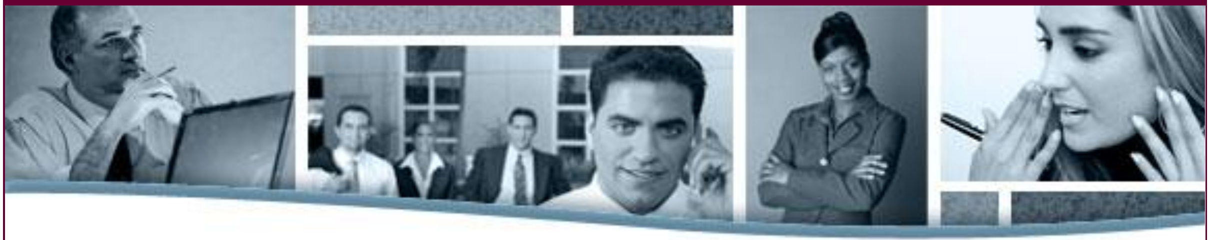
NEWSFLASH 2014



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Business Tax Provisions Retroactively Extended by the Tax Increase Prevention Act of 2014

The U.S. Senate sent a $42 billion package of tax incentives to President Obama for his signature, reviving dozens of lapsed breaks for 2014 and setting them to expire in less than two weeks. On December 16, 2014, Congress passed the "Tax Increase Prevention Act of 2014" (TIPA) which the President is expected to sign into law. The Act extends a host of tax breaks depreciation and expensing provisions for businesses. Some of the important business related provisions which are extended include:

- **Research Credit Extended:**

Generally, the research credit equals 20% of the excess (if any) of the qualified research expenses for the tax year over a base amount. Under pre-TIPA 2014 law, the research credit didn't apply for amounts paid or accrued after Dec. 31, 2013.

However, TIPA retroactively extends the research credit for one year to apply to amounts paid or accrued before Jan. 1, 2015. (Code Sec. 41(h)(1), as amended by Act Sec. 111(a)).

Because the extension of the research credit is retroactive to include amounts paid or incurred after Dec. 31, 2013, taxpayers that have filed returns for tax years ending after Dec. 31, 2013 (including fiscal year taxpayers), 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.

- **Work Opportunity Tax Credit Extended:**

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). 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, 2013.

TIPA retroactively extends the WOTC so that it applies to eligible veterans and nonveterans who begin work for the employer before Jan. 1, 2015. (Code Sec. 51(c)(4)(B), as amended by Act Sec. 119(a))

- **Bonus First-Year Depreciation Extended (50% additional depreciation)**

Code Sec. 168(k) generally allows an additional first-year depreciation deduction (also called bonus first-year depreciation) equal to 50% of the basis of qualified property acquired and placed in service after Dec. 31, 2011, and before Jan. 1, 2014. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes. Under pre-TIPA 2014 law, these bonus depreciation provisions didn't apply to property placed in service after Dec. 31, 2013 (Dec. 31, 2014 for certain longer-lived and transportation property).

TIPA extends 50% first-year bonus depreciation for one year so that it applies to qualified property acquired and placed in service before Jan. 1, 2015 (before Jan. 1, 2016 for certain longer-lived and transportation property). (Code Sec. 168(k)(2), as amended by Act Sec. 125(a)).

- **Boosted Expensing Amounts for 2014 (IRC 179 Deduction):**

Under Code Sec. 179, a taxpayer may elect to deduct as an expense, rather than to depreciate, up to a specified amount of the cost of new or used tangible personal property placed in service during the tax year in the taxpayer's trade or business.The amount eligible to be expensed for a tax year can't exceed the taxable income derived from the taxpayer's active conduct of a trade or business. And any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding tax years.

For tax years beginning in 2013: (1) the dollar limitation on the expensing deduction was $500,000; and (2) the investment-based reduction in the dollar limitation began to take effect when property placed in service in the tax year exceeds $2,000,000 (the investment ceiling)

Under pre-Act law, for tax years beginning after 2013, the maximum expensing limit dropped to $25,000, and the investment ceiling dropped to $200,000. Thus, the Code Sec. 179 deduction phased out completely when the cost of expensing-eligible property exceeded $225,000 ($200,000 (investment ceiling) + $25,000 (dollar limit)).

TIPA retroactively extends for one year the increased $500,000 maximum expensing amount under Code Sec. 179 and the increased $2 million investment-based phaseout amount. These increased amounts will apply for qualified property placed in service before Jan. 1, 2015. For tax years beginning after 2014, the maximum expensing amount is again scheduled to drop to $25,000 and the investment-based phaseout amount is scheduled to drop to $200,000. (Code Sec. 179(b), as amended by Act Sec. 127)

- **15-Year Write-off for Qualified Leasehold and Retail Improvements and Restaurant Property Extended**

Qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property that was placed in service before Jan. 1, 2014 was included in the 15-year MACRS class for depreciation purposes-that is, such property was depreciated over 15 years under MACRS. Under pre-Act law, the above rules didn't apply to property placed in service after Dec. 31, 2013.

TIPA retroactively extends for one year the inclusion of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property in the 15-year MACRS class. Such property qualifies for 15-year recovery if it is placed in service before Jan. 1, 2015. (Code Sec. 168(e)(3)(E), and Code Sec. 168(e)(8)(E), as amended by Act Sec. 122(a))

- **First-Year Depreciation Cap for 2014 Autos and Trucks Boosted by $8,000:**

Under the luxury auto dollar limits of Code Sec. 280F, depreciation deductions (including Code Sec. 179 expensing) that can be claimed for passenger autos are subject to dollar limits that are annually adjusted for inflation. For passenger automobiles placed in service in 2014, the adjusted first-year limit is $3,160. The applicable first-year depreciation limit is increased by $8,000 (not indexed for inflation) for any passenger automobile that is "qualified property" under the bonus depreciation rules of Code Sec. 168(k) and which isn't subject to a taxpayer election to decline bonus depreciation.

Under pre-Act law, qualified property didn't include property placed in service after Dec. 31, 2013. Thus, under pre-Act law, the $8,000 boost in first-year depreciation allowances wasn't available for new cars and trucks purchased after 2013.

TIPA provides that the placed-in-service deadline for "qualified property" is Dec. 31, 2014. (Code Sec. 168(k)(2), as amended by Act Sec. 125).Thus, for a passenger auto that is qualified property under Code Sec. 168(k), (and isn't subject to the election to decline bonus depreciation and AMT depreciation relief), the Act extends the placed-in-service deadline for the $8,000 increase in the first-year depreciation limit from Dec. 31, 2013 to Dec. 31, 2014.

- **Look-Through Rule for Payments Between Related CFCs under Foreign Personal Holding Company Income Rules Extended:**

For tax years beginning before Jan. 1, 2014, dividends, interest, rents, and royalties received by one controlled foreign corporation (CFC) from a related CFC are not treated as foreign personal holding company income (FPHCI) to the extent attributable or properly allocable to non-subpart-F income, or income that was not effectively connected with the conduct of a U.S. trade or business of the payor (look-through treatment).

Under pre-Act law, this look-thru rule applied to tax years of foreign corporations beginning after Dec. 31, 2005 and before Jan. 1, 2014, and to tax years of U.S. shareholders with or within which such tax years of foreign corporations ended.

TIPA retroactively extends look-through treatment for related CFCs for one year, to tax years of a foreign corporation before Jan. 1, 2015, and tax years of U.S. shareholders with or within which such tax years of foreign corporations end. (Code Sec. 954(c)(6)(C), as amended by Act Sec. 135(a))

- **Extended Choice to Forego Bonus Depreciation and Claim Credits Instead:**

Code Sec. 168(k)(4) generally permits a corporation to increase the AMT credit limitation by the bonus depreciation amount with respect to certain property placed in service after Dec. 31, 2010 and before Jan. 1, 2014 (Jan. 1, 2015 in the case of certain longer-lived and transportation property) if it forgoes bonus depreciation on that property.

Under pre-Act law, the above provision didn't apply to such property placed in service after Dec. 31, 2013 (Dec. 31, 2014 in the case of certain longer-lived and transportation property).

TIPA Act extends for one year the election to increase the AMT limitation in lieu of bonus depreciation so that it applies to property placed in service before Jan. 1, 2015. For property placed in service after Dec. 31, 2013, in tax years ending after that date, the Act provides a similar option to corporations with respect to "round four extension property," generally, property newly eligible for 50% bonus first-year depreciation under the Act's one-year extension provision, i.e., property placed in service after 2013 and before 2015 (before 2016 for the aircraft and long-production-period property). (Code Sec. 168(k)(4)(d) and Code Sec. 168(k)(4)(J), as amended by Act Sec. 125(c)).

The Act further provides that a corporation that has an election in effect to claim minimum tax credits in lieu of bonus depreciation with respect to round three extension property (generally, property that was newly eligible for 50% bonus first-year depreciation under the 2012 Taxpayer Relief Act) is treated as having an election in effect for round four extension property, unless the corporation chooses otherwise. (Act Sec. 125(c)(2)(ii)) A corporation that does not have an election in effect with respect to round three extension property may also elect to claim minimum tax credits in lieu of bonus deprecation for round four extension property.

Miscellaneous Other Provisions Repealed, Modified, or Extended:

TIPA 2014 retroactively extends:

- Indian employment credit for tax years beginning before Jan. 1, 2015.
- The Differential Wage Payment Credit extended for differential wages paid before Jan. 1, 2015.
- The special domestic production activities rules for Puerto Rico for one year through 2014. Under the Act, these special rules for Puerto Rico apply for the first nine tax years of a taxpayer beginning after Dec. 31, 2005 and

before Jan. 1, 2015.

- The rules exempting from gross basis tax and withholding tax the interest-related dividends and short-term capital gain dividends received from a regulated investment company, for dividends with respect to tax years of a RIC beginning before Jan. 1, 2015.
- Subpart F Exception for Active Financing Income: The exclusions for active financing income for one year to tax years of a foreign corporation beginning after Dec. 31, 2013 and before Jan. 1, 2015, and tax years of U.S. shareholders with or within which such tax years of foreign corporations ended.
- Qualified Zone Academy Bond Limitation Extended: TIPA provides that the national bond volume limitation is $400 million per year for 2011 through 2014.
- The low-income housing 9% credit rate freeze for allocations made before Jan. 1, 2015.
- For one year through 2014 a provision under which the basic housing allowance of a military member is excluded from income for purposes of determining the individual's qualification as a "low-income tenant" for purposes of the low-income housing tax credit program.
- The railroad track maintenance credit for one year through 2014.
- The mine rescue team training credit for one year through 2014.
- The increase in the $10.50 per gallon limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands for one year through 2014.
- The possessions tax credit for American Samoa for one year through 2014.
- Automatic extension of amortization periods for multiemployer defined benefit pension plans
- Shortfall funding method for plans in endangered or critical status.
- The 7-year straight line cost recovery period for motorsports entertainment complexes.
- The expensing election for costs of film and TV production. The election applies to qualified film and TV productions beginning before Jan. 1, 2015.
- Classification of certain race horses as 3-year property, for horses placed in service before Jan. 1, 2015 (regardless of age when placed in service).
- Accelerated depreciation for business property on an Indian reservation, for property placed in service before Jan. 1, 2015.
- Election to treat 50% of the cost of any qualified mine safety equipment as an expense in the tax year in which the equipment is placed in service, for property placed in

service before Jan. 1, 2015.

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