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Well another year has flown by and Congress finally passed and the President signed on December 19, 2014 the "Tax Increase Prevention Act of 2014" (TIPA), which extends a host of expired or expiring individual, business, and energy provisions. These "extenders" are a varied assortment of more than 50 individual and business tax deductions, tax credits, and other tax-saving laws which have been on the books for years but which technically are temporary because they have a specific end date. The new legislation generally extends these tax breaks, most of which expired at the end of 2013, for one year through 2014. In addition, the legislation provides for a new type of tax-advantaged savings program to help in meeting the financial needs of disabled individuals, the "Achieving a Better Life Experience" (ABLE) program, and also contains several other miscellaneous provisions.

While this long-awaited legislation generally resolves the uncertainty of whether the extender tax breaks will be available for 2014, their fate will soon be uncertain again as they are again set to expire at the end of that year. The justification for making the extension for only one year was apparently to allow each of the extenders to be individually examined and dealt with in a less time-constrained environment and as part of a greater tax reform effort, and perhaps made permanent or allowed to remain expired. However, whether and when that occurs, and whether the political landscape in the coming year makes tax reform more of a reality, remains to be seen.

INDIVIDUAL PROVISIONS

ABOVE-THE-LINE DEDUCTION FOR EDUCATOR EXPENSES EXTENDED

Eligible elementary and secondary school teachers may claim an above-the-line deduction for up to $250 per year of expenses paid or incurred for books, certain supplies, computer and other equipment, and supplementary materials used in the classroom. Under pre-Act law, the educator expense deduction didn't apply for expenses paid or incurred in tax years after 2013.

New law. TIPA retroactively extends the educator expense deduction one year so that it applies to expenses paid or incurred in tax years through 2014.

EXCLUSION FOR DISCHARGED HOME MORTGAGE DEBT EXTENDED

Discharge of indebtedness income from qualified principal residence debt, up to a $2 million limit ($1 million for married individuals filing separately) is excluded from gross income. Under pre-Act law, this exclusion didn't apply to any debt discharged after December 31, 2013.

New law. TIPA extends this exclusion for one year so that it applies to home mortgage debt discharged before January 1, 2015.

INCREASE IN EXCLUDIBLE EMPLOYER-PROVIDED MASS TRANSIT AND PARKING BENEFITS EXTENDED

Under pre-Act law, for 2014, an employee may exclude from gross income up to: (1) $250 per month for qualified parking, and (2) $130 a month for transit passes and commuter transportation in a commuter highway vehicle (including van pools). However, notwithstanding the applicable statutory limits on the exclusion of qualified transportation fringes (as adjusted for inflation), for any month beginning before January 1, 2014, a parity provision required that the monthly dollar limitation for transit passes and transportation in a commuter highway vehicle had to be applied as if it were the same as the dollar limitation for that month for employer-provided parking ($245 for 2013).

New law. TIPA extends for one year the parity provision, through 2014. Thus, for 2014, it increases the monthly exclusion for employer-provided transit and vanpool benefits to $250 - the same as for the exclusion for employer-provided parking benefits.

MORTGAGE INSURANCE PREMIUMS AS DEDUCTIBLE QUALIFIED RESIDENCE INTEREST EXTENDED

Mortgage insurance premiums paid or accrued by a taxpayer in connection with acquisition indebtedness with respect to the taxpayer's qualified residence are treated as deductible qualified residence interest, subject to a phase-out based on the taxpayer's adjusted gross income (AGI). The amount allowable as a deduction is phased out ratably by 10% for each $1,000 by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction isn't allowed if the taxpayer's AGI exceeds $110,000 ($55,000 in the case of married individual filing a separate return).

Under pre-Act law, this provision only applied to premiums paid or accrued before January 1, 2014 (and not properly allocable to any period after that date).

New law. TIPA retroactively extends this provision for one year so that a taxpayer can deduct, as qualified residence interest, mortgage insurance premiums paid or accrued before January 1, 2015 (and not properly allocable to any period after 2014).

STATE AND LOCAL SALES TAX DEDUCTION EXTENDED

Taxpayers who itemize deductions may elect to deduct state and local general sales and use taxes instead of state and local income taxes.

Under pre-Act law, this choice was unavailable for tax years beginning after December 31, 2013.

New law. TIPA retroactively extends this provision for one year so that itemizers can elect to deduct state and local sales and use taxes instead of state and local income taxes for tax years beginning before January 1, 2015.

LIBERALIZED RULES FOR QUALIFIED CONSERVATION CONTRIBUTIONS EXTENDED

A taxpayer's aggregate qualified conservation contributions (i.e., contributions of appreciated real property for conservation purposes) are allowed up to the excess of 50% of the taxpayer's contribution base over the amount of all other allowable charitable contributions (100% for qualified farmers and ranchers), with a 15 year carryover of such contributions in excess of the applicable limitation. Under pre-Act law, these rules didn't apply to any contribution made in a tax year beginning after December 31, 2013, and contributions made thereafter were to be subject to the otherwise applicable 30% limit for capital gain property (50% limit for qualified farmers and ranchers).

New law. TIPA retroactively extends for one year the 50% and 100% limitations on qualified conservation contributions of appreciated real property so that they apply to contributions made in tax years beginning before January 1, 2015.

ABOVE-THE-LINE DEDUCTION FOR HIGHER EDUCATION EXPENSES EXTENDED

Eligible individuals can deduct higher education expenses - i.e., "qualified tuition and related expenses" of the taxpayer, his spouse, or dependents - as an adjustment to gross income to arrive at adjusted gross income. The maximum deduction is $4,000 for an in individual whose AGI for the tax year doesn't exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for individuals who don't meet the above AGI limit, but whose adjusted gross income doesn't exceed $80,000 ($160,000 in the case of a joint return). No deduction is allowed for an individual whose adjusted gross income exceeds the relevant adjusted gross income limitations, for a married individual who does not file a joint return, or for an individual for whom a personal exemption deduction may be claimed by another taxpayer for the tax year.

Under pre-Act law, this deduction wasn't available for tax years beginning after December 31, 2013.

New law. TIPA retroactively extends the qualified tuition deduction for one year so that it can be claimed for tax years beginning before January 1, 2015.

NONTAXABLE IRA TRANSFERS TO ELIGIBLE CHARITIES EXTENDED

Taxpayers who are age 70 1/2 or older can make tax-free distributions to a charity from an Individual Retirement Account (IRA) of up to $100,000 per year. These distributions aren't subject to the charitable contribution percentage limits since they are neither included in gross income nor claimed as a deduction on the taxpayer's return.

Under pre-Act law, these rules didn't apply to distributions made in tax years beginning after December 31, 2013.

New law. TIPA retroactively extends this provision for one year so that it's available for charitable IRA transfers made in tax years beginning before January 1, 2015.

ENERGY PROVISIONS

NONBUSINESS ENERGY PROPERTY CREDIT EXTENDED

For qualified energy property placed in service before 2014, a taxpayer may claim a credit up to a $500 lifetime limit (with no more than $200 from windows and skylights) over the aggregate of the credits allowed to the taxpayer for all earlier tax years ending after December 31, 2005. The credit equals the sum of: (1) 10% of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during the tax year, and (2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during the tax year. The credit for residential energy property expenditures can't exceed: (i) $50 for an advanced main circulating fan; (ii) $150 for any qualified natural gas, propane, or hot water boiler; and (iii) $300 for any item of energy-efficient building property.

Under pre-Act law, the credit wasn't available for property placed in service after December 31, 2013.

New law. TIPA retroactively extends the nonbusiness energy property credit for one year, to apply to property placed in service after December 31, 2013 and before January 1, 2015. Thus, taxpayers can claim a credit on the cost of qualified energy efficiency improvements and residential energy property expenditures, with a lifetime credit limit of $500 ($200 for windows and skylights), for property placed in service through 2014.

NEW TAX-ADVANTAGED ABLE ACCOUNTS

Under pre-Act law, there wasn't a tax-advantaged savings program specifically targeted to persons with disabilities that was similar, for example, to a qualified tuition program (QTP, or 529 plan). A QTP provides taxpayer favorable rules for paying qualified higher education expenses. Under a QTP, a person can make nondeductible cash contributions on behalf of a designated beneficiary to an account established by a state. The earnings on the contributions build up tax-free, and distributions from the QTP are excludable to the extent used to pay qualified higher education expenses. A 10% additional tax is imposed on distributions that are includible in gross income. But the contributor can do either of the following without tax consequences: a) change the beneficiary to be a member of the prior beneficiary's family, or b) roll over amounts from one QTP to another for the same beneficiary or for a beneficiary who is a member of the prior beneficiary's family.

A "qualified disability trust" - a disability trust described in Sec.1917(c)(2)(B)(iv) of the Social Security Act, all the beneficiaries of which are determined to be disabled (within the meaning of Sec.1614(a)(3) of the Social Security Act) - may be used to provide financial assistance to a disabled person (the trust beneficiary) without disqualifying the beneficiary for certain government benefits. Amounts distributed to a child who is a beneficiary of a qualified disability trust are treated as earned income for purposes of the "kiddie" tax and so aren't taxed at parents' tax rates.

New law. For tax years beginning after December 31, 2014, TIPA allows states to establish tax-exempt "Achieving a Better Life Experience" (ABLE) accounts to assist persons with disabilities in building an account to pay for qualified disability expenses. Similar to a QTP, a tax exemption would be allowed for an ABLE program; amounts in an ABLE account would accumulate on a tax-exempt (or, in some cases, tax-deferred) basis.

General rules on taxation of the ABLE program. A qualified ABLE account is generally exempt from income tax but is subject to the tax imposed by Code Sec. 511 on the unrelated business income of tax-exempt organizations. (Code Sec. 529A(a)) A "qualified ABLE program" (see below) is subject to the excise tax on non-plan tax-exempt entities that are parties to prohibited tax shelter transactions and subsequently listed transactions. (Code Sec.4965(c)(8), as amended by Act Sec. 102(e)(3) Div B) Any person may make contributions to an ABLE account. Summary of H.R. 647) Contributions to an ABLE account aren't deductible for income tax purposes.

QUALIFIED ABLE PROGRAM DEFINED

A qualified ABLE program is a program established and maintained by a state or state agency or instrumentality that:

(a) provides that non-cash contributions and contributions that exceed the annual contribution limit won't be accepted. (Non-cash contributions won't violate this rule if they are returned before the return due date). Except in the case of a rollover contribution from another account, an ABLE program must limit the aggregate contributions from all contributors for a tax year to the amount of the annual Code Sec. 2503(b) gift tax exclusion for that tax year ($14,000 for 2015, adjusted annually for inflation). A 6% excise tax is imposed on excess contributions to an ABLE account; (b) provides separate accounting for each designated beneficiary; (c) limits the designated beneficiary's investment direction to no more than two times in a calendar year; (d) prohibits the use of any interest or any portion of an interest in the program as security for a loan; and (e) provides adequate safeguards to prevent excess aggregate contributions.

Observation: Contributions to a QTP, which are also required to be made in cash, may be made by check, money order, credit card, electronic funds transfer, payroll deductions, or automatic deductions from a bank account. Presumably, the same rules will apply to ABLE accounts. The program must limit a designated beneficiary to one ABLE account. If an ABLE account is established for a designated beneficiary, no account later established for that beneficiary is treated as an ABLE account.

WHO CAN BE A BENEFICIARY OF AN ABLE ACCOUNT

The program must allow an ABLE account to be established only for a beneficiary who is a resident of either the state that maintains the program (a ''program state'') or of a contracting state that hasn't established an ABLE program but has entered into a contract with a program state to provide the contracting state's residents with access to the program state's ABLE program.

The designated beneficiary of an ABLE account is an eligible individual who established the account and is its owner. An individual is an eligible individual for a tax year if, during that tax year: the individual is entitled to benefits based on blindness or disability under the Social Security disability insurance program (title II of the Social Security Act) or the SSI program (title XVI of the Social Security Act), and that blindness or disability occurred before the date on which the individual reached age 26, or a "disability certification" for the individual has been filed with IRS for the tax year.

A disability certification is one made by the eligible individual or his parent or guardian, that certifies that: (1) the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind, within the meaning of Sec.1614(a)(2) of the Social Security Act, and (2) that blindness or disability occurred before the date on which the individual attained age 26.

The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment(s), signed by a licensed physician meeting the criteria of Sec.1861(r)(1) of the Social Security Act.

Distributions from, and other amounts coming out of, ABLE accounts. No amount of a distribution from an ABLE account is includible in gross income if distributions from the account don't exceed the designated beneficiary's "qualified disability expenses." Qualified disability expenses are any expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary.

They include education, housing, transportation, employment training & support, assistive technology & personal support services, health, prevention & wellness, financial management & administrative services, legal fees, expenses for oversight & monitoring, funeral & burial expenses and other expenses that are approved under IRS regulations and consistent with Code Sec. 529A's purposes.

If the distributions exceed the qualified disability expenses, then the amount otherwise includible in gross income is reduced by an amount that bears the same ratio to the distributed amount as the qualified disability expenses bear to that amount. Distributions from a qualified ABLE program are includible in the distributees gross income under the Code Sec. 72 annuity rules to the extent not excluded from gross income under any other income tax provision.

A taxpayer who receives a distribution from a qualified ABLE program that's includible in gross income is subject to an additional 10% tax on the includible part. An exception to this rule applies to the distribution of certain contributions made during the tax year on the designated beneficiary's behalf.

A payment or distribution from an ABLE account isn't taxable to the extent that the amount received is paid, no later than the 60th day after the date of the payment or distribution, into another ABLE account for the benefit of the designated beneficiary or an eligible individual who's a family member of the designated beneficiary.

A change in the designated beneficiary of an interest in a qualified ABLE program during a tax year isn't treated as a taxable distribution if the new beneficiary is both an eligible individual for the tax year and a member of the family of the former beneficiary. Upon the death of an eligible individual, any amounts remaining in the account (after Medicaid reimbursements) would go to the deceased's estate or to a designated beneficiary and would be subject to income tax on investment earnings, but not to the 10% penalty.

EXCEPT FOR SSI, ABLE ACCOUNTS DISREGARDED FOR FEDERAL MEANS-TESTED PROGRAMS

Federal means-tested programs typically include income and resource limits that are designed to target benefits to individuals with limited income and other financial resources. These limits vary from program to program or, for state-administered programs such as Medicaid, from state to state. For example, the supplemental security income (SSI) program, which is federally-administered, has a $2,000 resource limit for individuals. In most states, SSI receipt confers Medicaid eligibility. When SSI recipients have income and resources over the limit, their SSI benefits are suspended but they remain eligible for Medicaid.

New law. Amounts in an individual's qualified ABLE account (including earnings), contributions to the individual's account, and distributions to pay qualified disability expenses are disregarded for purposes of determining an individual's eligibility for, or the amount of, any assistance or benefit authorized by any federal means-tested program. This rule overrides any other federal law that requires those amounts to be taken into account.

However, in the case of the SSI program, distributions from an ABLE account for housing expenses are considered income; and amounts (including earnings) in an ABLE account in excess of $100,000 are considered a resource of the designated beneficiary. (Act Sec. 103(a) Div B) The SSI benefits of an individual who has excess resources because the individual's ABLE account balance exceeds $100,000 aren't terminated. Instead, the benefits are suspended (Act Sec. 103(b)(1) Div B) until the individual's balance falls below $100,000. (Committee Report) The suspension of SSI benefits doesn't apply for purposes of Medicaid eligibility.

Observation: 32 states and the District of Columbia provide that anyone who is eligible for SSI benefits is also eligible for Medicaid. In those states, an individual would remain eligible for Medicaid during any period where his ABLE account balance exceeded $100,000 and thus his SSI benefits were suspended.

For purposes of determining SSI eligibility, states must submit to the Commissioner of Social Security, in the manner specified by the Commissioner, monthly electronic statements on relevant distributions and account balances from all ABLE accounts. This requirement is effective for tax years beginning after December 31, 2014.

SOME ABLE ACCOUNTS GET BANKRUPTCY EXEMPTION

Property of a bankruptcy estate doesn't include funds placed in an ABLE account no later than 365 days before the filing date of the bankruptcy petition but, only if the designated beneficiary of the account was the debtor's child, stepchild, grandchild, or step-grandchild for the tax year for which funds were placed in the account. And, the exclusion is limited to $6,225 for funds placed in all ABLE accounts having the same designated beneficiary no earlier than 720 days nor later than 365 days before the filing date.

Other rules limit this exemption; one such rule provides that no exemption is provided for contributions in excess of the annual contribution limit, which, as discussed under “Qualified ABLE program defined,” above, is equal to the annual gift tax exclusion amount.

These provisions apply to bankruptcy cases begun under title 11 of the U.S. Code on or after the date of enactment (i.e., December 19, 2014).

As always, we look forward to seeing you again this tax season. In the interim, if you have any questions on this or any matter on which you feel we may be of assistance, please do not hesitate to contact us immediately.

Yours truly

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