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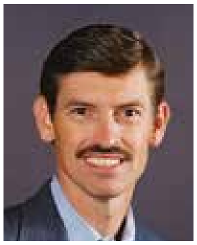
# Deadlines Approach for Potential Legislative Vehicles for Tax-Incentive Extenders



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Oct. 1 is a big day for tax extenders.

There are a variety of ways to extend crucial expiring or expired tax incentives–which most notably include the new markets tax credit (NMTC), the renewable energy production tax credit (PTC), and the Internal Revenue Code Section 179D and Section 45L energy efficiency incentives–but tying extensions to must-pass legislation is the most obvious.

That's where Oct. 1 comes in. Oct. 1 is the deadline tied with the new fiscal year, a likely need to raise or suspend the debt ceiling and the need to increase spending caps for the new fiscal year to prevent draconian cuts to defense and nondefense programs, giving legislators opportunities to add extenders to bills that are required to pass to keep the government functioning.

It's a familiar journey for supporters of incentives that have expired or face expiration.

## Expiring, Expired Incentives

The headliner of at-risk tax incentives is the NMTC, which was extended through 2019 as part of the Protecting Americans from Tax Hikes (PATH) Act at the end of 2015.

The NMTC has strong support on both sides of the aisle–standalone legislation to extend it has 29 co-sponsors in the Senate and 91 co-sponsors in the House. This is familiar territory: the NMTC has been part of the tax code since 2000, but has been kept alive by a series of short-term extensions. The 2015 extension through the end of 2019 was the longest in NMTC history. The incentive was previously extended in 2006, 2008, 2010, 2013 and 2014.

Supporters of the NMTC say a lack of permanence for the incentive hinders investment in low-income communities. With a $3.5 billion annual allocation (which would increase to $5 billion under two

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current extension proposals), it's important to develop a pipeline of developments. Uncertainty over extensions harms that process.

The PTC is in the midst of a phasedown established by the PATH Act–one that ends with projects that begin construction this year–but there has been momentum to extend the incentive including a proposed one-year extension in a House of Representatives extenders bill. Wind-energy supporters have stepped up calls for an extension after President Donald Trump's budget request in March called for cuts to renewable energy programs at the U.S. Department of Energy and to the Environmental Protection Agency.

The Section 179D deduction is for energy-efficient improvements to commercial and multifamily buildings that are at least four stories, but the incentive expired at the end of 2017.

The Section 45L incentive is a $2,000-per-unit tax credit for energy efficient multifamily and single-family homes that are three stories or less. Many developers of low-income housing tax credit (LIHTC) properties added this incentive to the LIHTC before it expired at the end of 2017.

## Bills that Must Pass

The federal budget faces an Oct. 1 deadline, which means that unless Congress passes legislation to authorize new spending, the federal government will shut down. A similar shutdown started in late December 2018 after a temporary spending authorization expired. That could conceivably recur this fall, but legislators and President Trump presumably want to avoid it. That means either a budget bill or legislation to extend the authority for the government to spend money must pass by that date.

Oct. 1 is also the date that spending caps come back into play. Caps were passed as part of the Budget Control Act in 2011 and austere measures will take effect Oct. 1 unless Congress passes legislation to increase the caps–defense spending faces a $71 billion annual cut and nondefense spending faces a $55 billion cut from 2019 levels.

Another pending issue is that the national debt hit the legislative ceiling of just more than $22 trillion March 1. Since that time, the Treasury Department has used "extraordinary measures" to keep the government below the limit, something that needs to be addressed before Treasury exhausts its ability to do so. That deadline is a moving target because it is impossible to project exactly how much spending the federal government will incur and how much tax revenue it will receive over a particular period. With Treasury facing the possibility of running out of cash before Congress returns from the August break, there was urgency to pass a debt-limit increase (or a suspension of the debt limit) before the break, even if it was for a short term–possibly until Oct. 1.

## Legislation Update

Legislators haven't been idle during this session of Congress as several extension and/or expansion bills for the expiring and expired provisions were introduced.

The New Markets Tax Credit Extension Act of 2019 (H.R. 1680, S. 750) was introduced in March and gained the aforementioned 91 co-sponsors in the House and 26 co-sponsors in the Senate. The legislation would make the NMTC a permanent part of the tax code and would add an inflation adjustment to the annual NMTC allocation authority.

The PTC was included as one of the clean energy provisions in need of an extension in a letter from 110 members of Congress to House Ways and Means Committee Chairman Richard Neal. The PTC was also was included in a bill to make renewable energy tax

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credits transferable and other legislation to create a simplified renewable energy program.

There has also been wider extender legislation. H.R. 3301, containing a series of extenders, passed the House Ways and Means Committee June 20, so its next step is to be considered by the entire House of Representatives. That legislation contained 34 extenders, including a one-year extension for the NMTC with a $5 billion allocation. In addition to extending the PTC, Section 45L tax credit and Section 179D deduction, the House legislation also includes an increase in low-income housing tax credit allocation for declared disaster areas of California hit by fires in 2017 and 2018.

In February, Senate Finance Committee Chairman Chuck Grassley and Ranking Member Ron Wyden teamed up to introduce S. 617, the Tax Extender and Disaster Relief Act of 2019, a bill that would extend 29 incentives through the end of this year.

Their version of the extenders bill retroactively extended the provisions–which included the Section 45L and 179D deductions–for this year.

## Other Incentives

While extensions are on the front burner, Congress could expand or extend other community development-related incentives this year.

The LIHTC is an indefinite part of the tax code, but the Affordable Housing Credit Improvement Act (AHCIA)–reintroduced in June–contains several provisions that could become part of the must-pass legislation. Last year, a temporary 12.5 percent allocation increase and the average-income provision was added to FY 2018 omnibus spending legislation that passed in March 2018, giving affordable housing advocates a victory. That came after the PATH Act included a provision to create a 9 percent floor for the LIHTC.

The most popular provision in the AHCIA is the 4 percent floor, which could be added to one of the must-pass bills, so affordable housing advocates will be pushing for that.

Elsewhere, Sens. Tim Scott, R-S.C., and Cory Booker, D-N.J., are planning to introduce legislation to push back the deadline for the 10-year deferral as well as the five- and seven-year basis step-ups for the opportunity zones incentive by a year. That legislation is likely to have strong support and could be a candidate for inclusion in must-pass bills.

Scott and Booker also introduced legislation in the Senate (S. 1344) to require the collection of information on OZ investments, while Rep. Ron Kind, D-Wis., and Mike Kelly, R-Pa., introduced a House version. That bill, too, could be a candidate for inclusion in must-pass bills. Other possible additions to the must-pass bills would be provisions from the Historic Tax Credit Growth and Opportunity (HTC-GO) Act, a proposal to make energy storage technology eligible for the renewable energy investment tax credit (ITC) and a provision to extend the ITC for offshore wind developments

## Politics: Art of the Deal

With extension bills introduced and deadlines looming, proponents of extending tax incentives are involved in the practical, political side of the debate.

While passing a standalone bill is possible, it's nearly impossible. Must-pass legislation is a different animal. Key players in the must-pass legislation are the leaders of the House and Senate, along with the leaders of the tax committees in the respective chambers.

Many tax incentives for individuals are virtually guaranteed be included, but for a variety of reasons–some political, others fiscal–business provisions

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(which include the NMTC, PTC, Section 179D and 45L incentives) require a push.

One way to improve the odds of passage is to set up negotiating chips early, which is what the Democrats in the House did when they included many incentives in their extenders bill, but excluded accelerated depreciation for racehorses. The reason? That's a provision that Senate Majority Leader Mitch McConnell, R-Ky., wants for his state. The idea was to hold that back as a bargaining chip to get McConnell's agreement on a provision he might otherwise dislike, such as the PTC.

Another way to improve the odds of inclusion is to get as many co-sponsors for legislation, evidenced by the New Markets Tax Credit Extension Act of 2019, which has 29 percent of the Senate and 21 percent of the House as co-sponsors.

## End Game

Whether it's fiscal year 2020 spending bill, legislation to increase spending caps or a bill to suspend the debt limit, community development tax incentive supporters enter the final part of 2019 with opportunities and hurdles.

Next year is a presidential election year, which makes legislation even more difficult to pass and draws deeper divides between Democrats and Republicans. With a Republican-controlled Senate and a Democrat-controlled House, any tax incentive or extender needs bipartisan support.

Oct. 1 this year is more important than ever.

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