BUSINESS Tax Provisions

Permanent: Research & Development Credit

The research credit equals the sum of: (1) 20% of the excess (if any) of the qualified research expenses for the tax year over a base amount (unless the taxpayer elected an alternative simplified research credit); (2) the university basic research credit (i.e., 20% of the basic research payments); (3) 20% of the taxpayer's expenditures on qualified energy research undertaken by an energy research consortium.

The base amount is a fixed-base percentage of the taxpayer's average annual gross receipts from a U.S. trade or business, net of returns and allowances, for the 4 tax years before the credit year, and can't be less than 50% of the year's qualified research expenses. The fixed base percentage for a non-startup company is the percentage (not exceeding 16%) that taxpayer's total qualified research expenses are of total gross receipts for tax years beginning after '83 and before '89. A 3% fixed-base percentage applies for each of the first 5 tax years in which a "startup company" (one with fewer than 3 tax years with both gross receipts and qualified research expenses) has qualified research expenses.

A taxpayer can elect an alternative simplified research credit equal to 14% of the excess of the qualified research expenses for the tax year over 50% of the average qualified research expenses for the three tax years preceding the tax year for which the credit is being determined. If a taxpayer has no qualified research expenses in any one of the three preceding tax years, the alternative simplified research credit is 6% of the qualified research expenses for the tax year for which the credit is being determined.

Under pre-Act law, the research credit didn't apply for amounts paid or accrued after Dec. 31, 2014.

New law. The Act retroactively and permanently extends the research credit. (Code Sec. 41(h) , as amended by Act Sec. 121(a)(1))

> RIA recommendation: Because the extension of the research credit is retroactive to include amounts paid or incurred after Dec. 31, 2014, taxpayers, such as fiscal year corporations that already filed returns for a fiscal year that includes part of 2015, or any other taxpayers that have filed returns for tax years ending after Dec. 31, 2014, should consider filing an amended return to claim a refund for the amount of any additional tax paid because of not claiming amounts now eligible for the credit.

In addition, for tax years that begin after Dec. 31, 2015, eligible small businesses ($50 million or less of gross receipts) may claim the credit against their alternative minimum tax (AMT) liability. (Code Sec. 38(c)(4)(B)(ii) , as

amended by Act Sec. 121(b)). And, for tax years that begin after Dec. 31, 2015, small (less than $5 million of gross receipts) startup businesses may claim up to $250,000 per year of the credit against their employer FICA tax liability. (Code Sec. 41(h) and Code Sec. 3111(f), as amended by Act Sec. 121(c))

Permanent: Enhanced Deduction for Food Inventory

A taxpayer engaged in a trade or business is eligible to claim an enhanced deduction for donations of food inventory. A C corporation's deduction equals the lesser of (a) basis plus half of the property's appreciation, or (b) twice the property's basis, for contributions of food inventory that was apparently wholesome food-i.e., meant for human consumption and meeting certain quality and labeling standards. For a taxpayer other than a C corporation, the aggregate amount of contributions of apparently wholesome food that may be taken into account for the tax year can't exceed 10% of the taxpayer's aggregate net income for that tax year from all trades or businesses from which those contributions were made for that tax year.

Under pre-Act law, this enhanced charitable deduction didn't apply for contributions after Dec. 31, 2014.

New law. The Act retroactively and permanently extends the apparently wholesome food contribution rules. (Code Sec. 170(e)(3)(C)(iv) , as amended by Act Sec. 113(a))

In addition, for tax years beginning after Dec. 31, 2015,

> . . . The Act increases the limitation on deductible contributions of food inventory from 10% to 15% of the taxpayer's aggregate net taxable income from all trades or businesses from which such contributions were made (15% of taxable income in the case of a C corporation) per year. (Code Sec. 170(e)(3)(C)(ii) , as amended by Act Sec. 113(b));
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> . . . The fair market value (FMV) of apparently wholesome food that cannot or will not be sold solely by reason of internal standards of the taxpayer, lack of market, or similar circumstances is determined without regard to such internal standards, etc.; FMV is determined by taking into account the price at which the same or substantially the same food items-as to both type and quality-are sold by the taxpayer at the time of the contribution. (Code Sec. 170(e)(3)(C)(v), as amended by Act Sec. 113(b)); and
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> . . . Taxpayers who do not account for inventories using full absorption costing and who are not required to capitalize indirect costs under the Code Sec. 263A UNICAP rules may elect to treat the basis of any apparently wholesome food as being equal to 25% of the market value of the food, in determining the amount of the charitable contribution deduction. (Code Sec. 170(e)(3)(C)(iv) , as amended by Act Sec. 113(b))

Permanent: Expanded Differential Wage Payment Credit for Employers

Eligible small business employers that pay differential wages-payments to employees for periods that they are called to active duty with the U.S. uniformed services (for more than 30 days) that represent all or part of the wages that they would have otherwise received from the employer-can claim a credit. This differential wage payment credit is equal to 20% of up to $20,000 of differential pay made to an employee during the tax year. An eligible small business employer is one that: (1) employed on average less than 50 employees on business days during the tax year; and (2) under a written plan, provides eligible differential wage payments to each of its qualified employees. A qualified employee is one who has been an employee for the 91-day period immediately preceding the period for which any differential wage payment is made.

Under pre-Act law, the credit was not available for differential wages paid after Dec. 31, 2014.

New law. The Act retroactively and permanently extends the credit. (Code Sec. 45P(f) , as amended by Act Sec. 122(a)) And, for tax years beginning after Dec. 31, 2015, the Act provides that the credit applies to employers of any size (i.e., the less than 50 employee average no longer applies). (Code Sec. 45P(a) , as amended by Act Sec. 122(b))

Extended Thru 2019: Expanded Work Opportunity Tax Credit

The work opportunity tax credit (WOTC) allows employers who hire members of certain targeted groups to get a credit against income tax of a percentage of first-year wages up to $6,000 per employee ($3,000 for qualified summer youth employees). Where the employee is a long-term family assistance (LTFA) recipient, the WOTC is a percentage of first and second year wages, up to $10,000 per employee. Generally, the percentage of qualifying wages is 40% of first-year wages; it's 25% for employees who have completed at least 120 hours, but less than 400 hours of service for the employer. For LTFA recipients, it includes an additional 50% of qualified second-year wages.

The maximum WOTC for hiring a qualifying veteran generally is $6,000. However, it can be as high as $12,000, $14,000, or $24,000, depending on factors such as whether the veteran has a service-connected disability, the period of his or her unemployment before being hired, and when that period of unemployment occurred relative to the WOTC-eligible hiring date.

Under pre-Act law, wages for purposes of the WOTC didn't include any amount paid or incurred to: veterans or non-veterans who began work after Dec. 31, 2014.

New law. The Act retroactively extends the WOTC so that it applies to eligible veterans and non-veterans who begin work for the employer before Jan. 1, 2019. (Code Sec. 51(c)(4)(B), as amended by Act Sec. 142(a))

With respect to individuals who begin work for an employer after Dec. 31, 2015, the credit also applies to employers who hire qualified long-term unemployed individuals (i.e., those who have been unemployed for 27 weeks or more). The credit with respect to such long-term unemployed individuals is 40% of the first $6,000 of wages. (Code Sec. 51(d)(1)(J) and Code Sec. 51(d)(15), as amended by Act Sec. 142(b)).

Permanent: Excluded Employer-Provided Mass Transit and Parking Benefits Increased

For 2015, an employee could exclude from gross income up to: (1) $250 per month for qualified parking, and (2) $130 a month for transit passes and commuter transportation in a commuter highway vehicle (including van pools). However, notwithstanding the applicable statutory limits on the exclusion of qualified transportation fringes (as adjusted for inflation), for any month beginning before Jan. 1, 2015, a parity provision required that the monthly dollar limitation for transit passes and transportation in a commuter highway vehicle had to be applied as if it were the same as the dollar limitation for that month for employer-provided parking ($250 for 2014).

New law. For months after Dec. 31, 2014, the Act permanently extends the maximum monthly exclusion amount for transit passes and van pool benefits so that these transportation benefits match the exclusion for qualified parking benefits. (Code Sec. 132(f)(2) , as Act Sec. 105) These fringe benefits are excluded from an employee's wages for payroll tax purposes and from gross income for income tax purposes.

RIA observation: As it has in past years when parity between mass transit and parking benefits was retroactively revived (see, e.g., Notice 2015-2, 2015-4 IRB) , IRS doubtless will issue a notice providing guidance on how employers should handle the retroactive 2015 increase in the monthly exclusion for employer-provided transit and vanpooling benefits.

Permanent: Reduction in S Corp Recognition Period for Built-In Gains Tax

An S corporation generally is not subject to tax, but instead passes through its income to its shareholders, who pay tax on their pro-rata shares of the S corporation's income. Where a corporation that was formed as a C corporation elects to become an S corporation (or where an S corporation receives property from a C corporation in a nontaxable carryover basis transfer), the S corporation is taxed at the highest corporate rate (currently 35%) on all gains that

were built-in at the time of the election if the gain is recognized during a recognition period.

Under pre-Act law, for S corporation tax years beginning in 2012 and 2013, the recognition period was five years (instead of the generally applicable 10-year period). Thus, the recognition period was the 5-year period beginning with the first day of the first tax year for which the corporation was an S corporation (or beginning with the date of acquisition of assets if the rules applicable to assets acquired from a C corporation applied). If an S corporation disposed of such assets in a tax year beginning in 2012 or 2013 and the disposition occurred more than five years after the first day of the relevant recognition period, gain or loss on the disposition wasn't taken into account in determining the net recognized built-in gain.

New law. The Act retroactively and permanently provides that, for determining the net recognized built-in gain, the recognition period is a 5-year period-the same rule that applied to tax years beginning in 2014. (Code Sec. 1374(d)(7) , as amended by Act Sec. 127(a))

Permanent: Lower Shareholder Basis Adjustment for Charitable Contributions by S Corporations

Before the Pension Protection Act of 2006 (PPA), if an S corporation contributed money or other property to a charity, each shareholder took into account his pro rata share of the fair market value of the contributed property in determining his own income tax liability. The shareholder reduced his basis in his S stock by the amount of the charitable contribution that flowed through to him. *The PPA amended this rule to provide that the amount of a shareholder's basis reduction in S stock by reason of a charitable contribution made by the corporation is equal to his pro rata share of the adjusted basis of the contributed property.*

Under pre-Act law, the PPA rule did not apply for contributions made in tax years beginning after Dec. 31, 2014.

New law. The Act retroactively and permanently extends the PPA rule. (Code Sec. 1367(a)(2) , as amended by Act Sec. 115(a))