DAILY BUSINESS REVIEW, "TAX EXTENDERS: LIMITED BENEFITS AND LIMITED CERTAINTY FOR LIMITED TAXPAYERS"

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On Dec. 20, 2019, President Donald J. Trump signed into law H.R. 1865, the “Further Consolidated Appropriations Act, 2020,” an omnibus spending package that included a division titled the “Taxpayer Certainty and Disaster Relief Act of 2019” (the Tax Act). Title I of the Tax Act provides for the extension of certain expiring tax provisions. Such extenders are generally broken into four categories: tax relief and support for families and individuals (families and individuals); incentives for employment, economic growth, and community development (economic development); incentives for energy production, efficiency and green economy jobs (energy); and certain other provisions expiring at the end of 2019 (other provisions). But don’t be fooled by the title of the Tax Act, it provides little certainty to taxpayers, and what little certainty it does provide benefits a limited number of taxpayers in limited ways.

The average South Florida business owner reading this article may be thinking, “fine, the Tax Act may only benefit a limited number of taxpayers, but does it affect me?” The business-related tax extenders are generally found in the economic development, energy and other provisions categories, all are geared toward specific industries.
Do you employ people who work on or have property used in a trade or business located within an Indian reservation? Do you maintain railroad tracks? Do you own a motorsports entertainment complex? Are you a film or television producer? Is your corporation located in American Samoa? Do you deal with biodiesel, biofuels or produce renewable energy? Are you in the beer, wine and distilled spirits industry? If so, then congratulations!

The Tax Act just extended certain business deductions and tax credits available to you and, if your business is taxed as a “C” corporation, the extension of these deductions and credits are in addition to the reduced 21% corporate income tax rate that went into effect in 2018 (down from 35% in 2017). However, chances are that most South Florida business owners do not operate in any of these niche industries, hence, none of the foregoing applies. But fear not!

There are other extenders in these business categories that have more general application. The employer tax credit for paid family and medical leave was extended through 2020. The work Opportunity Tax Credit, which gives employers a tax credit for hiring individuals from certain targeted groups who have consistently faced significant barriers to employment (i.e., ex-felons, certain veterans, etc.), was extended through 2020. With respect to the New Markets Tax Credit (which provides individuals and corporations with a tax credit for capital invested in a qualified community development area), the Tax Act allocates $5 billion for 2020.

For those taxpayers who do not fall into one of the niches described above, or who are otherwise wage-earners and not business owners, the families and individuals category of tax extenders may provide some benefit. The exclusion from gross income of cancellation of debt income attributable to a qualified principal residence was extended to exclude all discharges before Jan. 1, 2021. The Tax Act extends the treatment of mortgage premium insurance on a qualified principal residence as qualified residence interest through 2020. For medical expenses, the Tax Act extends the floor of 7.5% of adjusted gross income for tax years beginning after Dec. 31, 2018, and before Jan. 1, 2021. The Tax Act also extends the deduction for qualified tuition and related expenses for higher education through 2020. Note, however, for 2018 through 2025, the standard deduction for an individual is increased to $12,000 ($24,000 for married filing jointly). As such, these extensions for deductions attributable mortgage premium insurance, medical expenses and higher education will only provide a tax benefit to those taxpayers who, when added to their other itemized deductions, exceed the applicable standard deduction (and are not otherwise phased out).

In sum, there were a limited number of winners who benefited from the tax extenders passed by Congress and signed by Trump. But those taxpayers shouldn't pop the champagne bottles just yet because the Tax Act is just a Band-Aid that pushes the expiration of these tax benefits a few years down the road. As the term "extender" implies, the Tax Act merely extends the deadline of certain tax provisions that are set to expire and kicks the can down the road, leaving the issue of whether to let such provisions expire to another Congress. For these taxpayers and the tax practitioners who represent them and assist in their tax planning, the short-term nature of these tax extenders and the uncertainty as to whether they will remain in effect makes it difficult to effectively plan and create accurate financial forecasts.

In addition to the short-term and "kick the can down the road" nature of these tax extenders, critics of the Tax Act point to the special-interest nature of the extenders and how Congress missed the opportunity to pass broader tax legislation to assist low-income taxpayers and to fix errors in the sweeping tax overhaul that was rushed through Congress at the end of 2017. Other critics question the need to extend these tax benefits, in light of the already reduced 21% corporate income tax rate (which the Trump administration said would reduce the need for businesses to rely on special-interest tax breaks), and note the further additions to the federal deficit these extenders create (estimated to be more than $427 billion over the next decade). The manner that these tax extenders were passed has also received criticism—they were tacked on to legislation that had to be passed to keep the federal government funded and operating.

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