PATH Act Business Real Estate

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For the past several years, the real estate industry has found tax planning to be a tricky undertaking. The tax provisions intended to stimulate the economy would often expire and Congress wouldn't pass legislation until late in the year, retroactively reinstating programs. Obviously, this led to missed planning opportunities. The passage of "Protecting Americans from Tax Hikes Act of 2015" (the PATH Act) has ended much of the uncertainty. This $622 billion bill makes permanent certain items and extends others through 2017 or beyond. Let the planning begin!

Bonus Depreciation

The PATH Act restores bonus depreciation and extends it through 2019, though there is a phase out period. Qualifying property will be eligible for 50 percent bonus depreciation if placed in service between Jan. 1, 2015 and Dec. 31, 2017. For property placed in service in 2018 a 40 percent bonus depreciation deduction will be available and for 2019 a 30 percent deduction. There are also changes to bonus depreciation that will help certain taxpayers subject to AMT.

Section 179 Deduction

Code Section 179 limits in effect for tax years beginning in 2010 through 2014 have been restored and permanently extended. The maximum annual allowable expense is $500,000 with a phase out beginning when Section 179 property placed in service that year exceeds $2,000,000. These amounts will be indexed for inflation for tax years beginning on or after Jan. 1, 2016. Qualified real property as Section 179 property has been restored and permanently extended and for tax years beginning on or after Jan. 1, 2016 the $250,000 per year limitation has been removed. Air conditioners and heating units, which were previously specifically excluded from Section 179, are now eligible for the deduction. The ability to revoke a Section 179 election without IRS consent is made permanent.

15 Year Property

The PATH Act makes permanent the 15-year depreciation recovery period for qualified restaurant property, qualified retail improvement property and qualified improvement property.

Qualified Leasehold Improvement Property

Prior to the passage of the PATH Act, taxpayers could take bonus depreciation and Section 179 deductions on real property improvements only if the improvement met the restrictive definition of "qualified leasehold improvement property." Beginning on Jan. 1, 2016 these standards have relaxed somewhat, meaning taxpayers may be able to qualify more of their real property improvements for bonus and/or Section 179. The new standard is referred to as "qualified improvement property" and generally consists of any improvement to an interior portion of a building that is nonresidential real property if the improvement is placed in service after the original date the building was placed in service.

Energy Efficient Commercial Building (EECB) Deduction

The EECB deduction is retroactively restored and extended for property placed in service before Jan. 1, 2017. This credit is allowed for commercial properties that meet certain energy efficient criteria for interior lighting systems, heating and cooling, ventilation and hot water systems, or the building envelope.

Credit for Energy Efficient Homes

The 45L credit for new energy efficient homes is retroactively restored and extended for homes acquired before Jan. 1, 2017. Eligible contractors can claim, as part of the general business tax credit, $2,000 (for a 50 percent reduction in energy usage) or $1,000 (for a 30 percent reduction in energy usage).

Low Income Housing Credit

From July 30, 2008 through Jan. 1, 2015, investors claiming the Low Income Housing Credit were guaranteed a minimum credit rate of at least 9 percent for any new building placed in service that was not federally subsidized. The PATH Act, restores and makes the permanent the 9 percent minimum.

These provisions are just the beginning. The PATH Act included modifications and/or extensions of the Affordable Care Act, individual deductions, education credits, the child tax credit, charitable contributions, IRS audits, the R&D credit, small business stock sales, employment credits, S Corporation built in gains and many more thrilling dinner topics. For more information on the items mentioned above or any others included in the PATH Act and an analysis of how they will affect your tax liability, contact your tax advisor.