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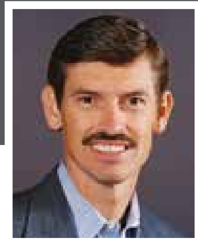

Finance Committee Approves Tax Extenders, Now What?

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On April 3, Senate Finance Committee Chairman Ron Wyden, D-Ore., led the Finance Committee to pass bipartisan legislation renewing a set of provisions known as "tax extenders" that have expired or will expire at the end of this year. The bill, entitled the Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act, was approved by bipartisan voice vote. As approved by the committee, the EXPIRE Act contains important provisions related to the low-income housing tax credit (LIHTC), new markets tax credit (NMTC) and renewable energy production tax credit (PTC) and investment tax credit (ITC).

In addition to the bill's immediate significance to the affordable housing, community development and renewable energy communities, it's expected that the EXPIRE Act will play a role in ongoing tax reform efforts in Congress. In his opening statement, Chairman Wyden emphasized the two-year, temporary nature of the bill. "I want to be straightforward on one point–this will be the last tax extenders bill the committee takes up as long as I'm chairman," Wyden said. "That's why the bill is called the EXPIRE Act. It is meant to expire."

Despite the emphasis on expiration, Wyden was also very vocal about finding a permanent place for a number of the bill's provisions in the permanent tax code during tax reform. He said, "Let's pass this bill today and then put a lens to each of these provisions before deciding which ones deserve a permanent spot in a 21st-century tax code. That task will be harder if these incentives disappear now."

LIHTC

The EXPIRE Act, as approved by the Senate Finance Committee, extends the rate floor for the 9 percent LIHTC and creates a rate floor for volume cap 4 percent credits for acquisitions. Both provisions would run for allocations made before Jan. 1, 2016.

During the hearing, several senators noted the LIHTC's importance and voiced their support for the provisions. Sen. Maria Cantwell, D-Wash., said "I also want to comment on the extending tax provisions that are also helping our economy grow: the wind production tax credit; the low-income housing tax credit; the new market tax credit … All of these things are so essential for businesses to have predictability and to basically leverage further private sector investment. Businesses plan ahead and so that means they need the certainty to do so … I also just want to mention the low-income housing tax credit which also has been leveraged and fills the gap."

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Sen. Ben Cardin, D-Md., also spoke in support of the LIHTC provisions, describing Cantwell's work on them as critically important. "It helps all of our communities," Cardin said.

Following the committee's vote, Cardin's office released a statement saying, "Sen. Cardin was pleased that the tax extenders package also renews incentives for use of public transit and conservation easements, renews the [NMTC] and extends the [LIHTC] minimum rate for both existing property and new construction, all of which are important for Baltimore and communities throughout Maryland."

The EXPIRE Act also extends for two years a provision that allows active members of the military near seven bases to exclude their basic housing allowance from their annual income when calculating income to qualify for LIHTC units.

NMTC

The NMTC extension and other NMTC related provisions enjoyed strong support during the hearing. The committee-passed EXPIRE Act extends the NMTC program for two years, and would authorize up to $3.5 billion in qualified equity investments annually. In his opening statement, Wyden said, "Without the new markets tax credit, communities mired in poverty would lose a proven tool to draw investments and jobs."

Cantwell cited the NMTC as an example of a provision helping the economy grow. "Between 2003 and 2010, it cost the federal government $5.4 billion in new market tax credits, but it generated $45 billion in investment–in a leverage of approximately 8 to 1. To me, those are the things that we should be doing to help our economy."

Sen. Charles Schumer, D-N.Y., also spoke in favor of the NMTC. He said, "The New Market Tax Credit program is a proven job creator, especially in our older cities that many of us have."

Additionally, the EXPIRE Act provides that unused NMTCs would be clawed back and reallocated to a new Manufacturing Communities Tax Credit program. These credits would be used by community development entities (CDEs) that provide services to trade and manufacturing businesses located in communities that have suffered major manufacturing job losses.

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>
> ***Sen. Charles Schumer, D-N.Y.***

Sen. Sherrod Brown, D-Ohio, proposed a tax credit program for manufacturing communities earlier this year and a similar proposal was included in President Barack Obama's fiscal year 2015 budget. In remarks during the April 3 hearing, Brown said, "The Manufacturing Communities Tax Credit builds upon the successful new markets tax credit. I think most on this committee have supported what new markets has done for development in large portions of their state. Building on that with a Manufacturing Communities Tax Credit can make a big, big difference."

Sens. Jay Rockefeller, D-W.Va., Cardin and Debbie Stabenow, D-Mich., also submitted an amendment to increase the 2014 allocation of NMTCs to about $4.7 billion, which is equivalent to the inflation-adjusted value of $3.5 billion from 2000, and to index the annual NMTC allocation to inflation, but that amendment was not offered or adopted.

Similarly, Sen. Bill Nelson, D-Fla., during the hearing discussed his amendment to provide bonus points in the application process for CDEs that commit to NMTC projects in states that historically have been underserved by the NMTC. An underserved state would be one that has a share of the nation's population in poverty that is greater than the state's share of NMTC investment during the previous five years. Currently this could include the following states: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Montana, Nebraska, Nevada, New Mexico, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Utah, West Virginia and Wyoming. However, that amendment was also not offered or adopted.

PTC/ITC

The EXPIRE Act, as approved April 3, also extends the renewable energy production tax credit through Dec. 31,

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2015. The bill also enables developers to choose to claim the renewable energy ITC instead of the PTC.

Considering he is often dubbed the "father" of the PTC because of his role in its creation, it was fitting that Sen. Charles Grassley, R-Iowa, spoke in favor of its extension. "A strong vibrant renewable energy sector is good for jobs and economic growth … Due to both economic and security reasons, I am pleased the Chairman included the biodiesel credit in his original mark and has accepted my amendment to extend the wind production tax credit to the modified mark," Grassley said.

Sen. Michael Bennet, D-Colo., also applauded the extension. "I'm very pleased that the modified mark contains a two-year extension of the wind production tax credit. This is vitally important to Colorado. The PTC clearly is helping drive not just economic growth but job growth and wage growth in our state," he said.

However, the PTC and ITC provisions did not receive unanimous support. In fact, Sen. Pat Toomey, R-Pa., proposed an amendment to eliminate the PTC (and the ITC in lieu of the PTC), all credits for biofuel, biodiesel, and renewable diesel; credits for energy efficient appliances; credits for electric motorcycles and fuel cell vehicles; and credits for alternative fuel refueling property. Toomey's amendment was defeated by a vote of 18 to 6.

During debate on the Toomey amendment, Grassley spoke emphatically in defense of the PTC. "The Chairman has expressed his determination that this be the last extenders bill prior to comprehensive tax reform. It is in tax reform where we should consider the relative merits of alternative and renewable incentives, along with all other energy provisions," he said. "I look forward to working with the Chairman and Ranking Member to enact tax reform and put an end to the headaches and uncertainty created by the regular expiration of tax provisions. Right now our focus should be on extending current expired or expiring provisions to give us room to work toward that goal."

Tax Extender Timing and Tax Reform

Calls for comprehensive tax reform ran through the duration of the committee's April 3 hearing, and an amendment expressing the Sense of the Senate to pass tax reform next year was adopted in the bill. In a statement about the bill's committee passage, Wyden reiterated the EXPIRE Act's significance as it relates to tax reform.

"By passing this bill, the Finance Committee has put an expiration date on the status quo," Wyden said. "The stop and go nature of these tax extenders contributes to the lack of certainty and predictability … But it makes no sense to let these incentives disappear without a comprehensive reform proposal to replace them when jobs, innovation and research, and people's homes are on the line."

Meanwhile, Wyden's counterpart in the House of Representatives, retiring House Ways and Means Committee Chairman Dave Camp, R-Mich., held an April 8 hearing that also focused on expired and expiring tax provisions and tax reform. Similar to Sen. Wyden's approach, when Camp announced his April 8 hearing, it was billed as the Ways and Means committee's first hearing on tax reform for the year, not a hearing just on tax extensions. The hearing focused on the seven expired business tax provisions that were included in Camp's Feb. 26 tax reform discussion draft: the research and development credit, small business expensing, active financing exception, depreciation for certain race horses, CFC look-through and two S-corp provisions. The LIHTC, NMTC, PTC, ITC or other related provisions were not discussed.

In early April, Camp told reporters he is planning to consider a "series" of bills making expiring tax provisions permanent. Bloomberg reports, he said business extenders such as expensing and the research credit are "very good" and "clearly at the top of the list" as the committee considers those they believe warrant permanent status. Camp also said the NMTC would be "part of the discussion." He noted that there would not be a single, comprehensive bill for all extenders.

Wyden also said last month that he planned to begin hearings on tax reform later this spring, but he is unlikely to release any draft tax reform legislation this year. Regarding tax extenders, Majority Leader Harry Reid, D-Nev., announced April 8 his attention to bring the EXPIRE Act to the Senate floor "as soon as possible" after the spring state work period. However, given the difference in approach on extenders between the House

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and Senate, many believe final action won't occur until after the early November midterm elections.

Until then, the affordable housing, community development and renewable energy communities have a lot of work to do to ensure lawmakers understand the benefits these provisions provide to communities and the economy. In his opening statement, Wyden said, "Many of these extenders are well-intentioned and ought to be permanent."

We couldn't agree more. ❖

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