

## Summary of S. 2260, the Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act

### Overview

The Senate Finance Committee approved and reported S. 2260, the Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act, sponsored by Chairman Ron Wyden (D-OR) on April 3, 2014, which would extend approximately \$85 billion in tax breaks for individuals and businesses through 2015. These and other temporary tax provisions commonly referred to as “tax extenders” have been routinely extended by Congress on a one or two-year basis; however, the majority were allowed to expire at the end of 2013. The package was brought to the Senate floor in May 2014, but ultimately failed to reach cloture by a vote of 53 to 40, with Republicans protesting the exclusion of several GOP sponsored amendments on several hot button issues.

Senate Majority Leader Harry Reid (D-NV) has confirmed that the bill will not see floor time until after the November Congressional elections, leaving only a handful of legislative days available for action on the package. Meanwhile, Senator Wyden has made clear that his priority as Chairman of the Finance Committee is to extend these provisions before vowing to move to comprehensive tax reform in 2015.

Of note, the first provision included in the bill is a “Sense of the Senate” calling for action on comprehensive tax reform in the next Congress that would be concluded before the end of 2015 when the proposed tax extenders would expire. The Committee-passed legislation, which contains provisions pertaining to businesses and individuals, as well as a handful of provisions directly relevant to the renewable energy industry, are outlined below.

### Energy Provisions

The EXPIRE Act extends, expands, and modifies a dozen tax incentives that spur innovation in clean energy technologies and energy efficiency, or the production and utilization of renewables and alternative energy technologies. The Alliance applauds the inclusion of the **Section 45L** credit for construction of energy efficient new homes that achieve a 30% or 50% reduction in heating and cooling energy consumption, and the modification of the **Section 179D** credit for energy efficient commercial buildings deduction, raising the qualifying efficiency standards and allowing tribal governments and non-profits to allocate the deduction to designers. The bill also amends and expands the **Section 25C** credit, allowing a 10 percent credit for purchases of energy efficient improvements to existing homes. Under the credit, homeowners can claim up to \$200 for energy efficient windows, up to \$150 for an efficient furnace or boiler, and up to \$300 for other improvements, including insulation, with a total cap at \$500 per taxpayer. Additionally, the bill includes a two-year extension of the highly politicized and polarizing renewable electricity production tax credit (PTC), as well as the ability to elect a 30 % investment tax credit in lieu of the PTC. All energy provisions listed below have expired unless otherwise noted:

- **Credit for construction of new energy efficient homes (45L)**
- **Energy efficient commercial buildings deduction (179D)**
- **Credit for energy efficient improvements to existing homes (25C)**
- Renewable energy production and investment tax credits (PTC)
- Plug-in electric motorcycles and highway vehicles
- Cellulosic biofuels producer tax credit
- Incentives for biodiesel and renewable diesel
- Indian country coal production tax credit

- Cellulosic biofuels bonus depreciation
- Incentives for alternative fuel and alternative fuel mixtures (including liquefied hydrogen)
- Extension of special rule for sales or dispositions to implement Federal Energy Regulatory Commission (FERC) or State electric restructuring policy for qualified electric utilities
- Credit for fuel cell motor vehicles\*
- Credit for alternative fuel vehicle refueling property (including hydrogen property)\*

## Individual Provisions

The EXPIRE Act extends key provisions providing relief to individuals and families. One provision of note would extend mortgage debt relief for families ensuring that any cancelled mortgage debt does not become eligible as taxable gross income. Another provision extends the **Health Coverage Tax Credit (HCTC)** which helps cover the cost of health care for dislocated individuals eligible for trade adjustment assistance or who are over 55 and receive pension benefits from the Pension Benefit Guaranty Corporation. Other provisions of note would extend the **Work Opportunity Tax Credit** which provides a wage credit to employers that hire veterans and recipients of Temporary Assistance for Needy Families; and the above-the-line deduction for higher education expenses which extends the deduction for qualified higher education expenses and the deduction for general state and local sales tax.

- Health Coverage Tax Credit (HCTC)
- Deduction for expenses of elementary and secondary school teachers
- Mortgage Debt Relief
- Parity for employer-provided mass transit and parking benefits
- Deduction for mortgage interest premiums
- Deduction for state and local general sales taxes
- Special rules for contributions of capital gain real property made for conservation purposes
- Above-the-line deduction for higher education expenses – extends the above-the-line deduction for qualified higher education expenses and the deduction for general state and local sales tax.
- Tax-free distributions from individual retirement plan for charitable purposes

## Business Provisions

Chairman Wyden's EXPIRE Act proposes extending most of the business provisions that expired in 2013. Of particular note, the bill extends and expands the research and experimentation tax credit to help maintain U.S. competitiveness. The bill expands the **R&E credit** to start-up businesses which will be able to claim up to \$250,000 per year of the credit against their payroll tax after applying the credit to income tax liability. The bill also allows the R&E credit to count against alternative minimum tax (AMT) liability. Additionally, the EXPIRE Act would renew 50% **bonus depreciation** for qualified property, and would continue to permit an election to **accelerate AMT credits in lieu of bonus depreciation**. All business-focused provisions are listed below:

- **Research and experimentation credit (R&E)**
- **Bonus depreciation**
- **Acceleration of AMT credits in lieu of bonus depreciation**
- 9% credit rate freeze for the Low-Income Housing Tax Credit Program (LIHTC)

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\* Provision expiring in 2014

\* *ibid*

- Treatment of military basic housing allowances under low-income housing credit
- Indian employment tax credit
- New Markets Tax Credit
- Credit for railroad track maintenance
- Mine rescue team training credit
- Employer wage credit for activated military reservists
- Work Opportunity Tax Credit
- Qualified zone academy bonds (QZABs)
- Three-year depreciation for racehorses
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant building and improvements, and qualified retail improvements
- 7-year recovery period for motorsports entertainment complexes
- Accelerated depreciation for business property on Indian reservations
- Enhanced charitable deduction for contributions of food inventory
- Temporarily extend increase in the maximum amount & phase-out threshold under section 179
- Election to expense advanced mine safety equipment
- Special rules for certain film and television productions
- Deduction for domestic production activities in Puerto Rico
- Modification of tax treatment of certain payments to controlling exempt organizations
- Treatment of certain dividends of regulated investment companies (RIC's)
- Definition of RICs as qualified investment entities under FIRPTA
- Exceptions under subpart F for active financing income
- Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules
- Special rules for qualified small business stock
- Basis adjustment to stock of S corporations making charitable contributions of property
- Reduction in S corporation recognition period for built-in gains tax
- Extension of Empowerment Zone tax incentives
- Temporary increase in limit on cover over of rum excise tax revenues (from \$10.50 to \$13.25 per proof gallon) to Puerto Rico and the Virgin Islands.
- American Samoa economic development credit
- Multiemployer pension plan funding rules

### **\*Revenue Raising Provisions**

Several “revenue-raising” provisions were included to offset modifications to credits that would increase the revenue loss relative to current standing policy. Some of those provisions include increasing levy authority on payments to Medicare providers with delinquent tax debt, applying paid preparer Earned Income Tax Credit (EITC) due diligence requirement to the child tax credit, and excluding from gross income certain clean coal power grants. A full list of these provisions is included below:

- Extend paid preparer EITC due diligence requirements to the child tax credit
- Increase levy authority on payments to Medicare providers with delinquent tax debt
- Exclusion from gross income of certain clean coal power grants
- IRS to enter into qualified tax collection contracts

- Indexing tax penalties for inflation
- Modification of personal holding company rules