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RSC THE REPUBLICAN STUDY COMMITTEE

H.R. 2029 – Protecting Americans from Tax Hikes Act of 2015 (Rep. Brady, R-TX) – Part I – Tax Extenders

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FLOOR SCHEDULE:

H.R. 2029 is expected to be considered on December 17, and 18, 2015, under a rule.

The rule is expected to make in order two House amendments to the Senate amendment to H.R. 2029. The first House amendment consists of 12 appropriations bills, an intelligence reauthorization, a cyber security bill, a provision lifting the crude export ban, a reauthorization of 9/11 benefits, a small number of tax provisions, and other legislation. This amendment includes Divisions A through P. The second House amendment includes several tax provisions, including making some tax extenders permanent. This amendment includes Divisions Q.

The rule is expected to provide for separate periods of debate and separate votes on each of the two House amendments. Assuming both amendments are agreed to, the Senate would consider both together as House amendments to the Senate amendments to the House passed bill.

TOPLINE SUMMARY:

Division Q of H.R. 2029 would make permanent a number of temporary provisions of the Internal Revenue Code that have been perennially renewed on short-term or retroactive bases. The bill would also extend several provisions through 2019, and a larger number of provisions through only 2016.

The measure also includes a number of reforms to the Internal Revenue Service, the treatment of tax-exempt organizations, processes in United States Tax Court, as well as makes changes to certain tariff policies.

The bill text can be found here and a section-by-section analysis from the Committee on Ways and Means statements can be found here.

COST:

The Joint Committee on Taxation estimates that enacting Division Q would result in a net reduction of revenues of $621.95 billion over the FY2016-25 period. This includes approximately $159 billion in increased outlays through the tax code for refundable credits.

CONSERVATIVE VIEWPOINTS:

Extends Stimulus Level Tax Credits: Some conservatives may be concerned that the bill extends several enhanced refundable tax credits, including the Earned Income Tax Credit, Child Tax Credit, and American Opportunity Credit.

Tax Integrity Measures: *Some conservatives may be pleased the bill includes provisions to improve the integrity of the EITC, CTC, and AOC tax credits and to prevent these credits from easily being claimed by illegal immigrants on a retroactive basis.*

Permanent Extensions: *Some conservatives may be pleased the bill permanently extends several pro-growth and charitable tax provisions and separates these provisions from the annual extenders package that contains less worthy extenders.*

Allowing Americans to Keep Their Money*: The permanent tax reduction in the bill has several benefits for American taxpayers. The bill would prevent tax increases caused by the lapse in provisions that are routinely extended each year. The permanent tax policies included in the bill allow for certainty in the tax code, which is important for economic growth. This would reduce the CBO baseline for revenues in the budget window, which could allow for a more pro-growth budget-neutral tax reform plan, although this will also make it more difficult to balance the budget in the ten year window.*

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Tax extenders include more than 50 separate tax provisions, many of which have been extended multiple times. These provisions were most recently extended (generally retroactively through 2014) by H.R. 5771, the Tax Increase Prevention Act of 2014, which passed the House on December 3, 2014, by a 378 – 46 vote.

The bill would make the following currently temporary provisions of the tax code permanent:

Corporate Tax Provisions

- Research and Development Credit (Similar to House-passed H.R. 808)
- Section 179 expensing (Included in House-passed H.R. 636)
- 15-year depreciation for leaseholds and improvements
- Active finance exemption
- Employer wage credit for employees on active duty
- 5-year built-in gains tax for subchapter S corporation stock (Included in House-passed H.R. 636)
- Registered Investment Company foreign investor pass-through

Individual Tax Provisions

- Enhanced Earned Income Tax Credit
- Enhanced American Opportunity Credit
- Enhanced Child Tax Credit
- Deduction for teacher classroom expenses
- Parity for exclusion of mass transit and parking benefits
- 100% Exclusion on gains from the sale of small business stock
- State and local sales tax deductions (Similar to House-passed H.R. 622)
- Low-Income Housing Tax Credit minimum rates
- Exclusion of military housing allowance from income test for low-income housing credits

Charitable Giving Provisions (Similar to the provisions of House-passed H.R. 644, the America Gives More Act)

- Food inventory deduction
- Conservation easement deduction
- IRA charitable rollover
- Exemption for payments to an exempt organization
- Adjustment to basis of S corporation stock for charitable donations (Included in House-passed H.R. 636)

The bill includes extensions through 2019 of the following provisions:

- Bonus depreciation would be extended at 50% for 2015-17, 30% in 2018, and 40% in 2019
- Work Opportunity Credit
- New Markets Credit
- Look-through treatment for payments between related foreign controlled corporations

The bill includes extensions through 2016 of the following provisions:

- Mortgage debt forgiveness
- Treatment of mortgage insurance premiums as mortgage interest
- Deduction for tuition and related expenses
- Indian employment credit
- Railroad track maintenance credit
- Mine rescue team training credit
- Qualified zone academy bonds
- 3-year recovery period for race horses
- 7-year recovery period for motorsports complexes
- Expensing of mine safety equipment
- Special expensing for film and television productions
- Deduction of income from production activities in Puerto Rico
- Empowerment zone incentives
- Puerto Rican and Virgin Islands rum excise tax credit
- American Samoa economic development credit

The bill extends the following energy and conservation provisions through 2016:

- Renewables Production Tax Credit
- Nonbusiness energy property credit
- Alternative fuel vehicle refueling property credit
- 2-wheeled electric vehicle credit
- Fuel cell motor vehicles credit
- Cellulosic biofuels credit
- Bonus depreciation for cellulosic biofuel facilities
- Biodiesel and renewable diesel credits and fuel excise tax credit
- Alternative fuel excise tax credit
- Indian coal facilities credit
- Energy efficient home manufacturer credit
- Commercial building energy efficiency improvements deduction

Medical Device Tax Moratorium

Section 174 would impose a two-year moratorium (through calendar year 2017) of the Obamacare 2.3% medical device excise tax.

Program Integrity Requirements

The bill includes a number of changes to existing law intended to improve the integrity of the administration of certain tax credits, especially the EITC, CTC, and AOTC. These reforms would prohibit an individual from making retroactive claims for any of these credits for any year in which the individual, or, in the case of the CTC, the child, did not have a social security number for the purposes of the EITC, or an IRS taxpayer identification number for the purposes of the CTC or AOTC. These reforms are intended to prevent illegal immigrants from claiming retroactive, refundable tax credits.

The bill also increases penalties for paid preparers who are found to have been involved in or failed to exercise due diligence in preventing fraud and abuse, as well as penalties and disqualification periods for individuals who fraudulently claim credits.

Tax Administration Provisions

The bill includes a number of provisions intended to better protect taxpayers from abuse and ensure IRS employees are acting in compliance with the law and in the best interest of the taxpayers. Several of these provisions were components of House-passed legislation during 2015, including: explicitly establishing the duty of IRS employees to taxpayers; allowing IRS employees to be terminated for taking political actions in their official capacity; and, reforming to process for recognition of tax-exempt organizations.

The bill would also exempt from the gift tax donations to social welfare organizations organized under section 501(c)(4), labor unions under 501(c)(5), and business leagues and trade associations under501(c)(6).

Taxpayer Bill of Rights: The bill includes the text of H.R. 1058, the Taxpayer Bill of Rights Act of 2015, which would require IRS employees to be familiar with the rights of taxpayers. These include: (1) the right to be informed; (2) the right to quality service; (3) the right to pay no more than the correct amount of tax; (4) the right to challenge the position of the Internal Revenue Service and be heard; (5) the right to appeal a decision of the Internal Revenue Service in an independent forum; (6) the right to finality; (7) the right to privacy; (8) the right to confidentiality; (9) the right to retain representation; 4 and (10) the right to a fair and just tax system. The IRS has adopted guidelines, referred to as the Taxpayer Bill of Rights, which are identical to those included in the bill.

IRS Email Transparency: The bill includes the text of H.R. 1152, the IRS Email Transparency Act, which would prohibit IRS employees from using personal email accounts for official business.

Taxpayer Knowledge of IRS Investigations: The bill includes the text of H.R. 1026, the Taxpayer Knowledge of IRS Investigations Act, which would permit the Internal Revenue Service (IRS) to release information about the investigation of leaked taxpayer information to victims of this crime.

Right to Appeal: The bill includes the text of H.R. 1314, the Ensuring Tax Exempt Organizations the Right to Appeal Act, which would require the Internal Revenue Service (IRS) to establish procedures for an administrative appeal for organizations applying for tax-exempt status in the event of an adverse qualification determination against the organization.

501(c)(4) Declaration: The bill includes the text of H.R. 1295, the IRS Bureaucracy Reduction and Judicial Review Act, which would allow groups to declare their tax exempt status rather than wait for an IRS determination.

Termination of IRS Employees for Taking Official Action for Political Purposes: The bill includes the text of H.R. 709, the Prevent Targeting at the IRS Act, which would require IRS employees to be terminated if they target taxpayers for political purposes.

No Gift Tax for Tax Exempt Organizations: The bill includes the text of H.R. 1104, the Fair Treatment for All Gifts Act, which would explicitly provide that donations to 501(c)(4), 501(c)(5), and 501(c)(6) tax-exempt organizations are not subject to the federal gift tax. Under current law, federal gift taxes generally apply to donations above $14,000, but donations to tax-exempt organizations have been considered tax-free. It has been reported that the IRS has considered imposing gift taxes to donations to conservative organizations.

Real Estate Investment Trust (REIT) Provisions

Real Estate Investment Trusts (REIT) serve as holding trusts for real estate assets that pass income generated by such assets through to investors without paying income tax at the trust level. In order to benefit from this tax structure, REITs must meet certain requirements related to shareholders, revenue sources, and distributions (more information available here.) In recent years, several firms have taken advantage of the tax-free spinoff provisions of Section 355 (26 U.S.C. 355) in order to shift corporate real estate assets into an affiliated REIT in a tax-free transaction, thereby freeing up cash and providing for a more profitable structure for the combined affiliates.

The provisions of Subtitle B of Title III of Division Q would make several changes to REIT requirements and applicable law to prevent such spinoffs. Specifically, the bill would: (1) deny REIT spinoffs tax-free treatment under Section 355, thereby requiring a firm to pay tax on the sale of real estate assets to the REIT; (2) prohibit a REIT from receiving in excesses of 25% of rental income from a single corporation; and (3) prohibit REITs from paying preferred dividends to any class of shareholders.

United States Tax Court

The bill would make several changes to improve and enhance access to United States Tax Court for taxpayers, including: (1) expanding the court's jurisdiction to cases of less than $50,000; (2) allowing taxpayers seek review from the court for abatement of interest; (3) clarify that appeals from the United States Tax Court should be heard in the relevant circuit Court of Appeals; and, (4) applying the Federal Rules of Evidence to proceedings before the court.

Trade Provisions

The bill would delay implementation of a reclassification of certain outerwear products that would result in increased tariffs and ensure that reductions in tariffs of certain environmental goods agreed to by the Asia-Pacific Economic Cooperation forum are implemented pursuant to the Trade Priorities and Accountability Act of 2015

Other Provisions

The bill would also:

- Establish parity between the excise tax credit between liquefied petroleum gas and liquefied natural gas
- Allow non-corporate taxpayers to exclude income from clean coal power plants
- Modify treatment of motion picture project employees
- Clarify the valuation procedures for charitable remainder trusts that are terminated early
- Alter the definition of hard cider subject to excise tax
- Modify the treatment of gains from timber activities

Budgetary Provisions

The bill would provide that the budgetary effects of Divisions Q of the bill shall not be entered on the PAYGO scorecards under the Statutory Pay As You Go Act.

OUTSIDE GROUPS:

Support:

Americans for Prosperity: AFP Supports Tax Extenders Legislation
Americans for Tax Reform: ATR Statement on Permanent Tax Extenders Bill

National Association of Manufacturers: Manufacturers Applaud Historic Agreement on Tax Provisions
U.S. Chamber of Commerce
RATE Coalition

Oppose:

Heritage Action

Other:

Heritage Foundation: What the Tax Extenders Bill Should and Shouldn't Include

National Taxpayers Union: Lawmakers Should Preserve Pro-Growth Tax Extenders

COMMITTEE ACTION:

The House Appropriations Committee marked up H.R. 2029 as the Fiscal Year 2016 Military Construction and Veterans Affairs Appropriations on April 22, 2015, and approved the bill by a voice vote. The House passed H.R. 2029 on April 30, 2015, by a 255 - 163 vote. The Senate amended and passed H.R. 2029, the Military Construction and Veterans Affairs bill on November 11, 2015, by a 93 – 0 vote.

The House has passed several bills to make pro-growth provisions that businesses and families count on a permanent part of the U.S. tax code. You can see the RSC Legislative Bulletins for those bills below:

- H.R. 622, the State and Local Sales Tax Deduction Fairness Act of 2015, would permanently allow taxpayers to deduct state and local sales taxes in lieu of state and local income taxes.
- H.R. 644, the America Gives More Act of 2015, would make permanent and expand provisions of the tax code that are meant to encourage charitable giving.
- H.R. 636, the America's Small Business Tax Relief Act of 2015, would make permanent and index for inflation the $500,000 level of Section 179 enhanced small business expensing, which expired at the end of 2014. The bill also would make permanent provisions to reduce tax burdens on S corporations.
- H.R. 880, the American Research and Competitiveness Act of 2015, would make permanent and expand the research and development (R&D) tax credit.

Additionally, the House Ways and Means Committee passed additional bills to make permanent changes to the tax code that were not considered by the House:

- **H.R. 2510, A bill to amend the Internal Revenue Code of 1986 to modify and make permanent bonus depreciation**, would make 50-percent bonus depreciation permanent.
- **H.R. 2940, the Educator Tax Relief Act of 2015**, would make permanent the above-the-line deduction for classroom expenses of schoolteachers.
- **H.R. 765, the Restaurant and Retail Jobs and Growth Act**, would make permanent the 15-year depreciation schedule for leasehold improvements, restaurant improvements and new construction, and retail improvements.

- **H.R. 961, A bill to amend the Internal Revenue Code of 1986 to permanently extend the subpart F exemption for active financing income**, would level the playing field for U.S. companies to compete against foreign competitors that are not subject to an onerous worldwide tax system.
- **H.R. 1430, the Permanent CFC Look-Through Act of 2015**, would help U.S. companies operating internationally to function in an efficient manner without worrying about negative U.S. tax consequences.

Alternatively, the Senate Finance Committee put forward a tax extenders bill (S. 1946) that would provide a two-year extension for a majority of the provisions that expired at the end of 2014. However, the Senate failed to act on this or any legislation related to expired tax provisions.

ADMINISTRATION POSITION:

The Administration supports House passage of the House Amendments to the Senate Amendment to H.R. 2029, making appropriations for Fiscal Year (FY) 2016, and making permanent vital improvements to tax credits that benefit more than 24 million working- and middle-class families each year.

The Administration appreciates the bipartisan effort to provide full-year appropriations legislation consistent with the Bipartisan Budget Act of 2015, which provided significant relief from sequestration for both defense and non-defense priorities. The legislation would help to grow the economy and build middle-class economic security by investing in education, job training, advanced manufacturing, infrastructure, and research while keeping America safe. Additionally, the legislation is largely free of new unrelated ideological riders.

In addition to making permanent vital improvements to tax credits for working- and middle-class families, this legislation also would bring certainty to small businesses, companies investing in U.S. innovation, and charities, while extending important incentives for hiring and investing in low-income communities. The agreement would extend tax incentives for investments in wind and solar energy, driving significant reductions in carbon pollution and other dangerous air pollutants and providing certainty for investments in clean energy. The agreement also would phase out bonus depreciation, which was intended to be a temporary incentive, saving over $200 billion over the next decade relative to its indefinite continuation.

The Administration appreciates the bipartisan effort to provide full-year appropriations legislation for FY 2016 largely free of new unrelated ideological riders, and take a critical step toward a simpler, fairer tax code and a stronger economy, and urges the Congress to pass this legislation.

CONSTITUTIONAL AUTHORITY:

"Congress has the power to enact this legislation pursuant to the following: The principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: ``No Money shall be drawn from the

Treasury, but in Consequence of Appropriations made by Law . . . .'' In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: ``The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States . . . .'' Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability, and to set forth terms and conditions governing their use."

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

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