

Recommendations to Congress on the 2018 Tax Extenders

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Key Findings:

- For more than a decade, a collection of temporary, narrowly targeted tax provisions for individuals and businesses have routinely expired and then been temporarily reauthorized, earning the nickname of “tax extenders.”
- Twenty-six now expired provisions are under congressional review to determine whether they merit a permanent place in the tax code. The ten-year cost of making all 26 provisions a permanent part of the tax code would be \$92.5 billion.
- These 26 remaining provisions broadly fall into four categories: energy provisions, cost recovery provisions, business provisions, and individual provisions. More than half of the remaining provisions are tax credits that subsidize certain economic activities.
- Seven of the provisions are no longer necessary because the Tax Cuts and Jobs Act (TCJA) provides similar, or better, cost recovery treatment. Seventeen provisions provide narrow, distortive benefits and should be allowed to expire. Two of the provisions, if they are congressional priorities, would be better implemented with permanent policy.
- Given that Congress did not make these provisions permanent in the Tax Cuts and Jobs Act and that the TCJA will reduce the tax burden on both businesses and individuals, Congress now has an opportunity to eliminate narrowly targeted tax provisions.

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Introduction

Nearly every year for more than a decade, a collection of tax provisions for businesses and individuals have routinely expired and then been temporarily reinstated, earning the nickname of “tax extenders.” Most recently, the Bipartisan Budget Act of 2018 retroactively extended 32 of these provisions for tax year 2017.¹ All but two of those provisions are currently expired for 2018, with reauthorization of the temporary provisions costing \$15 billion over the next decade.²

The recently enacted Tax Cuts and Jobs Act³ (TCJA) provides Congress the opportunity to determine whether any of these extenders have a place in the new tax code. Currently, members of the House Ways and Means Tax Policy subcommittee are reviewing 26 of the recently expired tax provisions.⁴ Several of the extenders are no longer necessary, because the TCJA provides similar, or better, cost recovery treatment as was afforded by the temporary provisions. Many extenders provide narrow, distortive benefits and should be allowed to expire, while others are better suited for the appropriation process rather than the tax system.

Many of the provisions that are now under review were originally designed to phase out, often because they were part of temporary bills like the stimulus package.⁵ But rather than letting the provisions phase out as designed, or making them permanent features of the tax code, Congress has instead reauthorized these provisions on a temporary basis, most often at the last minute or retroactively. Temporary, and retroactive, tax provisions like the tax extenders are poor public policy and should not be expected to contribute to long-run economic growth⁶; temporary provisions are not features of an ideal tax code.

Most of the remaining 26 provisions are narrowly designed to benefit particular industries or groups; for example, more than half are tax credits that subsidize certain activities, such as energy production. These tax preferences reduce the neutrality and efficiency of the tax system by altering relative costs of investments. This change in cost can lead to otherwise inefficient investment choices because of the tax breaks afforded to an activity, which can slow economic growth.

Another poor policy outcome of extenders is that temporary tax provisions, often with retroactive reauthorizations, do not effectively accomplish their stated, primary objective: to encourage certain activities. Instead, because of their often-retroactive nature, these provisions result in an after-the-fact transfer to narrow groups without incentivizing the intended activity—businesses and individuals cannot go back in time and make different decisions. This temporary, uncertain nature also makes it increasingly difficult for businesses and individuals to engage in long-term decision-making as they do not know which tax provisions will be in effect in the future. The economic uncertainty created by these provisions slows economic growth.

1 Public Law No: 115-123.

2 “Estimated Budget Effects of the Revenue Provisions Contained in the ‘Bipartisan Budget Act of 2018,’” Joint Committee on Taxation, February 8, 2018.

3 Public Law No: 115-97.

4 “Hearing on Post Tax Reform Evaluation of Recently Expired Tax Provisions,” U.S. House of Representatives Committee on Ways and Means Tax Policy Subcommittee, March 14, 2018, <https://waysandmeans.house.gov/event/hearing-post-tax-reform-evaluation-recently-expired-tax-provisions/>.

5 Alan Cole, “Extenders and the Opportunity for Tax Reform,” November 19, 2014, <https://taxfoundation.org/extenders-and-opportunity-tax-reform/>.

6 Scott Greenberg, “A Unified Theory of Some of the Common Misconceptions in the Tax Reform Debate,” August 21, 2017, <https://taxfoundation.org/unified-theory-misconceptions-tax-reform-debate/>.

These 26 remaining provisions broadly fall into four categories: energy, cost recovery, business, and individual. The 10-year cost of making all 26 provisions a permanent part of the tax code would be \$92.5 billion.⁷ However, many extenders are no longer necessary because of the TCJA, some are better suited for the appropriations process as they would be better categorized as expenditures, and others should be allowed to expire because of the distortions they create.

No longer needed because of the Tax Cuts and Jobs Act

Many extenders improve the cost recovery treatment of different types of investments by allowing for more favorable depreciation schedules. Generally, these provisions reduce the user cost of capital and encourage additional investment. However, Congress should avoid limiting proper cost recovery treatment to only certain types of investments, as it can distort investment decisions.

The TCJA provides 100 percent bonus depreciation for five years, phased out over successive years, for qualified property with recovery periods of 20 years or less. This generally includes the property that receives favorable depreciation schedules through the tax extenders, including racehorses, land improvements at racetrack facilities that are not considered residential real property, qualified Indian reservation property, mine safety equipment, qualified second-generation biofuel plant property, and qualified film, television, and live theatrical productions.⁸

Additionally, the TCJA increased the limit for Section 179 expensing, which would include certain qualified real property such as roofs; heating, ventilation, and cooling (HVAC) systems; fire protection and alarm systems; security systems; and property that is included in an extender for energy-efficient commercial buildings.⁹

To the extent that the property covered by these extenders is also covered by the full expensing provision of the TCJA, the extenders are not needed as such property is already eligible for proper cost recovery treatment. Notably, if considered nonresidential real property, residential real property, water utility property, or railroad grading and tunnel bores (railroad improvements), then property would not qualify for more favorable depreciation schedules under the TCJA. Congress should focus on extending full expensing to all industries and products, including structures, rather than a select few, and making full expensing permanent rather than temporary.

⁷ "Federal Tax Provisions Expired in 2017," Joint Committee on Taxation, March 9, 2018, <https://www.jct.gov/publications.html?func=startdown&id=5062>.

⁸ Ibid.

⁹ Ibid.

TABLE 1.**Provisions That Are No Longer Needed Because of the TCJA**

Provision	Description	10-Year Cost (\$ millions)
Cost Recovery		
Racehorses	Three-year write-off period for racehorses two years or younger.	142
Motorsports entertainment complexes	Seven-year write-off period for motorsports entertainment complexes, including ancillary and support facilities and land improvements.	504
Accelerated depreciation for business property on an Indian reservation	Shorter depreciation schedules for certain property used to conduct business within an Indian reservation. For example, 10-year property receives a recovery period of six years under this provision.	1,441
Mine safety equipment	This provision allows a taxpayer a 50 percent deduction of the cost of any qualified mine safety equipment in the year it is placed in service.	27
Certain film, television, and live theatrical productions	Full expensing (up to \$15 million, or \$20 million for certain areas) for qualified film, television, or live theatrical production costs.	433
Second-generation biofuel plant property allowance	Allows a 50 percent deduction of the adjusted basis in the first year of in-service second-generation biofuel plants.	124
Energy-efficient commercial buildings deduction	Provides a tax deduction of up to \$1.80 per square foot of a building for the cost of energy-efficient property such as energy-efficient windows or HVAC systems.	719

Source: Joint Committee on Taxation

Should be allowed to expire

Narrowly targeted benefits can lead to a less efficient allocation of resources. They likewise lead to price advantages for tax-favored industries over competing industries that do not benefit from narrow provisions. Tax policy should not favor one type of technology or industry over another, but rather should be neutral. The positive aspects of the TCJA, which reduce the tax burden on both businesses and individuals, provide an opportunity to eliminate incentives targeted toward both energy-related interests and other narrow, non-energy interests.

Several specific changes of the TCJA – the new limits on the mortgage interest deduction, the expanded standard deduction, and the reduced personal income tax rates – reduce the value of an individual provision that allows taxpayers to deduct mortgage insurance premiums along with the mortgage interest deduction. Allowing this provision to expire makes sense considering the new limit to the mortgage interest deduction, and would continue the work of tax reform to further simplify the tax code.

Another individual provision allows taxpayers making under \$80,000 (single filers) the option to deduct up to \$4,000 in tuition and related expenses each year. However, the tax code already provides permanent benefits for education-related expenses, including the American Opportunity Tax Credit and the Lifetime Learning Credit, which cannot be used in conjunction with the tuition and fees deduction. These permanent features generally offer a larger tax benefit than the tuition and fees deduction, so many taxpayers already use those permanent provisions rather than the tuition

and fees deduction.¹⁰ Given that the tax code already contains permanent benefits for education, this particular deduction should be allowed to expire and Congress should consider simplifying and consolidating the existing education-related provisions.¹¹

Allowing the 17 provisions in this section to expire would continue the work of removing disparate tax advantages so that all technologies, businesses, and individuals face the same tax structure. As such, these provisions should not become part of the permanent tax code and Congress should allow them to expire.

¹⁰ Ibid, 20.

¹¹ The original House version of the Tax Cuts and Jobs Act proposed consolidating the three existing higher education tax credits into an enhanced version of the American Opportunity Tax Credit and repealing the tuition and fees deduction. See Tax Cuts and Jobs Act H.R. 1 As Ordered Reported by the Committee Section-by-Section Summary, 9-12, https://waysandmeansforms.house.gov/uploadedfiles/tax_cuts_and_jobs_act_section_by_section_hr1.pdf.

TABLE 2.

Provisions That Should Be Allowed to Expire

Provision	Description	10-Year Cost (\$ millions)
Energy Efficiency and Renewables		
New energy-efficient homes	Credit to the contractor or manufacturer of \$1,000 or \$2,000 per certified energy-efficient new home.	3,020
Certain nonbusiness energy property	Credit for 10 percent of expenditures on energy-efficient home improvements, up to \$500	5,398
Electricity produced from renewable sources (excluding wind)	Production tax credit of 1.2 or 2.4 cents per kWh for power produced, depending on type of facility, during the 10-year period after being placed in service.	1,118
Biofuels and Alternative Fuels		
Qualified fuel cell motor vehicles	Credit of \$4,000 up to \$40,000, depending on weight, for fuel cell vehicles.	72
Alternative fuel vehicle refueling property	30 percent credit for property that dispenses alternative fuels such as ethanol, up to \$30,000 for businesses and \$1,000 for individuals.	332
Two-wheeled plug-in electric vehicles	10-percent credit of the cost of battery-powered vehicles that have only two wheels, up to \$2,500.	12
Second-generation biofuels (formerly cellulosic biofuel producers)	Credit of up to \$1.01 per gallon for qualified second-generation biofuel sold per year.	306
Biodiesel and renewable diesel	Excise tax or income tax credit of up to \$1.00 per gallon of biodiesel mixture, biodiesel, and renewable diesel. Small producer credit of 10 cents per gallon for up to 15 million gallons of agri-biodiesel.	35,186
Alternative fuel and alternative fuel mixtures	Excise tax credit of 50 cents per gallon for alternative fuel and alternative fuel mixtures.	7,109
Conventional Energy		
Indian coal	Production tax credit of \$2 per ton for coal produced from reserves owned by an Indian tribe.	332
Special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy	Allows electric utilities the option to recognize gains from transmission property sales over an eight-year period if the gains are used to purchase exempt utility property.	10
Other Business Provisions		
Indian employment tax credit	20 percent credit of up to \$20,000 for qualified wages and employee health insurance costs.	603
American Samoa economic development	Credit against corporate income taxes based on business activity in American Samoa.	96
Empowerment zone tax incentives	Tax-exempt bond financing, 20 percent wage credit, accelerated depreciation, and capital gains deferral in designated areas.	2,296
Individual Provisions		
Discharge of indebtedness on principal residence excluded from gross income of individuals	Exclusion from gross income of up to \$2 million (for married households) for discharge of indebtedness on a qualified principal residence.	22,972
Mortgage insurance premiums	Allows mortgage insurance premiums paid in connection with a principal residence or a second home to be deductible with mortgage interest.	6,490
Tuition and fees	Deduction for college tuition and other related expenses, up to \$4,000 per year, subject to income limitations.	1,689

Source: Joint Committee on Taxation

Up to discretion

To the extent that lawmakers determine that the remaining provisions are congressional priorities, they would be better achieved as permanent provisions rather than temporary features of tax policy.

The two provisions in this section are less harmful extenders. While railroad tracks (seven-year property) will receive full expensing treatment under the TCJA, improvements to railroads still must be depreciated over a 50-year schedule. Allowing all railroad investments to be fully expensed would be ideal, but the provision for railroad track maintenance is a small step in that direction. If Congress determines that supporting mine safety training is a priority, the subsidy should be done through the appropriation process rather than the tax system.

TABLE 3.
Provisions Up to Discretion

Provision	Description	10-Year Cost (\$ millions)
Railroad track maintenance credit	50 percent credit for qualified track maintenance expenditures of regional and short line railroads, up to \$3,500 per mile of railroad track owned.	2,066
Mine rescue team training	20 percent or up to \$10,000 credit of the amount paid for mine rescue team employee training program costs.	19

Source: "Federal Tax Provisions Expired in 2017," Joint Committee on Taxation

Conclusion

Last-minute reauthorizations of temporary tax policy have been the status quo for more than a decade, riddling the tax code with uncertainty and slowing economic growth. Congress now has the opportunity to determine which, if any, of these 26 extenders are good policy worth permanence and which should remain expired. Removing disparate tax advantages from the code and allowing businesses and individuals to operate under a neutral tax code would continue the work of tax reform.

Most of the remaining extenders are not must-pass policies, but rather provide narrowly targeted preferences for specific economic interests, which distorts economic activity, creates uncertainty, and slows economic growth. Going forward, Congress should allow most of these tax provisions to expire and should instead focus on expanding and making permanent the features of the tax code, such as full expensing, that move toward a more ideal system.