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TAXPAYERS for COMMON SENSE

Testimony of Ryan Alexander
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"Post Tax Reform Evaluation of Recently Expired Tax Provisions"
House Ways and Means Committee
March 14, 2018

Thank you for the opportunity to submit testimony on the important issue of tax extenders and recently expired provisions in the tax code. My organization, Taxpayers for Common Sense, is a national nonpartisan budget watchdog and we have long monitored and cataloged the nearly annual legislative event of extending packages of expiring tax provisions.

My testimony will focus on the tax policy and budget implications of these narrow short-term tax expenditures as well as critiques of specific provisions that expired at the end of 2017.

The practice of tax extenders undercuts the most broadly agreed upon goals of tax policy: to provide certainty to individuals and businesses; to provide a predictable flow of revenue to the government; and to encourage future behavior. The procedural history and practice of tax extenders is equally flawed. The hodge-podge package of unrelated provisions has no rational basis as a whole, and in almost every case extender bills are passed without debate on any of the individual provisions. We welcome this hearing as one of the first instances of oversight on extenders and expiring provisions in the tax code.

The short term nature of tax provisions passed on an annual or biannual basis increases uncertainty for all involved. Investors and companies benefiting from specific provisions may not be able to make long term decisions. In some sectors, like energy, emerging technologies have largely benefitted from "temporary" tax provisions while more mature industries benefit from permanent tax preferences, skewing the market and compounding the already complex risk assessment involved in investments in emerging technology. It means that taxpayer subsidies benefit one industry to compete with another subsidized industry. The narrow focus, in turn, adds complexity to an already complex tax code and results in Washington picking winner and losers amongst taxpayers.

Moreover, temporary tax provisions reflect the political influence of the beneficiaries rather than reasoned, prioritized tax policy making. Like earmarks in appropriations, tax extenders have one unsung beneficiary: lobbyists. Because extenders allow for narrow changes to tax law that often benefit a single industry – and sometimes a single company – they are perfect for lobbyists. One example in the recent extenders package is the changes to the nuclear production tax credit. The changes included in the package are not technically an extender – rather they modify the conditions required to qualify for the credit, by eliminating the time limitation on eligibility. Originally projects needed to be placed into service by 2021, now there is no deadline. The modifications also allow tax exempt entities to claim the credit – and pass it along to their for-profit partners.

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Repeated short-term extensions mask the true costs of provisions. In the last decade, we estimate that the extension of expiring tax provisions has added hundreds of billions of dollars to the deficit. The seven bills passed in the last decade were almost all attached to must-pass legislation – as the most recent bill was – without any effort to fully offset the lost revenue. In that period of time, more than 150 provisions were extended more than once, and more than 40 provisions were extended four times or more.

The true aggregate cost of these bills is difficult to ascertain because of the way the legislation is structured and passed. All Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) projections – the projections upon which Congress bases budgetary decisions presumed that all of these "extender" provisions would not be renewed – not even once. When provisions are extended for another one or two years, JCT and CBO make new projections, once again assuming there will be no further renewals, further obfuscating the true, long term cost. The lack of transparency in scoring results in Congress is willfully making decisions based on incomplete evidence. With a debt of $20 trillion that already exceeds our gross domestic product and trillion dollar deficits on the horizon, extenders are a foolhardy practice to continue.

And finally, the often retroactive extensions of these provisions do not promote future activities, rather they subsidize behavior and actions that have already occurred – possibly in anticipation of an extension. In the last decade, six out of seven extender bills have included retroactive provisions.

Before turning to the recently expired provisions, I want to take a moment to put the most recent tax extenders bill in context. In December, Congress passed and the President signed, the most sweeping tax legislation in more than 30 years. On the **very same day** the tax package passed the Senate, Senate Finance Committee Chairman Hatch (R-UT) introduced the Tax Extenders Act of 2017, which extended the expiration date of more than 30 provisions, most of which have been extended repeatedly in the last decade. These provisions were not made permanent in the tax bill. The fact that these tax extender provisions being discussed today were not included in this package is either an indication of their importance, or lack thereof, to lawmakers, or the inability of lawmakers to shoehorn the costs of these provisions into the more than $1.5 trillion deficit permitted by the budget reconciliation agreement.

The recent tax bill also set the stage for a whole new round of tax extenders by including many provisions that expire before the end of the ten year budget window. In addition to almost all of the individual provisions expiring in 2025, several other provisions, including some newly established tax preferences will expire within the budget window. The new provision dealing with craft beer will expire in 2019, those affecting citrus producers in 2027, and bonus depreciation in 2027. These will almost certainly become the nucleus of future extender packages.

The majority of extensions attached to the Bipartisan Budget Act of 2018 in February were retroactive – shifting the expiration date from the end of 2016 to the end of 2017. There is no possibility that these extensions will change behavior.

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Of the 28 provisions that were only retroactively extended and therefore expired on December 31, 2017, many are provisions Taxpayers for Common Sense has long criticized on their merits in addition to the inherently problematic process by which they were passed.

Section 168(e)(3)(A), which provides for three-year depreciation of race horses two years old or younger, which has a value of $37 million in FY 2018 alone, was created as part of the 2008 Farm Bill and has been renewed three times prior to the most recent extension. The narrowness of this provision is self-evident, the policy behind the provisions is not. Was Congress presented with evidence that the horse racing industry would create more jobs because of this accelerated depreciation? Is the universe of investors in race horses critical to the economic growth and health of the country? What changes to the industry – other than increased profits for race horse owners – would result because of this change?

Similarly, the seven year recovery period for motorsports entertainment complexes, section 168(I) (15) (d) has also been extended six times since it was established. This so-called NASCAR tax-break is a perfect example of a special interest lobbying successfully for special treatment. Owners of motorsports entertainment complexes are allowed to depreciate their investments in less than half the time of other investors in similar real estate. Since 2004, when the provision was added “temporarily” to the tax code, it has cost taxpayers more than $300 million.

Movies and television benefit too, with section 181(f), which grants the industry special expensing rules, and has done so temporarily six times in ten years. Unlike motorsports complexes and race horse owners, film and television had some of their wishes addressed in December’s tax package, which included bonus depreciation for film, television, and theater—although that provision expires in 2026.

The American Samoa Economic Development credit is essentially a $10 million subsidy for Korean-owned Starkist to operate a cannery in the territory. This provision has been extended seven times in the last decade. If it is as critical as proponents suggest, why wasn’t it included in the December tax package?

Some provisions in the extenders package passed last month did do more than retroactively extend the expiration date of a specific provisions. The rum excise tax cover over was retroactively extended to cover 2017 and further extended until 2022. The rum provision also demonstrates how these provisions are often poorly targeted. The US Virgin Islands used the cover over to build a distillery to entice Diageo, the British-based largest liquor conglomerate in the world, to shift Captain Morgan rum production from Puerto Rico to USVI. From one US territory to another.

After years of trying, (see H.R. 4622, S. 3179, S. 1535, etc.) carbon capture and sequestration (CCS) backers have gotten an extension and expansion of the 45Q tax credit. The credit for capturing and sequestering a metric ton of carbon will ramp up from $20 to $50 by 2027; the credit for capturing a ton then using it for oil recovery or something else ramps up from $10 to $35.

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More than half of the provisions included in the BBA 2018 relate to the energy industry, some of which originated as temporary tax provisions in the Energy Policy Act of 2005. Many of those provisions were established to provide tax incentives to less established sectors, to counteract the longstanding tax preferences in the tax code for more mature industries. Unfortunately, the December tax package left all of longstanding provisions in place, thereby renewing the demand for tax preferences for newer industries – and now the tax extenders package continues the cycle of adding rather than subtracting subsidies.

Among the biggest beneficiaries among the energy and natural resources portion of the extenders package are the biodiesel/renewable diesel industries: the retroactive extension of their credits will reduce their 2017 tax bill (or increase their refund) by $3.3 billion. Similarly, although section 30C(g)(2), Credit for Alternative Fuel Vehicle Refueling Properties, has been renewed six times, it didn't make it in to the December tax package, but a one year retroactive extension did make it in to the budget deal. While the Solar Investment Tax Credit was extended for five years in 2015, the construction start date for eligibility to claim the credit for **non-solar** property was extended five years in the recent deal, after significant lobbying from non-solar industries.

Another concern about extending any of the recently expired provisions of the tax code is the likelihood that expiring provisions are either duplicative, overlapping, or even undermining of provisions in the new tax law. For example, the recent extenders package included a retroactive extension of the Empowerment Zone tax credit through 2017. This provided a tax credit to employers who hired individuals who live and work in certain high poverty areas in the country. Still another provision targeted at development in high poverty areas is the New Markets Tax Credit, which was extended six times before being extended for five years as part of the PATH (Protecting Americans from Tax Hikes) Act in 2015. Interestingly, the New Markets Tax Credit excludes racetracks from the eligible activities, something that is subsidized by the aforementioned NASCAR tax extender.

All of these provisions certainly overlap, and may be duplicative of section 1031 of the December tax package, which creates new incentives and vehicles for investing in qualified opportunity zones. Under this new provision, investors can defer taxes on unrealized capital gains by investing them in a Qualified Opportunity Fund, which would in turn, only be able to invest in opportunity zones. What is not clear is that these provisions actually stimulate activities and development that would not otherwise occur or simply fuel gentrification and planned development.

Again, thank you for inviting me to testify. Taxpayers for Common Sense is pleased that you are holding a hearing on specific tax extenders, but we believe the entire process should be ended. I would be happy to answer any questions you might have.