

## *Numerous Tax Extenders included in Fiscal Cliff Legislation*

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President Obama signed the American Taxpayer Relief Act of 2012 into law on January 2, 2013. Among others, the law includes the following tax provisions relevant for tax credit and business industry participants:

- 50% bonus depreciation was extended for qualifying property that is both acquired and placed in service prior to January 1, 2014.
- The Code Section 179 election to expense certain depreciable business assets was retroactively increased to \$500,000 from \$125,000 for 2012, with the expense allowance reduced dollar for dollar by the amount that the qualifying property placed in service by the taxpayer for the year exceeds \$2 million. The \$500,000 and \$2 million thresholds were also made applicable to 2013. In general, qualifying property for purposes of Code Section 179 includes new or used tangible business property placed in service by the taxpayer during the taxable year other than real property, with exceptions.
- The production tax credit for wind power was extended by one year and is now available for projects that begin construction before 2014. While the term "construction" was not defined, it is possible that the 1603 cash grant definition of "construction" might be applied.
- The "begin construction" standard was also made applicable to facilities producing energy from closed- and open-loop biomass, geothermal, landfill gas, trash, qualified hydropower and marine and hydrokinetic sources. Prior to the enactment of the less stringent begin construction standard, such facilities were required to be placed in service before 2014 in order to be eligible for the production tax credit. The production tax credit period for Indian coal facilities placed in service prior to 2009 was also increased from seven to eight years.
- The election to take the 30% investment tax credit in lieu of the production tax credit was extended for eligible projects that begin construction before January 1, 2014.
- The 9% minimum rate for non-federally subsidized, new low-income housing tax credit buildings was extended to buildings receiving an allocation before 2014. Prior law required such buildings to be placed in service before 2014 in order to be eligible for the 9% minimum rate.

- The new markets tax credit was extended for two years, with a maximum aggregate allocation amount of \$3.5 billion in each year. Any unallocated credit amount may be carried forward for allocation through 2018.
- The \$1.01 per gallon cellulosic biofuel producer credit was extended by one year through 2013 and was expanded to include algae as a qualifying fuel. The 50% depreciation allowance for cellulosic biofuel plants was also extended by one year to include such plants placed in service through 2013.
- The \$1 per gallon biodiesel fuels credit was extended retroactively to apply to any sale or use in 2012 or 2013.
- The 100% exclusion on the gain from the sale of qualified small business stock held for more than five years was extended to apply to qualified small business stock acquired in 2012 and 2013.

The impact of the extenders in certain industries could be substantial. If you have further questions, please contact your Paul Hastings' tax team member.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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