TAXPAYERS for COMMON SENSE

Tax Extenders: Impact and Evolution in U.S. Fiscal Policy

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Tax extenders are provisions in the U.S. tax code that are technically temporary but often and routinely renewed by Congress. Initially, these extenders were designed as short-term measures to address specific economic needs or to incentivize certain behaviors. Over time, they've become a recurring element of the American tax landscape.

The origin of tax extenders can be traced back to specific pieces of legislation in the 1970s and 1980s. One key piece of legislation that introduced several of these provisions was the Economic Recovery Tax Act of 1981 (ERTA). This Act, signed by President Ronald Reagan, was a major tax cut bill aimed at stimulating economic growth and included various temporary provisions intended to provide immediate economic stimulus.

However, the concept of temporary tax provisions predates ERTA. Throughout the 1970s, several tax laws introduced short-term incentives and benefits to address specific economic issues of the time, such as energy crises or economic downturns. Over the years, these temporary provisions started to be collectively referred to as “tax extenders” because they required regular extension by Congress to remain in effect. This practice became more institutionalized, with tax extenders being packaged together and passed as part of larger tax or budget legislation.

While ERTA and other legislation in the 1970s and 1980s laid the groundwork for what would become known as tax extenders, the term itself and the practice of regularly extending a set of temporary tax provisions became more formalized and frequent in later years, particularly in the 1990s and 2000s.

Some of these provisions are made temporary to force a review when they’re scheduled to expire, or “sunset.” Others are temporary because Congress intended them to address temporary needs, such as recession, mortgage market collapse, or regional weather disasters. And, here’s the rub, some are temporary because proponents want them to be permanent but cannot muster the budgetary (or political) resources to offset the cost for more than a year or two at a time.

Legislative History and Costs

The American Taxpayer Relief Act (ATRA; P.L. 112-240) extended numerous tax provisions that had either expired at the end of 2011 or were set to expire at the end of 2012, with the Joint Committee on Taxation estimating the cost at $73.6 billion over ten years. ATRA permanently extended most of the tax cuts that were first enacted in 2001 and 2003, and it also permanently indexed the alternative minimum tax (AMT) for inflation. Additionally, ATRA made permanent the Economic Growth and Tax Relief Reconciliation Act of 2001 for individual taxpayers with taxable income at or below certain thresholds.

In the 113th Congress, despite proposals for a two-year extenders package and permanent extensions, the Tax Increase Prevention Act of 2014 (P.L. 113-295) was enacted, extending expired provisions for the 2014 tax year at a ten-year cost of $41.6 billion. 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), extended or made permanent 52 temporary tax provisions with an estimated cost of $628.8 billion between FY2016 and FY2025.

Following this, the Bipartisan Budget Act of 2018 (BBA18; P.L. 115-123) further extended provisions which expired at the end of 2016 through the end of 2017. The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q, P.L. 116-94), enacted in December 2019, extended most provisions through 2020 and specific incentives through 2022, with a total projected cost of $39.2 billion over ten years. The FY2021 Omnibus and COVID-19 relief package passed by Congress also made many big (and costly) changes to the tax code. The Inflation Reduction Act of 2022 (IRA) extended or modified various energy-related tax provisions in Subtitle D of the Act which are projected to reduce federal tax revenue by an estimated $205.2 billion over a 10-year period.

Recent Legislation

“The Tax Relief for American Families and Workers Act of 2024” was introduced by Senate Finance Committee Chairman Ron Wyden (D-OR) and House Ways and Means Committee Chairman Jason Smith (R-MO), and it would make significant, temporary changes to the child tax credit (CTC) and business tax provisions.

The Act modifies the calculation of the maximum refundable child tax credit by allowing taxpayers to multiply their earned income (in excess of $2,500) by 15 percent and then by the number of qualifying children. The maximum refundable amount per child has been increased to $1,800 for the tax year 2023, $1,900 for 2024, and $2,000 for 2025, with adjustments for inflation in tax years 2024 and 2025.

It also addresses business tax incentives by delaying the requirement for taxpayers to amortize domestic research or experimental costs over a five-year period until after December 31, 2025. This allows for the current deduction of these costs for tax years beginning after December 31, 2021, and before January 1, 2026. Additionally, the legislation would extend the application of EBITDA (earnings before interest, taxes, depreciation, and amortization) for the computation of adjusted taxable income for the limitation on the deduction for business interest until January 1, 2026. The 100-percent bonus depreciation has been extended for qualified property placed in service after December 31, 2022, and before January 1, 2026, and the limitations on expensing of depreciable business assets have been increased.

A notable international component is the introduction of the United States-Taiwan Expedited Double-Tax Relief Act and the United States-Taiwan Tax Agreement Authorization Act. These provisions aim to alleviate double taxation on U.S.-Taiwan cross-border investment and authorize the President to negotiate a U.S.-Taiwan tax agreement.

The Act extends relief for disaster-impacted communities by continuing the treatment of certain disaster-related personal casualty losses as established in the Taxpayer Certainty and Disaster Tax Relief Act of 2020. It also provides tax exclusions for qualified wildfire relief payments.

The Joint Committee on Taxation estimates that enacting the Tax Relief for American Families and Workers Act of 2024 would increase the deficit by $78 billion over the 2024-2033 period. However, the legislation also proposes to limit the ability to make Employee Retention Credit (ERC) claims introduced in 2020 as part of the CARES Act to encourage employers to retain employees during the COVID-19 pandemic. The credit was applicable to qualified wages paid to employees, initially up to $5,000 per worker in 2020, and later increased to $7,000 per quarter for the first half of 2021. The ERC was discontinued for most businesses after September 30, 2021, but could be claimed retroactively. The Joint Committee on Taxation estimates this change will save $77.1 billion over the next decade, meaning the official "score" or cost of the legislation is just $262 million over that period.

It is important to distinguish between the generation of new revenue and the reduction of unspent funds to accurately understand the fiscal implications of the Tax Relief for American Families and Workers Act of 2024. The projected savings of $77.1 billion, as estimated by the Joint Committee on Taxation, stem not from new income but from a reduction in the allocation of unused COVID-19 relief funds.

Time to Say Goodbye

TCS has long criticized the practice of tax extenders. One of our criticisms is the lack of long-term planning and predictability that extenders entail, making it challenging for both taxpayers and the government to forecast future fiscal obligations accurately. Furthermore, the sporadic renewal of tax extenders undermines the principles of good governance and fiscal responsibility, as it often leads to a rushed legislative process, lacking adequate debate. Even if Congress manages to cobble something together as part of the FY24 appropriations, many soon-to-expire provisions need to be allowed to expire. These include:

- **Incentives for Biodiesel and Renewable Diesel**: These incentives include a $1.00 per gallon tax credit for biodiesel and renewable diesel under IRC § 40A, as well as an additional $0.10 per gallon credit for small agro-biodiesel producers on the first 15 million gallons of qualified production. The credits apply to biodiesel or renewable diesel used in trade or business, sold at retail for use as motor vehicle fuel, or used in the production of a qualified mixture. These incentives have been extended through December 31, 2024.

  The U.S. biofuels subsidies, initiated post-1970s energy crisis, aimed to boost energy independence, and later focused on reducing emissions and aiding rural economies. Despite significant taxpayer investment, the industries haven't met their goals, with analysts skeptical about future success. Biofuels, predominantly corn ethanol, have led to higher food and fuel costs, increased emissions, and land use changes. These subsidies have distorted market dynamics, often conflicting with other federal initiatives. After

decades of support and federal mandates, there is a call for the government to reduce its role, allowing the biofuels industry to operate without taxpayer subsidies.

- **Second Generation Biofuel Producer Credit** (sec. 40(b)(6)(J)): The Second-Generation Biofuel Producer Credit is a tax incentive under IRC § 40(b)(6) designed to encourage the production of biofuels from renewable biomass other than corn kernel starch. The credit amount is $1.01 per gallon, but it is reduced for alcohol-based biofuels by the amount of any other applicable credits. To qualify, the biofuel must be derived from certain feedstocks, and the producer must be registered with the IRS. This credit has been retroactively extended through December 31, 2024.

  While biofuels were sold on the promise of reduced greenhouse gas emissions and a shift to non-food sources for biofuel production, the reality has been nuanced. Production of so-called advanced, cellulosic biofuels has fallen significantly lower than once envisioned. Economically, the high production costs of these biofuels necessitate subsidies or tax credits to remain competitive with fossil fuels, leading to potential inefficiencies. The Second-Generation Biofuel Producer Credit, despite its availability, is underutilized due to the high investment risk in this industry and the failure of the industry to get off the ground despite significant taxpayer support over several decades.

- **Special Expensing Rules for Certain Film, Television, and Live Theatrical Productions** (sec. 181(g)): This provision allows immediate expensing of costs incurred in qualified film, television, and live theatrical productions, rather than capitalizing and depreciating these costs over time. It was originally part of the American Jobs Creation Act of 2004 for Film and Television (Live Theatrical Production was added later) and has been extended multiple times, with the current expiration date set for December 31, 2025.

  This is a wasteful tax break that primarily benefits large production companies and high-income individuals, rather than smaller companies or those with lower incomes. The deduction represents a significant cost to the government in terms of foregone tax revenue, which could be better spent on other priorities. Furthermore, Section 181 is a poorly designed tax incentive that fails to achieve its intended goals and is susceptible to potential abuse. Dramatic swings in income for production companies and the lack of clarity and guidance around the application of Section 181 are also problems.

- **Seven-Year Recovery Period for Motorsports Entertainment Complexes** (sec. 168(e)(3)(C)(ii) and (i)(15)(D)): This provision specifies a seven-year depreciation period for property used in motorsports entertainment complexes, instead of the standard 39-year life. It is intended to provide a more favorable depreciation timeline for these facilities and is set to expire on December 31, 2025.

  This is a subsidy to the auto racing industry and a form of unfair preferential treatment. As a matter of policy, more permanent tax solutions like full expensing for longer-lived structures would be preferable as, like with other tax extenders, the temporary and

frequently extended nature of this policy leads to uncertainty and hinders long-term investment.

And some tax extenders that expired years ago and should not be revived include:

- **Three-Year Depreciation Schedule for Racehorses:** The Three-Year Depreciation Schedule for Racehorses allows horse owners to depreciate the cost of their racehorses over three years, rather than the seven years that would typically apply to livestock. This shorter depreciation schedule first emerged in 2008 as part of the Farm Bill, in response to industry lobbying, ostensibly to stimulate investment in the horse racing industry.

  The provision has been extended periodically since then, often as part of larger tax legislation, and most recently in the Consolidated Appropriations Act of 2021. According to the Congressional Research Service (CRS), a 10-Year extension (FY2023-FY2032) of this tax extender would cost $400 million.

  This provision represents a form of tax break that primarily benefits wealthy horse owners and breeders, without delivering proportional public benefits. It is a niche carve-out that complicates the tax code and contributes to the deficit. The horse racing industry had been thriving for decades before the introduction of this tax break, and it should be capable of operating successfully without such specialized tax treatment. Furthermore, three-year-old horses are the competitors in the Triple Crown races (e.g. Kentucky Derby). It is clear those horses have worth after the racing season concludes.

- **Rum Cover-Over Program:** The Rum Cover-Over program, a long-standing component of American tax policy, has become emblematic of a broader issue in fiscal governance: the habitual renewal of tax extenders for short periods. While the program's intent is to support U.S. territories like Puerto Rico and the U.S. Virgin Islands by returning a portion of federal excise taxes on rum, its repeated short-term extensions raise significant concerns.

  Established in the early 20th century, the program was designed to bolster the economies of U.S. territories reliant on rum production. Annually, it channels hundreds of millions back to these territories. While its historical roots are steeped in support and development, the modern narrative of the Rum Cover-Over program is increasingly defined by fiscal inefficiency and policy inertia.

  Since its inception, the Rum Cover-Over program has been extended numerous times, often as part of larger tax legislation. These short-term renewals, typically lasting only a year or two, create a cycle of uncertainty and prevent long-term planning. The CRS estimates a 10-Year extension (FY2023- FY2032) would cost taxpayers $2.2 billion. The core issue with the Rum Cover-Over program isn't just its cost, but the way it is repeatedly extended. Short-term renewals represent a piecemeal approach to tax policy, lacking in strategic foresight and fiscal responsibility. Furthermore, these funds have often gone to simply support the rum producers rather than the economies of Puerto Rico and USVI.