IRA contributions by those 70½ and older; prohibiting plans from making loans through credit cards and similar arrangements; allowing the transfer of lifetime income investments (annuities) between plans or as a distribution if no longer allowed as an investment option in a plan; allowing custodial accounts on termination of certain plans (Section 403 plans) to be converted into IRAs; clarifying which individuals will be covered by church controlled organization plans; increasing a cap on increases in auto-enrollment retirement plans to achieve nondiscrimination safe harbors; increasing the credit (for three years) for setting up small employer plans from $500 to the greater of (1) $500 or (2) the lesser of $250 times the number of non-highly compensated employees or $1,500; increasing the credit by $500 for small employers who establish automatic enrollment plans; exempting individuals with accounts of $50,000 or less from minimum distribution rules; and allowing elective deferrals by members of the Ready Reserve of the Armed Forces.

The proposal also has some administrative changes. It allows due dates for establishment of employer plans on the tax filing day rather than year-end; modifies the antidiscrimination rules so they are not triggered by participation in the plan of older, longer-service employees; provides a safe harbor to satisfy prudence requirements for fiduciaries who are trustees of plans; requires employers of defined contribution plans to provide a lifetime disclosure; and reduces the premiums of the Pension Benefit Guaranty Corporation (PBGC) for cooperative and small employer charity plans that are a subset of multi-employer plans, as well as requiring use of the same discount rate used for benefits to measure unfunded liabilities.

The bill also allows penalty-free withdrawals of up to $7,500 from retirement plans in the case of birth or adoption.

The revenue loss from these provisions total $13.5 billion for FY2019-FY2028, with $6.3 billion due to the exemption from the required minimum distribution rules, $3.7 billion due to the multi-employer plans, $1.9 billion due to withdrawals for birth or adoption, and $1.4 billion due to the modification of PBGC premiums.

Provisions for Start-Up Firms

This proposal would increase the amount of start-up costs that can be deducted immediately from $5,000 to $20,000. The deduction would be phased out dollar for dollar after start-up costs exceed $120,000 (up from $50,000 in current law). The proposal would also allow net operating losses and unused tax credits arising within three years of start up to be carried over to a new owner that continues the business, without regard to the general rules that restrict these carryovers. These provisions cost $4.9 billion for FY2019-FY2028, with each provision responsible for about half the cost. These provisions were in H.R. 6756 (passed by the House on September 27, 2018).

Technical Corrections to the 2017 Tax Cut and Clarifications

Several proposals address provisions viewed as drafting errors in the 2017 tax revision.

(1) The 2017 act combined certain categories of real estate improvement property (qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property), which previously had a tax life of 15 years and was eligible for bonus depreciation (deducting half of the cost immediately or deducting all of the cost for certain small business) into one category, qualified improvement property. The legislative language, however, resulted in the tax life becoming the tax life for new nonresidential buildings, 39 years, which also made the property not eligible for temporary expensing of investments. The bill restores the 15-year life, which also restores eligibility for expensing and shorter lives if expensing is allowed to expire.

(2) The bill would ensure individual shareholders of a regulated investment company (RIC or mutual fund) that holds shares in a Real Estate Investment Trust or publicly traded partnership to be eligible for the 20% deduction for business income.

(3) The bill would allow losses that occurred in 2017 and predated the bill to be eligible for offset under prior-law net operating loss carryback provisions.

(4) The bill would clarify that the nondeductibility of attorneys' fees for sexual harassment or abuse does not apply to plaintiffs' costs.

(5) The bill would allow overpayments for tax installments on accumulated income earned abroad (Section 965, deemed repatriation) to be treated as overpayments and refunded.

The Joint Committee on Taxation reports no revenue effect for these provisions.

In addition to these five changes relating to the 2017 law, the bill would clarify that veterans housing complies with the general public use requirements for the low-income housing tax credit and tax-exempt bond treatment.

Manager's Amendment

The Ways and Means Committee adopted a manager's amendment that removed the provision in the 2017 act that taxed fringe benefits of nonprofits under the unrelated business income tax (UBIT), as well as some other minor changes, and would clarify refunds of overpayments and installments of deemed repatriation net tax liability, allow for automatic filing extensions in disaster areas and clarify the applicability period for Section 403(b) plan revisions. The UBIT provision loses $1.8 billion in revenue for FY2019-FY2028.

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