NATIONAL TAXPAYERS UNION

Not All Tax Extenders Are Created Equal, 2021 Edition

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Introduction

As we approach the end of the calendar year, Congress's annual debate over a number of expiring tax provisions -- colloquially known as "tax extenders" -- is once again taking shape. In 2019, former NTU Foundation Vice President Nicole Kaeding wrote a piece titled, "Not All Extenders Are Created Equal." Kaeding explained that while the batch of tax extenders are often voted on as one legislative package, some "extenders" are good policy that should be made permanent and some are bad policy that should be allowed to permanently expire. Indeed, lawmakers would be wise to allow the extenders process to end once and for all, since one-year extensions of various tax provisions create inefficiencies and distortions in the tax code while leading to uncertainty and volatility for the affected individuals, families, and businesses.

To that end, NTU is reviving the framework that "Not All Tax Extenders Are Created Equal" for 2021. On December 31, 2021, 25 provisions of the tax code identified by the nonpartisan Joint Committee on Taxation (JCT) will "expire." Another five provisions of the code not considered traditional extenders by JCT -- which stem from the Tax Cuts and Jobs Act (TCJA), the CARES Act, and the American Rescue Plan Act (ARPA) -- will expire at the end of the year as well.

NTU considers all 30 expiring provisions below, with recommendations to Congress for most of the provisions outlining whether lawmakers should:

- Permanently extend the provision of the code, without modifications;
- Extend the provision, with modifications; or
- Permanently allow the provision to expire.

NTU does not take a position on a few provisions that are outside the scope of our regular work.

Summary

For quick access to each extender, use the following guide below. All parenthetical references are to the U.S. Code unless noted otherwise:

Provisions Congress Should Permanently Extend Without Modifications

- Allowing businesses to fully expense research and development (R&D) expenditures (sec. 174)
- Allowing businesses to factor in depreciation and amortization costs when calculating their annual limit on interest deductions (sec. 163(j)(8)(A)(v))
- Providing a safe harbor for HSA beneficiaries who receive telehealth services before their deductible (sec. 223(c)(2)(E))
- Increasing the contribution limits on employer-provided dependent care assistance programs (DCAPs; sec. 129(a)(1)(D))

Provisions Congress Should Extend With Modifications

- Expansions to the Earned Income Tax Credit (EITC; sec. 32)
- Expansions to the Child Tax Credit (CTC; sec. 24)
- Treatment of premiums for qualified mortgage insurance as qualified residence interest (sec. 163(h)(3)(E)(iv))

Provisions Congress Should Allow to Permanently Expire

- Special rule for health and dependent care FSAs (sec. 214 of Division EE of PL 116-260)
- Health coverage tax credit (HCTC; sec. 35(b)(1)(B))
- Second generation biofuel producer credit (sec. 40(b)(6)(J))
- Credit for construction of new energy efficient homes (sec. 45L(g))
- Credit for qualified fuel cell motor vehicles (sec. 30B(k)(1))
- Credit for alternative fuel vehicle refueling property (sec. 30C(g))
- Credit for two-wheeled plug-in electric vehicles (sec. 30D(g)(3)(E)(ii))
- Beginning-of-construction date for renewable power facilities eligible to claim electricity production credit (PTC) or investment credit (ITC) in lieu of PTC (secs. 45(d) and 48(a)(5))
- Excise tax credits and outlay payments for alternative fuel (secs. 6426(d)(5) and 6427(e)(6)(C))
- Excise tax credits for alternative fuel mixtures (sec. 6426(e)(3))
- Mine rescue team training credit (sec. 45N(e))
- Increase in States' low-income housing tax credit (LIHTC) ceiling (sec. 42(h)(3)(I))
- Nonbusiness energy property credit (sec. 25C(g))
- Modification of limit on charitable contributions (sec. 2205 of PL 116-136, as amended)
- Expansions to the Child and Dependent Care Tax Credit (CDCTC)

Provisions NTU Does Not Take a Position On

- Credit for production of Indian coal (sec. 45(e)(10)(A))
- Indian employment credit (sec. 45A(f))
- Accelerated depreciation for business property on Indian reservations (sec. 168(j)(9))
- Three-year recovery period for racehorses two years old or younger (sec. 168(e)(3)(A))
- Black Lung Disability Trust Fund: increase in amount of excise tax on coal (sec. 4121(e)(2))
- Temporary increase in limit on cover over of rum excise tax revenues (from $10.50 to $13.25 per proof gallon) to PR and VI (sec. 7652(f))
- American Samoa economic development credit (sec. 199 of PL 109-432, as amended)
- Charitable contributions deductible by non-itemizers (sec. 170(p))

Provisions Congress Should Permanently Extend Without Modifications

Allowing businesses to fully expense research and development (R&D) expenditures (sec. 174)

- **Last Addressed**: Tax Cuts and Jobs Act, H.R. 1, 115th Congress; Sec. 13206

- **Legislation Addressing the Issue in the 117th Congress**: American Innovation and R&D Competitiveness Act of 2021 (H.R. 1304, from Rep. John Larson (D-CT) and 59 bipartisan cosponsors) and American Innovation and Jobs Act (S. 749, from Sen. Maggie Hassan (D-NH) and 11 bipartisan cosponsors)

- **10-Year Budget Impact of Permanent Extension**: $131.3 billion (static; Tax Foundation estimate)

- **Explanation of the Provision**: For decades, businesses have been able to fully and immediately recover their research and development (R&D) expenditures by expensing them on that year's tax return. Starting in 2022, however, the full and immediate expensing under sec. 174 switches to five-year amortization -- requiring businesses to spread their cost recovery over five years.

- **Why Make Permanent**: Switching the tax treatment of R&D from full expensing to five-year amortization will significantly extend the time needed for businesses to recover their R&D costs, making it more expensive for them to invest in R&D. This would harm American economic growth and would stunt job growth in high-paying, high-tech industries, at a particularly fragile time in the country's economic recovery from the COVID-19 crisis. There is strong, bipartisan interest in undoing the scheduled R&D amortization -- and, in so doing, keeping the full and immediate expensing treatment of business R&D costs. This should be one of lawmakers' top tax priorities in 2021.

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Allowing businesses to factor in depreciation and amortization costs when calculating their annual limit on interest deductions (sec. 163(j)(8)(A)(v))

- **Last Addressed**: Tax Cuts and Jobs Act, H.R. 1, 115th Congress; Sec. 13301

- **Legislation Addressing the Issue in the 117th Congress**: Permanently Preserving America's Investment in Manufacturing Act (S. 1077, from Sen. Roy Blunt (R-MO) and four Republican cosponsors)

- **10-Year Budget Impact of Permanent Extension**: $65.8 billion (static; Tax Foundation estimate)

- **Explanation of the Provision**: The Tax Cuts and Jobs Act placed a limit on the amount of interest deductions large businesses can take, which was but one way to pay for some of the pro-growth changes in TCJA like full expensing for machinery and equipment. Lawmakers tied businesses' annual limit on interest deductions to a definition of adjusted taxable income that includes depreciation and amortization, but that definition (EBITDA, or earnings before interest, taxes, depreciation, and amortization) shifts to just EBIT (or earnings before interest and taxes) in 2022.

- **Why Make Permanent**: The shift from EBITDA to EBIT means businesses that purchase or own depreciable and amortizable assets -- which often make American workers and companies more productive and profitable -- will be punished with lower limits on their interest deductions starting next year. This undermines the full expensing provisions of TCJA (for short-lived assets) and the ability for businesses to fully expense R&D (section 174). Lawmakers should help preserve and uphold robust cost recovery provisions in the code by keeping the EBITDA definition of adjusted taxable income for purposes of the business interest deduction limit.

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Providing a safe harbor for HSA beneficiaries who receive telehealth services before their deductible (sec. 223(c)(2)(E))

- **Last Addressed**: CARES Act, H.R. 748, 116th Congress; Sec. 3701

- **Legislation Addressing the Issue in the 117th Congress**: Ensuring Telehealth Expansion Act of 2021 (H.R. 341, from Rep. Roger Williams (R-TX)) and the Telehealth Expansion Act of 2021 (S. 1704, from Sens. Steve Daines (R-MT) and Catherine Cortez Masto (D-NV))

- **10-Year Budget Impact of Permanent Extension**: unclear, but likely under $3 billion (cost of safe harbor for March 2020 through December 2021 was $92 million according to JCT)

- **Explanation of the Provision**: As health care shifted to virtual "telehealth" settings during the COVID-19 pandemic, Congress passed a provision in the CARES Act that ensured people with health savings accounts (HSAs) would not lose their ability to open and/or contribute to an HSA just because their health insurance plan offers telehealth services before the beneficiary or beneficiaries reach their deductible. This "safe harbor" enables Americans to open or keep contributing to an HSA when they otherwise might have been barred from doing so.

- **Why Make Permanent**: Even after the COVID-19 pandemic, there is bipartisan support for a broader shift to telehealth services in both public and private health coverage. While lawmakers must carefully monitor how telehealth utilization impacts the costs taxpayers bear for public and private health plans, there are some reasons to believe increased telehealth utilization will reduce some health costs in the long run. As Congress explores and monitors these developments, HSA beneficiaries should not be punished for utilizing telehealth services offered by their insurance coverage. Fortunately, there is bipartisan support on Capitol Hill for extending the telehealth HSA safe harbor.

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Increasing the contribution limits on employer-provided dependent care assistance programs (DCAPs; sec. 129(a)(1)(D))

- **Last Addressed**: American Rescue Plan Act, H.R. 1319, 117th Congress; Sec. 9632

- **Legislation Addressing the Issue in the 117th Congress**: Improving Child Care for Working Families Act of 2021 (S. 897, from Sen. Joni Ernst (R-IA) and 3 bipartisan cosponsors; H.R. 2121, from Rep. Cindy Axne (D-IA) and 19 bipartisan cosponsors), Family Savings for Kids and Seniors Act (H.R. 833, from Rep. Katie Porter (D-CA) and 5 bipartisan cosponsors), Working Families Childcare Access Act of 2021 (H.R. 2714, from Rep. Jackie Walorski (R-IN) and 5 Republican cosponsors)

- **10-Year Budget Impact of Permanent Extension**: $3.3 billion (JCT estimate)

- **Explanation of the Provision**: The American Rescue Plan Act (ARPA) provided a significant, one-year increase in the amount of money workers and their employers can contribute to an employer-provided dependent care assistance program (DCAP). These programs allow workers (and their employers) to set aside pre-tax money for use on dependent care expenses (e.g., child care or summer camp) during the year. The regular limit is $5,000. For 2021, ARPA more than doubled that limit, to $10,500.

- **Why Make Permanent**: As NTU explained earlier this year, "Congress first allowed parents to set aside their income for child care expenses on a tax-free basis in 1981, and it set the limit at $5,000 per family per year in 1986. The limit has been $5,000 ever since, even though child care costs have increased significantly in the past 35 years." It's past time that Congress increase the limit, and we are pleased to see there's bipartisan legislation that would do just that.

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Provisions Congress Should Permanently Extend With Modifications

Expansions to the Earned Income Tax Credit (EITC; sec. 32)

• **Last Addressed**: American Rescue Plan Act, H.R. 1319, 117th Congress; Title II, Subtitle C, Sec. 211

• **Legislation Addressing the Issue in the 117th Congress**: The Family Security Act (framework from Sen. Mitt Romney (R-UT))

• **Budget Impact of One-Year Expansion**: $13.3 billion according to JCT

• **Explanation of the Provision**: The Earned Income Tax Credit (EITC) is a refundable tax credit targeting lower- and moderate-income workers and is one of the largest anti-poverty programs. In 2018, 26.5 million taxpayers received $64.9 billion from the EITC. The participation rate for eligible EITC recipients was 78 percent in 2016, with higher participation among filers with children and lower participation for childless filers. This credit is received as an annual lump sum. To qualify for this credit, a tax filer must typically be between the ages of 25 and 64, unless a filer has qualifying children, in which case there is no age restriction. A "qualifying child" must meet three requirements: they must 1) have a specified relationship with the filer, 2) share a residence with the filer for more than half a year, and 3) must be under the age of 19 (unless they are a full-time student or permanently and totally disabled). A qualifying child can only be claimed by one filer. The EITC amount is based on a formula that includes earned income, number of qualifying children, marital status, and adjusted gross income (AGI). There are three phases to the EITC: 1) the phase-in portion where each additional dollar of income increases the size of the credit, 2) a plateau phase where additional income has no effect on the size of the credit, and 3) a phase-out where each additional dollar in earned income decreases the size of the credit until it reaches zero. The phaseout amount threshold is affected by both the number of qualifying children and the marital status of the filer.

ARPA made two changes to the EITC for 2021 only. It lowered the minimum age requirement from 25 to 19 for most workers and expanded the "childless" amount (nearly tripling the maximum amount, speeding up the phase-in rate, and raising the threshold where the benefit phased out). These changes were made due to the significantly larger benefits filers with children receive under regular law, and because childless low-income workers do not benefit from the expanded Child Tax Credit. The maximum credit in 2020, prior to the passage of ARPA, for example, was $538 with no children, $3,584 with one child, $5,920 with two children, and $6,660 with three or more children.

• **Why Extend with Modifications**: This is a well-targeted program, as the Tax Foundation notes, with benefits of the EITC heavily concentrated among people with incomes of between 75 and 150 percent of the poverty line. The U.S. Census Bureau found that refundable tax credits moved 7.5 million out of poverty, and while this includes both the EITC and the child tax credit, research points to most of the benefits coming from the EITC. The EITC has also been linked to increased workforce participation, especially among single mothers. However, going forward Congress should address at least two major flaws with the EITC: complexity and the marriage penalty.

The Internal Revenue Service estimated that a shocking 25.3 percent, or $17.4 billion, of the total EITC payments made in FY 2019 were improper. This is not an outlier year, as the EITC has a consistently high error rate. The complexity associated with low-income taxpayers self-reporting the eight eligibility requirements is daunting, and the unacceptably high error rate is a drain on taxpayers. While not conclusive, it is likely that a large portion of the errant claims come from genuine mistakes rather than malicious intent. A recent report found that the leading errors are filers claiming children who do not qualify, income reporting errors, and filing status errors.

The "marriage penalty" is another flaw that should be addressed. The marriage penalty in the EITC occurs because the credit for a married couple could be less than the combined credit if both filers were unmarried. For example, a CRS report found that "in 2014, two single parents, each with one child and earned income of $15,000, would receive an EITC of $3,305 each for a total EITC of $6,610. If they married, their combined income would be $30,000, and with two children their EITC would be $4,041.46. The EITC marriage penalty for this couple would be $2,659." Lawmakers should simplify complexities and address the marriage penalty associated with the EITC.

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Expansions to the Child Tax Credit (CTC; sec. 24)

- **Last Addressed**: American Rescue Plan Act, H.R. 1319, 117th Congress; Title II, Subtitle G, Part 2, Sec. 9611

- **Legislation Addressing the Issue in the 117th Congress**: The Family Security Act (framework from Sen. Mitt Romney (R-UT))

- **Budget Impact of One-Year Expansion**: $184.6 billion according to JCT

- **Explanation of the Provision**: Prior to ARPA, an eligible taxpayer could reduce their tax liability by up to $2,000 per qualifying child (defined as a dependent under 17 years old). The credit was reduced by $50 for every $1,000 of income over $200,000 ($400,000 for joint filers). If a filer's tax liability was less than the CTC, a portion of the credit would be refundable, sometimes referred to as the additional child tax credit (ACTC). The ACTC would equal 15 percent of earnings over $2,500, with a maximum of $1,400 per child.

ARPA made several major changes to the CTC, including raising the maximum age from 16 to 17 years old, making the credit fully refundable, and increasing the size of the credit. The post-ARPA CTC is $3,600 per child (1-5 years old) or $3,000 per child (6-17 years old), an increase of $1,600 and $1,000 over pre-ARPA amounts, respectively. Under the ARPA expansion, the credit is much more generous to low-income filers while maintaining the same benefits for those eligible on the higher end of the income scale. Another major change made under ARPA is that half of the expected credit is issued in monthly installments, while the other half is claimed when taxes are filed. The estimate of the size of the credit is based on a taxpayer's prior year tax returns. However, if taxpayers receive more in advance than they are eligible for (due for example to a change in marital status), they could have to pay back the excess credit.

- **Why Extend with Modifications**: The CTC could be a useful tool to combat childhood poverty. However, lawmakers should explore ways to better target this credit and find ways to make program expansion deficit-neutral, relative to a pre-TCJA baseline. If the expanded CTC was treated as a spending program, it would be the *fourth largest* program in the federal government. Addressing childhood poverty is important, but alleviating poverty to only saddle these future taxpayers with trillions more in debt that they will ultimately be on the hook for is not a sound approach. Instead, lawmakers should explore offsets, like repealing the regressive state and local tax (SALT) deduction, reforming the EITC, and cutting spending.

Another modification that would greatly increase the efficacy of this program as an antipoverty measure is ensuring the benefits are aimed at those most in need. As NTU has explained, it's more than a little head scratching how this program is billed at addressing poverty when a married couple making $350,000 (13 times the federal poverty level) is able to claim a $2,000 per child tax credit. While there are potentially many ways to address this issue, NTU does lay out a possible model for lawmakers to consider that would target the benefits of this program to the most needy.

Lastly, lawmakers should look to retain certain two positive changes made under ARPA: full refundability and regular payments. Allowing the credit to be fully refundable increases the benefit for low-income filers, while the budgetary impacts are minimal compared to the entire CTC program cost under ARPA. Regular payments do increase tax complexity, which generally concerns NTU. However, in the context of this credit, allowing for half of the credit to be received in advance in the form of monthly payments is appropriate. Parents do not buy food, clothes, and other essentials for their children in bulk once per year. These costs are incurred on a regular basis, and the CTC should provide flexibility to low-income families to partially offset these costs as they appear.

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Treatment of premiums for qualified mortgage insurance as qualified residence interest (sec. 163(h)(3)(E)(iv))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 133

• **Budget Impact for One-Year Extension in 2021**: $207 million according to JCT

• **Explanation of the Provision**: A taxpayer who itemizes may claim a deduction for "qualified residence interest," which includes interest paid on a mortgage secured by a principal or secondary residence. This deduction is available for taxpayers with an AGI of $55,000 if single, and $110,000 if married filing jointly. For taxable years 2018 through 2025, interest incurred on the first $750,000 of combined mortgage debt ($375,000 for married filing separately) may be deductible. Mortgage debt does not include home equity loans that are used for purposes unrelated to the property securing the loan. After 2025, the mortgage limit for all qualifying mortgage interest will be $1 million, plus $100,000 in home equity indebtedness regardless of its use. Refinanced mortgage debt is treated as having been incurred on the date of the original mortgage.

• **Why Extend with Modifications**: As NTU wrote in 2009, "mortgage insurance is a critical factor in allowing many moderate-income families, first-time buyers, and veterans to obtain their piece of the American Dream, but the larger costs of using this option do not receive a similar level of tax treatment provided to those who can afford larger down payments." Absent more holistic reforms to government-sponsored enterprise (GSE) and federal housing administration (FHA) loans, premium mortgage insurance can help insulate taxpayers from exposure in bailouts. Reforms to GSEs, on the other hand, could limit the necessity of this deduction. Overall, Congress should continue to evaluate this deduction as part of the larger mortgage ecosystem -- rather than on a standalone basis -- to ensure this deduction serves its purpose of expanding home-owning opportunities for taxpayers.

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Provisions Congress Should Allow to Permanently Expire

Special rule for health and dependent care FSAs (sec. 214 of Division EE of PL 116-260)

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title II, Sec. 214

• **Revenue Increase for One-Year Provision**: $54 million according to JCT (note this is a *revenue gain* as opposed to a revenue loss)

• **Explanation of Provision**: This provision of the December relief bill provided workers who own employer-provided health and dependent care flexible spending arrangements (FSAs) additional flexibility in using and rolling over these benefits from plan years 2020 and 2021 to 2021 and 2022, respectively. Specifically, this section of the law allows FSA owners to temporarily carry over unused balances to a new year and to carry forward balances in dependent care FSAs for children who otherwise would have aged out of eligibility. It also allows employers to reimburse employees for unused balances in health FSAs if the employee has ceased participation in a plan.

• **Why Allow to Expire**: NTU supported additional health and dependent care FSA flexibility during the COVID-19 pandemic, and we strongly support increasing the FSA annual contribution limits (see above). However, we believe that, with the country and economy emerging from the pandemic, COVID-era flexibilities for FSA owners like those promulgated in this section of the law are unnecessary beyond plan years 2021 or 2022.

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Health coverage tax credit (HCTC; sec. 35(b)(1)(B))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 134

• **Budget Impact for One-Year Extension in 2021**: $42 million according to JCT

• **Explanation of the Provision**: This provision allows Trade Adjustment Assistance (TAA) and Pension Benefit Guaranty Corporation (PBGC) recipients to receive a refundable, advanceable tax credit for up to 72.5 percent of health insurance premium payments made by the recipient for individual or family coverage.

• **Why Allow to Expire**: While the HCTC has a minimal impact on the federal budget, it overlaps with other federal programs providing private premium support, especially the premium tax credits (PTCs) offered to eligible families under the Affordable Care Act (ACA). While the PTC model is sorely in need of reforms, especially after the recent American Rescue Plan Act expansion of PTCs, this model of means-testing premium support based on *income* is preferable to the HCTC model of providing premium support based on *participation* in other federal programs. Additionally, this small credit adds unnecessary complexity to the code when lawmakers should be aiming to simplify the code and eliminate duplicative deductions and credits.

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Second generation biofuel producer credit (sec. 40(b)(6)(J))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 140

• **10-Year Budget Impact for One-Year Extension in 2021**: $16 million according to JCT

• **Explanation of the Provision**: This provision provides a tax credit of up to $1.01 per gallon of "qualified second generation biofuel production," defined as fuel derived by or from certain biomass feedstocks such as algae.

• **Why Allow to Expire**: Though this extender has a minor impact on the federal budget, it increases complexity in the code and biases certain types of energy over others.

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Credit for construction of new energy efficient homes (sec. 45L(g))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 146

• **Budget Impact for One-Year Extension in 2021**: $276 million according to JCT

• **Explanation of the Provision**: Contractors building energy-efficient new homes may be eligible for a tax credit up to $2,000 per dwelling unit. Manufacturers of manufactured energy-efficient homes may be eligible for a tax credit of up to $1,000 per dwelling unit. The credit can be carried back one year and carried forward for 20 years.

• **Why Allow to Expire**: While creating energy efficient homes should not be penalized, it does not warrant a tax credit either. Incentivizing certain economic activity through preferential treatment in the tax code can increase complexity in the code and distort economic behavior. Contractors and manufacturers should respond to the needs of consumers, but this tax provision distorts market incentives.

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Credit for qualified fuel cell motor vehicles (sec. 30B(k)(1))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 142

• **Budget Impact for One-Year Extension in 2021**: $6 million according to JCT

• **Explanation of the Provision**: The credit ranges from $4,000 to $40,000 depending on the vehicle weight. This credit is available for taxpayers or for tax-exempt entities, with the requirement that a tax-exempt entity disclose the cost of the credit when sold to a purchaser.

• **Why Allow to Expire**: Fuel cell motor vehicles are still a relatively new technology and require infrastructure like fueling stations which are not widely available in the United States. Credits for new technology are largely claimed by higher-income taxpayers in markets where that infrastructure exists. It is unclear whether this tax credit incentivizes the purchase of a fuel cell motor vehicle or if these purchases would still take place absent a tax credit. Other economic forces, such as gas prices, could have a larger impact on encouraging adoption of non-gasoline powered vehicles. A report prepared by the Congressional Research Service states that “tax credits for advanced lean burn technology vehicles, hybrid motor vehicles, and certain other types of alternative fuel vehicles generally expired at the end of 2009 or 2010.” This tax credit should similarly be allowed to expire.

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Credit for alternative fuel vehicle refueling property (sec. 30C(g))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 143

• **Budget Impact for One-Year Extension in 2021**: $167 million according to JCT

• **Explanation of the Provision**: A 30 percent tax credit can be claimed for the installation cost of a qualified alternative vehicle refueling property on a taxpayer’s principal residence or a business, with a $1,000 limit for taxpayer residences and a $30,000 limit for business locations. A qualified alternative vehicle refueling property includes “clean fuel” and electricity. For a qualifying business, the credit can be carried back one year or carried forward 20 years.

• **Why Allow to Expire**: Clean energy tax credits are largely claimed by wealthy taxpayers who do not need a tax credit. Vehicles running on electricity and alternative fuel represent a relatively small percentage of vehicles in the U.S. The build out of infrastructure should be in response to consumer demand for these vehicles. Preferential tax treatment for new and less popular technologies is a poorly targeted way to promote clean fuel alternatives.

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Credit for two-wheeled plug-in electric vehicles (sec. 30D(g)(3)(E)(ii))

- **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 144

- **Budget Impact for One-Year Extension in 2021**: $2 million according to JCT

- **Explanation of the Provision**: A 10 percent credit, up to $2,500, can be claimed by taxpayers for the costs of qualifying two- or three-wheeled vehicles that are propelled by an electric motor. The credit can not be carried forward or back.

- **Why Allow to Expire**: Tax provisions to encourage a specific economic activity or that favor specific industries undermine tax neutrality. Additionally, tax credits for plug-in vehicle credits are largely claimed by higher-income taxpayers. Over half of all plug-in vehicle credits were claimed by tax returns with an adjusted gross income of $200,000 or more in 2018. Electric vehicle adoption could help alleviate some of the social costs associated with fossil fuels, but subsidizing the costs of electric vehicles primarily for higher-income taxpayers is not sound tax policy.

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Beginning-of-construction date for renewable power facilities eligible to claim electricity production credit (PTC) or investment credit (ITC) in lieu of PTC (secs. 45(d) and 48(a)(5))

- **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 131

- **Budget Impact for One-Year Extension in 2021**: $1.69 billion according to JCT

- **Explanation of the Provision**: In order to qualify for the electricity production credit (PTC) or investment credit (ITC), meant to incentivize the production of renewable power facilities and the expansion of renewable energy use in America, certain facilities need to begin construction before 2022. This includes wind power, biomass, solar, and hydropower facilities. Continually extending the begin-construction date reduces tax revenues and increases federal deficits because it enables more facilities to be eligible for PTCs and ITCs.

- **Why Allow to Expire**: Though renewable energy facilities should not actively be *disadvantaged* by the tax code, and while companies owning renewable facilities should have access to full and immediate expensing for various costs of doing business (i.e., full and immediate cost recovery), the PTC and the ITC add complexity to the code and bias certain forms of energy over others. Or, as NTU put it earlier this year, these provisions "put the federal government in the middle of both America's energy markets and investment markets." Lawmakers should allow the begin-construction date to end on January 1, 2022.

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Excise tax credits and outlay payments for alternative fuel (secs. 6426(d)(5) and 6427(e)(6)(C))

- **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 147

- **Budget Impact for One-Year Extension in 2021**: $279 million according to JCT (combined with the alternative fuel mixtures credit below)

- **Explanation of the Provision**: Certain alternative fuels, such as liquefied petroleum gas, liquefied natural gas, carbon-capture coal, and biomass fuel, are eligible for a tax credit against their excise taxes. The credit is equal to $0.50 per gallon in 2021.

- **Why Allow to Expire**: NTU appreciates policymakers' motivation to provide incentives for private-sector development of alternative fuels. The best way to do so is through tax and regulatory reforms that allow innovators greater capital and development space to do what they do best. Tax credits should be a secondary option, and to the extent policymakers add or extend credits in the code they should be clean, evidence-based, and evaluated on a regular basis to determine whether they are achieving desired ends. For example, with these excise tax credits (and the excise tax credits for alternative fuel mixtures outlined below), a better path forward for Congress would be to lower taxes and/or repeal certain excise taxes in the first place, rather than levy an excise tax and then provide a credit against that levy.

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Excise tax credits for alternative fuel mixtures (sec. 6426(e)(3))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 147

• **Budget Impact for One-Year Extension in 2021**: $279 million according to JCT (combined with the alternative fuels credit above)

• **Explanation of the Provision**: Similar to the alternative fuels excise tax credit discussed above, this provision allows for a credit of $0.50 per gallon against alternative fuel mixture excise taxes.

• **Why Allow to Expire**: All of our concerns about excise taxes and excise tax credits outlined immediately above also apply to excise tax credits for alternative fuel mixtures. An additional concern with the fuel mixtures excise tax credit is that several years ago some lawmakers attempted to apply certain changes to the credit retroactively. We believed then, as we do now, that retroactive changes to the tax code are often deeply unfair to taxpayers and create significant uncertainty that harms economic activity and investment decisions. Again, the better path forward for Congress would be to eliminate or reduce excise taxes, rather than levy excise taxes and then provide a credit for those taxes.

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Mine rescue team training credit (sec. 45N(e))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 136

• **Budget Impact for One-Year Extension in 2021**: $1 million according to JCT

• **Explanation of the Provision**: This provision provides employers with a dollar-for-dollar tax credit for up to 20 percent of “training program costs” for mine rescue teams, up to $10,000 per employee.

• **Why Allow to Expire**: While this credit has an infinitesimal impact on the federal budget, it increases complexity in the code. Also, employers in other sectors and industries do not benefit from similar credits for the costs of training their employees.

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Increase in States’ low-income housing tax credit (LIHTC) ceiling (sec. 42(h)(3)(I))

Last Addressed: Consolidated Appropriations Act, H.R. 1625, 115th Congress; Division T; Sec. 102

Budget Impact for Four-Year Extension in 2018: $2.72 billion according to JCT

Explanation of the Provision: According to CRS, the LIHTC “is the federal government’s primary policy tool for encouraging the development and rehabilitation of affordable rental housing.” Rather than going directly to renters or homeowners, the LIHTC goes to developers that "offset construction costs," so long as the residences being constructed include units that are affordable for low-income households. The federal government's allocations of LIHTC dollars to states is based on a formula. Under permanent law that formula would be $2.50 per person in 2021 (rising with inflation), but with a temporary 12.5-percent boost (in effect from 2018-2021) that formula is $2.8125 per person. States must also receive a minimum of $2,885,000 under permanent law, but with the temporary 12.5-percent boost that figure is $3,245,625 per state.

Why Allow to Expire: As CRS has noted, "many economists would argue that housing vouchers, or direct-income supplements to low-income individuals, are more direct and fairer methods of providing assistance to lower-income individuals." The current LIHTC comes with "significant overhead and administrative costs," and lawmakers should allow this temporary boost to state allocations to expire while exploring more efficient means of supplying more affordable housing.

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Nonbusiness energy property credit (sec. 25C(g))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 141

• **Budget Impact for One-Year Extension in 2021**: $395 million according to JCT

• **Explanation of the Provision**: Taxpayers can deduct 10 percent of their expenditures resulting from certain energy-efficient improvements to their principal residence from their annual tax liability. This includes weatherization, although labor costs associated with building envelope improvements are excluded. Labor costs associated with qualifying heating, cooling, and water-heating equipment are eligible for the credit. The credit is limited to a $500 lifetime maximum with additional credit limits for specific property types. This credit is nonrefundable, and cannot be carried forward.

• **Why Allow to Expire**: This tax credit disproportionately benefits higher income taxpayers. According to IRS data from 2018 (the most recent available data), taxpayers with an adjusted gross income (AGI) between $100,000 and $200,000 made up 14 percent of tax returns, but this income group accounted for 37 percent of total credits claimed. A paper from UC Berkeley similarly found that most federal income tax credits for "clean energy" investments go to higher-income Americans. While the stated goal is to ease the burden for taxpayers when investing in energy-efficient homes, this tax credit is a clumsy and ineffective way to accomplish this.

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Modification of limit on charitable contributions (sec. 2205 of PL 116-136, as amended)

• **Last Addressed**: CARES Act, H.R. 748, 116th Congress; Sec. 2205

• **Budget Impact of One-Year Extension**: $643 million according to JCT

• **Explanation of the Provision**: This modification suspended the 50 percent of AGI limit (increasing to 60 percent through 2025) on cash contributions to charitable organizations deductions for individuals. The corporate deduction limit increased from 10 percent to 25 percent of taxable income for cash contributions. The limit on the deduction of food inventory increased from 15 percent to 25 percent. These increased limits do not apply to private foundations.

• **Why Allow to Expire**: Encouraging charitable giving through preferential tax treatment is not a new tool for Congress to use following a disaster. Now, as vaccines are readily available and the economy has mostly recovered from COVID-19, there is significantly less need for this provision. Lawmakers should allow this modification to expire.

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Expansion of the Child and Dependent Care Tax Credit (CDCTC)

• **Last Addressed**: American Rescue Plan Act, H.R. 1319, 117th Congress; Title IX, Subtitle G, Part 4, Sec. 9631
• **Budget Impact for One-Year Expansion**: $7.96 billion according to JCT

• **Explanation of Provision**: Prior to ARPA, the CDCTC was a nonrefundable tax credit which reduces tax liability for dependent care expenses incurred by a taxpayer who is working or who is looking for work. To qualify for this credit, a qualifying individual must have a child who they claim as a dependent and is under 13 years old, or a spouse or dependent who is incapable of caring for themselves. Qualifying expenses include expenses incurred for care so the qualifying individual can work or look for work. To calculate the amount a taxpayer is eligible for, the qualifying individual would multiply the amount of the expenses (subject to a cap) by the credit rate (determined by their AGI). The pre-ARPA caps on expenses were $3,000 for one dependent and $6,000 for two or more dependents. Taxpayers with an AGI of under $15,000 received the maximum credit rate of 35 percent (which comes out to a $1,050 credit for one dependent and a $2,100 credit for two or more dependents). The credit rate declines by one percentage point for roughly each $2,000 of AGI above $15,000 until it reaches the minimum 20 percent credit at over $43,000 AGI.

Changes in ARPA made the CDCTC refundable, increased the cap on expenses, and raised the credit rate, making this credit more generous. The cap on expenses increased from $3,000 to $8,000 for one qualifying individual (from $6,000 to $16,000 for two or more). However, expenses still cannot exceed a taxpayer's earned income. The credit rate also increased. The top credit rate under ARPA is 50 percent for taxpayers with income under $150,000, then drops one percentage point for every $2,000 of income over $125,000 until it reaches 20 percent at $183,000 AGI. The 20 percent credit rate remains in place for AGI between $183,000 to $400,000, and then declines at the same one percent/$2,000 rate until it reaches zero at $438,000 of AGI.

• **Why Allow to Expire**: The more generous CTC limits the need for this credit. Similarly, broader reforms, including the elimination of the SALT deduction, both help pay for CTC and eliminate regressive provisions in the tax code. However, if the CTC modifications are not made permanent, NTU does outline improvements for the CDCTC that would make the CDCTC better targeted and more fiscally responsible. These include accelerating the phaseout and reducing the increase in dollar limits on credible amounts. Pre-ARPA, more than 72 percent of CDCTC dollars were claimed by taxpayers with $100,000 or more of income. Even making the credit more generous and refundable, the expanded CDCTC is still poorly targeted. Taxpayers should not be subsidizing dependent care for individuals making well over six figures.

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Provisions NTU Does Not Take A Position On

Credit for production of Indian coal (sec. 45(e)(10)(A))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 145

• **Budget Impact for One-Year Extension in 2021**: $39 million according to JCT

• **Explanation of the Provision**: This provision allows Tribal producers of coal to take a $2.60 credit per ton (adjusted for inflation) upon production and sale of the coal.

• **Why No Position**: NTU does not typically take a position on matters affecting Tribes.

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Indian employment credit (sec. 45A(f))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 135

• **Budget Impact for One-Year Extension in 2021**: $67 million according to JCT

• **Explanation of the Provision**: This provision allows employers to take a tax credit worth up to $4,000 per year against the wages and health insurance benefits of employees who are members of Indian Tribes (or their spouses). The credit is only available to employers for workers making less than $50,000 per year in wages.

• **Why No Position**: NTU does not typically take a position on matters affecting Tribes.

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Accelerated depreciation for business property on Indian reservations (sec. 168(j)(9))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 138

• **Budget Impact for One-Year Extension in 2021**: $32 million according to JCT

• **Explanation of the Provision**: This provision allows owners of "qualified Indian reservation property" -- property used in an active business on an Indian reservation, other than gaming or gambling -- to take advantage of accelerated cost recovery for tangible assets. For example, three-year property may be recovered over two years, 10-year property may be recovered over six years, and nonresidential real property may be recovered in 22 years instead of 39 years. Some of these provisions are not as beneficial in 2021 as they were in 2017, given the temporary 100-percent bonus depreciation (full expensing) that went into effect in 2018 after passage of TCJA.

• **Why No Position**: NTU does not typically take a position on matters affecting Tribes. However, NTU does believe lawmakers should continue to expand full expensing opportunities for all U.S. businesses, from extending full and immediate expensing for short-lived assets to expanding full and immediate expensing to structures.

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Three-year recovery period for racehorses two years old or younger (sec. 168(e)(3)(A))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 137

• **Budget Impact for One-Year Extension in 2021**: No revenue effect according to JCT

• **Explanation of the Provision**: As the Congressional Research Service (CRS) explains, "The cost recovery period for racehorses is [typically] seven years, although racehorses that begin training after age two have a three-year recovery period. Under the temporary provision [i.e., the exender], this three-year recovery period is extended to all racehorses." Because race horses may benefit from the full and immediate expensing provisions of TCJA through 2022, there is minimal benefit to this extender at this time.

• **Why No Position**: JCT estimates no revenue impact for extending the racehorse provision at this time, so NTU does not take a position on the provision at this time. JCT's estimate may change if and when the full and immediate expensing provisions of TCJA begin to phase out. As mentioned above, NTU does believe lawmakers should continue to expand full expensing opportunities for all U.S. businesses, from extending full and immediate expensing for short-lived assets to expanding full and immediate expensing to structures.

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Black Lung Disability Trust Fund: increase in amount of excise tax on coal (sec. 4121(e)(2))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 149

• ***Revenue Gain for One-Year Extension in 2021: $147 million according to JCT (note this is*** a *revenue gain* as opposed to a revenue loss)

• **Explanation of the Provision**: Excise taxes on coal (from both underground and surface mines) fund the Black Lung Disability Trust Fund, which helps cover the medical costs of individuals who are disabled by black lung after being employed in coal mines. The permanent law excise tax rate is $0.50 per ton for coal from underground mines and $0.25 per ton for coal from surface mines. Under the extender provision, the excise taxes are more than double: $1.10 per ton for coal from underground mines and $0.55 per ton for coal from surface mines. As Taxpayers for Common Sense (TCS) explains, "Congress has increased the coal excise tax several times because revenues from the excise tax have not been enough to cover all the claims paid by the trust fund."

• **Why No Position**: Though NTU would normally cast a skeptical eye toward provisions of the code that raise excise taxes (or keep excise tax rates temporarily high, rather than allowing them to fall to permanent law levels), the extended excise tax rates on coal help avoid putting *all* taxpayers on the hook for Black Lung Disability Trust Fund liabilities. As TCS also explains, "[t]he excise tax rate provision, unlike other tax extenders that hand out tax breaks or tax credits to special interests, maintains the tax on the coal industry so that they bear the cost of the negative human externality associated with their product, thereby reducing taxpayer liability for the disability payments." We are not experts on the coal industry (nor on black lung liabilities), so we do not take a position on the ideal permanent excise tax rates for coal.

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Temporary increase in limit on cover over of rum excise tax revenues (from $10.50 to $13.25 per proof gallon) to PR and VI (sec. 7652(f))

• **Last Addressed**: Bipartisan Budget Act of 2018, H.R. 1892, 115th Congress; Division D, Title II, Sec. 41102

• **Budget Impact for Five-Year Extension in 2018**: $676 million according to JCT

• **Explanation of the Provision**: According to CRS, the permanent excise tax on rum is $13.50 per gallon (78 percent) produced in or imported to the U.S. While under typical law $10.50 per gallon is transferred to Puerto Rico (PR) and the Virgin Islands (VI), this extender provision has led to $13.25 per gallon (98 percent) being transferred to PR and VI.

• **Why No Position**: Since this provision of the code primarily concerns the *distribution* of tax revenues and has a negligible impact on the federal budget, NTU does not take a position on the extender.

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American Samoa economic development credit (sec. 199 of PL 109-432, as amended)

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title I, Subtitle C, Sec. 139

• **Budget Impact for One-Year Extension in 2021**: $8 million according to JCT

• **Explanation of the Provision**: This credit allows businesses with operations in American Samoa, one of the U.S. territories, to take a dollar-for-dollar offset against U.S. corporate income tax for the sum of wages, fringe benefits, and tangible property depreciation allowances.

• **Why No Position**: NTU does not typically take a position on matters affecting American Samoa.

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Charitable contributions deductible by non-itemizers (sec. 170(p))

• **Last Addressed**: Further Consolidated Appropriations Act, H.R. 133, 116th Congress; Division EE, Title II, Subtitle C, Sec. 212

• **Budget Impact of One-Year Extension**: $2.86 billion according to JCT

• **Explanation of the Provision**: Non-itemizers can deduct $300 ($600 for joint filers) in qualified charitable contributions to reduce their tax liability.

• **Why No Position**: While this provision may be well-intentioned, NTU believes there are better alternatives to encourage charitable giving in a fiscally responsible manner. One such framework could be the one proposed in the Everyday Philanthropist Act (H.R. 4585), introduced by Representatives Vern Buchanan (R-FL) and Tom Souzzi (D-NY). Similar to Flexible Spending Accounts (FSAs) that allow Americans to fund medical expenses on a pre-tax basis, this bipartisan legislation would allow workers to utilize Flexible Giving Accounts up to $2,700 of their annual pre-tax earnings. As NTU President Pete Sepp explained, "the legislation draws upon the successful infrastructure that has already been established to support Flexible Spending Accounts, which were created by law in 1978 and have subsequently been refined by IRS guidance." While there are likely other alternatives to the $300 above line deduction, this is one option that would support charitable giving and protect taxpayers' privacy.

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