

FEDERAL TAX PROVISIONS EXPIRED IN 2017

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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides an overview of Federal tax provisions that expired in 2017.² All the provisions discussed herein were scheduled to expire after 2016 and were extended through 2017 by the enactment on February 9, 2018 of the Bipartisan Budget Act of 2018³ (the “Bipartisan Budget Act”). In particular, the document describes those expired provisions in light of the December 2017 enactment of an Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (the “2017 Tax Act”).⁴ This document also includes Joint Committee staff revenue estimates of making permanent those provisions extended through 2017 by the Bipartisan Budget Act.

The 2017 Tax Act repealed provisions of law that included two now-expired provisions. A provision treating Puerto Rico as part of the United States for purposes of the domestic production activities deduction under section 199⁵ expired in 2017. A maximum 23.8-percent tax rate for qualified timber gain of corporations under section 1201 similarly expired in 2017. (The 2017 Tax Act generally reduced the top marginal corporate income tax rate from 35 percent to 21 percent.) The 2017 Tax Act repealed sections 199 and 1201 in their entirety for taxable years beginning after December 31, 2017. For that reason, these two provisions are not described in this document and no revenue estimates are provided for them.

¹ This document may be cited as follows: Joint Committee on Taxation, *Federal Tax Provisions Expired in 2017* (JCX-5-18), March 9, 2018. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

² Certain provisions terminate according to a taxpayer’s taxable year and not according to a calendar year. Thus, the expiration dates of such provisions may differ with respect to fiscal year taxpayers.

³ Pub. L. No. 115-123.

⁴ Pub. L. No. 115-97.

⁵ Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

A. Energy

Congress has enacted many tax provisions related to energy production (including oil and gas and renewables) and conservation. Generally, policymakers offer two broad rationales for intervention in the energy market and for using tax policy to help effectuate these policy goals.

One policy rationale is to promote domestic energy independence. Some have argued that decreasing the dependence of the United States on foreign-source energy is desirable for geopolitical and national defense reasons. The oil embargo of the 1970s imposed economic costs on the U.S. economy. Mitigating the potential of similar energy supply disruptions in the future has motivated various policies both to increase domestic energy production from multiple sources, including fossil fuels and alternative energy, and to promote conservation in energy consumption. Some have argued that using tax policy to achieve these objectives has the advantage of using the market economy, with taxpayers responding to the economic incentives created by the tax policy, instead of programs requiring applications to and grants from the Federal government.

A second rationale for government intervention in certain markets (including many aspects of energy markets) is the presence of “externalities” in the consumption or production of certain goods. Externalities exist when, in the consumption or production of a good, there is a difference between the cost (or benefit) to an individual and the cost (or benefit) to society as a whole. These externalities lead to “market failures” wherein the mismatch between individual and social costs (or benefits) result in the purely market-based outcome providing either too little or too much of certain economic activity, relative to what is socially optimal. Thus, tax preferences that encourage more or less consumption or production, as appropriate, can help to achieve increases in economic efficiency by moving consumption or production toward the socially-optimal level.

The externality that is generally the subject of concern for energy markets is pollution. Pollution is considered a negative externality because the producers of pollution generally do not bear the full costs of pollution to society, thus resulting in the production of a larger amount of pollution than is socially optimal. Economists generally agree that the most efficient means of addressing pollution is a direct tax on pollution-causing activities, rather than through the indirect approach of targeted tax credits for certain technologies. A direct tax on pollution-causing activity is technology neutral, meaning that it does not favor any particular technology that individuals may choose to use, or any particular behavioral modification that individuals may choose to make, in their pollution-reducing responses to the tax.

Rather than taking this direct approach, many energy-related Federal tax incentives provide targeted tax credits for investment in, or expenditures on, certain assets that reduce, directly or indirectly, the consumption of conventional fuels and the attendant negative externalities. Likewise, if promoting energy independence is a policy rationale, a collection of disparate tax benefits in favor of specific approaches to conservation and specific sources of increased supply achieves the goal at a greater cost to the fisc because of the economic inefficiency created by the distortion of the markets for energy-conserving goods and services and energy production.

Ideally, the design of these tax benefits would be coordinated to try to mimic the more economically-efficient outcome that a broad-based tax would provide. Some criticize the current system of incentives as a set of disparate provisions that lack not only this coordination but also well-defined objectives, and further argue that the temporary nature of the incentives and uncertainty regarding renewal or extension reduces their efficacy by disrupting long-term planning.

1. Credit for certain nonbusiness energy property (sec. 25C)

- For property placed in service before January 1, 2018, the provision allows a credit of 10 percent of the expenditures on energy-efficient improvements to the building envelope (windows, doors, skylights, and roofs) of principal residences, and credits of fixed dollar amounts ranging from \$50 to \$300 for energy-efficient property including furnaces, boilers, biomass stoves, heat pumps, water heaters, central air conditioners, and circulating fans. It is subject to a lifetime cap of \$500.
- The provision was first enacted in the Energy Policy Act of 2005⁶ for property placed in service after December 31, 2005, and before January 1, 2008.
- The provision was substantially modified in the American Recovery and Reinvestment Tax Act of 2009,⁷ with the principal change being an increase in the credit amounts to 30 percent of expenditures on all qualifying property, up to a \$1,500 aggregate credit over two years for 2009 and 2010. This modification was not included in the most recent extension of the provision.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

2. Alternative motor vehicle credit for qualified fuel cell motor vehicles (sec. 30B(b))

- For purchases made before January 1, 2018, a credit is available for vehicles propelled by chemically combining oxygen with hydrogen and creating electricity. The base credit is \$4,000 for vehicles weighing 8,500 pounds or less. For heavier vehicles, a credit of up to \$40,000 may be allowed. An additional \$1,000 to \$4,000 credit is available for purchases of cars and light trucks to the extent their fuel economy exceeds the 2002 base fuel economy set forth in the Code.
- The provision was enacted as part of the Energy Policy Act of 2005⁸ through December 31, 2014.
- The original provision included incentives for hybrid electric vehicles, lean burn diesel vehicles, and other incentives. These elements of the provision have all expired, generally in 2009, 2010, and 2011.

⁶ Pub. L. No. 109-58.

⁷ Pub. L. No. 111-5.

⁸ Pub. L. No. 109-58.

- The provision has been extended twice, most recently by the Bipartisan Budget Act.

3. Credit for alternative fuel vehicle refueling property (sec. 30C)

- For property placed in service before January 1, 2018, a 30-percent credit is available for property that dispenses alternative fuels, including ethanol, biodiesel, natural gas, hydrogen, and electricity. The credit may not exceed \$30,000 per location for business property and \$1,000 for property installed at a principal residence.
- The provision was enacted as part of the Energy Policy Act of 2005⁹ effective for property placed in service after December 31, 2005, in tax years ending after such date, and before January 1, 2010 (January 1, 2015 for hydrogen refueling property).
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

4. Credit for two-wheeled plug-in electric vehicles (sec. 30D)

- A 10-percent credit (up to \$2,500) is available for purchases of vehicles otherwise qualifying as plug-in electric-drive vehicles but which have only two wheels. Such two-wheeled vehicles must have a battery capacity of at least 2.5 kilowatt-hours.
- The provision was enacted (and originally codified under section 30) as part of the American Recovery and Reinvestment Tax Act of 2009¹⁰ through December 31, 2011.
- The credit lapsed for calendar year 2014, but was prospectively extended from January 1, 2015, through December 31, 2016, by the Protecting Americans from Tax Hikes Act of 2015.¹¹
- The provision was most recently extended by the Bipartisan Budget Act.

5. Second generation biofuel credit (formerly known as the “cellulosic biofuel producer credit”) (sec. 40(b)(6))

- The provision provides for a \$1.01-per-gallon income tax credit (nonrefundable) for qualified second generation biofuel sold at retail into the fuel tank of a buyer’s vehicle, or second generation biofuel mixed with gasoline or a special fuel and sold or used as a fuel (not limited to transportation fuel). The provision expires for fuel produced after December 31, 2017.

⁹ Pub. L. No. 109-58.

¹⁰ Pub. L. No. 111-5.

¹¹ Pub. L. No. 114-113.

- The provision was enacted as part of the Heartland, Habitat, Harvest, and Horticulture Act of 2008¹² for qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013.
- The Health Care and Education Reconciliation Act of 2010¹³ amended the cellulosic biofuel production credit to exclude fuels exceeding certain water and/or sediment content (such as black liquor). In addition, the Creating Small Business Jobs Act of 2010¹⁴ amended the provision to exclude certain fuels exceeding certain acidity levels (such as crude tall oil). The American Tax Relief Act of 2012¹⁵ renamed the credit the “second generation biofuel producer credit” and added algae, cyanobacteria, and lemna as qualifying feedstocks.
- The provision has been extended four times, most recently by the Bipartisan Budget Act.

6. Incentives for biodiesel and renewable diesel (secs. 40A, 6426(c), and 6427(e))

The incentives for biodiesel and renewable diesel consist of four components:

1. Income tax credits for biodiesel fuel, biodiesel used to produce a qualified mixture, and small agri-biodiesel producers (sec. 40A).
2. Income tax credits for renewable diesel fuel and renewable diesel used to produce a qualified mixture (sec. 40A).
3. Excise tax credits and outlay payments for biodiesel fuel mixtures (secs. 6426(c)(6) and 6427(e)(6)(B)).
4. Excise tax credits and outlay payments for renewable diesel fuel mixtures (secs. 6426(c)(6) and 6427(e)(6)(B)).

Biodiesel

- The biodiesel fuels credit is the sum of three credits: (1) the biodiesel mixture credit (\$1.00 per gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture), (2) the biodiesel credit (\$1.00 per gallon of biodiesel that is not in a mixture with diesel fuel), and (3) the small agri-biodiesel producer credit (10 cents per gallon for up to 15 million gallons of agri-biodiesel produced by small producers).

¹² Pub. L. No. 110-246.

¹³ Pub. L. No. 111-152.

¹⁴ Pub. L. No. 111-240.

¹⁵ Pub. L. No. 112-240.

The credits may be taken as income tax credits and the biodiesel mixture credit may be taken as an excise tax payment or credit.

- The biodiesel provision was enacted in the American Jobs Creation Act¹⁶ and originally expired on December 31, 2006.
- The provision was subsequently modified and extended by the Energy Tax Incentives Act of 2005¹⁷ which added small agri-biodiesel producer income tax credit and extended the incentives through December 31, 2008. The provision was amended by the Energy Improvement and Extension Act of 2008,¹⁸ which equalized credit for biodiesel and agri-biodiesel at \$1.00, clarified that fuel produced outside the United States for use outside the United States was ineligible for the credit, and extended the incentives through December 31, 2009.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

Renewable diesel

- Renewable diesel is treated the same as biodiesel for purposes of the Code, except there is no small producer credit.
- The renewable diesel provision was added by the Energy Tax Incentives Act of 2005¹⁹ and was limited to fuel made using a thermal depolymerization process and was originally to expire December 31, 2008.
- The Energy Improvement and Extension Act of 2008²⁰ removed the requirement that renewable diesel be made using a thermal depolymerization process, gave the Secretary authority to approve fuel standards equivalent to the requirements of American Society of Testing Materials (“ASTM”) D975 or D396 for purposes of renewable diesel, provided that military jet fuel and ASTM aviation turbine fuel qualified as renewable diesel, provided that renewable diesel could not be coprocessed with a feedstock that is not biomass as defined in section 45K(c)(3) (*e.g.*, crude oil), and extended the incentive through December 31, 2009.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

¹⁶ Pub. L. No. 108-357.

¹⁷ Pub. L. No. 109-58.

¹⁸ Pub. L. No. 110-343.

¹⁹ Pub. L. No. 109-58.

²⁰ Pub. L. No. 110-343.

7. Credit for electricity produced from certain renewable resources (other than wind) (secs. 45 and 48(a)(5))

- A production tax credit is available for electricity produced from certain renewable resources during the 10-year period beginning after the related renewable power facility has been placed in service. The credit rate is adjusted annually for inflation and for 2017 is 2.4 cents per kilowatt hour for power produced at closed-loop biomass and geothermal facilities and 1.2 cents per kilowatt hour for power produced at open-loop biomass, small irrigation power, municipal solid waste, marine/hydrokinetic, and certain hydropower facilities. The credit expires for facilities the construction of which begins after December 31, 2017.
- Taxpayers may elect to claim a 30-percent investment tax credit in lieu of a production tax credit with respect to property placed in service at a qualified facility.
- The provision was enacted as part of the Energy Policy Act of 1992²¹ at which time only electricity produced at qualified wind and closed-loop biomass facilities were credit-eligible. The credit originally expired for facilities placed in service after June 30, 1999.
- The credit has been extended and modified many times. Major modifications (listed below) occurred in 1999, 2004, 2005, and 2008. The Ticket to Work and Work Incentives Improvement Act of 1999²² extended the credit and added poultry waste facilities placed in service after 1999 as qualified renewable power facilities. The American Jobs Creation Act of 2004²³ extended the credit and added open-loop biomass (which subsumed poultry waste), solar power, small irrigation power, and municipal solid waste as qualified renewable power resources. Facilities producing power using these resources were only eligible for five years of credit. In addition, the credit rate for power from such facilities was half the rate for electricity produced at qualified wind and closed-loop biomass facilities. The Energy Policy Act of 2005²⁴ extended the credit (except for solar power facilities), increased the credit period to 10 years for all qualified facilities, and added qualified hydropower facilities to the list of credit-eligible facilities. The Energy Improvement and Extension Act of 2008²⁵ extended the credit and added marine and hydrokinetic renewable energy as a qualified resource. The American Recovery and Reinvestment

²¹ Pub. L. No. 102-386.

²² Pub. L. No. 107-170.

²³ Pub. L. No. 108-357.

²⁴ Pub. L. No. 109-58.

²⁵ Pub. L. No. 110-343.

Tax Act of 2009²⁶ added the election to claim a 30-percent investment credit in lieu of a production credit, for facilities placed in service after December 31, 2008.

- The provision was most recently extended by the Bipartisan Budget Act.

8. Credit for production of Indian coal (sec. 45(e)(10))

- A \$2-per-ton credit (adjusted for inflation; \$2.387 per ton for 2016)²⁷ is available through December 31, 2017, for coal produced from reserves that on June 14, 2005, were owned by (or held in trust by the United States on behalf of) an Indian tribe.
- The provision was enacted as part of the Energy Policy Act of 2005²⁸ through December 31, 2012.
- The provision has been extended four times, most recently by the Bipartisan Budget Act.

9. Credit for construction of new energy efficient homes (sec. 45L)

- A credit of \$1,000 or \$2,000 per home (depending on efficiency standard met) is provided to the contractor or manufacturer for each certified energy efficient new home acquired from the contractor or manufacturer before January 1, 2018.
- The provision was first enacted in the Energy Policy Act of 2005²⁹ for new homes constructed in 2006 and 2007.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

10. Special depreciation allowance for second generation biofuel plant property (sec. 168(l))

- The provision allows an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified second generation biofuel plant property that is used in the United States solely to produce second generation biofuel and if (1) the original use of the property commences with the taxpayer on or after December 20, 2006, (2) the property is to be acquired by purchase by the taxpayer after the date of enactment, but only if no written binding contract for the acquisition was in effect on or before such date, (3) the property is placed in service before January 1, 2018, and (4) no portion of the property is financed with the proceeds of a tax-exempt bond obligation. For this purpose, second generation biofuel means any liquid fuel which is derived from qualified feedstocks and meets the registration

²⁶ Pub. L. No. 111-5.

²⁷ The IRS has not yet published an inflation-adjusted amount for 2017.

²⁸ Pub. L. No. 109-58.

²⁹ Pub. L. No. 109-58.

requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. “Qualified feedstocks” means any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and any cultivated algae, cyanobacteria, or lemna.

- The provision was enacted in the Tax Relief and Health Care Act of 2006³⁰ for cellulosic biomass ethanol plant property placed in service after the effective date of the Act and before January 1, 2013.
- The provision has been extended four times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes qualified second generation biofuel plant property.

11. Energy efficient commercial buildings deduction (sec. 179D)

- A deduction of up to \$1.80 per square foot of the building is allowed for the cost of energy efficient commercial building property relating to the (1) building envelope, (2) lighting, or (3) HVAC systems for buildings that meet specific energy standards, for property placed in service before January 1, 2018. If the entire building does not meet the specific energy standards, a partial deduction of up to \$0.60 per square foot may be allowed for qualifying expenditures in each of the building subsystems listed above. If qualified property is installed on or in government-owned property the deduction may be allocated to the person primarily responsible for designing the property in lieu of the owner.
- The provision was first enacted in the Energy Policy Act of 2005³¹ for property placed in service after December 31, 2005 and before January 1, 2008.
- The provision has been extended five times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides section 179 expensing for certain qualified real property (*i.e.*, roofs, HVAC, fire protection and alarm systems, and security systems).

12. Special rule for sales or dispositions to implement Federal Energy Regulatory Commission (“FERC”) or State electric restructuring policy (sec. 451(k))

- The provision allows a taxpayer that is a qualified electric utility to elect to recognize gain from a qualifying electric transmission transaction ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to

³⁰ Pub. L. No. 109-432.

³¹ Pub. L. No. 109-58.

purchase exempt utility property within the applicable period. The provision only applies to transactions occurring before January 1, 2018.

- The provision was enacted (originally as section 451(i)) as part of the American Jobs Creation Act of 2004³² and was effective for transactions occurring between October 23, 2004 and December 31, 2007.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act redesignated this provision as section 451(k) as a result of other amendments made to section 451.

13. Incentives for alternative fuel and alternative fuel mixtures (secs. 6426(d) and (e), and 6427(e))

- The provision provides for a 50-cents-per gallon excise tax credit or payment for certain alternative fuel used as fuel in a motor vehicle, motor boat, or airplane, and a 50-cents-per gallon credit for alternative fuel mixed with a traditional fuel (gasoline, diesel, or kerosene) for use as a fuel (not limited to transportation applications). The credits expire for fuel sold or used after December 31, 2017.
- The provision was enacted in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act of 2005³³ and expired on September 30, 2009 (September 30, 2014, in the case of hydrogen fuel). The provision was subsequently modified in the Tax Technical Corrections Act of 2007.³⁴ The original provision provided a credit for fuel that was a “liquid hydrocarbon derived from biomass.” The credit was intended to cover fish oil, which contains oxygen, and is not exclusively composed of hydrogen and carbon. The modification changed “liquid hydrocarbon” to “liquid fuel.”
- The provision was modified in the Energy Improvement and Extension Act of 2008³⁵ which extended the non-hydrogen incentives through December 31, 2009, clarified that fuel produced outside the United States for use outside the United States was ineligible for the credit, added compressed or liquefied biomass gas to the list of alternative fuels, allowed credit for aviation use, and added a carbon capture requirement for liquid fuel derived from coal through the Fischer-Tropsch process (coal to liquids). The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010³⁶ excluded from credit eligibility any fuel derived from the

³² Pub. L. No. 108-357.

³³ Pub. L. No. 109-59.

³⁴ Pub. L. No. 110-172.

³⁵ Pub. L. No. 110-343.

³⁶ Pub. L. No. 111-312.

production of paper or pulp (including lignin, wood residues, or spent pulping liquor).³⁷

- The provision has been extended six times, most recently by the Bipartisan Budget Act.

³⁷ In addition, mixtures of butane and gasoline are not alternative fuel mixtures and do not qualify for the alternative fuel mixture credit under section 6426(e). Rev. Rul. 2018-2, 2018-2 I.R.B. 277.

B. Cost Recovery

Economic output may be understood as the product of labor supply and average labor productivity. Capital investment affects economic output by influencing average labor productivity. A primary way tax policy can promote capital investment is by lowering the user cost of capital, which is the opportunity cost that a firm (user) incurs as a consequence of owning a capital asset.³⁸ Lower statutory income tax rates and greater tax depreciation deductions both tend to lower the user cost of capital.

While taxes may affect economic output directly as discussed above, taxes may also affect output levels indirectly by influencing how efficiently resources, such as capital, are allocated in the economy. As economic resources are allocated more efficiently (*i.e.*, are increasingly directed to their most productive use), average labor productivity increases. Taxes generally lead to economy-wide distortions that reduce economic efficiency, but in some cases taxes can correct for market failures and thereby increase economic efficiency. The effect of taxes on economic efficiency depends on both the nature of the tax and the economic activity being taxed.

To the extent extensions of expired cost-recovery provisions reduce differences in marginal tax rates across different types of investment, they may promote a more efficient allocation of resources by eliminating preferential treatment of certain activities over others and by reducing the scope of distortionary behavioral responses to taxation. If the provisions do not correct market failures, however, they may create or exacerbate preferential treatment of certain activities over others, causing an inefficient allocation of resources. A less efficient allocation of resources leaves society with a lower level of output of goods and services than it would enjoy in the absence of the distortions caused by the tax system.

The 2017 Tax Act generally reduced the top marginal corporate income tax rate from 35 percent to 21 percent³⁹ and generally reduced marginal individual income tax rates. A reduction in marginal income tax rates generally reduces the value to taxpayers of an exclusion or deduction from gross income, and reduces by the same amount the revenue cost to the government of providing such exclusion or deduction.

The extension of expired cost recovery provisions would interact with the cost recovery provisions of the 2017 Tax Act. To the extent expired provisions relate to property that is eligible for the special allowance for depreciation (commonly referred to as “bonus depreciation”), the revenue cost of extension is diminished during the period in which such property would otherwise be eligible for bonus depreciation, as is any economic effect on the level of investment in such property.

³⁸ For a more detailed discussion of the user cost of capital see, Joint Committee on Taxation, *Economic Growth and Tax Policy* (JCX-19-17), May 16, 2017, pp. 9ff.

³⁹ For corporations with taxable income between \$100,000 and \$335,000, the marginal tax rate under prior law was 39 percent. For corporations with taxable income between \$15 million and \$18,333,333, the marginal tax rate under prior law was 38 percent. For corporations with taxable income less than \$50,000, which is less than one percent of corporations, the marginal tax rate increased from 15 percent to 21 percent.

1. Three-year depreciation for race horses two years old or younger (sec. 168(e)(3)(A)(i))

- The provision assigns a recovery period of three years for any race horse placed in service prior to January 1, 2018, that is two years old or younger at the time it is placed in service. Subsequently, the three-year recovery period for race horses will only apply to those which are more than two years old when placed in service by the purchaser after December 31, 2017, and a seven-year recovery period will apply to those which are two years old or younger when placed in service after such date.
- The provision was enacted in the Heartland, Habitat, Harvest, and Horticulture Act of 2008⁴⁰ for property placed in service after December 31, 2008, and before January 1, 2014.
- The provision has been extended three times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes race horses regardless of age when placed in service.

2. Seven-year recovery period for motorsports entertainment complexes (sec. 168(i)(15) and (e)(3)(C)(ii))

- The provision assigns a recovery period of seven years for a motorsports entertainment complex placed in service prior to January 1, 2018. A motorsports entertainment complex is a racing track facility which is permanently situated on land and which hosts one or more racing events within 36 months of its placed-in-service date. The term motorsports entertainment complex also includes ancillary facilities, land improvements (*e.g.*, parking lots, sidewalks, and fences), support facilities (*e.g.*, food and beverage retailing and souvenir vending), and appurtenances associated with such facilities (*e.g.*, ticket booths and grandstands).
- The provision was enacted in the American Jobs Creation Act of 2004⁴¹ and expired for property placed in service after December 31, 2007.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes motorsports entertainment complexes placed in service before 2018. After 2017, land improvements will

⁴⁰ Pub. L. No. 110-246.

⁴¹ Pub. L. No. 108-357.

generally constitute qualified property, but race track facilities that constitute nonresidential real property will not constitute qualified property eligible for bonus depreciation.

3. Accelerated depreciation for business property on an Indian reservation (sec. 168(j))

- The provision provides the following accelerated recovery periods for certain property used in connection with the conduct of a trade or business within an Indian reservation:

3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years ⁴²

- “Qualified Indian reservation property” eligible for accelerated depreciation includes property described in the table above which is: (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; (2) not used or located outside the reservation on a regular basis; (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer; and (4) is not property placed in service for purposes of conducting gaming activities. Certain “qualified infrastructure property” may be eligible for the accelerated depreciation even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (*e.g.*, roads, power lines, water systems, railroad spurs, and communications facilities). The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service on or before December 31, 2017. A taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis.

⁴² Section 168(j)(2) does not provide shorter recovery periods for water utility property, residential rental property, or railroad grading and tunnel bores.

- The provision was enacted in the Omnibus Budget Reconciliation Act of 1993⁴³ for property placed in service after December 31, 1993 and before January 1, 2004.
- The provision was modified by the Taxpayer Relief Act of 1997⁴⁴ which clarified the definition of “Indian reservation” and made such language generally effective as if included in the Omnibus Budget Reconciliation Act of 1993.
- The provision was modified by the Protecting Americans from Tax Hikes Act of 2015,⁴⁵ which provided that a taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis for qualified Indian reservation property placed in service in taxable years beginning after December 31, 2015.
- The provision has been extended nine times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes qualified Indian reservation property other than nonresidential real property, residential rental property, water utility property, or railroad grading and tunnel bores.

4. Election to expense advanced mine safety equipment (sec. 179E)

- The provision allows a taxpayer to elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense in the taxable year in which the equipment is placed in service for property placed in service on or before December 31, 2017.
- The provision was enacted by the Tax Relief and Health Care Act of 2006⁴⁶ for costs paid or incurred after December 20, 2006, and property placed in service before December 31, 2008.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes advanced mine safety equipment.

⁴³ Pub. L. No. 103-66.

⁴⁴ Pub. L. No. 105-34.

⁴⁵ Pub. L. No. 114-113.

⁴⁶ Pub. L. No. 109-432.

5. Expensing of certain qualified film and television and live theatrical productions (sec. 181)

- The provision allows taxpayers to elect to deduct up to \$15 million of the aggregate cost (\$20 million if a significant amount of the production expenditures are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress) of any qualifying film and television production in the year the expenditure was incurred in lieu of capitalizing the cost and recovering it through depreciation allowances. A qualified film or television production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format) or television program if at least 75 percent of the total compensation expended on the production was for services performed in the United States by (as originally enacted) actors, directors, producers, and other relevant production personnel.
- The provision was enacted in the American Jobs Creation Act of 2004⁴⁷ for qualified film and television productions that commenced after the effective date of the Act and before January 1, 2009.
- The Tax Extenders and Alternative Minimum Tax Relief Act of 2008⁴⁸ modified the definition of qualified compensation to apply to the services of actors, production personnel, directors, and producers.
- The Protecting Americans from Tax Hikes Act of 2015⁴⁹ expanded eligible productions to include qualified live theatrical productions. A qualified film or television production means any production of a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a taxable entity in any venue which has an audience capacity of not more than 3,000 or a series of venues the majority of which have an audience capacity of not more than 3,000 if at least 75 percent of the total compensation expended on the production was for services performed in the United States by actors, production personnel, directors, and producers. In addition, qualified live theatrical productions include any live staged production which is produced or presented by a taxable entity no more than 10 weeks annually in any venue which has an audience capacity of not more than 6,500.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act expands qualified property eligible for 100-percent bonus depreciation (subject to a phasedown) to include qualified film, television, and live theatrical productions placed in service after September 27, 2017. A production is

⁴⁷ Pub. L. No. 108-357.

⁴⁸ Pub. L. No. 110-343.

⁴⁹ Pub. L. No. 114-113.

considered placed in service at the time of initial release, broadcast, or live staged performance (*i.e.*, at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience).

C. Miscellaneous

1. Indian employment tax credit (sec. 45A(f))

- The provision allows a credit to employers against income tax liability for the first \$20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees. The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs incurred during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to \$20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993.
- The provision was enacted in the Omnibus Reconciliation Act of 1993⁵⁰ and did not apply to taxable years beginning after December 31, 2003.
- The provision has been extended nine times, most recently by the Bipartisan Budget Act.

2. Credit for certain expenditures for maintaining railroad tracks (sec. 45G)

- A business tax credit is allowed for 50 percent of qualified railroad track maintenance expenditures paid or incurred in the taxable year by an eligible taxpayer. Qualified railroad track maintenance expenditures (as originally enacted) are gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad (determined without regard to any consideration for such expenditure given by the Class II or Class III railroad which made the assignment of such track). The credit is limited to the product of \$3,500 times the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of its taxable year. An eligible taxpayer is (1) any Class II or Class III railroad and (2) any person that transports property using the rail facilities of a Class II or Class III railroad or that furnishes railroad-related property or services to such person.
- The provision was enacted in the American Jobs Creation Act of 2004⁵¹ for qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.
- The Protecting Americans from Tax Hikes Act of 2015⁵² modified the definition of qualified railroad track maintenance expenditures to include gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad

⁵⁰ Pub. L. No. 103-66.

⁵¹ Pub. L. No. 108-357.

⁵² Pub. L. No. 114-113.

track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad (determined without regard to any consideration for such expenditure given by the Class II or Class III railroad which made the assignment of such track), effective for expenditures paid or incurred in taxable years beginning after December 31, 2015.

- The provision has been extended six times, most recently by the Bipartisan Budget Act.

3. Mine rescue team training credit (sec. 45N)

- The mine rescue training credit is a general business credit available with respect to each qualified mine rescue team employee employed by the taxpayer equal to the lesser of: (1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of each qualified mine rescue team employee (including the wages of the employee while attending the program), or (2) \$10,000.
- The provision was enacted in the Tax Relief and Health Care Act of 2006⁵³ and was effective for tax years beginning after December 31, 2005, and on or before December 31, 2008.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

4. Discharge of indebtedness on principal residence excluded from gross income of individuals (sec. 108(a)(1)(E))

- A maximum exclusion from gross income of \$2,000,000 is provided for any discharge of indebtedness income by reason of a discharge (in whole or in part) of qualified principal residence indebtedness. In general, the discharged indebtedness eligible for the exclusion must be indebtedness incurred in the acquisition, construction, or substantial improvement of the principal residence of the individual and secured by the residence.
- The provision was enacted in the Mortgage Forgiveness Debt Relief Act of 2007⁵⁴ effective for discharges of indebtedness occurring on or after January 1, 2007, and prior to January 1, 2010.
- The provision has been extended five times, most recently by the Bipartisan Budget Act.

⁵³ Pub. L. No. 109-432.

⁵⁴ Pub. L. No. 110-142.

5. Premiums for mortgage insurance deductible as interest that is qualified residence interest (sec. 163(h)(3))

- Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a principal residence or second home of the taxpayer is treated as if it were deductible qualified residence interest. The deduction is phased out for taxpayers with adjusted gross income over \$100,000 (\$50,000 if married filing separately).
- The provision was enacted in the Tax Relief and Health Care Act of 2006⁵⁵ with respect to mortgage contracts issued after December 31, 2006, effective for amounts paid or accrued after December 31, 2006, through December 31, 2007, that are properly allocable to periods on or before that date.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act modified the deduction for home mortgage interest such that a taxpayer may claim a deduction for interest paid on up to \$750,000 of acquisition indebtedness, for indebtedness incurred after December 15, 2017. For indebtedness incurred on or before December 15, 2017, the deduction may be claimed with respect to interest paid on up to \$1,000,000 in acquisition indebtedness.

6. Above-the-line deduction for qualified tuition and related expenses (sec. 222)

- An individual is allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. The maximum deduction is \$4,000 for taxpayers with adjusted gross income of \$65,000 or less (\$130,000 for joint filers) and \$2,000 for taxpayers with adjusted gross income above \$65,000 (\$130,000 for joint filers) but less than or equal to \$80,000 (\$160,000 for joint filers). No deduction is allowed for taxpayers with adjusted gross income above \$80,000 (\$160,000 for joint filers).
- Because both the American Opportunity credit (in the case of tuition for the first four years of post-secondary education) and the Lifetime Learning credit (in the case of tuition paid for all post-secondary education) are permanent features of the Code, and generally offer taxpayers a larger tax benefit than the tuition deduction, many taxpayers use those provisions rather than the deduction for tuition.⁵⁶

⁵⁵ Pub. L. No. 109-432.

⁵⁶ In 2018, a taxpayer claiming the deduction for tuition and fees will be in a tax bracket no higher than 22 percent. This translates to a maximum tax benefit of \$880, on \$4,000 of tuition payments. Taxpayers eligible to claim the American Opportunity credit (*i.e.*, those paying tuition for the first four years of postsecondary education) would receive a tax credit worth \$2,500 for the same tuition payment. Taxpayers eligible to receive the Lifetime Learning credit (for tuition payments beyond the first four years of postsecondary education), however, would be eligible for only an \$800 credit. Nonetheless, if tuition payments exceed \$4,000, the value of the Lifetime Learning credit can exceed the deduction for tuition and fees.

- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

7. Empowerment zone tax incentives (secs. 1391(d)(1)(A)(i) and (h)(2), 1394, 1396, 1397A, and 1397B)

- The empowerment zone tax incentives are intended to encourage economic growth and investment in distressed communities by providing Federal tax incentives to businesses located within the designated geographic areas. There are 40 areas designated as empowerment zones. The tax incentives available within the designated empowerment zones (secs. 1391(d)(1)(A)(i) and (h)(2)) include tax-exempt bond financing (sec. 1394), a Federal income tax credit for employers who hire qualifying employees (sec. 1396), accelerated depreciation deductions on qualifying equipment under section 179 (sec. 1397A), deferral of capital gains tax on sale of qualified assets sold and replaced (sec. 1397B).
- The empowerment zone tax incentives were enacted in the Omnibus Budget Reconciliation Act of 1993⁵⁷ which authorized the designation of nine empowerment zones (“Round I empowerment zones”) to be designated by the Secretaries of the Department of Housing and Urban Development and the Department of Agriculture. These designations were to be made after 1993 and before 1996 and terminated upon the earliest of (i) the close of the tenth calendar year beginning on or after such date of designation, (ii) the termination date designated by the State and local governments as provided for in their nomination, or (iii) the date the appropriate Secretary revoked the designation.
- The Taxpayer Relief Act of 1997⁵⁸ authorized the designation of two additional Round I urban empowerment zones, and 20 additional empowerment zones (“Round II empowerment zones”). These designations were to be made after the date of the enactment and before January 1, 1999. The Community Renewal Tax Relief Act of 2000 (“Renewal Act”)⁵⁹ authorized a total of 10 new empowerment zones (“Round III empowerment zones”). These designations were to be made after the date of the enactment and before January 1, 2002. The designations were generally to remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009. In addition, the Renewal Act conformed the tax incentives that are available to businesses in the Round I, Round II, and Round III empowerment zones, added some additional tax incentives (deferral of capital gains tax on sale of qualified assets sold and replaced under section 1397B and partial exclusion of capital gains tax on certain sales of qualified small business stock), raised the expensing limitation on qualifying equipment under section 1397, and generally extended all of the empowerment zone incentives through December 31, 2009.

⁵⁷ Pub. L. No. 103-66.

⁵⁸ Pub. L. No. 105-34.

⁵⁹ Pub. L. No. 106-554.

- The empowerment zone tax benefits were extended five times, most recently by the Bipartisan Budget Act. The empowerment zone tax incentives may expire earlier than December 31, 2017, if a State or local government provided for an expiration date in the nomination of an empowerment zone or the appropriate Secretary revokes an empowerment zone's designation. The State or local government may, however, amend the nomination to provide for a new termination date.

8. American Samoa economic development credit (sec. 119 of Pub. L. No. 109-432, as amended by sec. 40312 of Pub. L. No. 115-123)

- The American Samoa economic development credit is a credit against U.S. corporate income tax in an amount equal to the sum of certain percentages of a domestic corporation's employee wages, employee fringe benefit expenses, and tangible property depreciation allowances for the taxable year in respect of the active conduct of a trade or business in American Samoa. The credit is available only to a domestic corporation that, among other requirements, claimed the now-expired section 936 possession tax credit with respect to American Samoa for its last taxable year beginning before January 1, 2006.
- The provision was enacted in the Tax Relief and Health Care Act of 2006⁶⁰ and originally expired on December 31, 2007.⁶¹
- The American Taxpayer Relief Act of 2012⁶² modified the provision by requiring corporations to have qualified production activities income in American Samoa in order to claim the credit.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

⁶⁰ Pub. L. No. 109-432.

⁶¹ The enactment of the American Samoa economic development credit coincided with the pending expiration of the section 936 possessions tax credit. The section 936 possessions tax credit generally expired for taxable years beginning after December 31, 2005. The American Samoa economic development credit was originally effective for the first two years of a corporation that began after December 31, 2005 and before January 1, 2008.

⁶² Pub. L. No. 112-240.

D. Estimated Revenue Effects

The following table contains Joint Committee staff revenue estimates of making permanent the provisions described in this document.

**ESTIMATED REVENUE EFFECTS OF A PROPOSAL TO
 MAKE PERMANENT CERTAIN REVENUE PROVISIONS EXPIRED IN 2017,
 SCHEDULED FOR A PUBLIC HEARING BEFORE THE COMMITTEE ON WAYS AND MEANS ON MARCH 14, 2018**

Fiscal Years 2018 - 2027

[Millions of Dollars]

Provision	Effective	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-22	2018-27
A. Energy													
1. Credit for section 25C nonbusiness energy property.....	ppisa 12/31/17	-135	-543	-556	-569	-577	-586	-594	-603	-612	-622	-2,380	-5,398
2. Alternative motor vehicle credit for qualified fuel cell motor vehicles.....	ppa 12/31/17	-3	-4	-5	-6	-6	-7	-8	-9	-11	-12	-24	-72
3. Credit for alternative fuel vehicle refueling property.....	ppisa 12/31/17	-19	-29	-28	-28	-29	-32	-34	-40	-45	-49	-133	-332
4. Credit for two-wheeled plug-in electric vehicles.....	vaa 12/31/17	[1]	-1	-1	-1	-1	-1	-1	-1	-2	-2	-5	-12
5. Second generation biofuel producer credit.....	fpa 12/31/17	-11	-23	-25	-27	-30	-32	-35	-38	-41	-44	-115	-306
6. Biodiesel and renewable diesel incentives - extend present-law income tax credits, excise tax credit, and outlay payments.....	fsoua 12/31/17	-2,517	-3,486	-3,539	-3,582	-3,626	-3,656	-3,686	-3,724	-3,670	-3,700	-16,750	-35,186
7. Beginning-of-construction date for non-wind renewable power facilities eligible to claim the electricity production credit or investment credit in lieu of the production credit...	1/1/18	---	-49	-73	-77	-91	-111	-138	-171	-207	-201	-291	-1,118
8. Production credit for Indian coal facilities [2].....	cpa 12/31/17	-12	-23	-27	-30	-33	-37	-40	-42	-43	-44	-125	-332
9. Credit for construction of energy-efficient new homes.....	haa 12/31/17	-103	-201	-249	-286	-318	-346	-370	-380	-383	-383	-1,158	-3,020
10. Special depreciation allowance for second generation biofuel plant property.....	ppisa 12/31/17	---	---	---	---	---	---	---	-29	-52	-43	---	-124
11. Energy efficient commercial buildings deduction.....	ppisa 12/31/17	-55	-85	-83	-80	-77	-73	-70	-68	-66	-64	-379	-719
12. Special rule for sales or dispositions to implement Federal Energy Regulatory Commission ("FERC") or State electric restructuring policy for qualified electric utilities....	da 12/31/17	-113	-163	-147	2	78	78	78	78	62	37	-343	-10
13. Excise tax credits and outlay payments for alternative fuel, and excise tax credits for alternative fuel mixtures.....	fsoua 12/31/17	-446	-650	-691	-717	-741	-756	-764	-777	-778	-789	-3,245	-7,109
B. Cost Recovery													
1. Classification of certain race horses as 3-year property.....	ppisa 12/31/17	---	---	---	---	---	-3	-14	-28	-42	-55	---	-142
2. 7-year recovery period for motorsports entertainment complexes.....	ppisa 12/31/17	-6	-23	-41	-54	-63	-70	-73	-70	-59	-44	-188	-504
3. Accelerated depreciation for business property on an Indian reservation.....	ppisa 12/31/17	-12	-35	-51	-59	-65	-128	-237	-286	-291	-278	-222	-1,441
4. Election to expense mine safety equipment.....	ppisa 12/31/17	-5	-7	-5	-4	-4	-3	-2	-1	[1]	[1]	-23	-27
5. Special expensing rules for certain film, television, and live theatrical productions.....	pca 12/31/17	-40	-139	-138	-45	-11	-11	-12	-12	-12	-13	-373	-433
C. Miscellaneous													
1. Indian employment tax credit.....	tyba 12/31/17	-20	-58	-60	-61	-63	-64	-66	-68	-70	-72	-261	-603

Provision	Effective	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-22	2018-27
2. Railroad track maintenance credit.....	epoii tyba 12/31/17	-118	-216	-216	-216	-216	-217	-217	-217	-217	-217	-982	-2,066
3. Mine rescue team training credit.....	tyba 12/31/17	-1	-1	-1	-2	-2	-2	-2	-2	-3	-3	-7	-19
4. Exclusion from gross income of discharge of indebtedness on qualified principal residence indebtedness.....	doia 12/31/17	-340	-2,275	-2,337	-2,389	-2,440	-2,500	-2,555	-2,632	-2,711	-2,792	-9,781	-22,972
5. Mortgage insurance premiums treated as qualified residence interest.....	apoa 12/31/17	-75	-508	-548	-585	-605	-633	-657	-676	-801	-1,402	-2,322	-6,490
6. Above-the-line deduction for qualified tuition and related expenses.....	tyba 12/31/17	-53	-258	-235	-218	-191	-162	-155	-146	-132	-139	-955	-1,689
7. Empowerment zone tax incentives.....	tyba 12/31/17	-70	-229	-231	-234	-239	-245	-251	-258	-266	-274	-1,002	-2,296
8. American Samoa economic development credit.....	tyba 12/31/17	-17	-8	-8	-9	-9	-9	-9	-9	-9	-9	-51	-96
NET TOTAL		-4,171	-9,015	-9,295	-9,277	-9,359	-9,606	-9,913	-10,209	-10,462	-11,214	-41,115	-92,516

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

apoa = amounts paid or accrued after
cpa = coal produced after
da = dispositions after
doia = discharge of indebtedness after
epoii = expenditures paid or incurred in

fpa = fuel produced after
fsoua = fuel sold or used after
haa = homes acquired after
pca = productions commencing after

ppa = property purchased after
ppisa = property placed in service after
tyba = taxable years beginning after
vaa = vehicles acquired after

[1] Loss of less than \$500,000.

[2] Estimate assumes additional years of credit eligibility. The placed-in-service sunset date is assumed to be unchanged at December 31, 2008.