

# 2016 YEAR-END TAX PLANNING

October 7, 2016

Special Report

## HIGHLIGHTS

- Many Tax Law Changes Effective 2016
- Working with Permanent/Sunsetting “Extenders”
- Impact of Life’s Changes on Planning
- Business Expensing Opportunities
- Exceptions To Normal Timing Rules
- Affordable Care Act Strategies
- Reacting To New Administration/Congress

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## 2016 Year-End Strategies: Straddling Two Years Of Significant Change

Implementing tax strategies at year-end always presents unique challenges and opportunities. The impact of recent tax legislation and significant IRS rule changes during 2016 raises the stakes. The *Protecting Americans from Tax Hikes Act* (PATH Act), passed in late 2015, changed—both dramatically and through some nuanced revisions—the dynamics of planning for the expiration of various tax breaks . . . and the permanence of others. The IRS for its part has been busy creating safe-harbor benefits under the “repair regulations,” clarifying the definition of marriage for tax purposes, fine-tuning *Affordable Care Act* requirements, and more, all of which immediately impact the 2016 tax year.

**STRATEGY.** *Income and deductions for the entire year typically become more clear for most taxpayers as they move ever closer to the end of the current calendar year. The final months of the year provide an important “last chance” to change the final course of the entire tax year before it closes for good. Initiating traditional techniques designed to accelerate deductions and delay income (or vice versa, depending upon prospects for next year) can yield substantial tax savings.*

**STRATEGY.** *Taxpayers at year-end should also review their own personal and business situations. Comparing how 2016 is looking against 2015 returns can help identify new tax benefits—or expose new tax pitfalls—that may otherwise be missed.*

**PLANNING NOTE.** *The impact of a new Administration’s tax policies for 2017 (whoever is elected President on November 8)—and beyond that, tax reform—is yet to be revealed. Forecasting whether a*

*taxpayer will pay more or less tax in 2017 than in 2016, and then rebalancing any inequality—one of the staples of year-end planning—depends upon many factors, including what deductions, exclusions and credits will be allowed, and what rates will be applied. These changes, and how quickly they might be enacted, will also depend under the political makeup of the new Congress. Clearly, part of year-end planning involves being ready to adjust course, as late as December 31, 2016, as necessary.*

## YEAR-END INDIVIDUAL PLANNING

### Tax Rate Exposure

Balancing the impact of the existing tax rates on a variety of transactions during the year and at year-end can be challenging: the ordinary income tax rates, the capital gain rates, the net investment income tax rate, and the alternative minimum tax (AMT), all may play a role.

**Ordinary income tax rates.** One of the most significant changes over three years ago that still reverberates with many taxpayers is the creation of the 39.6 percent bracket, up from a top 35 percent rate.

**Net Investment Income (NII) tax.** The NII tax is 3.8% on the lesser of net investment income or the excess of modified adjusted income over the threshold amount. The threshold amount is equal to \$250,000 modified adjusted gross income (MAGI) in the case of joint returns or a surviving spouse; \$125,000 in the case of

### 39.6% TOP TAX RATE BRACKET STARTS AT:

Filing Status	2016	2017
Married filing jointly and surviving spouse	\$466,950	\$470,700
Heads of households	\$441,000	\$444,550
Unmarried individuals	\$415,050	\$418,400
Married filing separately	\$233,475	\$235,350

a married taxpayer filing a separate return, and \$200,000 for other filers.

**STRATEGY.** *If possible, keep general income below the threshold amounts by spreading income out over a number of years or offsetting the income with above-the-line deductions. Grouping similar categories of net investment income activity may be another way to reduce overall NII.*

**Additional Medicare Tax.** The Additional Medicare Tax is 0.9 percent of covered wages and other compensation above threshold dollar amounts that mirror the threshold amounts of the NII tax regime.

**Capital Gains and Dividends.** The tax rates on qualified capital gains (net long-term gains) and dividends range from zero to 20 percent, depending upon the individual's income tax bracket:

Income Tax Bracket	Capital Gains Rate
39.6 percent	20 percent
35 percent	15 percent
33 percent	15 percent
28 percent	15 percent
25 percent	15 percent
15 percent	0 percent
10 percent	0 percent

**STRATEGY.** *Spikes in income, whether capital gains or other income, may push gains into either the 39.6 percent bracket for short-term gain or the 20 percent capital gains bracket. Spreading the recognition of certain income between 2016 and 2017 may help minimize the total tax paid for the 2016 and 2017 tax years.*

**Capital losses.** Cashing out stocks with a built-in loss may be a simple means of providing a loss to be taken against current ordinary income. Individuals can deduct up to \$3,000 of additional losses, whether net long-term or short-term; losses above \$3,000 can be carried over and deducted in succeeding years. If the investment remains economically attractive, taxpayers can buy the same stock more than 30 days before or after they sell shares in the same company. This avoids the wash sale rules, which would disallow the loss. The wash-sale rule, however, applies only to losses; gains are recognized in full—a benefit if acceleration of some income into 2016 is a goal, whether to absorb excess losses or otherwise.

“Initiating traditional techniques designed to accelerate deductions and delay income (or vice versa, depending upon prospects for next year) can yield substantial tax savings.”

**Adjusted gross income caps.** Monitoring adjusted gross income (AGI) at year-end can also pay dividends in qualifying for a number of tax benefits. Often tax savings can be realized by lowering income in one year at the expense of realizing a bit more in the other: in this case, either 2016 or 2017. Some of those tax benefits that get phased out depending upon the taxpayer's AGI level include:

- itemized deductions
- personal exemptions

- education savings bond interest exclusion
- maximum child's income on parent's return: (Form 8814)
- education credits
- student loan interest deduction adoption credits
- maximum Roth IRA contributions maximum IRA contributions for individuals.

### PATH Act “Extenders”

The PATH Act permanently extended many tax incentives that were previously temporary, removing for the first time in many years the year-end concern over their temporary applicability.

**CAUTION.** *Not all “extenders” however were extended beyond 2016 and some were modified in the process. Others were extended but with the intention to eventually replace them within more sweeping tax reform.*

**American Opportunity Tax Credit.** The PATH Act made the American Opportunity Tax Credit (AOTC) permanent. The AOTC is equal to 100 percent of the first \$2,000 of qualified tuition and related expenses, plus 25 percent of the next \$2,000 of qualified tuition and related expenses.

**STRATEGY.** *An education tax credit is generally allowed only for payments of qualified tuition and related expenses for an academic period beginning in the same tax year as the year the payment is actually made. However, if qualified expenses are paid during one tax year for an academic period that begins during the first three months of the following tax year, the academic period is treated as beginning during the tax year in which the expenses were paid.*

**CAUTION.** *The Tax Code now requires that the taxpayer possess a valid Form 1098-T to claim the AOTC. To prevent improper and fraudulent claims due to the refundable nature of a portion of the AOTC, additional criteria must be satisfied and a due diligence requirement has been added.*

**Teachers' classroom expense deduction.**

The PATH Act permanently extended the above-the-line deduction of up-to \$250 for elementary and secondary-school administrators' and teachers' classroom expenses. Eligible educators (such as teachers, administrators and others) may claim this above-the-line deduction in lieu of a miscellaneous itemized deduction.

**STRATEGY.** *Additionally, starting in 2016, the Act places within the scope of the deduction "professional development expenses," which include the cost of courses related to the curriculum in which the educator provides instruction.*

**State and local sales tax deduction.** The PATH Act made permanent the itemized deduction for state and local general sales taxes. That deduction may be taken in lieu of state and local income taxes when itemizing deductions.

**STRATEGY.** *Generally IRS tables based upon federal income levels and a taxpayer's number of dependents are used for this optional deduction. Taxpayers who wish to claim more than the table amounts must provide adequate substantiation.*

**Exclusion for direct charitable donation of IRA funds.** The PATH Act made permanent the exclusion from gross income of qualified charitable distributions for individuals aged 70½ or older. The exclusion covers distributions of up to \$100,000 received from traditional or Roth IRAs (\$100,000 for each spouse on a joint return).

**STRATEGY:** *The transfer to the charity from the IRA must be completed by December 31, 2016, to treat it taking place in 2016; mere instructions to the IRA trustee are insufficient.*

**More permanent extenders include:**

- 100-percent gain exclusion on qualified small business stock.
- Conservation contributions benefits.
- Five-year solar energy property.

**TAKING ACTION ON SELECTED TAX EXTENDERS\***

Before 2017	Next Five Years	Permanent
		State and local sales tax deduction
		Teachers' classroom expense deduction
		AOTC
		Charitable donation of IRA funds
		Section 179 expensing
		Research credit
	Bonus depreciation	
	WOTC	
Mortgage premium deduction		
Tuition deduction		
Expensing for radio/TV		

\*Reflecting PATH Act effective dates as of October 7, 2016.

**Extenders Expiring at End of 2016**

The PATH Act renewed several extenders related to individuals retroactively for only two years through 2016, so they are up for renewal again at the end of 2016.

**Tuition and fees deduction.** The PATH Act extended the above-the-line deduction for qualified tuition and related expenses for two years, for expenses paid before January 1, 2017. The maximum amount of the tuition and fees deduction is \$4,000 for an individual whose AGI for the tax year does not exceed \$65,000 (\$130,000 in the case of a joint return), or \$2,000 for other individuals whose AGI does not exceed \$80,000 (\$160,000 in the case of a joint return).

**STRATEGY.** *Payments by year-end 2016 may be particularly critical to taking this deduction. There is some—but not unlimited—flexibility regarding the deductibility of tuition paid before a semester begins. As with the AOTC, the deduction is allowed for expenses paid during a tax year, in connection with an academic term beginning during the year or the first three months of the next year.*

**Exclusion for discharge of indebtedness on principal residence.** The PATH Act extended the exclusion from gross income of discharged

qualified principal residence indebtedness, applicable to discharges of qualified principal residence indebtedness occurring before January 1, 2017, or discharges that are subject to an arrangement that is entered into and evidenced in writing before January 1, 2017.

**STRATEGY.** *To exclude discharged debt under this exclusion, the lender needs to issue the appropriate Form 1099-C, for the particular tax year desired (in this case, 2016). The IRS says that it "encourages" the homeowner to work out the disagreement with the lender and have the lender issue a corrected Form 1099-C.*

**Mortgage insurance premium deduction.** The PATH Act extended the treatment of qualified mortgage insurance premiums as qualified residence interest retroactively for two years, to apply to amounts paid or accrued through 2016, and not properly allocable to a period after December 31, 2016.

**Nonbusiness energy property credit.** The PATH Act extended the nonrefundable non-business energy property credit allowed to individuals, making it available for qualified energy improvements and property placed in service before January 1, 2017.

**STRATEGY.** *Several overall limitations apply. A credit amount for qualified*

energy efficiency improvements equals 10 percent of the amount paid or incurred during the tax year and 100 percent of the amount paid or incurred for qualified energy property during the tax year. The maximum credit amount for qualified energy property varies depending upon the type of property; further all nonbusiness energy property carries a \$500 maximum lifetime credit cap.

More incentives extended through 2016 include:

- Fuel cell motor vehicle
- Electric motorcycles credit

## Other 2016 Deadlines/Changes

IRS guidance, regulations, and case law released so far in 2016 also impact on year-end tax planning. Two of the more notable 2016 developments for use by individuals include:

**Relief for late rollovers.** The IRS unveiled a new self-certification procedure for taxpayers who inadvertently miss the 60-day time limit for certain retirement plan distribution rollovers (Rev. Proc. 2016-47). Distributions to plan participants must be rolled over (i.e. deposited) into another qualified retirement account (usually an IRA) within 60 days.

**COMMENT.** *The procedure eliminates the costs associated with requesting a private letter ruling for the 60-day waiver. It is generally effective August 24, 2016; further, the IRS may grant a waiver during an examination of the taxpayer's income tax return for any year. The procedure, however, does not rubber-stamp any excuse; it must be reasonable and is subject to IRS verification.*

**Per taxpayer mortgage deduction.** The IRS announced its acquiescence in *Voss, 2015-2 USTC ¶50,427*, where the Ninth Circuit Court of Appeals, found that when multiple unmarried taxpayers co-own a qualifying residence, the debt limit provisions under Code Sec. 163(h)(3) apply per taxpayer and not per residence.

**STRATEGY.** *Rather than sharing the \$1.1 million mortgage debt limit to which each taxpayer is subject, whether single or married (half for married, filing separately), two unmarried taxpayers sharing the same residence and same mortgage debt are effectively allowed—as the law now stands—a combined \$2.2 million limit.*

## LIFE EVENTS

Life events such as marriage, birth or adoption of a child, a new job or the loss of a job, and retirement, all impact year-end tax planning.

“The PATH Act permanently extended many tax incentives that were previously temporary, removing for the first time in many years the year-end concern over their temporary applicability.”

**Marriage.** Marital status (single, married or divorced) for the entire tax year is determined on December 31<sup>st</sup>. Because the income tax brackets vary depending upon filing status, a marriage penalty or a marriage benefit may result for any particular couple.

**STRATEGY.** *As a general rule, if each partner has income approximately in the same amount of the other, they will pay more filing a married, joint return rather than as two single individuals. Accelerating or postponing marriage or divorce at year-end might be considered based upon this difference in tax brackets.*

**Same-sex marriage.** The Supreme Court held in June 2015 that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex (*Obergefell, 2015-1 USTC ¶50,357*). Further,

states must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. The IRS followed up in 2016 with final regulations (TD 9785).

**Dependents.** A child born at any time during the tax year is considered a child for that entire tax year. Subject to AGI limits, a child born at year-end 2016 entitles the parent to a full \$4,050 personal exemption, a full \$1,000 child credit, and up to a \$3,000 child care credit if eligible.

**STRATEGY.** *These benefits also have cut-off ages that are keyed to the age a dependent turns before the close of the tax year: under 19 (or incapacitated, or under 24 if a student) for the dependency exemption and the “kiddie” tax rules, under age 17 (or incapacitated) for the child credit, and under age 13 (or incapacitated) for the child care credit.*

**Retirement.** Taxpayers may want to take a look at a number of different provisions at year-end in anticipation of retirement, at the point of retirement, or after retirement. Many of these provisions have opportunities and deadlines keyed to the tax year. Three strategies especially stand out for year-end consideration:

- **Minimum distribution requirements.** Most retirement arrangements (other than Roth IRAs) require that participants begin to take annual payments of benefits in the year they turn age 70½. While distributions generally must be made at the end of the calendar year, distributions for the first year can be delayed until April 1 of the succeeding year.
- **Roth conversions/reconversions.** A traditional IRA may be converted to a Roth IRA. As with rollovers to traditional IRAs, the 10-percent additional tax on early distributions does not apply; however, unlike rollovers to traditional IRAs the amount converted is taxable in the year of conversion.
- **Roth reconversions.** Once a Roth IRA has been recharacterized back to a (new) traditional IRA, the (new) traditional IRA

can be (re)converted to a Roth IRA, provided the taxpayer meets the eligibility requirements in the reconversion year. This reconversion option is most often used to allow a “do-over” when assets that are transfer lose value before year end.

**STRATEGY:** *Any amount converted to a Roth IRA is included in gross income as a distribution for the tax year in which the amount is distributed or transferred from the traditional IRA. When a rollover spans two tax years, the taxable amounts from the traditional IRA are included in gross income in the year in which the amounts are withdrawn from the traditional IRA.*

## AFFORDABLE CARE ACT—INDIVIDUALS

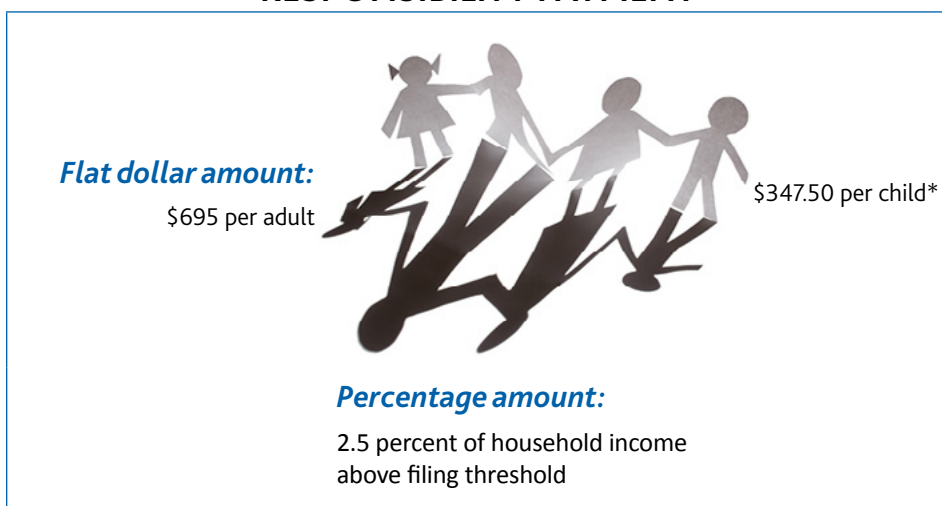
Year-end planning for individuals with regards to the ACA may generally be more prospective than retrospective but there are some year-end moves that may be valuable, particularly with health-related expenditures.

**Individual Shared Responsibility Payments.** For 2016, the individual shared responsibility payment is the greater of 2.5 percent of household income that is above the tax return filing threshold for the individual’s filing status or the individual’s flat dollar amount, which is \$695 per adult and \$347.50 per child, limited to a family maximum of \$2,085, but capped at the cost of the national average premium for a bronze level health plan available through the Marketplace in 2016.

**STRATEGY.** *Open enrollment for coverage through the Health Insurance Marketplace for 2016 has closed. However, some qualifying life events may make an individual eligible for non-filing season special enrollment.*

**Medical expense deduction.** Taxpayers who itemized deductions (for regular tax purposes) may claim a deduction for qualified unreimbursed medical expenses to the extent those expenses exceed 10 percent of adjusted gross income (AGI), unless the taxpayer falls within an age-based exception.

## 2016 ACA INDIVIDUAL SHARED RESPONSIBILITY PAYMENT



*\*Limited to a family maximum of \$2,085, but capped at the cost of the national average premium for a bronze level health plan available through the Marketplace in 2016.*

Taxpayers (or their spouses) who are age 65 or older before the close of the tax year, may apply the old 7.5 percent threshold for tax years but only through 2016.

**STRATEGY.** *Taxpayers who are age 65 or older may consider accelerating medical costs into 2016 if they want to itemize deductions since the AGI floor for deductible expenses rises from 7.5 percent to 10 percent in 2017. For deductions by cash-basis taxpayers in general, including for purposes of the medical expense deduction, a deduction is permitted only in the year in which payment for services rendered is actually made.*

**FSAs.** Contributions to health flexible spending arrangements (health FSAs) are capped under the ACA at \$2,500 (indexed for inflation to \$2,550 in 2016 and \$2,600 in 2017).

**STRATEGY.** *Use-it-or-lose-it rules for health FSAs allow cafeteria plans to provide for a 2½ month grace period after the current year to incur expenses and request reimbursement. However, plans are not required to offer this grace period so participants should check before year-end whether a grace period applies to them. Additionally, IRS regs allow but do not*

*require employers to amend their plans to permit employees to carry over up to \$500 in unused health FSA balances to the following plan year.*

## GENERAL TIMING STRATEGIES

Year-end tax planning, especially if done “at the eleventh hour,” requires some understanding of the timing rules: when income becomes taxable and when it may be deferred; and, likewise, when a deduction or credit is realized and when it may be deferred into next year or beyond.

### Income Acceleration/Deferral

Taxpayers using the cash method basis of accounting (generally most individuals) can defer or accelerate income using a variety of strategies. These may include:

**Sell appreciated assets.** If a taxpayer has current losses that may cover the gains that are “locked into” certain assets until they are sold, realizing gains may make sense. For example, identical appreciated securities may be sold and repurchased. Their cost basis would be reset with, at worst, a

downside of some accelerated tax liability. The “wash sale” rule only applies to losses.

**Bonuses.** If an accrual-basis employer delays paying a properly-accrued bonus in the year of service (for example, 2016) until up to 2½ months into 2017, the employer can get its deduction in 2016 while the employee (if “unrelated” for tax purposes) will be taxed in 2017.

**Installment contracts.** Income on a sale reported under the installment method is realized pro-rata over the years in which the installment payments are made. To accelerate income realization, the taxpayer simply sells the remainder of the installment contract to a third party for a lump sum.

**U.S. Savings Bonds.** For cash-basis taxpayers, interest on series E, EE and I bonds is generally taxed at the earliest of disposition, redemption or final maturity of the bond (however, the taxpayer can elect to report the interest as it accrues).

**Debt forgiveness income.** Determination of the time of debt forgiveness requires a practical assessment of the facts and circumstances relating to the likelihood of payment. Convincing the lender to issue a Form 1099-C, Cancellation of Debt, for the 2016 tax year, should also form part of the process.

**Like-kind exchanges.** Taxpayers may also avoid tax deferred, like-kind exchanges by taking steps to disqualify the transaction from Code Sec 1031 treatment. Such steps might include delaying identification of replacement property, transferring cash to an intermediary, or switching to a sale-and-reinvestment arrangement.

### Deduction Acceleration/Deferral

A cash basis taxpayer generally deducts an expense in the year it is paid, although prepayment of an expense generally will not accelerate a deduction. There are exceptions.

**Year-end payments.** It is not necessary to pay cash to make a payment with the goal of attaining a deduction or other tax benefit

for 2016. Taxpayers can write a check or can charge an item by credit card and treat these actions as payments.

**STRATEGY.** *It does not matter, for example, when the recipient receives a check mailed by the payor, when a bank honors the check, or when the taxpayer pays the credit card bill, as long as done or delivered “in due course.” The same treatment applies for a gift – sending a check is treated as a payment and will qualify for the current year gift tax exclusion.*

**Package payments.** An agreement for services or other deliverables that require full upfront payment may gain a full, immediate deduction, depending upon the circumstances (for example, payment up front for an orthodontia program as a medical expense deduction).

**Tuition.** Payments made in 2016 for tuition for an academic period beginning in 2016 or during the first three months of 2017 qualify for an education credit taken in 2016.

**Estimated state taxes.** Although the deadline under state law is generally not until January 15, 2017, payment of fourth quarter state and local estimated taxes before year-end 2016 is deductible for 2016 for federal tax purposes.

## YEAR-END PLANNING FOR BUSINESS

Businesses seeking to maximize tax benefits through 2016 year-end tax planning may want to consider several general strategies, such as use of traditional timing techniques for income and deductions, in addition to the role of the tax extenders (those made permanent and those expiring at the end of 2016), as well as strategies targeted to their particular business.

### Permanent Extensions for Businesses

The PATH Act makes permanent many business-related provisions.

**Code Sec. 179 expensing.** The PATH Act permanently sets the Code Sec. 179 expensing limit at \$500,000 with a \$2 million overall investment limit before phase out (both amounts indexed for inflation, for 2016 at \$500,000 and \$2.01 million, and for 2017 at \$510,000 and \$2.03 million, respectively). The Path Act also permanently allows for the expensing of off-the-shelf computer software.

**STRATEGY.** *New for 2016, the PATH Act also removed the \$250,000 cap related to the expensing of qualified real property.*

**STRATEGY.** *Year-end purchases of qualifying section 179 property entitle the taxpayer to a full deduction up to the \$500,000 cap. There is no prorated reduction based upon the portion of the year that a qualifying asset is placed in service.*

**STRATEGY.** *When comparing the possible benefits of the Code Sec. 179 deduction versus bonus depreciation, keep in mind that Code Sec. 179 is available for both new and second-hand/used property that is purchased and placed in service by a taxpayer. However, bonus depreciation is available only for new (first-time use) property.*

**Research credit.** The PATH Act made the research credit permanent. The PATH Act also made the research credit more useful to small businesses.

### More business incentives made permanent by the PATH Act include:

- Shorter recovery period for leasehold improvement, restaurant and retail improvement property made permanent.
- Recognition period for S corporation’s built-in gains tax made permanent.
- Shareholder’s basis reduction for S corporation’s charitable donations made permanent.

### Five-Year Extensions for Businesses

The PATH Act extended several business-related provisions for five-years.

**Bonus Depreciation.** The PATH Act extended bonus depreciation (additional first-year depreciation) under a phase-down schedule. In addition to extending bonus depreciation, a number of modifications have been made that enhance the incentive.

**STRATEGY.** *Because bonus depreciation can be elected on the 2016 return filed in 2017, it is not necessary for business to make an immediate decision on its use, although qualifying property must nevertheless be purchased and placed in service in 2016. Bonus depreciation is optional and businesses can elect not to use it. Electing out may be appropriate if the business wants to spread its depreciation deductions over future years more evenly.*

**WOTC.** The PATH Act extended the work opportunity credit (WOTC). In addition, the credit has been expanded and is available to employers who hire qualified long-term unemployment recipients.

### Business Extenders Scheduled To Expire At The End Of 2016

A few business extenders are scheduled to expire if not renewed by Congress:

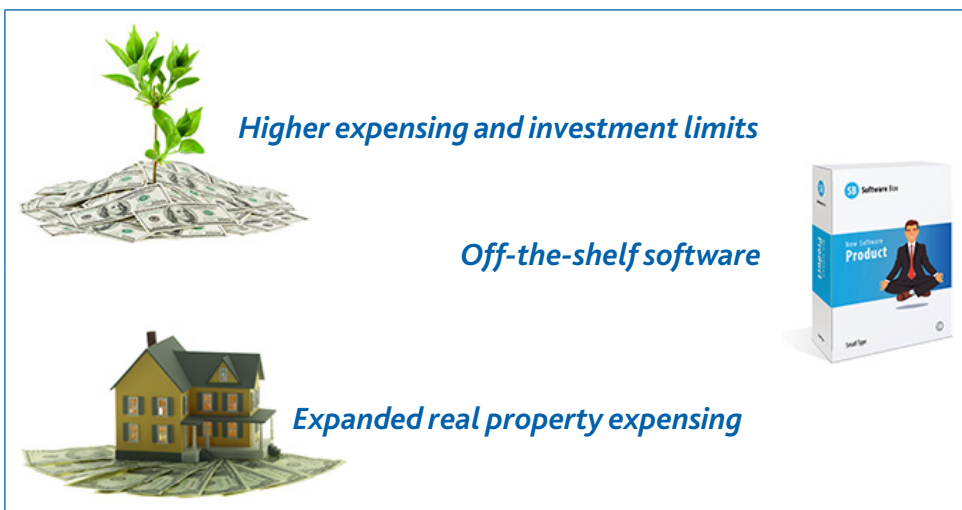
- Film and TV production expense provisions.
- Energy efficient commercial buildings deduction.
- Mine safety equipment expense election.
- Additional depreciation for biofuel plant property.

### Revised Repair Reg Rules

The IRS issued sweeping tangible property regulations (“repair regs”) in 2013 to govern accounting for costs to acquire, repair and improve tangible property (TD 9636). The “repair regs” impact virtually all asset-based businesses and continues to generate changes in 2016, with additional “clean-up” expected in 2017.

**De minimis safe harbor.** The tangible property regulations dealing with repairs

## PERMANENT ENHANCEMENTS TO CODE SEC. 179 EXPENSING



include a *de minimis* expensing safe harbor that allows taxpayers to annually elect to deduct the cost of materials and supplies and units of property produced or acquired subject to a per-item dollar limit. Effective starting in 2016, Notice 2015-82 increased the *de minimis* safe harbor limit under the repair regs — from \$500 to \$2,500 — for taxpayers without an applicable financial statement (AFS).

**STRATEGY.** *Despite waiving the AFS requirement, certain IRS officials have indicated that an unwritten policy employing a \$2,500 per-item deduction limit must still be in effect as of the beginning of the 2016 tax year in order for the \$2,500 limit to apply for the 2016 tax year.*

**STRATEGY:** *Thus, use of the safe harbor for 2017 requires a policy be in place by January 1, 2017. Further, the per-item deduction limit may exceed \$2,500 but only items costing \$2,500 or less receive safe harbor protection.*

**Remodel-refresh.** The IRS supplemented the tangible property regs with a safe harbor that allows a taxpayer operating a retail establishment or a restaurant to change to a method of accounting that allows the taxpayer to treat 25 percent of qualified

remodel-refresh costs as capital expenditures under Code Sec. 263 and 75 percent of such costs as currently deductible repair and maintenance expenses. The IRS also described how taxpayers may obtain automatic consent to change to the safe harbor method of accounting.

**CAUTION.** *Certain retailers may not use the remodel-refresh safe harbor. These excluded retailers include: automobile dealers; other motor vehicle dealers; gas stations; manufactured home dealers; and nonstore retailers.*

### Partnership Audit Rules

The *Bipartisan Budget Act of 2015* (Budget Act) repealed the TEFRA unified partnership audit rules and replaced them with streamlined procedures. The Budget Act delayed the effective date of the new audit rules for returns filed for partnership tax years beginning after 2017. However, subject to certain exceptions, partnerships may choose to apply the new regime to any partnership tax year beginning after November 2, 2015. In mid-2016, the IRS issued temporary rules that provide the time, form, and manner of election for a partnership to opt in to the new partnership audit regime (TD 9780; NPRM REG-105005-16).

**STRATEGY.** *This change impacts the manner in which the IRS will audit a partnership return and its partners. It does not impact year-end tax strategies, except perhaps to the extent an aggressive year-end technique may be audited differently and will bear upon who will be ultimately asked by the IRS to pay the tax.*

### Business Use of Vehicles

Several year-end strategies involving both business expense deductions for vehicles and the fringe-benefit use of vehicles by employees involve an awareness of certain rates and dollar caps that change annually.

**Standard Mileage Rate.** The standard business mileage allowance rate for 2016 is 54 cents-per-mile (down from 57.5 cents-per-mile for 2015).

**Depreciation.** The maximum depreciation limits under Code Sec. 280F for passenger automobiles first placed in service during the 2016 calendar year are:

- \$3,160 for the first tax year (\$11,160 if bonus depreciation is claimed);
- \$5,100 for the second tax year;
- \$3,050 for the third tax year; and
- \$1,875 for each succeeding tax year.

The maximum depreciation limits under Code Sec. 280F for trucks and vans first placed in service during the 2016 calendar year are:

- \$3,560 for the first tax year (\$11,560 if bonus depreciation is claimed);
- \$5,700 for the second tax year;
- \$3,350 for the third tax year; and
- \$2,075 for each succeeding tax year.

**STRATEGY.** *Sport utility vehicles (SUVs) and pickup trucks with a gross vehicle weight rating (GVWR) in excess of 6,000 pounds continue to be exempt from the luxury vehicle depreciation caps based on a loophole in the operative definition. Congress in 2004 placed a \$25,000 limit on Code Sec. 179 expensing of heavy SUVs but has not extended it to Code Sec. 280F. Consistent depreciation conventions for purchases throughout the year, however, do apply in this case.*

### AFFORDABLE CARE ACT—BUSINESSES

Despite several delays and legislative tweaks, the basic structure of the ACA for businesses, both large and small, generally remains intact. If an employer is an

applicable large employer (ALE), this triggers the employer shared responsibility provisions and the employer information reporting provisions. Small businesses, however, are not unaffected by the ACA and should take the ACA into account in year-end planning. Some incentives in the ACA could help maximize tax savings for small businesses.

### POST-ELECTION PLANNING

A traditional part of year-end tax planning for any given year has been to look ahead. As a general rule, a strategy that evens out bottom-line tax liability for the current year with the projected liability for the next year typically will save overall tax dollars. It does so by keeping the taxpayer's taxable income, less credits, within or close to the same tax rate bracket for both years. Until Election Day on November 8, 2016 settles who will be our next president and which party will control the Senate, however, balancing tax liability between 2016 and 2017 will be more challenging.

*The following chart illustrates some of the major positions that candidates Donald Trump and Hillary Clinton have taken as of press time:*

### TAX POSITIONS OF CANDIDATES

	Clinton	Trump
<b>Individual tax rates</b>		
	No change except for top income level	12, 25, 33%
	Buffett rule: minimum 30% effective rate above \$1 million	
	Fair share 4% surtax above \$5 million	
Capital gains	Top 20% rate raised based on holding period	No change from 0, 15 and 20% rates
	39.6% for assets held less than 2 years	Repeal 3.8% NII tax
	36% for assets held 2-3 years	
	4% reduction/year to 20% at year 6	
Deductions:	28% tax benefit cap for higher income levels	\$100K cap for single filers; \$200K for joint returns
<b>Business Income</b>		
	No tax rate proposal	Lower top rate from 35 to 15% for corporations and passthrough income reinvested into business
Deductions:	100% small business expensing up to \$1 million	Enhanced expensing for manufactures
	Limit use of like-kind exchanges as loophole	Limit deductions in return for lower rates