

# Issues AND INSIGHTS

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## Protecting Americans from Tax Hikes (PATH) Act of 2015

### IN THIS ARTICLE

- The Protecting Americans from Tax Hikes (PATH) Act of 2015 made certain “tax extenders” permanent
- Of particular interest to high-net-worth individuals, the Act made tax-free distributions from individual retirement plans for charitable purposes permanent (the “IRA charitable rollover”)
- Several important provisions for business owners were also made permanent

#### **Marguerite Weese**

Vice President  
Wealth Advisory  
Wilmington Trust, N.A.

#### **Drew Horwitz**

Vice President  
Wealth Advisory  
Wilmington Trust, N.A.

#### **Carol G. Kroch**

Managing Director  
Wealth and Philanthropic  
Planning  
Wealth Advisory  
Wilmington Trust Company

**F**or taxpayers looking for clarity in the federal income tax law, 2015 seemed to be déjà vu. Last spring Congress began talking about so-called “tax extenders”—provisions scheduled to expire at the end of 2015—only to have nothing come to fruition for almost the entire year.

Yet at the end of December the similarities of years past came to a halt. On December 18, 2015, the Protecting Americans from Tax Hikes Act of 2015, also known as the PATH Act, was signed into law. What makes this Act different from previous acts is that this Act provides permanency to some of the “tax extender” provisions.

### INDIVIDUAL PROVISIONS MADE PERMANENT

#### **Tax-free distributions from individual retirement plans for charitable purposes**

That’s right—permanent (although of course a future Congress can always change the law). The Act reinstated for 2015 and made permanent the so-called “IRA charitable rollover,” which allows individuals age 70 ½ or older to donate up to \$100,000 from an IRA directly to a qualified charity without recognizing income or taking a charitable contribution deduction. The transfer will count towards satisfying all or part of the individual’s required minimum distribution.

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Key points about the IRA charitable rollover:

- *Married individuals filing a joint return may exclude up to \$100,000 donated from each spouse's own IRA for a \$200,000 total*
- *You can use an inherited IRA to donate but must be at least 70 ½ years old*
- *The recipient charity may not be a donor advised fund, supporting organization, or most private foundations*

The rollover contribution rule can be helpful for taxpayers:

- *Seeking to minimize their adjusted gross income (AGI) to stay below the threshold for the 3.8% surtax on net investment income (\$250,000 married, \$200,000 single)*
- *Who do not itemize deductions, or have already maximized their permitted charitable contribution deductions*
- *Who live in a state that does not provide for charitable contribution deductions from state income tax*
- *Who can otherwise benefit from a lower amount of AGI*

IRA assets can be especially attractive to give to a charity, rather than leave to your heirs, as your heirs will pay income tax on the entire IRA distribution. Further eroding the amount your heirs receive from an IRA distribution, could be federal and state estate taxes and/or inheritance taxes. Altogether, the combined tax burden on IRA assets can be extremely high.

### **Special rule for contributions of real property made for conservation purposes**

An enhanced income tax deduction for the gift of real property that permanently restricts its use for conservation purposes and is enforceable by a qualified charity was also made permanent. The property is no longer part of your estate for estate tax purposes. A gift at death entitles the decedent to an estate tax deduction. Making a conservation easement gift requires complex documentation, plus an appraisal, so it's important to start the process early in the year. With this provision now permanent (unless Congress changes its mind), you can plan for these important gifts going forward with certainty that the enhanced income tax benefits will be available.

### **Deduction for state and local sales taxes**

This provision permits taxpayers to deduct sales tax, rather than state income taxes, which is helpful for taxpayers who itemize deductions and live in a state without income taxes.

### **Basis adjustment for shareholders in S Corporations when making charitable contributions**

This provision continues to allow S Corporation shareholders to take into account their pro rata share of the charitable deductions for contributions of appreciated property even if the deductions would exceed the shareholder's adjusted basis in the S Corporation.

### **Other provisions of interest to individuals:**

Permanent

- *The popular above-the-line deduction for qualified tuition and related expenses for post-secondary education has been made permanent. The maximum deduction is \$4,000 for taxpayers with AGI of up to \$65,000 (\$130,000 for joint returns) or \$2,000 for taxpayers with AGI of up to \$80,000 (\$160,000 for joint returns)*

Temporary— 2 year extension through December 31, 2016

- *\$500 credit for the purchase of certain non-business energy efficient property*
- *Up to the maximum credit of \$2,000 to the manufacturer of energy-efficient homes*
- *Expensing under section 179D for certain heating, cooling, ventilation, hot water systems, and interior lighting improvements to commercial properties*
- *A higher withholding tax from 10% to 15% for foreign taxpayers selling U.S. real property*
- *For REITs under Section 355, favorable tax treatment may be received by the shareholders if immediately following the transaction, both the distributing and controlled corporations are REITs. Favorable tax treatment means no gain or loss recognized to the shareholder or security holder on the receipt of such stock or securities from the distributing corporation*

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## **BUSINESS PROVISIONS MADE PERMANENT**

### **Research & Development credit**

For businesses, this is probably the most anticipated extender. This credit allows taxpayers a 20% credit for certain qualified research expenses or a 14% alternative simplified credit. The credit can be claimed either by C Corporations that pay taxes or by shareholders in S Corporations or other types of pass-through entities that pass along corporate income, losses, and credits to their owners.

### **Increased maximum amount and phase-out threshold under IRC Section 179**

Another highly anticipated extender, this provision allows a taxpayer to expense up to \$500,000 of IRC Section 179 property annually, with a dollar for dollar phase-out of the maximum deductible amount for purchases in excess of \$2,000,000. The new deal not only retains these higher limits, but also indexes them for inflation in future years. In addition to tangible personal property, this provision allows expensing for computer software, qualified leasehold improvement property, qualified restaurant property, and qualified improvement property. Note that the property must be purchased and placed in service this year.

### **15-year straight line cost recovery**

This provision provides for a 15-year cost recovery, rather than a 39-year cost recovery, for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements, regardless of when placed in service.

### **Reduction in S Corporation recognition period for built-in gains tax**

When a C Corporation is converted to a pass-through S Corporation, a tax is triggered if the corporate assets are sold at a gain during the built-in gain recognition period. This provision continues the shortened built-in gain recognition period of 5 years rather than 10 years.

For owners of C Corporations who have contemplated making an S Corporation election, this is an important provision.

### **Selling qualified small business stock held for at least five years**

This provision allows a taxpayer who sells qualifying small business stock (QSBS) held for longer than 5 years to exclude 100% of the gain realized on the sale or exchange of QSBS. This exclusion is increased from the previous exclusion amount of 50% gain.

## **NOT ALL OF THE PROVISIONS THAT HAVE BEEN PART OF THE "EXTENDERS" BILLS WERE MADE PERMANENT; THE FOLLOWING WERE ONLY EXTENDED THROUGH DECEMBER 31, 2019**

### **Bonus depreciation**

First year bonus depreciation on qualified property purchased and placed in service will receive more favorable treatment for only a few years. The 50% immediate expensing of asset acquisitions in effect in 2014 will be permitted for 2015, 2016, and 2017. The percentage will be reduced to 40% for 2018 and further reduced to 30% for 2019, after which it will disappear completely.

## **DELAY OF AFFORDABLE CARE ACT PROVISIONS**

### **Cadillac Tax**

The Cadillac Tax on high-cost employer-sponsored health insurance will be delayed from 2018 until 2020. The tax is intended to rein in high-priced insurance policies offered through employers, by placing a 40 percent tax on the portion of benefits exceeding certain price thresholds.

### **Excise Tax on medical devices**

The 2.3% excise tax on medical devices has been suspended for 2016 and 2017.

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**Renowned Expertise:  
The Authors****Marguerite Weese**

*Vice President  
Wealth Advisory  
Wilmington Trust, N.A.*

**Drew Horwitz**

*Vice President  
Wealth Advisory  
Wilmington Trust, N.A.*

**Carol G. Kroch**

*Managing Director  
Wealth and Philanthropic Planning  
Wealth Advisory  
Wilmington Trust Company*

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