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Tax Increase Prevention Act of 2014 and Achieving a Better Life Experience Act of 2014 Signed Into Law

by Kristin M. McKenna and Christopher C. Scarpa

On Dec. 19, President Barack Obama signed into law the Tax Increase Prevention Act of 2014 (TIPA) and the Achieving a Better Life Experience Act of 2014 (the "ABLE Act"). TIPA retroactively extends many tax breaks that expired at the end of 2013 through 2014, which means that, for the most part, the fix is temporary only and the provisions will need to be revisited in 2015 – possibly as part of fundamental tax reform, a more permanent fix or another temporary fix in 2015.

The ABLE Act creates a new section of the Internal Revenue Code (the "Code") providing for the establishment of accounts for individuals with disabilities. Funds in the accounts can be used for expenses such as education, housing and transportation without jeopardizing certain federal benefits such as SSI and Medicaid. The accounts are another tool in planning for the lifetime support needs of an individual with disabilities. Up to $14,000 a year can be put in an ABLE account, with a cap of $100,000.

The following are some of the major provisions of TIPA:

Individuals

- TIPA extends or modifies a number of individual tax provisions, including:
  - State and local sales tax deduction
  - Qualified tuition and related expenses deduction
  - Treatment of mortgage insurance premiums as deductible interest
  - Exclusion of cancellation of indebtedness income on principal residence
  - Teachers' classroom expense deduction
  - Parity in transit benefits
  - Special rule for contributions of capital gains real property for conservation

continued

- Tax-free distributions from individual retirement accounts to public charities by certain individuals

- Clarification of the post-2012 inflation adjustment to AMT exemption amount for individuals who are married, but filing separately

Regulated Investment Companies (RICs)

- *Qualified Investment Entities*. TIPA retroactively extends through Dec. 31, 2014 the inclusion of RICs within the definition of qualified investment entities for purposes of income tax withholding on certain dividends and redemption proceeds paid to foreign investors attributable to direct and indirect dispositions by RICs of U.S. real property interests. However, the retroactive inclusion of RICs does not apply to withholding obligations under Section 1445 of the Code on payments made on or before Dec. 19, 2014.

- *Interest-Related Dividends and Short-Term Capital Gains Dividends*. TIPA retroactively extends for one year the withholding exemption for interest-related dividends and short-term capital gains dividends received by foreign persons so that it expires for dividends paid by RICs in tax years beginning after Dec. 31, 2014.

- *Post-October Losses*. TIPA retroactively amends the definitions of "post-October capital loss" and "late-year ordinary loss," which losses are both considered "qualified late year losses."

  - The change to post-October capital loss corrects the ordering rule for post-October losses such that the RIC first uses any net capital loss attributable to the portion of the tax year after Oct. 31. If no such loss exists, then the RIC may defer (i) any post-October net long-term capital loss or (ii) any post-October net short-term capital loss.

  - The definition of "late-year ordinary loss" is amended to mean the sum of any post-October specified loss and any post-December ordinary loss, thereby separating the calculation of post-October foreign currency and passive foreign investment company losses from post-December ordinary losses.

  - Additionally, RICs with tax years other than calendar years may now elect to determine their ordinary income or ordinary loss for the calendar year without regard to any portion of any net ordinary loss.

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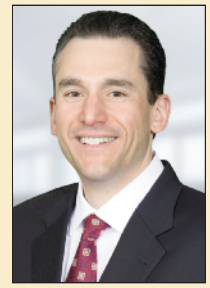

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These amendments take effect as if included in the provisions of the RIC Mod. However, the amendments do not apply to any elections to defer "qualified late year losses" that were made by a RIC before Dec. 19, 2014.

- *Other Late-Year Losses.*

  - TIPA amends the RIC excise tax rules to provide that a specified mark-to-market provision includes not only provisions under the Code or Treasury Regulations that treat property as disposed of on the last day of the tax year, but also provisions that determine income by reference to the *value* of an item on the last day of the tax year.

  - TIPA also clarifies that a RIC may push any portion of any net ordinary loss to the next calendar year in determining its ordinary income or net ordinary loss.

- *Spillover Dividends*. TIPA clarifies that a spillover dividend may be declared on or before the later of (i) the 15th day of the ninth month following the close of the tax year or (ii) the extended due date for filing such return.

- *Cost Basis Reporting*. TIPA clarifies Section 1012(c)(2)(B) of the Code and generally provides that RICs may elect to treat as a single account all stock held by a customer without regard to the date of acquisition of the stock. Absent a single account election, any stock in the RIC that was acquired before Jan. 1, 2012 (noncovered securities), would be treated as a separate account from any stock acquired on or after Jan. 1, 2012 (covered securities). However, if a RIC makes the single account election, the covered securities and the noncovered securities are treated as a single account and the basis of all stock is determined using the average cost basis method.

- *Capital Loss Carryovers*. TIPA allows a RIC to elect to delay the effective date of the RIC Mod rules, so that it would apply for the one-year period ending on Oct. 31 of calendar years ending after Dec. 31, 2011, which will prevent capital loss carryovers from expiring for excise tax purposes before expiring for income tax purposes. TIPA also amends the Code so that a RIC's earnings and profits for purposes of making required distributions are calculated without regard to any capital loss carryovers. Thus, capital loss carryovers will not prevent a RIC from satisfying its distribution requirements that are necessary to avoid application of the RIC excise tax (i.e., the RIC will have sufficient earnings and profits to support the distribution). These amendments take effect as if included in the provisions of the RIC Mod.

Businesses

- *Research Tax Credit.* TIPA retroactively extends the Code Section 41 research tax credit to qualified research expenses paid or incurred before Jan. 1, 2015.

- *Bonus Depreciation*. TIPA extends the 50 percent bonus depreciation for most qualified property placed in service through Dec. 31, 2014.

- *Small Business Expensing*. TIPA extends the $500,000 limitation and $2,000,000 phase-out amount applicable to Code Section 179 small business expensing to tax years beginning in 2014.

- *Work Opportunity Tax Credit.* TIPA retroactively extends through 2014 the work opportunity tax credit, which is available to employers for a percentage of wages paid by the employer to individuals who belong to a "targeted group."

- *Subpart F Exception for Active Financing Income.* TIPA retroactively extends for one year the exception in Subpart F allowing deferral of active financing income of a controlled foreign corporation engaged in banking, financing or a similar business activity that expired at the end of 2013.

- *Look-Through Rule for Related Controlled Foreign Corporation Payments*. TIPA extends for one year the look-through treatment for payments of dividends, interest, rents and royalties between related controlled foreign corporations under the foreign personal holding company income rules that expired at the end of 2013.

- *Other Business Provisions*. TIPA extends or modifies a number of other business tax provisions, including:

  - A 15-year recovery period for qualified leasehold improvements, qualified retail improvements and qualified restaurant property
  - New markets tax credit
  - A 100 percent exclusion for gain on sale of qualified small business stock
  - Reduced recognition period for S corporation built-in gains tax
  - New York Liberty Zone tax-exempt bond financing
  - Exclusion from a tax-exempt organization's unrelated business taxable income of interest, annuities, royalties and rents paid to it from a controlled entity
  - Tax incentives for empowerment zones
  - Employer wage credit for activated military reservists
  - S corporations making charitable donations of property
  - Low-income housing tax credit for non-federally subsidized new buildings

- Low-income housing tax credit treatment of military housing allowances

- Qualified zone academy bonds

- Enhanced deduction for charitable contributions of food inventory

- Indian employment tax credit

- Railroad track maintenance credit

- A seven-year recovery period for motorsports entertainment complexes

- Accelerated depreciation for business property on Indian reservations

- Special expensing rules for qualified film and television productions

- Mine rescue team training credit

- Election to expense advanced mine safety equipment

- Economic development credit for American Samoa

Energy Incentives

▪ *Energy Incentives.* TIPA extends or modifies a number of energy incentives, including, among others, credits for:

- Energy efficiency improvements to existing homes

- Facilities that produce energy from wind

- Alternative fuel vehicle refueling property

- Cellulosic biofuel production

- Indian coal facilities

- Energy-efficient new homes

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