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CCH Tax Briefing

# Trade Legislation Tax Provisions

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Special Report

## HIGHLIGHTS

- HCTC Extended Through 2019
- Changes To Child Tax Credit
- Increased Information Return Penalties
- Enhanced Requirements To Claim Education Incentives
- Corporate Estimated Tax Shift
- Tax Benefits For Public Safety Officers
- Another Trade Bill Goes To Conference

## INSIDE



# Trade Package Includes Individual And Business Tax Provisions

Just before recessing for the Independence Day holiday, Congress passed two trade bills with important tax changes affecting individuals and businesses. The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (HR 2146) and the Trade Preferences Extension Act of 2015 (HR 1295) are expected to be signed into law by President Obama as soon as they reach the White House. A third trade bill, the Trade Facilitation and Enforcement Act of 2015 (HR 644) is going to a House-Senate conference to iron-out differences.

**IMPACT.** *HR 2146 and HR 1295 took a long and torturous path to passage after a number of parliamentary maneuvers and deal-making, with HR 1295 winning House approval on June 25, following approval by unanimous consent by the Senate. HR 2146 was approved separately by the Senate on June 24 and sent to the President. The tax provisions, while not front and center in media coverage of the legislation, impact a significant number of taxpayers and will play a role in tax planning for 2015 and subsequent years.*

## TRADE PREFERENCES EXTENSION ACT

The Trade Preferences Extension Act extends a number of trade agreements as well as trade adjustment assistance (TAA) and the Health Coverage Tax Credit (HCTC). It also revises several Tax Code provisions.

**COMMENT.** *Trade Adjustment Assistance (TAA) is a group of programs that provide federal job-training and other assistance to workers, firms, farmers, and communities that have been adversely impacted by foreign trade, including workers who have been separated from employment because their jobs moved overseas or as a result of increased imports.*

### Health Coverage Tax Credit

Individuals who qualify for Trade Adjustment Assistance (TAA) may be eligible for the HCTC. The HCTC under Code Sec. 35 provides a refundable credit for 72.5 percent of a covered individual's premiums for qualified health insurance of the individual and qualifying family members.

**Covered individuals.** Generally, a covered individual is an individual who is an eligible TAA recipient, an eligible alternative TAA recipient, an eligible Reemployment TAA recipient or an eligible Pension Benefit Guaranty Corporation (PBGC) pension recipient. An individual is an eligible PBGC pension recipient for any month if the individual is age 55 or over as of the first day of the month and receives a benefit for the month, any portion of which is paid by the PBGC. Certain family members may be eligible to receive the HCTC.

**Qualified Health Insurance.** Covered individuals may apply the HCTC to help offset the cost of qualified health insurance, which includes certain COBRA continuation coverage; coverage under a health insurance program offered to state employees or a comparable program; and certain coverage under a group health plan that is available through the employment of the eligible individual's spouse. Covered individuals cannot be enrolled in Medicaid, Medicare, CHIP, TRICARE, or certain other federal programs.

**IMPACT.** *The HCTC under Code Sec. 35(b)(1) is now available for months beginning before January 1, 2020. The HCTC expired after 2013. The Tax Preferences Extension Act makes the HCTC available retroactively to the start of 2014. Lawmakers directed the IRS to publicize the retroactive extension of the HCTC.*

**COMMENT.** *The Trade Preferences Extension Act includes a number of provisions describing the relationship between the HCTC and the Code Sec. 36B premium assistance tax credit, such as the HCTC's coordination with advance payments of the premium tax credit to prevent a double benefit.*

## Child Tax Credit

The Trade Preferences Extension Act limits the child tax credit for taxpayers who elect to exclude from gross income for a tax year any amount of foreign earned income or foreign housing costs. These taxpayers would not be able to claim the refundable portion of the child tax credit for the tax year.

**COMMENT.** *A U.S. citizen or resident living abroad may be eligible to elect to exclude from U.S. taxable income certain foreign earned income and foreign housing costs under Code Sec. 911. The maximum amount of foreign earned income that an individual may exclude in 2015 is $100,800. The maximum amount of foreign housing costs that an individual may exclude in 2015 is, in the absence of Treasury adjustment for geographic differences in housing costs, $16,128. The combined foreign earned income exclusion and housing cost exclusion may not exceed the taxpayer's total foreign earned income for the tax year.*

**IMPACT.** *The change is effective immediately and retroactively for tax years beginning after December 31, 2014.*

**IMPACT.** *This either-or decision to take the child credit or Code Sec. 911 exclusion applies to exclude a refundable child care credit if any amount is excluded under Code Sec. 911. Many middle- and lower-income taxpayers can qualify for a refund of the child tax credit. The refundable portion of the $1,000 child credit was expanded for tax years beginning after 2008 and before 2017 under earlier legislation.*

## Information Returns

A penalty may be imposed for filing information returns/furnishing payee statements after the due date or filing returns/furnishing payee statements without all required or corrected information, among other reasons. Penalties may be reduced if the failure is corrected within certain timeframes. The Trade Preferences Extension Act revises the penalty structure, effective for information returns and payee statements required to be filed/furnished after 2015.

> "The tax provisions… impact a significant number of taxpayers and will play a role in tax planning for 2015 and subsequent years."

**IMPACT.** *The penalty for a single failure would increase from $100 to $250; the maximum penalty for all failures during a calendar year would increase from $1.5 million to $3 million. If the failure is corrected within 30 days of the required filing date, the penalty for a single violation would increase to $50 (up from $30); the penalty for all failures would increase to $500,000 (up from $250,000). The lower limitations for persons with gross receipts of $5 million or less would increase.*

**COMMENT.** *If the failure to properly file a correct information return is due to intentional disregard of the rules, the penalty is at least $250 for each improper return, and there is no cap on the total penalties imposed. The penalty does not apply to certain inconsequential errors,de minimis failures, or failures due to reasonable cause.*

**COMMENT.** *Many information reporting requirements have specific penalty provisions for failure to provide the required information.*

## Education Incentives

Educational institutions are required to provide Form 1098-T, Tuition Statement, to students who attend their institution and file a copy of Form 1098-T with the IRS. Under the Trade Preferences Extension Act, the American Opportunity Tax Credit (the HOPE credit) and the Lifetime Learning Credit under Code Sec. 25A, as well as the tuition and fees deduction under Code Sec. 222, would not be allowed unless the taxpayer possesses a valid information return (Form 1098-T, Tuition Statement) from the educational institution.

**IMPACT.** *The provision is effective for tax years beginning after the date of enactment of the Trade Preferences Extension Act. Under current law, the Code Sec. 222 tuition and fees deduction expired on January 1, 2015; however the expectation is that another "extenders" bill will extend it, which presumably is the reason it was included now under the reporting rules.*

**IMPACT.** *The provision effectively means that taxpayers claiming these education incentives will have to wait to file their returns until they receive Form 1098-T, which could impact individuals who file early in the filing season in anticipation of a large refund.*

**COMMENT.** *In March 2015, the Treasury Inspector General for Tax Administration (TIGTA) estimated that more than 3.6 million taxpayers received some $5.6 billion in potentially erroneous education credits for Tax Year (TY) 2012. TIGTA identified nearly 2.1 million taxpayers who* *received education credits without a Form 1098-T.*

### *Educational Institutions*

The Trade Preferences Extension Act waives certain penalties for educational institutions that fail to file information returns with accurate taxpayer identification numbers (TINs) of students. The educational institution must certify that it properly requested the TIN but was unable to collect it from the student. The provision is effective for returns required to be made, and statements required to be furnished, after December 31, 2015.

### *Corporate Estimated Tax Shift*

Included in the Trade Preferences Extension Act is a corporate estimated tax shift, designed to accelerate revenues needed to offset some of the cost of other provisions in the Act. For corporations with at least $1 billion in assets, the amount of corporate estimated tax due in July, August or September 2020 is increased by eight percent and the amount of the next required installment is reduced to reflect the prior increase.

## TRADE PRIORITIES AND ACCOUNTABILITY ACT

The Bipartisan Congressional Trade Priorities and Accountability Act (HR 2146) contains Trade Promotion Authority (TPA) for the Trans-Pacific Partnership. The bill also includes the Defending Public Safety Employees' Retirement Act.

### *Public Safety Officers*

Generally, taxpayers who receive an early distribution from a qualified retirement plan are subject to a 10 percent penalty, unless an exemption exists. Current law provides an exemption for qualified public safety officers. The Defending Public Safety Employees' Retirement Act expands the exemption to include certain federal law enforcement officers, federal firefighters, customs and border protection officers, and air traffic controllers. The provision applies to distributions made after December 31, 2015.

**IMPACT.** *Many federal public safety officers are able to retire at age 50 after 20 years of service. The bill is intended to provide penalty relief to these individuals.*

## TRADE FACILITATION AND ENFORCEMENT ACT

The House and Senate have approved different versions of the Trade Facilitation and Enforcement Act (HR 644) and are seeking to resolve their differences in a House-Senate conference. The House version would increase the penalty for failure to file a return. The Senate version would deny or revoke a U.S. passport in case of seriously delinquent tax debts.

**COMMENT.** *The House version would increase the $135 amount under Code Sec. 6651(a) to $205.*

**COMMENT.** *The Senate version defines a seriously delinquent tax debt as including any outstanding debt for federal taxes in excess of $50,000, including interest and any penalties, for which a notice of lien or a notice of levy has been filed. A debt would not be considered seriously delinquent if the taxpayer entered into an installment agreement or an offer in compromise or collection is suspended because collection due process or innocent spouse relief was requested.*