

**Protecting Americans From Tax Hikes Act
Passed and Signed by the President December 2015**

Business Highlights

- ✓ **Code Section 179** – The deduction was scheduled to be reduced to \$25,000, but the Act retroactively extends and makes permanent the \$500,000 expensing limitation and \$2 million phase-out. For years beginning before 2016 qualified real property is eligible to be expensed.
- ✓ **15-Year Write-off for Qualified Leasehold and Rental Improvements and Restaurant Property Made Permanent** – The Act extends and makes permanent the inclusion of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property.
- ✓ **Bonus First-Year Depreciation Extended Through 2019** – The Act retroactively extends 50% first-year bonus depreciation for two years so that it applies to qualified property acquired and placed in services before January 1, 2017, note that there are other provisions for future years that may apply.
- ✓ **Enhanced First-Year Depreciation Cap for Autos and Trucks Extended Through 2019** – For property placed in service after December 31, 2015 and before January 1, 2017 the Act provides that the limitation for a passenger auto that is qualified property is increased by \$8,000.
- ✓ **New Energy Efficient Home Credit Extended** -- The Act retroactively extends for two years the credit of \$2,000 or \$1,000 for eligible contractors for the construction of energy efficient home constructed by the contractor and acquired by a person from the contractor for use as a residence during the year.

Individual Highlights

- ✓ **State and Local Sales Tax Deduction Made Permanent** – Effective for tax years beginning after 2014; the Act retroactively revives and makes permanent the option to claim an itemized deduction for State and local general sales tax in lieu of an itemized deduction for State and local income taxes.
- ✓ **Nontaxable IRA Transfers to Eligible Charities Made Permanent** – The Act retroactively revives and permanently extends the ability of individuals at least 70 ½ years of age to exclude from gross income qualified charitable distributions from IRAs of up to \$100,000 per year.
- ✓ **Mortgage Insurance Premiums as Deductible Qualified Residence Interest Retroactively Extended Through 2016** – The Act retroactively extends the ability to deduct qualified mortgage insurance premiums paid or accrued before January 1, 2017.
- ✓ **Above-the-Line Deduction for Higher Education Expenses Retroactively Extended Through 2016** – The Act retroactively extends through 2016 the above-the-line deduction for qualified tuition and related expenses for higher education. The deduction is still subject to adjusted gross income limits.

The Following Pages Provide More Detail of the Act

Protecting Americans From Tax Hikes Act of 2015

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President Obama, December 18, 2015, signed H.R. 2029, the tax (the “Protecting Americans from Tax Hikes Act of 2015”) and spending bills (Consolidated Appropriations Act, 2016) to fund the government for its 2016 fiscal year. The tax portion includes a two-year delay on taxing high-cost “Cadillac” health plans, as well extensions to several renewable energy credits and a tax break for oil refiners, with tax extenders language making permanent or extending dozens of expired business and household tax breaks. Below is a summary of the tax provisions contained in the overall enacted legislation.

DIVISION Q—PROTECTING AMERICANS FROM TAX HIKES ACT OF 2015

TITLE I—EXTENDERS

Subtitle A—Permanent Extenders

Part 1—Tax Relief for Families and Individuals

Enhanced child tax credit made permanent [Act §101] The Act permanently extends the threshold for determining the portion of the child tax credit that is refundable (15% of earned income above a set amount) at \$3,000. The dollar amount will not be indexed for inflation. Effective for taxable years beginning after the date of enactment (December 18, 2015). [I.R.C. §24(d)]

Enhanced American Opportunity Tax credit made permanent [Act §102] The Act makes the American Opportunity Tax credit permanent (increased dollar amounts and phaseouts over the Hope Scholarship credit). A corresponding amendment is made to 2009 ARRA, §1004(c)(1) regarding mirror Code provisions. Effective for taxable years beginning after the date of enactment (December 18, 2015). [I.R.C. §25A(i)]

Enhanced earned income tax credit made permanent [Act §103] The Act makes permanent the increased credit percentage for families with three or more qualifying children and the reduction in the marriage penalty for the credit. The credit percentages for qualifying taxpayers is as follows: (1) 34% for qualifying individuals with one qualifying child; (2) 40% for two qualifying children; (3) 45% for 3 or more qualifying children; and (4) 7.65% for no qualifying children. The phaseout amounts of the credit for taxpayers filing jointly increases by \$5,000 (indexed for inflation). Effective for taxable years beginning after December 31, 2015. [I.R.C. §32(b)]

Extension and modification of deduction for certain expenses of elementary and secondary school teachers [Act §104] The Act makes permanent the \$250 above-the-line tax deduction for teachers and other school professionals for expenses paid or incurred for books, supplies (other than non-athletic supplies for courses of instruction in health or physical education), computer equipment (including related software and service), other equipment, and supplementary materials used by the educator in the classroom. The Act also adds relevant professional development courses to the list of expenses eligible for above-the-line treatment. The Act indexes the deduction to inflation beginning in 2016. Generally effective for tax years beginning after 2014; above-the-line treatment for professional development expenses effective for taxable years beginning after 2015. [I.R.C. §62(a)(2)(D)]

Extension of parity for exclusion from income for employer-provided mass transit and parking benefits [Act §105] The Act permanently extends the monthly maximum exclusion amount for transit passes and van pool benefits so that these transportation benefits match the exclusion for qualified

parking benefits (\$250 for 2015, \$255 for 2016)). The exclusion applies for payroll and income tax purposes. This provision is effective for months after December 31, 2014. [I.R.C. §132(f)(2)]

Extension of deduction of State and local general sales taxes [Act §106] The Act permanently extends the election to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes. Effective for taxable years beginning after December 31, 2014. [I.R.C. §164(b)(5)]

Part 2—Incentives for Charitable Giving

Extension and modification of special rule for contributions of capital gain real property made for conservation purposes [Act §111] The Act makes permanent: (1) the increased contribution limits and carryforward period for amounts in excess of these limits for contributions of appreciated real property (including partial interests in real property) for conservation purposes; and (2) the enhanced deduction and increased carryforward period for certain individual and corporate farmers and ranchers for qualified conservation contributions. Effective for taxable years beginning after December 31, 2014.

The Act allows for an enhanced deduction and increased carryforward period for Native Corporations contributing land conveyed under the Alaska Native Claims Settlement Act. Effective for taxable years beginning after December 31, 2015. [I.R.C. §170(b)]

Extension of tax-free distributions from individual retirement plans for charitable purposes [Act §112] The Pension Protection Act of 2006 provided an exclusion from gross income for qualified charitable distributions up to \$100,000 made by individuals at least 70½ years of age from a traditional IRA or Roth IRA. The period of exclusion originally applied to such distributions in taxable years 2006 and 2007, and was subsequently extended to apply to distributions in taxable years 2008 through 2014. The Act makes the exclusion permanent. Effective for distributions made in taxable years beginning after December 31, 2014. [I.R.C. §408(d)(8)]

Extension and modification of charitable deduction for contributions of food inventory [Act §113] The Act makes permanent the provision allowing noncorporate businesses (in addition to corporations) to claim an enhanced deduction for the contribution of food inventory of apparently wholesome food. Effective for taxable years beginning after December 31, 2014.

The Act (1) modifies the contribution limits, increasing them from 10% to 15% of the taxpayer's adjusted gross income (or taxable income in the case of a C corporation); (2) adds a carryforward period of five years for contribution amounts exceeding the limitation; and (3) adds provisions determining the basis and fair market value of contributions of food inventory. Effective for taxable years beginning after December 31, 2015. [I.R.C. §170(e)(3)]

Extension of modification of tax treatment of certain payments to controlling exempt organizations [Act §114] The Act permanently extends the special rules for interest, rents, royalties and annuities received by a tax-exempt entity from a controlled entity. Effective for payments received or accrued after December 31, 2014. [I.R.C. §512(b)(13)]

Extension of basis adjustment to stock of S corporations making charitable contributions of property [Act §115] The Act permanently extends the provision allowing S corporation shareholders to take into account their pro rata share of charitable deductions even if such deductions exceeds such

shareholder's adjusted basis in the S corporation. Effective for contributions made in taxable years beginning after December 31, 2014. [I.R.C. §1367(a)(2)]

Part 3—Incentives for Growth, Jobs, Investment and Innovation

Extension and modification of research credit [Act §121] The Act makes permanent the research credit. The Act also permits a small business (\$50 million or less in gross receipts) to claim the credit against alternative minimum tax (AMT). Certain small business start-up companies are permitted to claim the credit against payroll tax. Generally effective for amounts paid or incurred after December 31, 2014; AMT and start-up provisions effective for taxable years beginning after December 31, 2015. [I.R.C. §41, I.R.C. §45C, I.R.C. §3111]

Extension and modification of employer wage credit for employees who are active duty members of the uniformed services [Act §122] The Act permanently extends the provision that provides eligible small business employers with a credit against the taxpayer's income tax liability for a taxable year in an amount equal to 20% of the sum of differential wage payments to activated military reservists. The Act allows the credit to employers of all sizes (up from employers with less than 51 employees). The permanent extension is effective for payments made after December 31, 2014. The change to the employer eligibility is effective for taxable years beginning after December 31, 2015. [I.R.C. §45P]

Extension of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements [Act §123] The Act permanently extends the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements. Effective for property placed in service after December 31, 2014. [I.R.C. §168(e)(3)(E)]

Extension and modification of increased expensing limitations and treatment of certain real property as §179 property [Act §124] The Act makes permanent the higher small business expensing limitation and phase-out amounts (\$500,000 and \$2 million). Without this change, the amounts would have been \$25,000 and \$200,000, respectively, for tax years beginning after 2014. These amounts are indexed for inflation beginning in 2016. The special rules that allow expensing for computer software, qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property are permanently extended. Additionally, the Act permits expensing for air conditioning and heating units placed in service after 2015. Generally effective for taxable years beginning after December 31, 2014; air conditioning and heating unit provision effective for taxable years beginning after December 31, 2015. [I.R.C. §179]

Extension of treatment of certain dividends of regulated investment companies [Act §125] The Act permanently extends provisions allowing for the pass-through character of interest-related dividends and short-term capital gains dividends from regulated investment companies to non-resident aliens. Effective for taxable years beginning after December 31, 2014. [I.R.C. §871(k)]

Extension of exclusion of 100% of gain on certain small business stock [Act §126] The Act permanently extends the exclusion of 100% of the gain on certain small business stock for non-corporate taxpayers to stock acquired after September 27, 2010, and held for more than five years. This provision also extends the rule that eliminates such gain as an AMT preference item. Effective for stock acquired after December 31, 2014. [I.R.C. §1202(a)(2), I.R.C. §57(a)(7)]

Extension of reduction in S corporation recognition period for built-in gains tax [Act §127] For S corporations, the built-in gains tax was added in conjunction with the 1986 TRA repeal of the General Utilities doctrine. Congress was concerned that shareholders of closely held C corporations could circumvent a corporate-level tax by converting to S status and liquidating the corporation or selling appreciated assets and then distributing the proceeds. To prevent circumvention of the two-tier tax, §1374 was added to the Code to impose a corporate-level tax on the “built-in gain” recognized by former C corporations during the first 10 years of S existence (the “recognition period”). Legislation reduced the recognition period for taxable years beginning in 2009 through 2014. The Act permanently reduces the recognition period to five years for taxable years beginning in 2015 and thereafter. Pre-existing installment sales continue to be governed by the holding periods for the years of sale. Effective for taxable years beginning after December 31, 2014. [I.R.C. §1374(d)(7)]

Extension of subpart F exception for active financing income [Act §128] The Act permanently extends the subpart F exceptions for income in the active conduct of a banking or financing business, an insurance business, or business as a securities dealer. Effective for taxable years of a foreign corporation beginning after December 31, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. [I.R.C. §953(e), I.R.C. §954(h)]

Part 4—Incentives for Real Estate Investment

Extension of minimum low-income housing tax credit rate for non-Federally subsidized buildings [Act §131] The Act permanently extends the application of the 9% minimum credit rate for the low income housing tax credit for non-federally subsidized new buildings. Effective on January 1, 2015. [I.R.C. §42(b)(2)]

Extension of military housing allowance exclusion for determining whether a tenant in certain counties is low-income [Act §132] The Act permanently extends the exclusion of military basic housing allowances from the calculation of income for determining eligibility as a low-income tenant for purposes of low-income housing tax credit buildings. Effective as if included in the enactment of §3005 of the Housing Assistance Tax Act (enacted July 30, 2008). [§3005 of Housing Assistance Tax Act of 2008]

Extension of RIC qualified investment entity treatment under FIRPTA [Act §133] The Act permanently extends the provision that treats as qualified investment entity (QIE) a RIC that is a USRPHC or would be a USRPHC if the “publicly traded” exception under §897(c)(3) or the “domestically controlled” exception under §897(h)(2) did not apply. Effective on January 1, 2015. The provision does not apply with respect to any payment made before the date of enactment (December 18, 2015) that was actually withheld upon. If a RIC makes a distribution after December 31, 2014, and before the date of enactment (December 18, 2015), which is required to be withheld under I.R.C. §1445, such RIC is not liable to any person to whom the distribution was made for any amount so withheld and paid over to the IRS. [I.R.C. §897(h)]

Subtitle B—Extensions Through 2019

Extension of new markets tax credit [Act §141] The Act extends through 2019 the \$3.5 million tax yearly credit limitation for the new markets tax credit. The carryover of any unused limitation also is extended through 2024. Effective for calendar years beginning after December 31, 2014. [I.R.C. §45D(f)]

Extension and modification of work opportunity tax credit [Act §142] The Act extends through 2019 the work opportunity credit, which provides businesses a credit for hiring employees from specified groups that have historically been difficult to employ. The Act also extends the credit to employers who hire qualified long-term unemployed individuals (unemployed for 27 weeks or more and receiving unemployment). Generally effective for individuals who begin work for the employer after December 31, 2014; long-term unemployment provision effective for individuals who begin work for the employer after December 31, 2015. [I.R.C. §51]

Extension and modification of bonus depreciation [Act §143] The Act extends bonus depreciation to property acquired and placed in service through 2019 (2020 for certain property with a longer production period). The bonus depreciation percentage will be 50% for property placed in service during 2015, 2016 and 2017 and decrease to 40% in 2018 and 30 percent in 2019. The Act continues to allow taxpayers to elect to accelerate the use of prior year minimum tax credits in lieu of bonus depreciation under special rules for property placed in service during 2015. Beginning in 2016, the Act modifies the minimum tax credit rules by increasing the amount of unused minimum tax credits that may be claimed in lieu of bonus depreciation. The Act reduces the bonus depreciation amounts for passenger automobiles placed in service to \$6,400 during 2018 and \$4,800 during 2019. The Act also provides an election to modify bonus depreciation to include certain trees, vines, and plants bearing fruit or nuts to be eligible for bonus depreciation when planted or grafted, rather than when placed in service. Generally effective for property placed in service after December 31, 2014, in taxable years ending after that date. However, other provisions, including expansion of the minimum tax acceleration election and the special rules for plants, are generally effective for taxable years beginning after December 31, 2015. [I.R.C. §168(k)]

Extension of look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules [Act §144] The Act extends through 2019 the look-through treatment for payments of dividends, interest, rents, and royalties between related controlled foreign corporation. Effective for taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end. [I.R.C. §954(c)(6)]

Subtitle C—Extensions Through 2016

Part 1—Tax Relief for Families and Individuals

Extension and modification of exclusion from gross income of discharge of qualified principal residence indebtedness [Act §151] The Act extends through 2016 the exclusion from gross income of a discharge of qualified principal residence indebtedness. The Act also provides that mortgage debt discharged is eligible for exclusion as long as it was pursuant to an arrangement entered into and evidenced in writing before January 1, 2017. Effective for discharges of indebtedness after December 31, 2014. [I.R.C. §108(a)(1)(E)]

Extension of mortgage insurance premiums treated as qualified residence interest [Act §152] The Act extends through 2016 the treatment of qualified mortgage insurance premiums as interest for purposes of the mortgage interest deduction, subject to the existing phaseout rules. Effective for amounts paid or accrued after December 31, 2014. [I.R.C. §163(h)(3)]

Extension of above-the-line deduction for qualified tuition and related expenses [Act §153] The Act extends through 2016 the above-the-line tax deduction for qualified education expenses. The deduction is capped at \$4,000 for an individual whose adjusted gross income (AGI) does not exceed \$65,000 (\$130,000 for joint filers) or \$2,000 for an individual whose AGI does not exceed \$80,000 (\$160,000 for joint filers). Effective for taxable years beginning after December 31, 2014. [I.R.C. §222(e)]

Part 2—Incentives for Growth, Jobs, Investment, and Innovation

Extension of Indian employment tax credit [Act §161] The Act extends through 2016 the business tax credit for employers of qualified employees that work and live on or near an Indian reservation. Effective for taxable years beginning after December 31, 2014. [I.R.C. §45A(f)]

Extension and modification of railroad track maintenance credit [Act §162] The Act extends through 2016 the railroad track maintenance credit provided for Class II and Class III railroads. Effective for expenditures paid or incurred in taxable years beginning after December 31, 2014. The Act also changes the own or lease date for qualified track from January 1, 2005, to January 1, 2015. Effective for expenditures paid or incurred in taxable years beginning after December 31, 2015. [I.R.C. §45G]

Extension of mine rescue team training credit [Act §163]

The Act extends through 2016 the credit for training mine rescue team members. Effective for taxable years beginning after December 31, 2014. [I.R.C. §45N(e)]

Extension of qualified zone academy bonds [Act §164] The Act extends the \$400 million national limitation of the QZAB program through 2016. Effective for obligations issued after December 31, 2014. [I.R.C. §54E(c)]

Extension of classification of certain race horses as 3-year property [Act §165] The Act extends through 2016 the 3-year recovery period for race horses. Effective for property placed in service after December 31, 2014. [I.R.C. §168(e)(3)(A)]

Extension of 7-year recovery period for motorsports entertainment complexes [Act §166] The Act extends through 2016 the special 7-year cost recovery period for property used for land improvement and support facilities at motorsports entertainment complexes. Effective for property placed in service after December 31, 2014. [I.R.C. §168(i)(15)]

Extension and modification of accelerated depreciation for business property on an Indian reservation [Act §167] The Act extends through 2016 the placed-in-service date for the special depreciation recovery period for qualified Indian reservation property. Effective for property placed in service after December 31, 2014. The Act also provides an election out of the accelerated depreciation rules. Effective for property placed in service after December 31, 2015. [I.R.C. §168(j)]

Extension of election to expense mine safety equipment [Act §168] The Act extends through 2016 the election to expense mine safety equipment to property. Effective for property placed in service after December 31, 2014. This election allows mining companies to expense 50% of the cost of qualified mine safety equipment in the year the equipment is placed into service. [I.R.C. §179E(g)]

Extension of special expensing rules for certain film and television productions; special expensing for live theatrical productions [Act §169] The Act extends through 2016 the provision that allows film and

television producers to expense the first \$15 million of production costs incurred in the United States. Additionally, the Act modifies the special expensing rules to include certain live theatrical productions. Generally effective for productions commencing after December 31, 2014; live theatrical production provisions effective for productions commencing after December 31, 2015. [I.R.C. §181]

Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico [Act §170] The Act extends through 2016 the domestic production activities deduction to activities in Puerto Rico. Effective for taxable years beginning after December 31, 2014. [I.R.C. §199(d)(8)]

Extension and modification of empowerment zone tax incentives [Act §171] The Act extends through 2016 the designation of certain economically depressed census tracts as empowerment zones. The tax benefits available include tax-exempt bonds, employment credits, increased expensing, and gain exclusion from the sale of certain small-business stock. Beginning in 2016, the Act modifies the employee residence test to include residents of an empowerment zone, enterprise community, or qualified low-income community within an applicable nominating jurisdiction. Generally effective for taxable years beginning after December 31, 2014; bond provisions effective for bonds issued after December 31, 2015. [I.R.C. §1391(d), I.R.C. §1394(b)]

Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands [Act §172] The Act extends through 2016 the provision providing for payment of \$13.25 per gallon to cover over a \$13.50 per proof gallon excise tax on distilled spirits produced in or imported into the United States. Effective for distilled spirits brought to the United States after December 31, 2014. [I.R.C. §7652(f)]

Extension of American Samoa economic development credit [Act §173] The Act extends (through 2016 the existing credit for taxpayers currently operating in American Samoa. Effective for taxable years beginning after December 31, 2014. [§119 of Division A of the Tax Relief and Health Care Act of 2006]

Moratorium on medical device excise tax [Act §174] The Act delays the implementation of the 2.3% excise tax imposed on the sale of medical devices until 2018. Effective for sales after December 31, 2015. [I.R.C. §4191(c)]

Part 3—Incentives for Energy Production and Conservation

Extension and modification of credit for nonbusiness energy property [Act §181] The Act extends through 2016 the 10% credit (maximum of \$500) for purchases of nonbusiness energy property and update Energy Star requirements for certain improvements. Effective for taxable years beginning after December 31, 2014. [I.R.C. §25C]

Extension of credit for alternative fuel vehicle refueling property [Act §182] The Act extends through 2016 the 30% investment credit for alternative vehicle refueling property (which includes fuel pumps for ethanol, biodiesel, liquefied hydrogen, and compressed or liquefied natural gas). Effective for property placed in service after December 31, 2014. [I.R.C. §30C(g)]

Extension of credit for 2-wheeled plug-in electric vehicles [Act §183] The Act includes for 2015 and 2016 the individual income tax credit for highway-capable plug-in electric motorcycles and 2-wheeled vehicles. Effective vehicles acquired after December 31, 2014. [I.R.C. §30D(g)(3)]

Extension of second generation biofuel producer credit [Act §184] The Act extends through 2016 the cellulosic biofuels producers credit. Effective for qualified second generation production after December 31, 2014. [I.R.C. §40(b)(6)]

Extension of biodiesel and renewable diesel incentives [Act §185] The Act extends through 2016 the \$1.00 per gallon production tax credit for biodiesel and the small agri-biodiesel producer credit of 10 cents per gallon. The Act also extends through 2016 the \$1.00 per gallon production excise tax credit for diesel fuel created from biomass. Additionally, the Act provides special rules for claiming the excise tax credit for 2015. Effective for fuel sold or used after December 31, 2014. [I.R.C. §40A, I.R.C. §6426]

Extension and modification of production credit for Indian coal facilities [Act §186] The Act extends through 2016 the \$2 per ton production tax credit for coal produced on land owned by an Indian tribe, if the facility was placed in service before 2009. Beginning in 2016, the Act repeals the limitation based on the date the facility is placed in service and permits a taxpayer to claim the credit against AMT. Generally effective for coal produced after December 31, 2014; limitation repeal generally effective for coal produced and sold after December 31, 2015, in tax years ending after that date; AMT provisions effective for credits determined for taxable years beginning after December 31, 2014. [I.R.C. §45(e)(10)]

Extension of credits with respect to facilities producing energy from certain renewable resources [Act §187] The Act extends through 2016 the production tax credit (PTC) for closed loop biomass, open loop biomass, geothermal or solar energy, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities for which construction has commenced by the end of 2016. The Act also extends the election to treat qualified facilities as energy property for purposes of the §48 energy credit through 2016. The credit provisions for wind facilities is subject to a separate extension provision (see Act Division P, §301, above). Effective January 1, 2015. [I.R.C. §45(d)]

Extension of credit for energy-efficient new homes [Act §188] The Act extends through 2016 the credit for the construction of energy-efficient new homes. Effective for homes acquired after December 31, 2014. [I.R.C. §45L(g)]

Extension of special allowance for second generation biofuel plant property [Act §189] The Act extends through 2016 50% bonus depreciation for cellulosic biofuel facilities. Effective for property placed in service after December 31, 2014. [I.R.C. §168(l)(2)]

Extension and modification of energy efficient commercial buildings deduction [Act §190] The Act extends through 2016 the above-the-line deduction for energy efficiency improvements to lighting, heating, cooling, ventilation, and hot water systems of commercial buildings. Effective for property placed in service after December 31, 2014. See Act §341 below for updates to qualifying efficiency standards. [I.R.C. §179D(h)]

Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities [Act §191] The Act extends through 2016 (for sales prior to January 1, 2017) the present law deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC-approved independent transmission companies. Rather than recognizing the full amount of gain in the year of sale, this provision allows gain on such sales to be recognized ratably over an 8-year period. Effective for dispositions after December 31, 2014. [I.R.C. §451(i)]

Extension of excise tax credits relating to alternative fuels [Act §192] The Act extends through 2016 the \$0.50 per gallon alternative fuel tax credit and alternative fuel mixture tax credit. The Act also provides special rules for claiming the excise tax credit for 2015. Effective for fuel sold or used after December 31, 2014. [I.R.C. §6426, I.R.C. §6427]

Extension of credit for new qualified fuel cell motor vehicles [Act §193] The Act extends through 2016 the credit for new fuel cell motor vehicles. Effective for property purchased after December 31, 2014. [I.R.C. §30B(k)]

TITLE III—MISCELLANEOUS PROVISIONS

Subtitle A—Family Tax Relief

Exclusion for amounts received under the Work Colleges Program [Act §301] The Act exempts from gross income any payments from a comprehensive student work-learning-service program operated by a work college. Specifically, a work college must require resident students to participate in a work-learning-service program that is an integral and stated part of the institution's educational philosophy and program. Effective for amounts received in taxable years beginning after the date of enactment (December 18, 2015). [I.R.C. §117(c)]

Improvements to section 529 accounts [Act §302] The Act expands the definition of qualified higher education expenses for which tax-preferred distributions from §529 accounts are eligible to include computer equipment and technology if such equipment is used primarily by the beneficiary during any years the beneficiary is enrolled at an eligible educational institution. Effective for taxable years beginning after December 31, 2014. The Act modifies the §529 rules to eliminate the distribution aggregation requirements and thus treat any distribution from a §529 account as coming only from that account, even if the individual making the distribution operates more than one account. Effective for distributions after December 31, 2014. The Act treats a refund of tuition paid with amounts distributed from a §529 account as a qualified expense if such amounts are re-contributed to a §529 account within 60 days of the refund. The change applies with respect to refunds of qualified higher education expenses after December 31, 2014. A transition rule allows for re-contribution of refunds received after 2014 and before the date of enactment (December 18, 2015) to allow for re-contribution within 60 days after the enactment date (December 18, 2015). [I.R.C. §529]

Elimination of residency requirement for qualified ABLE programs [Act §303] The Act allows so-called ABLE accounts (tax-preferred savings accounts for disabled individuals), which currently may be located only in the state of residence of the beneficiary, to be established in any state. This allows individuals setting up ABLE accounts to choose the state program that best fits their needs. Effective for taxable years beginning after December 31, 2014. [I.R.C. §529A(b)]

Exclusion for wrongfully incarcerated individuals [Act §304] The Act adds rules allowing a taxpayer wrongfully incarcerated to exclude from gross income civil damages, restitution, or other monetary awards that the taxpayer received as compensation for a wrongful incarceration. Effective for taxable years beginning before, on, or after the date of enactment (December 18, 2015). [I.R.C. §139F (new)]

Clarification of special rule for certain governmental plans [Act §305] Section 105(j) excludes from gross income amounts paid to a taxpayer from certain governmental health plans. The Act extends this rule to current benefits paid by accident or health plans established by or on behalf of a state or political

subdivision. Effective for payments made after the date of enactment (December 18, 2015). [I.R.C. §105(j)]

Rollovers permitted from other retirement plans into simple retirement accounts [Act §306] Section 408 contains rules governing rollovers between retirement plans and accounts. The Act amends this provision to allow a taxpayer to roll over amounts from an employer-sponsored retirement plan (such as a §401(k) plan) to a SIMPLE IRA, provided the plan has existed for at least two years. Effective for contributions made after the date of enactment (December 18, 2015). [I.R.C. §408(p)]

Technical amendment relating to rollover of certain airline payment amounts [Act §307] Section 408 contains rules governing rollovers between retirement plans and accounts. The FAA Modernization and Reform Act of 2012, Pub. L. No. 113-243, contains a special rule allowing certain airline employees to contribute amounts received in certain bankruptcies to an IRA without being subject to the annual contribution limit. The Act clarifies that this rule applies to rollovers made within 180 days of receipt, or, if later, within the period beginning on December 18, 2014, and ending on the date that is 180 days after the date of enactment (December 18, 2015) of the Act. Effective as if included in the FAA Modernization and Reform Act of 2012. [I.R.C. §408 (note)]

Treatment of early retirement distributions for nuclear materials couriers, United States Capitol Police, Supreme Court Police, and diplomatic security special agents [Act §308] Section 72(t)(10)(B)(ii) contains an exception to the 10% penalty on withdrawals from retirement accounts before age 50 for certain categories of employees. The Act extends this relief to include nuclear materials couriers, U.S. Capitol Police, U.S. Supreme Court Police and diplomatic security special agents of the State Department. Effective for distributions made after December 31, 2015. [I.R.C. §72(t)]

Prevention of extension of tax collection period for members of the Armed Forces who are hospitalized as a result of combat zone injuries [Act §309] The Act provides that the collection period for members of the Armed Forces hospitalized for combat zone injuries not be extended by reason of any period of continuous hospitalization or the 180 days after hospitalization. Accordingly, the collection period expires 10 years after assessment, plus the actual time spent in a combat zone. Effective for taxes assessed before, on, or after the date of the enactment (December 18, 2015). [I.R.C. §7508]

Subtitle B—Real Estate Investment Trusts

Restriction on tax-free spinoffs involving REITs [Act §311] The Act amends §355 to provide that, with two exceptions, a corporation will not be eligible to participate in a tax-free spinoff if either the distributing corporation or the controlled corporation is a real estate investment trust (REIT). The first exception will be for spinoffs of a REIT by another REIT where, immediately after the distribution, both the distributing and controlled corporations are REITs. The second exception will be for spinoffs of taxable REIT subsidiaries where the distributing corporation has been a REIT, and the controlled corporation has been a taxable REIT subsidiary, for the three-year period ending on the date of the distribution. The Act also amends §856(c) to disallow a distributing corporation or a controlled corporation other than a REIT subsidiary spun off from its controlling REIT in a distribution to which §355 applied, the corporation may not elect to become a REIT during the 10-year period beginning on the date of the distribution. Both provisions are effective for distributions on or after December 7, 2015, except for a transaction described in a ruling request submitted on or before that date, if the ruling request has not been withdrawn and a ruling has not been issued or denied in its entirety as of that date. [I.R.C. §355(h); I.R.C. §856(c)(8)]

Reduction in percentage limitation on assets of REIT which may be taxable REIT subsidiaries [Act §312]

The Act reduces from 25% to 20% the amount of a REIT's assets that may be a taxable REIT subsidiary. Effective for taxable years beginning after December 31, 2017. [I.R.C. §856(c)(4)]

Prohibited transaction safe harbors [Act §313] The Act provides alternative three-year averaging tests to determine the percentage of assets (including REIT timber property) that a REIT may sell. The first alternative test provides that the aggregate of the adjusted bases of the properties sold may not exceed 20% of the aggregate bases of all of the REIT's properties as of the beginning of the tax year and the three-year average adjusted bases percentage for the tax year does not exceed 10%. The second provides that the fair market value of property sold during the tax year may not exceed 20% of the fair market value of all of the assets of the REIT as of the beginning of the tax year and the three-year average fair market value percentage for the year does not exceed 10%. In addition, the Act removes the safe harbor requirement that the real estate asset be inventory property. Generally effective for taxable years beginning after the date of enactment (December 18, 2015). The inventory property provision is effective as if included in the Housing Assistance Tax Act of 2008, Pub. L. No. 110-289, §3051. [I.R.C. §857(b)(6)]

Repeal of preferential dividend rule for publicly offered REITs [Act §314] The Act repeals the preferential dividend rule for publicly offered REITs determining dividends eligible for the dividends paid deduction. Effective for distributions in taxable years beginning after December 31, 2014. [I.R.C. §562(c)]

Authority for alternative remedies to address certain REIT distribution failures [Act §315] The Act provides the IRS with authority to provide an appropriate remedy to cure the failure of a distribution of a non-publicly traded REIT to satisfy the requirements of §562(c) where the failure is inadvertent or due to reasonable cause and not to undue neglect. Effective for distributions in taxable years beginning after December 31, 2015. [I.R.C. §562(e)(2)]

Limitations on designation of dividends by REITs [Act §316] The Act limits the aggregate amount of dividends that may be designated by a REIT as capital gain dividends or qualified dividends may not exceed the dividends actually paid by the REIT. The Act permits the IRS to require the proportionality of the designation of particular types of dividends among shares or beneficial interests in a REIT. Effective for distributions in taxable years beginning after December 31, 2015. [I.R.C. §857(g)]

Debt instruments of publicly offered REITs and mortgages treated as real estate assets [Act §317] The Act includes debt instruments issued by publicly offered REITs and mortgages on interests in real property in the definition of "real estate assets." Income from debt instruments issued by publicly offered REITs will not, however, qualify for purposes of satisfying the 75% income test. The Act also provides that no more than 25% of a REIT's assets may be comprised of nonqualified debt instruments of publicly offered REITs. Effective for taxable years beginning after December 31, 2015. [I.R.C. §856(c)]

Asset and income test clarification regarding ancillary personal property [Act §318] The Act treats personal property leased in connection with real property as a real estate asset for purposes of the 75% asset test. An obligation secured by a mortgage on both real and personal property also is treated as a real estate asset if the value of the personal property does not exceed 15% of the total value of all the mortgaged property. Effective for taxable years beginning after December 31, 2015. [I.R.C. §856(c)(9)]

Hedging provisions [Act §319] The Act disregards, for purposes of the 75% and 95% income tests, income from hedges entered into in order to manage risk with respect to a prior hedge, where the asset or liability associated with the prior hedge is partly or entirely disposed of. Effective for taxable years beginning after December 31, 2015. [I.R.C. §856(c)(5)]

Modification of REIT earnings and profits calculation to avoid duplicate taxation [Act §320] The Act provides that the earnings and profits (E&P) of a REIT for a tax year is not reduced by any amount that is not allowable as a deduction for the year and was not allowable as a deduction in any prior tax year. The Act also provides that, for purposes of calculating the dividends paid deduction, a REIT's E&P is increased by any gain on the sale or exchange of real property taken into account in determining the taxable income of the REIT for the tax year, to the extent the gain is not otherwise so taken into account for calculating E&P. Effective for taxable years beginning after December 31, 2015. [I.R.C. §562(e)(1); I.R.C. §857(d)]

Treatment of certain services provided by taxable REIT subsidiaries [Act §321] The Act permits, for purposes of the tax on prohibited transactions, a taxable REIT subsidiary to perform marketing and development services with regard to a real estate asset, and marketing services with regard to a real estate asset held for use in the trade or business of timber production. In addition, the Act adds redetermined TRS service income to the items subject to the 100% excise tax on certain transactions between a REIT and a taxable REIT subsidiary. Effective for taxable years beginning after December 31, 2015. [I.R.C. §857(b)]

Exception from FIRPTA for certain stock of REITs [Act §322] The Act increases from 5% to 10% the ownership percentage that under §897(c)(3) allows small interests in publicly traded corporations not to be considered to be U.S. real property interests. According to the Act, constructive ownership rules under §897(c)(6)(C) are not applied to attribute ownership of public companies to or from associated persons in making this test unless shares owned by the associated person amounted to “more than 10 percent” (an increase from “more than 5 percent”). Generally effective on the date of enactment (December 18, 2015). [I.R.C. §897]

Exception for interests held by foreign retirement or pension funds [Act §323] The Act provides that §897 does not apply to real property interests that otherwise would be U.S. real property interests (USRPIs) if they are held directly by qualified foreign retirement or pension funds, or if held indirectly by them through one or more partnership. Effective for dispositions and distributions after the date of enactment (December 18, 2015). [I.R.C. §897(l)]

Increase in rate of withholding of tax on dispositions of United States real property interests [Act §324] The Act increases the rate of withholding from dispositions of U.S. real property interests under §1445 from 10% to 15%, but remains at 10% for residences sold for less than \$1 million. [I.R.C. §1445]
Interests in RICs and REITs not excluded from definition of United States real property interests [Act §325] A slight tightening of the rule treating companies that had disposed of all USRPIs as having “purged” their own shares of status as USRPIs is implemented by requiring the company trying to purge itself of that status not to have been regulated investment companies (RICs) or real estate investment trusts (REITs) during the relevant measurement period. Effective for dispositions on or after the date of enactment (December 18, 2015). [I.R.C. §897(c)]

Dividends derived from RICs and REITs ineligible for deduction for United States source portion of dividends from certain foreign corporations [Act §326] For regulated investment companies (RICs), the

dividends received deduction (DRD) is limited to dividends from “domestic” corporations (whose income is, of course, subject to United States tax). Exceptions apply, however, to earnings that are sufficiently connected to the United States. If a domestic corporate shareholder owns 10% or more of a foreign corporation and receives a dividend from the foreign corporation, the domestic shareholder may take a DRD for the portion of the dividend that represents United States sourced income. The Act excludes dividends from RICs from the definition of post-1986 undistributed United States earnings for purposes of determining the amount of a dividend paid by a qualified 10% owned foreign corporation for which a deduction is allowed. Effective for dividends received from RICs and REITs on or after the date of enactment (December 18, 2015). [I.R.C. §245(a)]