



**2016 Tax Law
Wrap-Up**

BY DAVID MELLEME, EA

Congress did finally take action on the “extenders” last December, but it has not done very much this year. Some of the extenders were made permanent, and some were extended for a set period of time, such as two years. The items extended for two years are again expiring on December 31, 2016, and have so far not been extended further, which means we are again faced with uncertainty on these items.

Form 1099

As we mentioned last year, the Form 1099 penalties increased effective with Forms 1099 that were required to be filed after December 31, 2015. This means the ones we prepared last January were subject to these higher penalties. This penalty amount is also now subject to be increased due to inflation. The penalty amount has increased from last year’s \$250 to \$260 for this year.

Education Credits and Tuition Deduction

The American Opportunity Credit is now permanent as currently written. The Tuition Deduction is extended through December 31, 2016.

Beginning with calendar year 2016, educational institutions are now required to show the amounts of qualified expenses *paid* on Form 1098-T (Tuition Statement). However, many institutions told IRS they are having difficulty getting their software programs changed for this year, so IRS gave them an extra year. Therefore, this requirement to show the tuition paid will not apply until the calendar year 2017. As in years past, we will continue to have to ask our clients for the amounts they *paid* during the year and not trust the Form 1098-T’s “billed” amounts.

Delayed Refunds

Effective for tax years beginning after December 31, 2016, the refund shown on a Form 1040 series return that contains earned income credit (EIC) or the refundable Child Tax Credit will not be issued before February 15. This is intended to give

IRS more time to conduct fraud checks on the return.

Retroactive Refund Claims Denied

In the past, a taxpayer with an individual taxpayer identification number (ITIN) who later obtained a valid social security number (SSN) was able to amend prior-year returns to claim EIC, the American Opportunity Credit, and the refundable Child Tax Credit.

This ability to amend is no longer available for tax years beginning *after* December 31, 2014, if the SSN was obtained after the due date for filing the original return. There is an exception to this denial for a tax year beginning in 2015 as long as the original 2015 return was timely filed.

Denial of EIC, American Opportunity Credit and Refundable Child Tax Credit

Effective for tax years beginning after December 31, 2015, a taxpayer is not allowed the EIC, American Opportunity Credit, or the refundable Child Tax Credit if the taxpayer has improperly claimed the applicable credit.

This denial is for a period of two years if the claim is denied due to reckless or intentional disregard of the rules. The denial is for a period of 10 years if the claim is denied due to fraud.

Depreciation Changes Section 179

The \$500,000 maximum is permanent and is now indexed for inflation. The \$2,000,000 phase-out level is permanent and is now

indexed for inflation (\$2,010,000 for 2016). The maximum amount of Sec. 179 that can be used for qualified real estate improvements is now the full Sec. 179 amount. Off-the-shelf software is permanently eligible to be claimed under Sec. 179. The ability to amend to claim more or less Sec. 179 is also permanent. Air conditioning and heating units are now eligible for Sec. 179, and this is permanent.

Film and TV production expensing under Sec. 179 has been extended through tax years beginning prior to January 1, 2017. This has been expanded and includes certain live productions.

Depreciable Lives

The fifteen-year life for qualified leasehold improvements, qualified retail establishment improvements, and qualified restaurant improvements has been made permanent.

The seven-year life for motorsports racing track facilities is available for assets placed in service in tax years beginning prior to January 1, 2017.

The three-year life for race horses is available for assets placed in service in tax years beginning prior to January 1, 2017.

Bonus Depreciation

Bonus depreciation has been extended, phased out, and expanded:

- 50 percent bonus is available for assets placed in service prior to January 1, 2018. The first-year limit for vehicles falling under the listed property limitations is increased by \$8,000.
- 40 percent bonus is available for assets placed in service during calendar year 2018. The first-year limit for vehicles



- falling under the listed property limitations is increased by \$6,400.
- 30 percent bonus is available for assets placed in service during calendar year 2019. The first-year limit for vehicles falling under the listed property limitations is increased by \$4,800.
 - For plants planted or grafted after December 31, 2015, and before January 1, 2020, bonus depreciation is allowed for trees, vines, and plant-bearing fruit or nuts when planted or grafted, instead of when they are placed in service.

Extenders

Other Extenders Made Permanent

- Research Credit, with some modifications
- S corporation basis reduction for contributions of noncash property
- S corporation built-in gain period of five years
- Exclusion under Sec. 1202 of 100 percent of the gain from certain small business stock
- Enhanced deduction of food inventory
- Employer wage credit for employees who are active duty members of the uniformed services
- The educator deduction is permanent and now includes professional development. The \$250 limit is indexed in \$50 increments.
- Sales tax deduction
- Tax-free distributions from IRAs direct to charities for taxpayers who have reached age 70½
- Transit passes and qualified parking now have parity (\$255 for 2016).

Extended through December 31, 2016

- 10 percent Energy Credit for storm windows and doors, insulation, etc.
- Mortgage insurance premiums as itemized deductions
- Cancellation of indebtedness exclusion for principal residence

acquisition indebtedness of a maximum of \$2,000,000

- Alternative Fuel Vehicle Recycling Property Credit
- Two-Wheeled Plug-in Vehicle Credit
- Energy Efficient Home Credit (aka, Builder's Credit) of \$1,000 or \$2,000
- Energy Efficient Commercial Building Property deduction under Sec. 179D
- Credit for fuel-cell vehicles
- Indian Employment Credit
- Domestic Production Activities Deduction for Puerto Rico
- Empowerment Zone Credit

Extended Through Various Dates

- Work Opportunity Credit through 2019 with changes
- New Markets Tax Credit through 2019
- The medical device excise tax is postponed until after December 31, 2017.
- 40 percent tax on Cadillac health plans is postponed for two years.
- 30 percent credit for facilities using wind to produce electricity is extended through tax years beginning prior to January 1, 2020. The credit is phased out as follows:
 - 20 percent phase out for tax years beginning after December 31, 2016
 - 40 percent phase out for tax years beginning after December 31, 2017
 - 60 percent phase out for tax years beginning after December 31, 2018
- The 30 percent credit for solar energy property is extended through years beginning prior to January 1, 2022. This credit also has some modifications and lower credits.

Exclusion for Income Received for Wrongful Incarceration

Income received by a wrongfully incarcerated individual for civil damages, restitution, or other monetary award is not taxable.

This provision is available for any open year. If a year is closed, it appears the taxpayer can still get a refund as long as the claim is filed no later than December 19, 2016 (one year from the date Protecting Americans from Tax Hikes Act of 2015 (PATH Act) was signed into law plus one day since December 18 falls on a Sunday).

The amended return should have "Incarceration Exclusion PATH Act" written at the top of the Form 1040X (Amended U.S. Individual Income Tax Return).

IRS set up a special filing address for amended returns claiming this exclusion. Form 1040X, along with supporting documentation, should be sent to:

Internal Revenue Service
333 W. Pershing
Stop 6503 5th Fl
Kansas City, MO 64108

IRS has provided a set of FAQs on its website. Question 8 has information about the documentation that should be submitted with Form 1040X. See below:

Q8: What documentation should a wrongfully incarcerated individual submit with his or her amended federal income tax return (Form 1040X) to substantiate the claim for refund?

A8: The Form 1040X must include two different types of documentation. The first type of documentation must establish that the award was previously reported in income, when it was reported, and in what amount. Examples of such documentation include copies of federal income tax returns, Forms 1099-MISC (Miscellaneous Income), and any other retained records relating to the reported income. However, if a wrongfully

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incarcerated individual no longer has documentation establishing that he or she previously reported the award in income, then he or she must submit a written statement affirming that the income was reported and that he or she no longer has relevant records. The second type of documentation must establish that the award was made on account of the wrongful incarceration. Examples of such documentation include copies of federal or state court orders awarding the compensation, signed settlement agreements accepting the amount of the award, and letters by governmental agencies or private payment sources that may have accompanied the payment of the award that include an explanation of the reason for the payment.

Streamlined Exemption Process

IRS is to provide a streamlined recognition process for organizations seeking tax exemption under Sec. 501(c)(4).

Instead of the current process, these organizations must file a simple one-page notice of registration with IRS within 60 days of the organization's formation. Within 60 days after an application is submitted, IRS must provide a letter of acknowledgement of the registration, which the organization can use to demonstrate its exempt status. Certain limitations apply.

Rev. Proc. 2016-41 was released July 8, 2016. It announced the new Form 8976

(Notice of Intent to Operate under Sec. 501(c)(4)) to be used for this streamlined process. The form can only be filed electronically through IRS's website; it cannot be filed in paper format. Specific directions on this process can be found by going to www.irs.gov and entering "8976" in the search box. There is a \$50 fee for the processing of this form.

Social Security Numbers on Form W-2

IRS has been given the *authority* to require employers to include an identifying number for each employee, rather than the employee's SSN, on Forms W-2. Watch for further information from IRS.

Enrolled Agent Designation

Enrolled agents approved by IRS are now permitted to use the designation "enrolled agent," "EA," or "E.A."

Apparently, there was disagreement in some states about EAs' right to use their credential. It was felt in those states that the EA credential and abbreviation were too easily confused with the CPA credential and abbreviation.

Now the federal government has taken control of this issue and permits the designations to be used in all states.

Di Minimis Corrections on Forms W-2 and 1099

IRS does not require a Form W-2 or 1099 to be corrected if:

- The income amount is incorrect by \$100 or less.

- The federal income tax withholding is incorrect by \$25 or less.

Due Date for Submitting W-2s to the Social Security Administration

The new due date for submitting Forms W-2 and W-3 (that report employee compensation) to SSA and Form 1099-MISC (that report nonemployee compensation in Box 7) to IRS is now January 31, instead of the prior February 28, effective with forms for calendar years beginning after December 31, 2015.

Form 8809 (Application for Extension of Time to File Information Returns) can be filed to request a 30-day extension of time to file these forms. This is not an automatic extension.

As in the past, this extension does not extend the time to get the returns to the employees. To request an extension to provide Forms W-2 to employees, the employer must send a letter to IRS as provided in the instructions to Form W-3.

Repair Versus Capitalization Regulations Safe Harbor Options

Over the past several years, you have heard about the safe harbor amounts available for the definition of "materials and supplies," including the \$200 level, the \$500 level, and the \$5,000 level.

The \$500 level has now increased to \$2,500 effective for tax years beginning after December 31, 2015. IRS announced it will not question at examination, appeals, or court the use of this \$2,500 level for



any tax year beginning after December 2011, and ending prior to January 1, 2016.

Last Year's Provisions That First Take Effect This Year Public Safety Employee

The exception from the 10 percent early distribution penalty for public safety employees is changed to include federal employees who are law enforcement officers, customs and border protection officers, firefighters, or air traffic controllers effective with distributions after December 31, 2015. (Section 72(t)(10))

Due Dates of Various Return Changes Partnerships:

Effective for taxable years beginning after December 31, 2015, the due date for partnership tax returns becomes the 15th day of the third month after the end of the partnership's tax year. This means the due date for unextended calendar-year partnership tax returns becomes March 15, the same due date as S corporation tax returns. Congress also dictates to IRS that the maximum extension period for calendar-year partnership tax returns cannot exceed one six-month period. IRS can choose a shorter period of time if it desires.

C Corporations: Effective for taxable years beginning after December 31, 2015, the due date for C corporation tax returns also changes. The due date is changing to the 15th day of the *fourth* month after the end of *most* C corporations' tax years.

This sounds simple enough, but that isn't the whole story. There is a special rule that *keeps* the due date for a fiscal year C corporation using a taxable year ending June 30 as the 15th day of the *third* month after the end of its fiscal year, which means the due date for C corporation returns with a June 30 year end is September 15. These June 30 fiscal

year C corporation returns will have their due dates change to the 15th day of the *fourth* month effective for taxable years beginning after December 31, 2025—10 years after all other C corporations. (The Act does not specify why this special rule exists. All we can come up with is that the government fiscal year ends September 30, so a due date of September 15 causes the revenues to fall near the end of the government's fiscal year instead of at the beginning of the next fiscal year. We believe there is a provision in the law that says something about tax bills having to be able to be balanced over a 10-year period.)

Here is a summary of C corporation return due dates:

- All year-ends except June 30 = 6 months
- June 30 year ends = 5 months until 2026, then 6 months

Extensions for C Corporations

Congress dictates the maximum extension period is one six-month period (the law previously said one automatic three-month period, with another three-month non-automatic extension available, but IRS gave us a six-month automatic period anyway, so Congress is merely formalizing this).

There's more. As we said, the automatic extension period is a maximum six-month period, but a C corporation that has a December 31 tax-year end has a maximum five-month period for its extension for all tax years beginning prior to January 1, 2026. Effective for tax years beginning on or after January 1, 2026, calendar year-end C corporations will have the normal six-month extension period. This means calendar year C corporations will have an April 15 due date but a September 15 extended due date for the next 10 years!

Also, a C corporation that has a June 30 tax-year end has a maximum seven-month period for its extension for all tax years beginning prior to January 1, 2026.

Here is a summary of extended C corporation returns' due dates:

- All year-ends except December 31 and June 30 = 6 months
- December 31 year-ends = 5 months until 2026, then 6 months
- June 30 year-ends = 7 months until 2026, then 6 months

FinCEN Report 114

Effective for taxable years beginning after December 31, 2015, the due date for the FinCEN Report 114 (FBAR) will be April 15, and there is now an extension available for a maximum of one six-month period. Also, the secretary can waive penalty for failure to timely request for, or file, an extension for a taxpayer required to file this form for the first time.

Form 1098, Mortgage Interest Statement

Effective with statements required to be furnished after December 31, 2016, the Form 1098 will include the following new information:

- the amount of the outstanding principal at the beginning of the year
- the date of the origination of the mortgage
- the address of the property that secures the mortgage

Here's to a happy, successful, and stress-free tax season! **EA**

About the Author:

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