

## SUMMARY OF THE TAX EXTENDERS AGREEMENT

### DIVISION D – REVENUE MEASURES TITLE I – EXTENSION OF EXPIRING PROVISIONS

#### Subtitle A – Tax Relief for Families and Individuals

**Section 40201. Extension and modification of exclusion from gross income of discharge of qualified principal residence indebtedness.** The provision extends through 2017 the exclusion from gross income of a discharge of qualified principal residence indebtedness. The provision also modifies the exclusion to apply to qualified principal residence indebtedness that is discharged pursuant to a binding written agreement entered into in 2017.

**Section 40202. Extension of mortgage insurance premiums treated as qualified residence interest.** The provision extends through 2017 the treatment of qualified mortgage insurance premiums as interest for purposes of the mortgage interest deduction. This deduction phases out ratably for taxpayers with adjusted gross income of \$100,000 to \$110,000.

**Section 40203. Extension of above-the-line deduction for qualified tuition and related expenses.** The provision extends through 2017 the above-the-line deduction for qualified tuition and related expenses for higher education. The deduction is capped at \$4,000 for an individual whose adjusted gross income (AGI) does not exceed \$65,000 (\$130,000 for joint filers) or \$2,000 for an individual whose AGI does not exceed \$80,000 (\$160,000 for joint filers).

#### Subtitle B – Incentives for Growth, Jobs, Investment, and Innovation

**Section 40301. Extension of Indian employment tax credit.** The provision extends through 2017 the Indian employment tax credit. The Indian employment credit provides a credit on the first \$20,000 of qualified wages paid to each qualified employee who works on an Indian reservation.

**Section 40302. Extension and modification of railroad track maintenance credit.** The provision extends through 2017 the railroad track maintenance tax credit. The provision includes a “safe harbor” to provide that assignments of the credit shall be effective if made pursuant to a written agreement entered into no later than 90 days following date of enactment.

**Section 40303. Extension of mine rescue team training credit.** The provision extends through 2017 the mine rescue team training tax credit. Employers may take a credit equal to the lesser of 20 percent of the training program costs incurred, or \$10,000.

**Section 40304. Extension of classification of certain race horses as 3-year property.** The provision extends the 3-year recovery period for race horses to property placed in service during 2017.

**Section 40305. Extension of 7-year recovery period for motorsports entertainment complexes.** The provision extends the 7-year recovery period for motorsport entertainment complexes to property placed in service during 2017.

**Section 40306. Extension and modification of accelerated depreciation for business property on an Indian reservation.** The provision extends accelerated depreciation for qualified Indian reservation to property placed in service during 2017.

**Section 40307. Extension of election to expense mine safety equipment.** The provision extends the election to expense mine safety equipment to property placed in service during 2017.

**Section 40308. Extension of special expensing rules for certain film, television, and theatrical productions.** The provision extends through 2017 the special expensing provision for qualified film, television, and theatrical productions. In general, only the first \$15 million of costs may be expensed.

**Section 40309. Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.** The provision extends through 2017 the eligibility of domestic gross receipts from Puerto Rico for the domestic production deduction.

**Section 40310. Extension of Treatment of timber gains.** The provision provides that C corporation timber gains are subject to a tax rate of 23.8 percent. The provision is effective for tax year 2017.

**Section 40311. Extension of empowerment zone tax incentives.** The provision extends through 2017 the tax benefits for certain businesses and employers operating in empowerment zones. Empowerment zones are economically distressed areas, and the tax benefits available include tax-exempt bonds, employment credits, increased expensing, and gain exclusion from the sale of certain small-business stock.

**Section 40312. Extension of American Samoa economic development credit.** The provision extends through 2017 the existing credit for taxpayers currently operating in American Samoa.

### **Subtitle C – Incentives for Energy Production and Conservation**

**Section 40401. Extension of credit for nonbusiness energy property.** The provision extends through 2017 the credit for purchases of nonbusiness energy property. The provision allows a credit of 10 percent of the amount paid or incurred by the taxpayer for qualified energy improvements, up to \$500.

**Section 50402. Extension and Modification of Credit for Residential Energy Property.** The provision extends the credit for residential energy efficient property for all qualified property placed in service prior to 2022, subject to a reduced rate of 26 percent for property placed in service during 2020 and 22 percent for property placed in service during 2021. The provision would be effective for property placed in service after 2016.

**Section 40403. Extension of credit for new qualified fuel cell motor vehicles.** The provision extends through 2017 the credit for purchases of new qualified fuel cell motor vehicles. The provision allows a credit of between \$4,000 and \$40,000, depending on the weight of the vehicle, for the purchase of such vehicles.

**Section 40404. Extension of credit for alternative fuel vehicle refueling property.** The provision extends through 2017 the credit for the installation of non-hydrogen alternative fuel vehicle refueling property. (Under current law, hydrogen-related property already is eligible for the credit.) Taxpayers are allowed a credit of up to 30 percent of the cost of the installation of the qualified alternative fuel vehicle refueling property.

**Section 40405. Extension of credit for 2-wheeled plug-in electric vehicles.** The provision extends through 2017 the 10-percent credit for two-wheeled plug-in electric vehicles (capped at \$2,500).

**Section 40406. Extension of second generation biofuel producer credit.** The provision extends through 2017 the credit for production of cellulosic biofuels.

**Section 40407. Extension of biodiesel and renewable diesel incentives.** The provision extends through 2017 the existing \$1.00 per gallon tax credit for biodiesel and biodiesel mixtures, and the small agri-biodiesel producer credit of 10 cents per gallon. The provision also extends through 2017 the \$1.00 per gallon production tax credit for diesel fuel created from biomass. The provision extends through 2017 the fuel excise tax credit for biodiesel mixtures.

**Section 40408. Extension of production credit for Indian coal facilities.** The provision extends through 2017 the \$2 per ton production tax credit for coal produced on land owned by an Indian tribe.

**Section 40409. Extension and of credits with respect to facilities producing energy from certain renewable resources.** The provision extends the production tax credit (PTC) for certain renewable sources of electricity to facilities for which construction has commenced by the end of 2017.

**Section 40410. Extension of credit for energy-efficient new homes.** The provision extends through 2017 the tax credit for manufacturers of energy-efficient residential homes. An eligible contractor may claim a tax credit of \$1,000 or \$2,000 for the construction or manufacture of a new energy efficient home that meets qualifying criteria.

**Section 40411. Extension and phaseout of energy credit.**

The provision generally harmonizes the expiration dates and phaseout schedules for different properties. The 30 percent Investment Tax Credit (ITC) for solar energy, fiber optic solar energy, qualified fuel cell, and qualified small wind energy property is available for property the construction of which begins before 2020 and is then phased out for property the construction of which begins before 2022. Additionally, the 10 percent ITC for qualified microturbine, combined heat and power system, and thermal energy property is made available for property the construction of which begins before 2022.

**Section 50412. Extension of special allowance for second generation biofuel plant property.** The provision extends through 2017 50-percent bonus depreciation for cellulosic biofuel facilities.

**Section 40413. Extension of energy efficient commercial buildings deduction.** The provision extends through 2017 the deduction for energy efficiency improvements to lighting, heating, cooling, ventilation, and hot water systems of commercial buildings.

**Section 40414. Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.** The provision extends through 2017 a rule that permits taxpayers to elect to recognize gain from qualifying electric transmission transactions ratably over an eight-year period beginning in the year of sale (rather than entirely in the year of sale) if the amount realized from such sale is used to purchase exempt utility property within the applicable period.

**Section 40415. Extension of excise tax credits relating to alternative fuels.** The provision extends through 2017 the \$0.50 per gallon alternative fuel tax credit and alternative fuel mixture tax credit.

**Section 40416. Extension of Oil Spill Liability Trust Fund financing rate.** An excise tax of \$0.09 per barrel is imposed on crude oil received at a refinery and petroleum products entered into the U.S. and deposited into the Oil Spill Liability Trust Fund. Having expired at the end of 2017, the excise tax is reinstated beginning on the first day of the first calendar month beginning after the date of enactment.

#### **Subtitle D – Modifications of Energy Incentives**

**Section 40501. Credit for Production from Advanced Nuclear Power Facilities**

The provision allows the Secretary of the Treasury, after January 1, 2021, to re-allocate any of the national 6,000 megawatt capacity that is unused, first to qualifying facilities to the extent such facilities did not receive an allocation equal to their full capacity, and then to facilities placed in service after such date. Additionally, certain public entities would be eligible for an election to transfer tax credits to specified project partners.

#### **TITLE II – MISCELLANEOUS PROVISIONS**

**Section 41102. Modifications to Rum Cover Over.** The provision extends the rum cover over through the end of 2021. Additionally, the provision maintains the cover-amount as being based on \$13.25 per proof gallon of rum imported into the U.S. regardless of actual tax collected.

**Section 41103. Extension of Waiver of Limitations With Respect to Excluding From Gross Income Amounts Received by Wrongfully Incarcerated Individuals.** As of December 18, 2015, current law provides that, with respect to any wrongfully incarcerated individual, gross income does not include any civil damages, restitution, or other monetary award (including compensatory or statutory damages and restitution imposed in a criminal matter) relating to the incarceration of that individual for the covered offense for which that individual was convicted.

Current law contains a special rule allowing individuals to make a claim for credit or refund of any overpayment of tax resulting from the exclusion, even if such claim would be disallowed, if the claim for credit or refund is filed before the close of the one-year period beginning on December 18, 2015 (i.e., before December 18, 2016).

This provision in the bill would extend the waiver on the statute of limitations with respect to filing a claim for a credit or refund of an overpayment of tax resulting from the exclusion described above for an additional two years – that is, until December 18, 2018. The provision is effective on the date of enactment.

**Section 41104. Individuals Held Harmless on Improper Levy On Retirement Plans.** Under present law, if the IRS improperly levies on an individual retirement arrangement (“IRA”) or certain employer-sponsored retirement plans (“employer-sponsored plans”), an individual may not be made whole even if the IRS returns the amount levied with interest because the individual may lose the opportunity to have those funds accumulate on a tax-favored basis until retirement.

The provision allows amounts, including interest, returned to an individual from the IRS pursuant to a levy to be contributed to the IRA or employer-sponsored plan without regard to normal contribution limits. In general, any tax attributable to the amount distributed from the IRA or employer-sponsored plan by reason of a levy is not to be assessed, if assessed is to be abated, and if collected is to be credited or refunded as an overpayment.

In addition, the IRS is required to pay interest on an amount returned to the individual in the case of a levy that is determined to be premature or otherwise not in accordance with administrative procedures, as well as in the case of a wrongful levy under present law. The provision is effective for levied amounts, and interest thereon, returned to individuals in taxable years beginning after December 31, 2017.

**Section 41105. Modification of User Fee Requirements For Installment Agreements.** An installment agreement with the IRS allows taxpayers who cannot afford to fully pay their tax liability the option to pay through monthly installments.

The provision prohibits increases in the amount of user fees charged by the IRS for installment agreements. In addition, the IRS is required to waive the fees imposed for installment agreements for taxpayers whose income falls below 250 percent of the poverty line and has agreed to make the payments by electronic means through a debit account. Further, for those taxpayers whose income falls below 250 percent of the poverty line, are unbanked, and successfully complete an installment agreement, the fee would be reimbursed at the end of the installment agreement period.

The provision applies to agreements entered into on or after the date that is 60 days after the date of enactment.

**Section 41106. Form 1040SR for Seniors.** Current law provides that persons required to file tax returns do so in the form prescribed by the Secretary of the Treasury in regulations. The

standard form available for individuals subject to income tax are in the series of form known as Form 1040, and include two simplified versions, the Form 1040A and the Form 1040EZ.

The provision requires that the IRS publish a simplified income tax return form designated a Form 1040SR, for use by persons who are age 65 or older by the close of the taxable year. The form is to be as similar as possible to the Form 1040EZ. The use of Form 1040SR is not to be restricted based on the amount of taxable income to be shown on the return, or the fact that the income to be reported for the taxable year includes social security benefits, distributions from qualified retirement plans, annuities or other such deferred payment arrangements, interest and dividends, or capital gains and losses taken into account in determining adjusted net capital gain. This provision is effective for taxable years beginning after date of enactment.

**Section 41107. Attorney Fees Relating to Awards to Whistleblowers.** This provision would allow an above-the-line deduction for attorney fees and courts costs paid by, or on behalf of, a taxpayer in connection with any action involving a claim under State False Claims Acts, the SEC whistleblower program, and the Commodity Futures Trading Commission whistleblower program. The provision would be applicable in to taxable years beginning after December 31, 2017.

**Section 41108. Clarification of Whistleblower Awards.** This provision modifies the definition of collected proceeds eligible for awards to include: (1) penalties, interest, additions to tax, and additional amounts, and (2) any proceeds under enforcement programs that the Treasury has delegated to the IRS the authority to administer, enforce, or investigate, including criminal fines and civil forfeitures, and violations of reporting requirements. This definition would also be used to determine eligibility for the enhanced reward program under which proceeds and additional amounts in dispute exceed \$2,000,000. Collected proceeds amounts would be determined without regard to whether such proceeds are available to the IRS. The provision would apply to information provided before, on, or after the date of enactment with respect to which a final determination for an award has not been made before the date of enactment.

**Section 41109. Clarification Regarding Excise Tax Based on Investment Income of Private Colleges and Universities.** The provision narrows the scope of educational institutions that are subject to the excise tax on investment income of private colleges and universities, by modifying the definition of "student" to "tuition-paying student."

**Section 41110. Exception from Private Foundation Excess Business Holding Tax for Independently-Operated Philanthropic Business Holdings.** The provision creates an exception to the excess business holdings rules for certain philanthropic business holdings. Specifically, the tax on excess business holdings does not apply with respect to the holdings of a private foundation in any business enterprise that, for the taxable year, satisfies the following requirements: (1) the ownership requirements; (2) the "all profits to charity" distribution requirement; and (3) the independent operation requirements. The ownership requirements are satisfied if: (1) all ownership interests in the business enterprise are held by the private foundation at all times during the taxable year; and (2) all the private foundation's ownership interests in the business enterprise were acquired under the terms by a means other than purchase of the testator or settlor, as the case may be.

**Section 41111. Rule of Construction for Craft Beverage Modernization and Tax Reform.**

The provision states that the provisions contained within the Craft Beverage Modernization and Tax Reform Section of the Tax Cuts and Jobs Act, shall be not construed to preempt, supersede, or otherwise limit or restrict any State, local, or tribal law that prohibits or regulates the production or sale of distilled spirits, wine, or malt beverages.

**Section 41112. Simplification of Rules Regarding Records, Statements, and Returns.**

Under current law, brewers are subject to certain inventory rules for both tax paid and non-tax paid beer, which are in some cases unclear. This section would require Treasury to clarify these regulations to allow a unified accounting system for beer on which excise tax has already been paid, including in cases where such beer is intended to be consumed on the brewery premises.

**Section 41113. Modification of Rules Governing Hardship Distribution.**

Elective deferrals under a section 401(k) plan or a section 403(b) plan may not be distributed before the occurrence of one or more specified events, including financial hardship of the employee. Applicable Treasury regulations provide that a distribution is made on account of hardship only if the distribution is made on account of an immediate and heavy financial need of the employee and is necessary to satisfy the heavy need. The Treasury regulations provide a safe harbor under which a distribution may be deemed necessary to satisfy an immediate and heavy financial need. One requirement of this safe harbor is that the employee be prohibited from making elective deferrals and employee contributions to the plan and all other plans maintained by the employer for at least six months after receipt of the hardship distribution.

The provision directs the Secretary of the Treasury is directed to modify the applicable regulations within one year of the date of enactment to (1) delete the requirement that an employee be prohibited from making elective deferrals and employee contributions for six months after the receipt of a hardship distribution in order for the distribution to be deemed necessary to satisfy an immediate and heavy financial need, and (2) make any other modifications necessary to carry out the purposes of the rule allowing elective deferrals to be distributed in the case of hardship. Thus, under the modified regulations, an employee would not be prevented for any period after the receipt of a hardship distribution from continuing to make elective deferrals and employee contributions. The regulations as revised by the provision shall apply to plan years beginning after December 31, 2018.

**Section 41114. Modification of Rules Relating to Hardship Withdrawals from Cash or Deferred Arrangements.**

Under current law, defined contribution plans are generally not permitted to allow in-service distributions (distributions while an employee is still working for the employer) attributable to elective deferrals if the employee is less than 59½ years old. One exception is for hardship distributions, which plans have the option of offering to participants. Hardship distributions may be allowed only for amounts actually contributed by the employee and may not include account earnings or amounts contributed by the employer.

Under the provision, employers may choose to allow hardship distributions to also include account earnings and employer contributions. The provision would be effective for plan years beginning after 2018.

**Section 41115. Opportunity Zones Rule for Puerto Rico.** The Tax Cuts and Jobs Act created certain Opportunity Zones in the mainland United States. This provision would expand the areas that could qualify for Opportunity Zone designation to include all census tracts within Puerto Rico.

**Section 41116. Tax Home of Certain Citizens or Residents of the United States Living Abroad.** At the election of the individual, section 911 excludes from gross income certain foreign earned income of the individual. Generally, to receive such exclusion, the individual must have a “tax home” outside the United States.

According to the provision, if an individual is serving in area designated by the President as a combat zone, then such individual has a tax home outside the United States.

**Section 41117. Treatment of Foreign Persons for Returns Relating to Payments Made In Settlement of Payment Card and Third Party Network Transactions.** The provision modifies section 6050W(d)(1)(B) reporting requirements with respect to participating payees with only a foreign address.

**Section 41118. Repeal of Shift in Time Of Payment Of Corporate Estimated Taxes.** In the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding taxable year), the amount of the required installment of estimated tax otherwise due in July, August, or September of 2020 is increased by 8 percent of that amount (determined without regard to any increase in such amount not contained in the Internal Revenue Code) (i.e., the installment due in July, August or September of 2020, is increased to 108 percent of the payment otherwise due). The next required installment is reduced accordingly (i.e., the payment due in October, November, or December of 2020).

The provision repeals this increased corporate estimated tax installment rate in section 808 of the Trade Preferences Extension Act of 2015.

**Section 41119. Enhancement of Carbon Dioxide Sequestration Credit.** Section 45Q provides a credit for carbon dioxide (CO<sub>2</sub>) sequestration and is available to taxpayers that capture qualified CO<sub>2</sub> at a qualified facility – such as a coal power plant or manufacturing facility – and dispose of the CO<sub>2</sub> in secure geological storage or use it as an injectant in an enhanced oil or natural gas recovery project. The provision amends Section 45Q by: allowing facilities that have commenced construction within 7 years of enactment to qualify; allowing qualified taxpayers to claim the credit for 12 years; expanding the credit to include CO<sub>2</sub> disposed of through utilization in another end product; and increasing the credit amounts for geologic storage and enhanced oil recovery.