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Tax Provisions Expiring in 2020 ("Tax Extenders")

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SUMMARY

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December 3, 2020

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Tax Provisions Expiring in 2020 ("Tax Extenders")

Thirty-three temporary tax provisions are scheduled to expire at the end of 2020. Collectively, temporary tax provisions that are regularly extended as a group by Congress, rather than being allowed to expire as scheduled, are often referred to as "tax extenders."

Most recently, tax extenders were included in the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94). Nearly all temporary tax provisions that had expired at the end of 2017 were retroactively extended through 2020 by this law, with several provisions expiring at the end of 2018 and 2019 also extended through 2020. The extension of expired and expiring provisions enacted in P.L. 116-97 was estimated to reduce federal revenue by $32.9 billion between FY2020 and FY2029.

Most of the temporary tax provisions scheduled to expire at the end of 2020 have been included in previous "tax extender" legislation. There are several options for Congress to consider regarding temporary tax provisions. Provisions scheduled to expire at the end of 2020 could be extended. The extension could be retroactive. The extension could be short term, long term, or permanent. Another option would be to allow expired provisions to remain expired.

In addition to the 33 temporary tax provisions expiring at the end of 2020, 9 other temporary tax provisions expire at the end of 2021, 2022, or 2023. Certain disaster-related tax provisions were available for 2018 and 2019 disasters. Other temporary tax policy relief was enacted, for 2020, in response to the COVID-19 pandemic. Extending or expanding provisions that expire in coming years, or provisions that were available for disasters in past years or the COVID-19 pandemic in 2020, could be considered in policy debates regarding temporary and expiring tax provisions.

This report provides a broad overview of "tax extenders." More information on specific tax provisions scheduled to expire at the end of 2020 can be found in

- CRS Report R46271, *Business Tax Provisions Expiring in 2020, 2021, and 2022 ("Tax Extenders")*, coordinated by Molly F. Sherlock;
- CRS Report R46243, *Individual Tax Provisions ("Tax Extenders") Expiring in 2020: In Brief*, coordinated by Molly F. Sherlock;
- CRS Report R46451, *Energy Tax Provisions Expiring in 2020, 2021, 2022, and 2023 ("Tax Extenders")*, by Molly F. Sherlock, Margot L. Crandall-Hollick, and Donald J. Marples; and
- CRS Report R45967, *Expired and Expiring Tax Provisions ("Tax Extenders"): CRS Resources*, by Jennifer Teefy and Molly F. Sherlock.

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Thirty-three temporary tax provisions are scheduled to expire at the end of 2020.[1] Collectively, temporary tax provisions that are regularly extended as a group by Congress, rather than being allowed to expire as scheduled, are often referred to as "tax extenders."

There are several options for Congress to consider regarding temporary provisions. Provisions scheduled to expire at the end of 2020 could be extended. The extension could be short term, long term, or permanent. Another option would be to allow expiring provisions to expire as scheduled. If expiring provisions are not extended before the end of 2020, a retroactive extension might be considered at a later date.

Congress may also choose to evaluate the extension of selected expiring provisions in lieu of considering an extenders package that addresses most or all of the expiring provisions. In recent years, some provisions that had been long-standing tax extenders have been either made permanent or given longer-term extensions. Provisions expiring at the end of 2020 might be examined on a case-by-case basis to determine whether each provision is likely to achieve its desired outcome under the tax code as revised in the 2017 tax revision (commonly referred to as the "Tax Cuts and Jobs Act," P.L. 115-97).[2]

Congress has often chosen to extend most, if not all, recently expired or expiring provisions as part of tax extender legislation. Most recently, tax extenders were included in the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94). Most of the tax provisions extended in this legislation had expired at the end of 2017, and were retroactively extended through 2020. Previously, the Bipartisan Budget Act of 2018 (BBA18; P.L. 115-123) extended through the end of 2017 nearly all of the provisions that had expired at the end of 2016. This extension was entirely retroactive. Because the BBA18 was enacted in February 2018, the extensions were not available for 2018, the tax year in which the legislation was enacted.

Debates regarding proposals to modify or extend tax provisions scheduled to expire at the end of 2020 might also consider whether temporary tax provisions expiring in 2021, 2022, or 2023 should also be extended.[3] There are six temporary tax provisions scheduled to expire at the end of 2021. Another two expire at the end of 2022, and one more expires at the end of 2023.[4]

This report provides a broad overview of tax extenders. More information on specific tax provisions that will expire at the end of 2020, as well as in 2021, 2022, or 2023, can be found in

- CRS Report R46271, *Business Tax Provisions Expiring in 2020, 2021, and 2022 ("Tax Extenders")*, coordinated by Molly F. Sherlock;
- CRS Report R46243, *Individual Tax Provisions ("Tax Extenders") Expiring in 2020: In Brief*, coordinated by Molly F. Sherlock;

[1] Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2020-2029*, January 16, 2020.

[2] See CRS Report R45092, *The 2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law*, coordinated by Molly F. Sherlock and Donald J. Marples.

[3] There are no temporary tax provisions currently scheduled to expire at the end of 2024. Most of the individual income tax changes enacted as part of the 2017 tax revision (P.L. 115-97) expire at the end of 2025. These expirations could stimulate more comprehensive policy debates about what the tax system will look like after 2025.

[4] These counts do not include the Highway Trust Fund excise taxes scheduled to expire at the end of FY2022 and FY2023, or the Airport and Airway Trust Fund excise taxes scheduled to expire at the end of FY2023. For background, see CRS Report RL30304, *The Federal Excise Tax on Motor Fuels and the Highway Trust Fund: Current Law and Legislative History*, by Sean Lowry; and CRS Report R44749, *The Airport and Airway Trust Fund (AATF): An Overview*, by Rachel Y. Tang and Bart Elias.

- CRS Report R46451, *Energy Tax Provisions Expiring in 2020, 2021, 2022, and 2023 ("Tax Extenders")*, by Molly F. Sherlock, Margot L. Crandall-Hollick, and Donald J. Marples; and
- CRS Report R45967, *Expired and Expiring Tax Provisions ("Tax Extenders"): CRS Resources*, by Jennifer Teefy and Molly F. Sherlock.

The Concept of Tax Extenders

The tax code presently contains dozens of temporary tax provisions. In the past, legislation to extend some of these expiring provisions has often been referred to as the "tax extender" package. Although there is no formal definition of a *tax extender*, the term has regularly been used to refer to the package of expiring tax provisions temporarily extended by Congress. Often, these expiring provisions are temporarily extended for a short period (e.g., one or two years). Over time, as new temporary provisions were routinely extended and hence added to this package, the number of provisions that might be considered tax extenders grew.[5] This trend was broken with the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016 (P.L. 114-113), which made permanent a number of provisions that had been part of previous tax extender packages. As a result, there were fewer tax extender provisions that expired in 2016 and 2017, and that are scheduled to expire in 2020, than was the case in many previous years.

Evaluating Expiring Tax Provisions

There are various reasons Congress may choose to enact temporary (as opposed to permanent) tax provisions. Enacting provisions on a temporary basis, in theory, would provide Congress with an opportunity to evaluate provisions before providing further extension. Temporary tax provisions may also be used to provide relief during times of economic weakness or following a natural disaster. Congress may also choose to enact temporary provisions for budgetary reasons. Examining the reason why a certain provision is temporary rather than permanent may be part of evaluating whether it should be extended. It may also be instructive to evaluate tax extenders using economic concepts often used in general tax policy analysis, looking at tax extender provisions' impact on economic efficiency, equity, and simplicity.

Reasons for Temporary Tax Provisions

There are several reasons why Congress may choose to enact tax provisions on a temporary basis. As previously noted, doing so may provide an opportunity to evaluate effectiveness before expiration or extension. Making a tax provision temporary might allow for adjustment or modification before further extension, or expiration if the provision does not achieve its policy objectives.[6] However, this rationale is undermined if expiring provisions are regularly extended

[5] For a history of the tax extenders, see U.S. Congress, Senate Committee on Rules and Administration, *The Tax Extenders: How Congressional Rules and Outside Interests Shape Policy*, committee print, prepared by Congressional Research Service, 113th Cong., 2nd sess., December 2014, S.Prt. 113-30, pp. 441-456, available at http://www.gpo.gov/fdsys/pkg/CPRT-113SPRT89394/pdf/CPRT-113SPRT89394.pdf#page=453.

[6] U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Temporary Policy in the Internal Revenue Code*, Testimony of Mark Mazur, 116th Cong., March 12, 2019, available at https://waysandmeans.house.gov/legislation/hearings/temporary-policy-internal-revenue-code.

without systematic review, as is the case in practice. In testimony before the Senate Committee on Finance in 2012, tax policy scholar Rosanne Altshuler argued that

> an expiration date can be seen as a mechanism to force policymakers to consider the costs and benefits of the special tax treatment and possible changes to increase the effectiveness of the policy. This reasoning is compelling in theory, but has been an absolute failure in practice as no real systematic review ever occurs. Instead of subjecting each provision to careful analysis of whether its benefits outweigh its costs, the extenders are traditionally considered and passed in their entirety as a package of unrelated temporary tax benefits.[7]

While most expiring tax provisions have been extended in recent years, there have been some exceptions. For example, tax incentives for alcohol fuels (e.g., ethanol), which could be traced to policies first enacted in 1978, were not extended beyond 2011. The Government Accountability Office (GAO) had previously found that with the renewable fuel standard (RFS) mandate, tax credits for ethanol were duplicative and did not increase consumption.[8] Congress may choose not to extend certain provisions if an evaluation determines that the benefits provided by the provision do not exceed the cost (in terms of forgone tax revenue).

In recent years, some tax extender packages have included all (or nearly all) expiring provisions, while other packages have left some out, effectively allowing provisions to expire as scheduled. The tax extender package in the American Taxpayer Relief Act of 2012 (ATRA; P.L. 112-240) did not include several provisions that had been extended multiple times in the past.[9] Most, but not all, expiring provisions were extended in the one-year, retroactive, tax extender bill enacted at the end of 2014, the Tax Increase Prevention Act (P.L. 113-295).[10] The PATH Act, enacted as Division Q of the Consolidated Appropriations Act, 2016 (P.L. 114-113), extended all expiring provisions. Unlike other recent extenders packages, the PATH Act included a permanent extension for many provisions. Other provisions were extended for five years, while most provisions were extended for two years, in more typical tax extenders practice.[11] The tax extender package included in the Bipartisan Budget Act of 2018 (P.L. 115-123) retroactively extended tax provisions that had expired at the end of 2016 through the end of 2017.[12]

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[7] U.S. Congress, Senate Committee on Finance, *Extenders and Tax Reform: Seeking Long-Term Solutions*, Testimony of Dr. Rosanne Altshuler, 112th Cong., January 31, 2012, available at http://www.finance.senate.gov/hearings/hearing/?id=b1604e2e-5056-a032-52ff-dd661f9280f6.

[8] See U.S. Government Accountability Office, *Biofuels: Potential Effects and Challenges of Required Increases in Production and Use*, GAO-09-44, August 2009, http://www.gao.gov/new.items/d09446.pdf; and U.S. Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP, March 2011, http://www.gao.gov/assets/320/315920.pdf.

[9] In addition to not including an extension of tax incentives for ethanol, ATRA did not include two charitable provisions, the enhanced deduction for donations of computer equipment and the enhanced deduction for book inventory to schools, which had first been enacted in 1997 and 2005, respectively. Other energy-related provisions that had been part of past tax extender packages but were not extended in ATRA included (1) the suspension of the 100%-of-net-income limitation on percentage depletion for oil and gas from marginal wells, first enacted in 1997; (2) the production tax credit (PTC) for refined coal, first enacted in 2004; and (3) the provisions that allowed for expensing of "brownfield" environmental remediation costs, first enacted in 1997. The estate tax look-through rule for regulated investment company (RIC) stock, first enacted in 2004, was also not extended.

[10] The credit for electric-drive motorcycles and three-wheeled vehicles was not included in P.L. 113-295. The provision was modified and extended in P.L. 114-113. Two other energy-related provisions were not extended past their January 1, 2014, termination date: the placed-in-service date for partial expensing of certain refinery property, and the credit for energy-efficient appliances.

[11] For more information regarding provisions that were made permanent, as opposed to being extended for two or five years, see CRS Report R44677, *Tax Provisions that Expired in 2016 ("Tax Extenders")*, by Molly F. Sherlock.

[12] The one business-related tax provision that expired at the end of 2016 that was not extended in the BBA18 was a

Most recently, the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Consolidated Appropriations Act, 2020 (P.L. 116-94), retroactively extended, through 2020, nearly all of the provisions that had expired at the end of 2017.[13] The tax incentives for biodiesel and renewable diesel and the credit for railroad track maintenance were extended through 2022. Provisions that had expired at the end of 2018 and 2019 were also extended through 2020.

Tax policy may also be used to address temporary circumstances in the form of economic stimulus or disaster relief. Several temporary economic stimulus measures were enacted to respond to the COVID-19 pandemic (see "Temporary Tax Policies Enacted in Response to the COVID-19 Pandemic" below). Temporary disaster tax relief was available for 2018 and most 2019 disasters. This relief included, among other provisions, an enhanced casualty loss deduction, increased charitable giving incentives, provisions enhancing access to retirement funds, and a tax credit for employee retention.[14] Other examples of temporary provisions that have been enacted to address special economic circumstances include the exclusion of forgiven mortgage debt from taxable income during the housing crisis of the late 2000s,[15] the payroll tax cut following the Great Recession,[16] and the grants in lieu of tax credits to compensate for weak tax-equity markets during the economic downturn (the Section 1603 grants).[17] Some tax scholars have argued that provisions that were enacted to address a temporary situation should be allowed to expire once the situation is resolved.[18]

Congress may also choose to enact tax policies on a temporary basis for budgetary reasons. If policymakers decide that legislation that reduces revenues must be paid for, it is easier to find resources to offset short-term extensions rather than long-term or permanent extensions.[19]

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provision relating to the allocation of qualified zone academy bonds; zone academy bonds were eliminated in the tax legislation enacted in December 2017 (P.L. 115-97).

[13] The election to expense 50% of the cost of advanced mine safety equipment, which was first enacted in 2006 and effective for the 2007 tax year, was not extended past December 31, 2017. Advanced mine safety equipment may be expensed under Section 179 and may also qualify for bonus depreciation. For more information, see CRS Report RL31852, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects*, by Gary Guenther. Other provisions not extended include the deduction allowable with respect to income attributable to domestic production activities in Puerto Rico and the special rate for qualified timber gains. The domestic production activities deduction (Section 199 deduction) was repealed as part of the 2017 tax revision (P.L. 115-97). Because Section 199 was repealed in its entirety after 2017, this provision was not extended for Puerto Rico. The special rate for timber gains was 23.8%. Since the 2017 tax revision (P.L. 115-97) reduced the top corporate tax rate from 35% to 21%, this provision was not extended.

[14] For more information, see CRS Report R45864, *Tax Policy and Disaster Recovery*, by Molly F. Sherlock and Jennifer Teefy.

[15] For more information, see CRS Report RL34212, *Analysis of the Tax Exclusion for Canceled Mortgage Debt Income*, by Mark P. Keightley and Erika K. Lunder.

[16] For more information, see CRS Report R42103, *Extending the Temporary Payroll Tax Reduction: A Brief Description and Economic Analysis*, by Donald J. Marples and Molly F. Sherlock.

[17] For more information, see CRS Report R41635, *ARRA Section 1603 Grants in Lieu of Tax Credits for Renewable Energy: Overview, Analysis, and Policy Options*, by Phillip Brown and Molly F. Sherlock.

[18] This point was made in U.S. Congress, Senate Committee on Finance, *Extenders and Tax Reform: Seeking Long-Term Solutions*, Testimony of Dr. Rosanne Altshuler, 112th Cong., January 31, 2012, available at http://www.finance.senate.gov/hearings/hearing/?id=b1604e2e-5056-a032-52ff-dd661f9280f6; and U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Framework for Evaluating Certain Expiring Tax Provisions*, Testimony of Donald B. Marron, 112th Cong., June 8, 2012, available at https://gop-waysandmeans.house.gov/UploadedFiles/Marron.pdf.

[19] U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Framework for Evaluating Certain Expiring Tax Provisions*, Testimony of Donald B. Marron, 112th Cong., June 8, 2012, available at https://waysandmeans.house.gov/UploadedFiles/Marron.pdf.

Additionally, the Congressional Budget Office (CBO) assumes, under the current-law baseline, that temporary tax cuts expire as scheduled. Thus, the current-law baseline does not assume that temporary tax provisions are regularly extended. Hence, if temporary expiring tax provisions are routinely extended in practice, the CBO current-law baseline would tend to overstate projected revenues, making the long-term revenue outlook appear stronger. In other words, by making tax provisions temporary rather than permanent, these provisions appear to have a smaller effect on the long-term fiscal outlook than they actually do when continually extended.[20]

Temporary Tax Policies Enacted in Response to the COVID-19 Pandemic

Several temporary tax provisions were enacted in response to the COVID-19 pandemic and subsequent economic recession. The Families First Coronavirus Response Act (P.L. 116-127) included an employer payroll tax credit designed to offset the cost of paid sick and family leave that was separately required as part of the legislation.[21] The tax credits can be claimed for paid leave provided from April 1, 2020, through December 31, 2020. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) provided tax relief for individuals and businesses, as summarized in **Table 1**. Temporary tax relief provisions that respond to unusual economic circumstances are not typically considered tax extenders. However, in the past, provisions enacted in response to specific economic conditions have subsequently been extended multiple times, over time becoming tax extenders.

Table 1. Temporary Tax Provisions in the CARES Act

Provision	Description	Expiration Date
Individual Provisions		
2020 recovery rebates for individuals	Allowed a credit against 2020 income taxes, but advanced, generally based on information from 2019 or 2018 income tax returns. The credit equals $1,200 for singles ($2,400 for married filing jointly), and $500 per qualifying child. Credit phases out at a rate of 5% for adjusted gross income (AGI) over $75,000 for single filer ($112,500 for head of household; $150,000 for married filing jointly).	12/31/2020
Special rules for use of retirement funds	Provided an exception to the 10% early withdrawal penalty for distributions up to $100,000 for coronavirus-affected individuals. Income from such distributions can be recognized over three years, and taxpayers can recontribute funds to an eligible retirement plan in the first year or within three years without regard to the year's contribution cap. For coronavirus-affected individuals, loan limits from retirement plans are increased from $50,000 to $100,000 and the repayment deadline is delayed for loans that are due in 2020.	12/31/2020
Temporary waiver of required minimum distribution rules for certain retirement plans and accounts	This provision waived minimum distribution requirements for 2020. In general, required minimum distribution (RMD) rules require that taxpayers of a certain age withdraw minimum amounts annually. RMD rules typically apply to taxpayers after reaching age 72 (70½ before 2020).	12/31/2020
Allowance of partial above-the-line deduction for charitable contributions	An above-the-line deduction for cash contributions of up to $300 is available for taxpayers not itemizing deductions in 2020.	12/31/2020

[20] U.S. Congress, Senate Committee on Finance, *Extenders and Tax Reform: Seeking Long-Term Solutions*, Testimony of Dr. Rosanne Altshuler, 112th Cong., January 31, 2012, available at http://www.finance.senate.gov/hearings/hearing/?id=b1604e2e-5056-a032-52ff-dd661f9280f6.

[21] For more information, see CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*, by Molly F. Sherlock.

Modification of limitations on charitable contributions during 2020	This provision suspended the 50% of AGI limit (temporarily 60% for cash contributions through 2025) on cash contributions for individuals for 2020. The corporate deduction limit is increased from 10% of taxable income to 25% for cash contributions. The limit on the deduction for contributions of food inventory is increased from 15% to 25% for both corporate and noncorporate businesses. The increased limits do not apply to contributions to private foundations and donor-advised funds.	12/31/2020
Exclusion for certain employer payments of student loans	Expanded the definition of employer-sponsored educational assistance to include qualified student loan payments made to employees in 2020. Generally, employers can provide their employees with up to $5,250 per employee per year in educational assistance that is excluded from wages.	12/31/2020
Business Provisions		
Employee retention credit for employers subject to closure due to COVID-19	Created a refundable payroll tax credit computed as 50% of wages paid by eligible employers. Up to $10,000 in qualified wages can be taken into account per employee in determining the credit amount (making the maximum credit amount $5,000 per employee). Health plan expenses can be treated as wages when computing the credit. Eligible employers are those who (1) were required to fully or partially suspend operations due to a COVID-19-related order (includes nonprofit employers); or (2) have gross receipts 50% less than gross receipts in the same quarter in the prior calendar year. Qualified wages depend on the employer's number of employees. If the employer had more than 100 full-time employees in 2019, qualifying wages are wages paid when employee services are not provided. If the employer had 100 or fewer full-time employees, all employee wages paid are credit-eligible.	12/31/2020
Delay of payment of employer payroll taxes	Allowed employers and self-employed individuals to delay payments of employer Social Security payroll taxes, plus employer Social Security equivalent of employee representative Railroad Retirement Tax Act (RRTA) tax, with half due by 12/31/21, and the remainder due by 12/31/22.	12/31/2020
Modifications for net operating losses	Increased the taxable income limitation for net operating losses from 80% to 100% of taxable income, and allowed five-year net operating loss (NOL) carryback of losses recorded in tax years 2018, 2019, or 2020.	12/31/2020
Modification of limitation on losses for taxpayers other than corporations	This provision suspended the limit on deductions for excess business losses for 2018, 2019, and 2020. An excess business loss is the amount that a taxpayer's aggregate deductions attributable to trades and businesses exceeds the sum of (1) aggregate gross income or gain attributable to such activities; and (2) $250,000 ($500,000 if married filing jointly), adjusted for inflation. For partnerships and S corporations, this provision is applied at the partner or shareholder level.	12/31/2020
Modifications of limitation on business interest	Increased the adjusted taxable income limitation for net interest from 30% to 50% for 2019 and 2020.	12/31/2020
Temporary exception from excise tax for alcohol used to produce hand sanitizer	Exempted distilled spirits used to make hand sanitizer from the excise tax on distilled spirits.	12/31/2020

Source: For more information, see CRS Report R46279, *The Coronavirus Aid, Relief, and Economic Security (CARES) Act—Tax Relief for Individuals and Businesses*, coordinated by Molly F. Sherlock; and Joint Committee

on Taxation, *Description Of The Tax Provisions Of* P.L. 116-136, *The Coronavirus Aid, Relief, And Economic Security ("CARES") Act*, JCX-12R-20, April 23, 2020.

Extenders as Tax Benefits[22]

Temporary tax benefits are a form of federal subsidy that treats eligible activities favorably compared to others, and channels economic resources into qualified uses. Extenders influence how economic actors behave and how the economy's resources are employed. Like all tax benefits, extenders can be evaluated by looking at their impact on economic efficiency, equity, and simplicity.[23] Temporary tax provisions may be efficient and effective in accomplishing their intended purpose, though not equitable. Alternatively, an extender may be equitable but not efficient. Policymakers may have to decide which economic objectives matter most.

Economic Efficiency

Extenders often provide subsidies intended to encourage more of an activity than would otherwise be undertaken. According to economic theory, in most cases an economy best satisfies the wants and needs of its participants if markets allocate resources free of distortions from taxes and other factors. Markets may fail, however, to optimally allocate society's economic resources. If a tax incentive can improve on the market outcome, then economic efficiency may be enhanced by the tax policy intervention.[24] Thus, an extender's ability to improve economic welfare depends in part on whether or not it is remedying a market failure. According to theory, a tax extender reduces economic efficiency if it is not addressing a specific market failure or provides more subsidy than is needed to improve the market outcome.

An extender is also considered relatively effective if it stimulates the desired activity better than a direct spending program or other form of subsidy. Direct spending programs, for example, can often be more successful at targeting resources than indirect subsidies made through the tax system.[25]

The timing of a provision's enactment can affect its economic efficiency and effectiveness. For many tax incentives, but particularly those designed to encourage certain types of investments, provisions are most effective when enacted before investment decisions are made. Tax policies are most likely to factor into decisionmaking when they are known ahead of time. Tax policies that are enacted after investment decisions have been made can create windfalls, where tax benefits accrue to taxpayers even though their behavior was not altered by the incentive. In other words, retroactive extensions reduce the effectiveness of temporary tax benefits.[26]

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[22] This section is adapted from out-of-print CRS Report RL32367, *Certain Temporary Tax Provisions that Expired in December 2009 ("Extenders")*, by James M. Bickley (available to congressional clients upon request).

[23] Using these "criteria for good tax policy" to evaluate tax extenders was discussed in U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Framework for Evaluating Certain Expiring Tax Provisions*, Testimony of Dr. Jim White, 112th Cong., June 8, 2012, available at https://waysandmeans.house.gov/UploadedFiles/White.pdf.

[24] Market failure occurs when the marginal benefit of an action does not equal the marginal cost. For example, polluting forms of energy production cause social costs that are not taken into account by the producer; hence, there is an argument for taxing this type of energy or, alternatively, subsidizing less-polluting firms.

[25] Stanley S. Surrey, "Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures," *Harvard Law Review*, vol. 83, no. 4 (February 1970), pp. 705-738.

[26] U.S. Congress, House Committee on Ways and Means, Subcommittee on Select Revenue Measures, *Temporary*

Equity

A tax is considered to be fair when it contributes to a socially desirable distribution of the tax burden. Tax benefits—such as the extenders—can result in individuals or businesses with similar incomes and expenses paying differing amounts of tax, depending on whether they engage in tax-subsidized activities. This differential treatment is a deviation from the standard of horizontal equity, which requires that people in equal positions be treated equally.

Another component of fairness in taxation is vertical equity, which requires that tax burdens be distributed fairly among people with different abilities to pay. Extenders may be considered inequitable to the extent that they benefit those who have a greater ability to pay taxes. Those individuals with relatively less income and thus a reduced ability to pay taxes may not have the same opportunity to benefit from extenders as those with higher income. The disproportionate benefit of tax expenditures to individuals with higher incomes reduces the tax system's progressivity, which is often viewed as a reduction in equity.

An example of the effect a tax benefit can have on vertical equity can be illustrated by considering two students claiming the above-the-line deduction for higher-education expenses. Assume both students are single and have $1,000 in qualifying expenses. If one student has an income of $30,000, and the other student has an income of $60,000, the students would be in different tax brackets. The student with the lower income may fall in the 12% tax bracket, meaning the maximum value of the deduction would be $120 ($1,000 multiplied by 12%). The student with the higher income may fall in the 22% tax bracket, meaning the maximum value of the deduction would be $220 ($1,000 multiplied by 22%). Thus, the higher-income taxpayer, with presumably greater ability to pay taxes, receives a greater benefit than the lower-income taxpayer.

Simplicity

Extenders contribute to the complexity of the tax code and raise the cost of administering the tax system. Those costs, which can be difficult to isolate and measure, are rarely included in the cost-benefit analysis of temporary tax provisions. In addition to making the tax code more difficult for the government to administer, complexity also increases costs imposed on individual taxpayers. With complex incentives, individuals devote more time to tax preparation and are more likely to hire paid preparers or pay for tax preparation software. Further, tax extenders that are often extended retroactively create uncertainty, which can also create additional administrative costs for both taxpayers and tax collectors (e.g., the Internal Revenue Service).

Tax Provisions Expiring in 2020

Thirty-three temporary tax provisions expire at the end of 2020. These provisions can be categorized as primarily affecting individuals, primarily affecting businesses, or being energy-related (see **Table 2**). Most of the provisions that expire at the end of 2020 had previously expired at the end of 2017, and were extended through 2020 in P.L. 116-94.[27] P.L. 116-94 also extended several provisions that had expired in 2018 or were scheduled to expire in 2019 through 2020.

Policy in the Internal Revenue Code, Testimony of Mark Mazur, 116th Cong., March 12, 2019, available at https://waysandmeans.house.gov/legislation/hearings/temporary-policy-internal-revenue-code.

[27] Two provisions that expired in 2017, the credit for railroad track maintenance and the biodiesel and renewable diesel tax credits, were extended through 2022. Extending the tax credit for railroad track maintenance through 2022 reduced estimated tax revenue by $1.1 billion, while the biodiesel and renewable diesel tax incentives reduced estimated tax

Individual[28]

Six individual tax provisions are scheduled to expire at the end of 2020 (**Table 2**). Three of these provisions have regularly been included in recent tax extender packages. The above-the-line deduction for certain higher-education expenses, (i.e., the "tuition and fees deduction") was first added as a temporary provision in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA; P.L. 107-16) and has regularly been extended since.[29] The other two individual extender provisions are housing-related. The provision allowing homeowners to deduct mortgage insurance premiums was first enacted in 2006 (effective for 2007). The provision allowing qualified canceled mortgage debt income associated with a primary residence to be excluded from income was first enacted in 2007. Both provisions were temporary when first enacted, but have been extended as part of the tax extenders in recent years.

Two health-related provisions were extended through 2020 in P.L. 116-94. The health coverage tax credit was scheduled to expire at the end of 2019. The reduced floor on itemized medical expense deductions, from 10% to 7.5% of AGI, had expired at the end of 2018, and thus was extended retroactively.

A sixth provision, the exclusion of certain benefits and payments from gross income for volunteer firefighters and emergency responders, had previously expired in 2010. The provision was reinstated and expanded for one year, 2020, in P.L. 116-94.

The extension or reinstatement of the six individual provisions in P.L. 116-94 was estimated to reduce federal revenues by $7.9 billion between FY2020 and FY2029.[30]

Business[31]

Thirteen business tax provisions are scheduled to expire at the end of 2020 (**Table 2**). All of these provisions were extended in P.L. 116-94, with provisions having expired in 2017 generally extended for three years and provisions with a 2019 expiration date generally extended for one year.[32] The largest of these provisions, as ranked by cost, are those that were scheduled to expire at the end of 2019, and were extended for one year, through 2020. These include the employer credit for paid family and medical leave,[33] the Work Opportunity Tax Credit (WOTC),[34] and the New Markets Tax Credit (NMTC).[35] Rules providing look-through treatment of payments

revenue by $15.2 billion.

[28] For more information, see CRS Report R46243, *Individual Tax Provisions ("Tax Extenders") Expiring in 2020: In Brief*, coordinated by Molly F. Sherlock.

[29] For more information, see CRS Report R41967, *Higher Education Tax Benefits: Brief Overview and Budgetary Effects*, by Margot L. Crandall-Hollick.

[30] Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the House Amendment to the Senate Amendment to H.R. 1865, the Further Consolidated Appropriations Act, 2020 (Rules Committee Print 116-44)*, December 17, 2019, JCX-54-19R.

[31] For more information, see CRS Report R46271, *Business Tax Provisions Expiring in 2020, 2021, and 2022 ("Tax Extenders")*, coordinated by Molly F. Sherlock.

[32] The credit for railroad track maintenance, which had expired at the end of 2017, was extended through 2022.

[33] For more information, see CRS In Focus IF11141, *Employer Tax Credit for Paid Family and Medical Leave*, by Molly F. Sherlock.

[34] For more information, see CRS Report R43729, *The Work Opportunity Tax Credit*, by Benjamin Collins and Sarah A. Donovan.

[35] For more information, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples

between related controlled foreign corporations that were scheduled to expire at the end of 2019 were also extended for one year, through 2020.[36] The WOTC, NMTC, and look-through treatment of payments between related controlled foreign corporations had previously been extended for five years in the PATH Act.

Several business tax provisions expiring at the end of 2020 are related to cost recovery. Cost recovery provisions include accelerated depreciation for business property on Indian reservations; seven-year recovery for motorsport racing facilities; special expensing rules for film, television, and live theatrical production; and three-year depreciation for racehorses two years or younger. For temporary provisions that accelerate cost recovery, the cost over the 10-year budget window is smaller than the cost in the first year. This is because some of the cost is recovered, as the accelerated cost recovery serves to defer tax liability to a later time. For example, the special expensing rules for film, television, and live theatrical productions are estimated to reduce federal tax revenue by $1.7 billion in FY2020, but by less than $50 million over the FY2020 through FY2029 budget window.

Cost recovery provisions may interact with "bonus depreciation" that was enacted as part of the 2017 tax revision (P.L. 115-97).[37] If property is eligible for bonus depreciation, and therefore not eligible for the special cost recovery allowance, the cost of that provision falls. However, if bonus depreciation is claimed and the special tax incentive is not, then the special tax incentive is not affecting economic activity.

Other tax benefits for businesses expiring at the end of 2020 are the empowerment zone tax incentives;[38] the Indian employment tax credit; the American Samoa economic development credit; and the mine rescue team training credit.

Most of the business provisions expiring at the end of 2020 have been part of the tax code for close to a decade or longer. Several were first enacted in the 1990s, including the Indian employment tax credit; accelerated depreciation for business property on Indian reservations; and the empowerment zone tax incentives. Several others were first enacted in the mid-2000s, including the American Samoa economic development credit; the credit for railroad track maintenance; seven-year cost recovery for motorsport racing facilities; the mine rescue team training credit; and the special expensing rules for film and television production.

Two of the provisions scheduled to expire in 2020 were added to the tax code in the 2017 tax revision (P.L. 115-97). The employer credit for paid family and medical leave and the reduced excise tax rates on certain alcoholic beverages were initially enacted for 2018 and 2019, but extended for one year, through 2020, in P.L. 116-94.[39]

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and Sean Lowry.

[36] For more information, see CRS In Focus IF11392, *H.R. 1865 and the Look-Through Treatment of Payments Between Related Controlled Foreign Corporations*, by Jane G. Gravelle.

[37] For more information, see CRS Report RL31852, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects*, by Gary Guenther.

[38] For more information, see CRS Report R41639, *Empowerment Zones, Enterprise Communities, and Renewal Communities: Comparative Overview and Analysis*, by Donald J. Marples.

[39] For more information, see CRS In Focus IF11141, *Employer Tax Credit for Paid Family and Medical Leave*, by Molly F. Sherlock; and CRS In Focus IF10973, *Craft Alcoholic Beverage Industry: Overview and Regulation*, by Renée Johnson and Sean Lowry.

Extending the 13 business provisions in P.L. 116-94 was estimated to reduce federal revenues by $8.8 billion between FY2020 and FY2029.[40]

Energy[41]

Fourteen energy tax provisions expired at the end of 2017 (**Table 2**). Most of the energy tax provisions have been extended as part of past tax extender legislation. The largest provisions, as ranked by the cost of the most recent extension, are the renewable energy production tax credit[42] and the credits for alternative fuels and alternative fuels mixtures. Other provisions expiring at the end of 2020 include those related to residential and commercial building energy efficiency and alternative fuels and alternative fuel vehicles.

Energy-related excise taxes that finance trust funds are also scheduled to expire at the end of 2020. The increased amount of the excise tax on coal used to finance the Black Lung Disability Trust Fund is set to expire. For 2020, the tax rates on coal are $1.10 per ton of underground-mined coal or $0.55 per ton of surface-mined coal, limited to 4.4% of the sales price. Starting in 2021, these tax rates are scheduled to be $0.50 per ton of underground-mined coal or $0.25 per ton of surface-mined coal, limited to 2% of the sales price.[43] The $0.09 per barrel excise tax on crude oil received at refineries and petroleum products entering the United States, which finances the Oil Spill Liability Trust Fund, is also scheduled to expire at the end of 2020.[44]

Extending the 14 energy provisions in P.L. 116-94 was estimated to reduce federal revenues by $6.2 billion between FY2020 and FY2029 (including the $0.2 billion revenue gain from the extension of the Black Lung Disability Trust Fund coal excise tax rate).[45]

[40] Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the House Amendment to the Senate Amendment to H.R. 1865, the Further Consolidated Appropriations Act, 2020 (Rules Committee Print 116-44)*, December 17, 2019, JCX-54-19R. The railroad track maintenance credit extension, through 2022, was estimated to reduce federal tax revenues by $1.1 billion between FY2020 and FY2029.

[41] For more information, see CRS Report R46451, *Energy Tax Provisions Expiring in 2020, 2021, 2022, and 2023 ("Tax Extenders")*, by Molly F. Sherlock, Margot L. Crandall-Hollick, and Donald J. Marples.

[42] For more information, see CRS Report R43453, *The Renewable Electricity Production Tax Credit: In Brief*, by Molly F. Sherlock.

[43] For more information, see CRS Report R45261, *The Black Lung Program, the Black Lung Disability Trust Fund, and the Excise Tax on Coal: Background and Policy Options*, by Scott D. Szymendera and Molly F. Sherlock.

[44] For more information, see CRS In Focus IF11160, *The Oil Spill Liability Trust Fund Tax: Background and Reauthorization Issues in the 116th Congress*, by Jonathan L. Ramseur.

[45] Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the House Amendment to the Senate Amendment to H.R. 1865, the Further Consolidated Appropriations Act, 2020 (Rules Committee Print 116-44)*, December 17, 2019, JCX-54-19R. The extension of the credit for biodiesel and renewable diesel, through 2022, was estimated to reduce federal tax revenues by $15.2 billion between FY2020 and FY2029.

Table 2. Tax Provisions That Expire at the End of 2020

(extensions in previous "tax extenders" legislation)

		Extending Legislation										
	Cost of 3-Year Extension in P.L. 116-94 (FY2020-2029 budget window; billions)	P.L. 116-94	P.L. 115-123	P.L. 114-113	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
Individual Provisions												
Above-the-Line Deduction for Qualified Tuition and Related Expenses	$0.7	X	X	X	X	X	X	X	X			
Mortgage Insurance Premiums Treated As Qualified Residence Interest	$1.3	X	X	X	X	X	X	[a]				
Exclusion of Discharge of Principal Residence Indebtedness from Gross Income for Individuals	$2.3	X	X	X[b]	X	X		X[c]				
Credit for Health Insurance Costs of Eligible Individuals	-i-[d]	X[d]		[e]								
Medical Expense Deduction: Adjusted Gross Income (AGI) Floor of 7.5%	$3.6[f]	X[f]										
Exclusion for Benefits Provided to Volunteer Firefighters and Emergency Medical Responders	-i-											
Business Provisions												
Work Opportunity Tax Credit	$2.0[d]	X[d]		X[g]	X	X[h]	X	[i]	X	X	X	X
Indian Employment Tax Credit	$0.2	X	X	X	X	X	X	X	X	X	X	
Accelerated Depreciation for Business Property on Indian Reservations	$0.2	X	X	X[b]	X	X	X	X	X	X	X	
New Markets Tax Credit	$1.5[d]	X[d]		X[g]	X	X	X	X	X			

	Cost of 3-Year Extension in P.L. 116-94 (FY2020-2029 budget window; billions)	Extending Legislation										
		P.L. 116-94	P.L. 115-123	P.L. 114-113	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
American Samoa Economic Development Credit	-i-	X	X	X	X	X	X	X	X			
Look-Through Treatment of Payments Between Related Controlled Foreign Corporations under Foreign Personal Holding Company Income Rules	$0.7[d]	X[d]			X	X	X	X				
				X[g]								
Seven-Year Recovery for Motorsport Racing Facilities	$0.2	X	X	X	X	X	X	X				
Mine Rescue Team Training Credit	-i-	X	X	X	X	X	X	X				
Special Expensing Rules for Film, Television, and Live Theatrical Production	-i-	X	X	X[b]	X	X	X					
Empowerment Zone Tax Incentives[j]	$0.8	X	X	X[b]	X	X	X					
Three-Year Depreciation for Racehorses Two Years or Younger	—	X	X	X	X							
Employer Credit for Paid Family and Medical Leave	$2.2[d]	X[d]										
Provisions Modifying the Rates of Taxation of Beer, Wine, and Distilled Spirits, and Certain Other Rules	$1.0[d]	X[d]										
Energy Provisions												
Beginning-of-Construction Date for Renewable Power Facilities to Claim the Production Tax Credit (PTC) or the Investment Tax Credit (ITC) in Lieu of the PTC	$2.1	X[k]	X	X[b,l]	X	X[m]	n	o	n	o	o	o
Special Rule to Implement Electric Transmission Restructuring	—	X	X	X	X	X	X	X	p			

	Cost of 3-Year Extension in P.L. 116-94 (FY2020-2029 budget window; billions)	Extending Legislation										
		P.L. 116-94	P.L. 115-123	P.L. 114-113	P.L. 113-295	P.L. 112-240	P.L. 111-312	P.L. 110-343	P.L. 109-432	P.L. 108-311	P.L. 107-147	P.L. 106-170
Credit for Construction of Energy Efficient New Homes	$0.8	X	X	X	X	X	X	X	X			
Energy Efficient Commercial Building Deduction	$0.2	X	X	X	X			X[q]	X			
Credit for Section 25C Nonbusiness Energy Property	$0.8	X	X	X[b]	X	X	X[r]	X				
Alternative Fuel Vehicle Refueling Property	$0.3	X	X	X	X	X	X	X				
Incentives for Alternative Fuel and Alternative Fuel Mixtures	$2.0	X	X	X	X	X	X	X				
Second Generation Biofuel Producer Credit	-i-	X	X	X	X	X						
Credit for Production of Indian Coal	$0.1	X	X	X[b]	X	X						
Special Depreciation Allowance for Second Generation Biofuel Plant Property	—	X	X	X	X	X[s]						
Credit for Two-Wheeled Plug-In Electric Vehicles	-i-	X	X	X		X						
Alternative Motor Vehicle Credit for Qualified Fuel Cell Vehicles	-i-	X	X	X								
Black Lung Disability Trust Fund: Increased Coal Excise Tax	-$0.2[f,t]	X[f]						X[u]				
Oil Spill Liability Trust Fund Financing Rate	—	X[f]						X[v]	[w]			

Sources: CRS analysis of extending legislation; Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2020-2029*, January 16, 2020, JCX-1-20; and Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the House Amendment to the Senate Amendment to H.R. 1865, the Further Consolidated Appropriations Act, 2020 (Rules Committee Print 116-44)*, December 17, 2019, JCX-54-19R.

Notes: An "X" indicates that the provision was extended by the extending legislation listed in the column heading. An "-i-" indicates an estimated revenue loss of less than $50 million over the 10-year budget window. A "—" indicates no revenue effect.

a. This provision was extended as part of the Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142).

b. P.L. 114-113, in addition to extending this provision, also modified the provision.

c. This provision was extended through 2012 in P.L. 110-343.

d. This provision expired at the end of 2019, and was extended for one year in P.L. 116-94.

e. The Trade Preferences Extension Act of 2015 (P.L. 114-27) extended the HCTC through December 31, 2019.

f. This provision expired at the end of 2018, and was extended for two years in P.L. 116-94.

g. This provision was extended for five years, through 2019, in P.L. 114-113.

h. The expiration date of the Work Opportunity Tax Credit for qualified veterans was extended through December 31, 2012, as part of P.L. 112-56. Under P.L. 112-240, the expiration date was extended through December 31, 2013, for all eligible employees.

i. The Work Opportunity Tax Credit was extended through August 31, 2011, as part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2008 (P.L. 110-28).

j. Empowerment zone tax incentives include (1) designation of an empowerment zone; (2) empowerment zone tax-exempt bonds; (3) empowerment zone employment credits; (4) increased expensing under IRC Section 179; and (5) nonrecognition of gain on rollover of empowerment zone investments.

k. For wind, the PTC was extended at a reduced rate. The wind PTC had begun a phaseout starting in 2017.

l. P.L. 114-113 extended the PTC for wind through 2019, with a phaseout starting in 2017. The cost of the PTC for wind, as extended in P.L. 114-113, was $14.5 billion between 2016 and 2025.

m. As part of P.L. 112-240, the expiration date for the renewable energy production tax credit (PTC) was modified such that facilities that were under construction but not yet placed in service by the end of 2013 would qualify. The option to claim the ITC in lieu of the PTC was not available prior to 2009.

n. The renewable energy PTC placed-in-service deadline was extended as part of the EPACT05 (P.L. 109-58) and as part of ARRA (P.L. 111-5).

o. Prior to 2013, the renewable energy PTC expiration was a placed-in-service deadline. Historically, this placed-in-service deadline has been regularly extended as part of tax extender legislation.

p. This provision was extended as part of the Energy Policy Act of 2005 (EPACT05; P.L. 109-58).

q. This provision was extended for five years, through 2013, in P.L. 110-343.

r. This provision was extended at a reduced rate of 10%, with a maximum lifetime credit of $500. During 2009 and 2010, a 30% credit of up to $1,500 was available.

s. In addition to extending this provision through 2013, ATRA expanded the definition of qualified cellulosic biofuel production to include algae-based fuels.

t. The increased coal excise tax rate generates additional revenue. The estimated revenue gain from the two-year extension in P.L. 116-94 was $0.2 billion.

u. Increased coal excise tax rates were extended through 2018 in the Emergency Economic Stabilization Act of 2008 (EESA; P.L. 110-343). The previous extension of the increased excise tax rates was in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), which had extended the increased rates through 2013.

v. The Emergency Economic Stabilization Act of 2008 (P.L. 110-343) increased the tax rate to 8 cents per barrel through December 31, 2016, and to 9 cents per barrel starting in 2017. The rate was 9 cents per barrel when it expired in 2018.

w. The Oil Spill Liability Trust Fund excise tax, which had expired at the end of 1994, was reinstated in 2006 in the Energy Policy Act of 2005 (P.L. 109-58).

The Cost of Extending Expired Tax Provisions

As lawmakers consider whether to extend expiring tax provisions beyond 2020, cost is one factor. The total cost to extend expiring provisions in the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q, P.L. 116-94) was $39.2 billion over the 10-year budget window.[46] The cost of extending the provisions that were extended through 2020 was $22.9 billion, with an additional $1.1 billion and $15.2 billion associated with extending the railroad track maintenance and biodiesel and renewable diesel credits, respectively, through 2022.

Recent Tax Extender Legislation

As discussed above, tax extenders were most recently extended in the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q, P.L. 116-94). This legislation, enacted in December 2019, extended most provisions through 2020. The tax incentives for biodiesel and renewable diesel and the credit for railroad track maintenance were extended through 2022.

Before P.L. 116-94, tax extenders were enacted as part of the Bipartisan Budget Act of 2018 (BBA18; P.L. 115-123).[47] This legislation, enacted in February 2018, extended tax provisions that had expired at the end of 2016 through the end of 2017. Before BBA18, tax extenders were addressed in the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016 (P.L. 114-113). The PATH Act either extended or made permanent all of the 52 temporary tax provisions that had expired at the end of 2014.[48]

The PATH Act, unlike other recent tax extender legislation, provided long-term extensions (through 2019) for a number of provisions, while making many other temporary tax provisions permanent.[49] In total, the tax extenders in P.L. 114-113 were estimated to reduce federal revenues by $628.8 billion between FY2016 and FY2025.[50] Of that cost, nearly one-third ($202.1 billion) was attributable to extensions of provisions that were scheduled to expire in 2017 (the reduced earnings threshold for the refundable portion of the child tax credit; the American Opportunity Tax Credit; and modifications to the Earned Income Tax Credit) and the two-year moratorium on the medical device excise tax. Thus, after removing these provisions, the Joint Committee on Taxation (JCT) estimated the tax extender provisions would cost $426.8 billion between FY2016 and FY2025.

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[46] Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the House Amendment to the Senate Amendment to H.R. 1865, the Further Consolidated Appropriations Act, 2020 (Rules Committee Print 116-44)*, December 17, 2019, JCX-54-19R. As noted in **Table 2**, most provisions had expired at the end of 2017 and were extended for three years. However, several provisions had expired in 2018 or were scheduled to expire in 2019, and thus were extended for either two years or one year.

[47] For more information, see CRS Report R45347, *Tax Provisions That Expired in 2017 ("Tax Extenders")*, by Molly F. Sherlock.

[48] For more information, see CRS Report R43898, *Tax Provisions that Expired in 2014 ("Tax Extenders")*, by Molly F. Sherlock.

[49] For more information, see CRS Report R44677, *Tax Provisions that Expired in 2016 ("Tax Extenders")*, by Molly F. Sherlock.

[50] Joint Committee on Taxation, *Estimated Budget Effects of Division Q of Amendment #2 to the Senate Amendment to H.R. 2029 (Rules Committee Print 114-40), the "Protecting Americans from Tax Hikes Act of 2015,"* 114th Cong., December 16, 2015, JCX-143-15.

Of the total cost of the tax extenders in P.L. 114-113, $559.5 billion, or 89% of the total cost, was associated with permanent extensions. According to JCT estimates, the permanently extended provisions (provisions that had expired in 2014 and were made permanent in P.L. 114-113) cost $361.4 billion.

Of the total cost of tax extenders in P.L. 114-113, $17.7 billion (or less than 3%) was for the two-year extension of provisions that had expired in 2014 through 2016.

The Tax Increase Prevention Act of 2014 (P.L. 113-295), passed late in the 113th Congress, made tax provisions that had expired at the end of 2013 available to taxpayers in the 2014 tax year. The act extended most (but not all) expiring tax provisions, and most of the provisions extended in P.L. 114-113 had been included in past tax extenders legislation. JCT estimated the tax extenders package enacted as P.L. 113-295 would cost $41.6 billion over the 10-year budget window.[51] Earlier in the 113th Congress, the Senate Finance Committee had reported a two-year extenders package. The House had also passed legislation that would have made permanent certain expiring provisions. Ultimately, the 113th Congress passed and the President signed into law the one-year retroactive extenders legislation.[52]

The American Taxpayer Relief Act (ATRA; P.L. 112-240) extended dozens of temporary provisions that had either expired at the end of 2011 or were set to expire at the end of 2012. The provisions that had expired at the end of 2011 were extended retroactively. JCT estimated the tax extenders package enacted as part of ATRA would cost $73.6 billion over the 10-year budget window.[53] Several provisions that were considered "traditional extenders"—that is, they had been extended multiple times in the past—were not extended under ATRA.[54]

Other Temporary Tax Provisions

Tax Provisions Expiring in 2021, 2022, and 2023[55]

Four business-related provisions are scheduled to expire at the end of 2021 or 2022: (1) the 12.5% increase in the annual low-income housing tax credit (LIHTC) authority for four years (2018-2021), enacted as part of the 2018 Consolidated Appropriations Act; (2) the computation of adjusted taxable income without regard to any deduction allowable for depreciation, amortization, or depletion for purposes of the interest deduction limit, set to expire by the 2017 tax revision (P.L. 115-97); (3) the five-year extension of the rum cover over, last extended retroactively for 2017 and forward through 2021 as part of BBA18 (P.L. 115-123); and (4) the credit for certain

[51] Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 113th Congress,* JCS-1-15, March 2015, p. 248.

[52] For more information on tax extender legislation in the 113th Congress, see CRS Report R43898, *Tax Provisions that Expired in 2014 ("Tax Extenders"),* by Molly F. Sherlock.

[53] Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 112th Congress,* JCS-2-13, February 2013, pp. 240-243.

[54] For more information, see CRS Report R43124, *Expired and Expiring Temporary Tax Provisions ("Tax Extenders"),* by Molly F. Sherlock.

[55] Airport and airway excise taxes, including the tax rates on noncommercial aviation kerosene and noncommercial aviation gasoline, the domestic and international air passenger ticket taxes, the air cargo tax, and the surtax on fuel used in aircraft in a fractional ownership program, are scheduled to expire September 30, 2023. For background, see CRS Report R44749, *The Airport and Airway Trust Fund (AATF): An Overview,* by Rachel Y. Tang and Bart Elias.

expenditures for maintaining railroad tracks, extended through 2022 in the Taxpayer Certainty and Disaster Tax Relief Act of 2019.

Five energy-related tax provisions expire at the end of 2021, 2022, or 2023: (1) the credit for residential energy property,[56] which was extended through 2021 for solar in the PATH Act and extended through 2021 for nonsolar technologies in BBA18 (the credit is phased down in 2020 and 2021); (2) the renewable energy investment tax credit,[57] which was also extended through 2021 for solar in the PATH Act and extended through 2021 for nonsolar technologies in BBA18 (the credit is phased down in 2020 and 2021); (3) five-year cost recovery for renewable energy property if construction begins before January 1, 2022; (4) the tax incentives for biodiesel and renewable diesel, extended through the end of 2022 in P.L. 116-94; and (5) the credit for carbon oxide sequestration, which was modified and extended through 2023 in BBA18.[58]

Disaster-Related Tax Provisions[59]

In the past, some legislation extending temporary tax provisions has also included extensions of disaster-related tax benefits. The Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), included various types of disaster relief for those affected by a federally declared major disaster in 2018 and 2019 (so long as the incident period of the disaster began on or before December 20, 2019). Specifically, this legislation included (1) an employee retention tax credit; (2) enhanced access to retirement funds; (3) an increased casualty loss deduction; (4) look-back rules for the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC); (5) increased limits for charitable giving for disaster relief; and (6) low-income housing tax credit (LIHTC) allocations for qualified California disaster areas. Additionally, this legislation included a permanent provision for disaster relief for U.S. possessions and a provision to automatically extend tax filing deadlines for individuals and businesses in federally declared disaster areas. Taken together, these provisions were estimated to reduce federal tax revenue by $12.8 billion during the FY2020-FY2029 budget window.[60]

[56] For more information, see CRS Report R42089, *Residential Energy Tax Credits: Overview and Analysis*, by Margot L. Crandall-Hollick and Molly F. Sherlock.

[57] For more information, see CRS In Focus IF10479, *The Energy Credit: An Investment Tax Credit for Renewable Energy*, by Molly F. Sherlock.

[58] For more information, see CRS In Focus IF11455, *The Tax Credit for Carbon Sequestration (Section 45Q)*, by Angela C. Jones and Molly F. Sherlock.

[59] For more information, see CRS Report R45864, *Tax Policy and Disaster Recovery*, by Molly F. Sherlock and Jennifer Teefy.

[60] Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the House Amendment to the Senate Amendment to H.R. 1865, the Further Consolidated Appropriations Act, 2020 (Rules Committee Print 116-44)*, December 17, 2019, JCX-54-19R.

Appendix. List of Previous Tax Extender Legislation

There is no formal definition of tax extenders legislation. Over time, tax extenders legislation has come to be considered legislation that temporarily extends a group of expired or expiring provisions. Using this characterization, below is a list of what could be considered tax extenders legislation. Using this list, tax extenders have been addressed 19 times. The package of provisions that is included in the tax extenders has changed over time, as Congress has added new temporary provisions to the code, and as certain provisions are either permanently extended or given temporary extension in other tax legislation.

- Further Consolidated Appropriations Act, 2020 (P.L. 116-94)
- Bipartisan Budget Act of 2018 (P.L. 115-123)
- Consolidated Appropriations Act, 2016 (P.L. 114-113)
- Tax Increase Prevention Act of 2014 (P.L. 113-295)
- American Taxpayer Relief Act of 2012 (P.L. 112-240)
- Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)
- Emergency Economic Stabilization Act of 2008 (P.L. 110-343)
- Tax Relief and Health Care Act of 2006 (P.L. 109-432)
- Working Families Tax Relief Act of 2004 (P.L. 108-311)
- Job Creation and Worker Assistance Act of 2002 (P.L. 107-147)
- Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170)
- Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277)
- Taxpayer Relief Act of 1997 (P.L. 105-34)
- Small Business and Job Protection Act of 1996 (P.L. 104-188)
- Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66)
- Tax Extension Act of 1991 (P.L. 102-227)
- Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508)
- Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239)
- Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)

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