AICPA®

American Institute of CPAs
1455 Pennsylvania Avenue, NW
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September 15, 2014

The Honorable Ronald L. Wyden, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dave Camp, Chairman
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sander M. Levin
Ranking Member
House Committee on Ways & Means
1236 Longworth House Office Building
Washington, DC 20515

RE: Request for Legislation Extending Expired Tax Provisions

Dear Chairmen Wyden and Camp, and Ranking Members Hatch and Levin:

The AICPA urges Congress to immediately address the fifty-seven tax provisions that expired at the end of 2013 and the six tax provisions that expire at the end of 2014[1] (hereinafter referred to collectively as "tax extenders"). Although Congress began considering tax extenders legislation earlier this year,[2] America's businesses and individuals are still faced with uncertainty in planning and compliance as we quickly approach the fourth quarter. Therefore, we strongly recommend that the House and Senate address these provisions as soon as possible, albeit perhaps on a temporary basis, to avoid further distortions in financial reporting, prevent unnecessary delays in the tax filing season, and end all of the needless uncertainty.

As we have previously testified, taxpayers and tax practitioners need certainty to perform any long-term tax, cash-flow or financial planning and reporting.[3] If Congress does not act soon, we are concerned about the following consequences:

[1] See the Jan. 10, 2014, Joint Committee on Taxation report, JCX-1-14 (https://www.jct.gov/publications.html?func=startdown&id=4540) for the complete list of fifty-seven tax provisions expiring at the end of 2013, including the fifty-five federal tax provisions expiring at the end of 2013 listed in I.A. on pages 2-9 and the two temporary disaster relief federal tax provisions expiring at the end of 2013 listed on page 19. The six provisions expiring at the end of 2014 are also listed in this report on pages 11-12. Among the tax deductions, credits, exclusions, and other expired provisions are business provisions, such as increased expensing under Code section 179, additional first-year (bonus) depreciation, the Work Opportunity Tax Credit, and the credit for research and experimentation expenses, as well as individual provisions, such as the exclusion from income for discharge of indebtedness on a taxpayer's principal residence, the deduction for premiums for mortgage insurance, tax-free distributions from individual retirement accounts (IRAs) for charitable purposes, and the deduction for state and local general sales taxes.

[2] In 2014, Congress started to consider the following extenders bills: S. 2260 (passed Senate Finance Committee 4/28/14), H.R. 4429 and H.R. 4464 (passed House Ways and Means Committee 4/29/14), and the House passed: H.R. 4438 (5/9/14), H.R. 4457 and H.R. 4453 (6/12/14), H.R. 4718 (7/11/14), and H.R. 4719 (7/17/14).

[3] For example, see the AICPA testimony before the U.S. House of Representatives Committee on Small Business Subcommittee on Economic Growth, Tax, and Capital Access on the September 13, 2012, hearing on Adding To Uncertainty: Small Businesses' Perspectives on the Tax Cliff, and AICPA written statement for

- The impact on a company's financial accounting and reporting;
- The increase in complexity and administrative burden for taxpayers and the Internal Revenue Service (IRS);
- The adverse impact on small businesses and, ultimately, jobs and growth; and
- The effect on economic decisions and tax payments.

Impact on a Company's Financial Accounting and Reporting

The retroactive extension of tax deductions and credits has implications for a company's financial accounting and reporting. For financial accounting purposes, "the effect of a change in tax laws or rates shall be recognized at the date of enactment."[4] Accordingly, even if Congress signals that it plans to extend various tax credits and other tax incentives, because these tax credits and other tax incentives were not signed into law by the end of 2013, companies must calculate their 2014 tax provisions without regard to the extended tax credits and other tax incentives. Where the relevant credits and incentives are material, the failure to extend the expired provisions in a timely manner creates unnecessary and undesirable ambiguity for financial markets.

For example, because the section 41 tax credit for research and experimentation expenses expired on December 31, 2013, and its extension has not yet been enacted, when calculating the company's 2014 tax provision for financial statement purposes, a company with research expenses is not be able to consider the research and experimentation tax credit as an offset in calculating its tax liability, making its financial statement tax liability higher and net income lower than had the credit been enacted already. The company may not be seen as being as financially stable as it might have been if the tax credits were reflected in its financial statement.

The Increase in Complexity and Administrative Burden for Taxpayers and the IRS

When Congress enacts extensions of these provisions late in the year or in the beginning of the following year, after IRS has already finalized the income tax returns for the tax year, it causes confusion, complexity, and compliance burdens for taxpayers and practitioners, and the IRS. If the tax forms have already been released, the IRS may need to provide additional instructions or revised forms to clarify the new law and reporting. This instructions and forms delay causes the filing season to be even more compressed and taxpayers are not able to file and receive their tax refunds until later in the year. If taxpayers have already filed their tax returns prior to the change in the law, they may need to file

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the hearing before the U.S. House of Representatives Committee on Ways and Means Subcommittee on Select Revenue on May 15, 2013, on the Small Business and Pass-Through Entity Tax Reform Discussion Draft

[4] See Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 740, *Income Taxes* (https://asc.fasb.org/ and http://www.uic.edu/classes/actg/actg593/Cases/ASC/Standards/ASC-740-10-Income-Taxes.pdf), 740-10-25-47, September 29, 2011, page 15.

amended tax returns, reflecting the newly enacted tax rules for the prior tax year. Those taxpayers may have to pay additional costs for an amended tax return, and the IRS will have additional costs and burdens to process the amended tax returns.

For example, a March 31, 2014 fiscal year corporate filer will likely have to (1) report 9/12ths of the research credit on the originally filed return and (2) amend the return when the credit is reinstated to claim the credit for the additional three months (assuming the credit is reinstated after the tax return is filed, which was the case for the provisions that expired in 2010).

The Adverse Impact on Small Businesses and Ultimately Jobs and Growth

These ever-changing, often expiring, short-term changes to the tax laws make it increasingly difficult for small businesses and their owners to perform any long-term tax, cash-flow or financial planning. If businesses are not able to rely on these tax benefits for the long-term, they are limited in their ability to plan, invest, grow and expand, and hire additional workers. Therefore, we urge Congress to extend these provisions sooner rather than later. The expiration of the research and development credit and the section 179 expense deduction provides examples of where business taxpayers may enter into transactions in 2014 without certainty as to the tax implications. While taxpayers have come to anticipate the retroactive reinstatement of expiring provisions and may act under the assumption that Congress again may extend the provisions, an incorrect assumption may prove costly. While a prudent small business owner may wait until Congress provides certainty, the delay may result in the small business owner postponing equipment acquisitions and research expenditures from 2014 to 2015. The intended impact and reason for these provisions as an incentive for small businesses to replace aged equipment and pursue research and development are not achieved when the tax incentives are not available all or much of the year.

The Effect on Economic Decisions and Tax Payments

Uncertainty concerning whether Congress will extend certain tax provisions also adversely impacts tax planning and economic decisions made by individuals. These planning challenges are further compounded when tax laws are changed after the year has already begun but are slated to take effect that same year. When tax laws are issued late in the year or at the last minute, individuals try their best to comply, with no ability to plan for such provisions, no matter how well-intentioned. Incorrect assumptions may result in underpayments of estimated taxes and potential penalties or overpayment of taxes with no interest paid by the IRS.

The Lack of Transparency and Certainty with Short-Term, Retroactive Extensions

The AICPA continues to support long-term tax reform simplification efforts as we strongly believe the short-term, retroactive extension of tax provisions on an annual basis is counter to the AICPA's Guiding Principles of Good Tax Policy, which promote certainty, as well as transparency and visibility. We also generally urge Congress to enact future tax changes with a presumption of permanency, except in rare situations in which there is an overriding and explicit policy reason for making provisions temporary, such as short-term stimulus provisions or when a new provision requires evaluation after a trial period. Providing long-term certainty will provide simplification. Eliminating the need to constantly extend expiring provisions, such as the research and experimentation credit, will decrease the current state of confusion and, in many cases, reaffirm (rather than undermine) the policy reasons behind these incentives. Eliminating the on-again-off-again nature of these provisions, coupled with the often retroactive tax law changes, will better support long-term planning, reduce the number of amended returns, and significantly decrease the overall complexity of the tax rules.

However, in the current situation, we think Congressional action is preferable to inaction. The immediate passage of tax extender legislation is crucial, and will not diminish the Country's need for permanent tax rules or impact Congress' ability to achieve tax reform in the coming years.

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The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in 128 countries and a history of serving the public interest since 1877. Our members advise clients on federal, state and international tax matters, and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized business, as well as America's largest businesses.

We thank you for the opportunity to present our views on this issue. Please feel free to contact me at (304) 522-2553, or jporter@portercpa.com; Roby Sawyers, Chair of the AICPA Tax Legislation and Policy Committee, at Roby_Sawyers@ncsu.edu, or (919) 515-4443; or Eileen R. Sherr, AICPA Senior Technical Manager, at (202) 434-9256, or esherr@aicpa.org, to discuss the above comments or if you require any additional information.

Sincerely,

Jeffrey A. Porter, CPA
Chair, AICPA Tax Executive Committee

cc: Members of the House Ways and Means Committee and Senate Finance Committee
The Honorable Mark Mazur, Assistant Secretary for Tax Policy, Department of the Treasury
Ms. Lisa Zarlenga, Tax Legislative Counsel, Department of the Treasury