

A few comments and links for the extenders bill – PL 114-113 (12/18/15) + Sections 179 and 25D as amended

The extenders bill includes a lot of changes. While only about 52 provisions expired at 12/31/14, the extenders legislation included over 120 tax changes. [P.L. 114-113](#) (12/18/15) – [H.R. 2029](#), Consolidated Appropriations Act 2016 – includes appropriations and other changes along with the Protecting Americans from Tax Hikes Act of 2015 (PATH), which is the extenders bill (and more). P.L. 114-113 also extends the Internet Tax Freedom Act to 10/1/16.

The bulk of the tax changes are in PATH (Division Q of PL 114-113), although a few, including a 2 year extension of the Cadillac ACA tax (\$49801) from 2018 to 2020 (and making it deductible) are in the appropriations bill H.R. 2029 (see [1 page summary](#) of the non-PATH tax changes from the House Ways and Means Committee; Division P of the full legislation). In addition, the appropriations bill (Sec. 633) extends the Internet Tax Freedom Act to 10/1/16.

For several of the changes, you really need to see the changes inserted into the Code section as it existed before the change to get the full effect of the change. I have two examples below – Section 179 and Section 25D.

CAUTION: When you read Code sections modified by PL 114-113 (or by any other legislation), be sure to confirm the effective dates of the changes. Even for multiple changes to the same Code section, the effective dates might not be the same. For example, the PATH changes to Section 179 (shown below) include the higher dollar amounts that are effective for tax years beginning after 2014, but also includes changes to remove the \$250,000 limit for qualified real property, but that change is effective for tax years beginning after 2015. The language from PL 114-113 on the effective dates for the Section 179 changes are shown below following the text of changed Section 179.

Links/Resources to PL 114-113

Full legislation (appropriations and PATH) - [2009 page double-spaced version](#) or the [single-spaced 887 page version](#).

- Changes in the appropriations bill are in Division P.
- Changes in PATH (extenders) are in Division Q.

Resources on PATH (extenders):

- [Overview](#) from House Ways and Means Committee (4 pages)
- [Section-by-Section summary](#) from Senate Finance Committee (20 pages).
- [Text of PATH](#) (233 pages) – there are 127 sections in PATH representing over 127 changes to the law as many of the sections, such as Sec. 124 dealing with changes to §179 that have multiple changes in them.
- [Text of PATH with links to each of the 127 sections](#).
- Joint Committee on Taxation documents:
 - Technical Explanation ([JCX-144-15](#) (12/17/15) (268 pages)
 - Estimated Revenue Budget Effects ([JCX-143-15](#); 12/16/15)

- Estimated Budget Effects (non-PATH items) ([JCX-142-15](#); 12/16/15)
- Ways and Means Committee [statement](#) on the “cost” of tax extenders.
- 12/15/15 [press release](#) from Senators Hatch and Wyden and Congressman Brady.

§ 179 - Election to expense certain depreciable business assets

(a) Treatment as expenses. A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) Limitations

(1) Dollar limitation. The aggregate cost which may be taken into account under subsection

(a) for any taxable year ~~shall not exceed \$500,000~~~~shall not exceed—~~

~~(A) \$250,000 in the case of taxable years beginning after 2007 and before 2010,~~

~~(B) \$500,000 in the case of taxable years beginning after 2009 and before 2015, and~~

~~(C) \$25,000 in the case of taxable years beginning after 2014.~~

(2) Reduction in limitation. The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year ~~exceeds—~~~~exceeds \$2,000,000.~~

~~(A) \$800,000 in the case of taxable years beginning after 2007 and before 2010,~~

~~(B) \$2,000,000 in the case of taxable years beginning after 2009 and before 2015, and~~

~~(C) \$200,000 in the case of taxable years beginning after 2014.~~

(3) Limitation based on income from trade or business

(A) In general. The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) Carryover of disallowed deduction. The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

- (C) Computation of taxable income. For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.
- (4) Married individuals filing separately. In the case of a husband and wife filing separate returns for the taxable year—
- (A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and
 - (B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.
- (5) Limitation on cost taken into account for certain passenger vehicles
- (A) In general. The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed \$25,000.
 - (B) Sport utility vehicle. For purposes of subparagraph (A)—
 - (i) In general. The term “sport utility vehicle” means any 4-wheeled vehicle—
 - (I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),
 - (II) which is not subject to section 280F, and
 - (III) which is rated at not more than 14,000 pounds gross vehicle weight.
 - (ii) Certain vehicles excluded. Such term does not include any vehicle which—
 - (I) is designed to have a seating capacity of more than 9 persons behind the driver’s seat,
 - (II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or
 - (III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(6) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any taxable year beginning after 2015, the dollar amounts in paragraphs (1) and (2) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2014’ for ‘calendar year 1992’ in subparagraph (B) thereof.

(B) ROUNDING.—The amount of any increase under subparagraph (A) shall be rounded to the nearest multiple of \$10,000.

(c) Election

- (1) In general. An election under this section for any taxable year shall—
- (A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and
 - (B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

- (2) Election ~~irrevocable~~. Any election made under this section, and any specification contained in any such election, ~~may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2015~~ may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) Definitions and special rules

- (1) Section 179 property. For purposes of this section, the term "section 179 property" means property—

(A) which is—

- (i) tangible property (to which section 168 applies), or
- (ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i) ~~and to which section 167 applies, to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2015,~~

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) ~~and shall not include air conditioning or heating units.~~

- (2) Purchase defined. For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

- (i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or
- (ii) under section 1014(a) (relating to property acquired from a decedent).

- (3) Cost. For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

- (4) Section not to apply to estates and trusts. This section shall not apply to estates and trusts.
 - (5) Section not to apply to certain noncorporate lessors. This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—
 - (A) the property subject to the lease has been manufactured or produced by the lessor, or
 - (B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.
 - (6) Dollar limitation of controlled group. For purposes of subsection (b) of this section—
 - (A) all component members of a controlled group shall be treated as one taxpayer, and
 - (B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.
 - (7) Controlled group defined. For purposes of paragraphs (2) and (6), the term “controlled group” has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears in section 1563(a)(1).
 - (8) Treatment of partnerships and S corporations. In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.
 - (9) Coordination with section 38. No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).
 - (10) Recapture in certain cases. The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.
- (e) Special rules for qualified disaster assistance property
- (1) In general. For purposes of this section—
 - (A) the dollar amount in effect under subsection (b)(1) for the taxable year shall be increased by the lesser of—
 - (i) \$100,000, or
 - (ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year, and
 - (B) the dollar amount in effect under subsection (b)(2) for the taxable year shall be increased by the lesser of—
 - (i) \$600,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year.

(2) Qualified section 179 disaster assistance property. For purposes of this subsection, the term “qualified section 179 disaster assistance property” means section 179 property (as defined in subsection (d)) which is qualified disaster assistance property (as defined in section 168(n)(2)).

(3) Coordination with empowerment zones and renewal communities. For purposes of sections 1397A and 1400J, qualified section 179 disaster assistance property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 disaster assistance property into account for purposes of this subsection.

(4) Recapture. For purposes of this subsection, rules similar to the rules under subsection (d)(10) shall apply with respect to any qualified section 179 disaster assistance property which ceases to be qualified section 179 disaster assistance property.

(f) Special rules for qualified real property

(1) In general. If a taxpayer elects the application of this subsection for any taxable year ~~beginning after 2009 and before 2015~~, the term “section 179 property” shall include any qualified real property which is—

- (A) of a character subject to an allowance for depreciation,
- (B) acquired by purchase for use in the active conduct of a trade or business, and
- (C) not described in the last sentence of subsection (d)(1).

(2) Qualified real property. For purposes of this subsection, the term “qualified real property” means—

- (A) qualified leasehold improvement property described in section 168(e)(6),
- (B) qualified restaurant property described in section 168(e)(7), and
- (C) qualified retail improvement property described in section 168(e)(8).

~~(3) Limitation. For purposes of applying the limitation under subsection (b)(1)(B), not more than \$250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.~~

~~(4) Carryover limitation—~~

~~(A) In general. Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2014.~~

~~(B) Treatment of disallowed amounts. Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2014 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.~~

~~(C) Amounts carried over from 2010, 2011, 2012, and 2013. If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer’s last taxable year beginning in 2014, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in~~

~~service on the first day of the taxpayer's last taxable year beginning in 2014. For the last taxable year beginning in 2014, the amount determined under subsection (b)(3)(A) for such taxable year shall be determined without regard to this paragraph.~~

~~(D) Allocation of amounts. For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—~~

~~(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to~~

~~(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.~~

~~For purposes of the preceding sentence, only section 179 property with respect to which an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.~~

Effective Dates of PATH changes to §179 (PL 114-113, Sec. 124):

(g) EFFECTIVE DATES.—

(1) EXTENSION.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2014.

(2) MODIFICATIONS.—The amendments made by subsections (c)(2) and (e) shall apply to taxable years beginning after December 31, 2015.*

*(c) SPECIAL RULES FOR TREATMENT OF QUALIFIED REAL PROPERTY.—

(2) MADE PERMANENT.—Section 179(f), as amended by paragraph (1), is amended—

(A) by striking “beginning after 2009 and before 2016” in paragraph (1), and

(B) by striking paragraphs (3) and (4).

(e) AIR CONDITIONING AND HEATING UNITS.—Section 179(d)(1) is amended by striking “and shall not include air conditioning or heating units”.

§25D - Residential energy efficient property

(a) Allowance of credit. In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

- (1) ~~30 percent~~[the applicable percentage](#) of the qualified solar electric property expenditures made by the taxpayer during such year,
- (2) ~~30 percent~~[the applicable percentage](#) of the qualified solar water heating property expenditures made by the taxpayer during such year,
- (3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,
- (4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year, and
- (5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.

(b) Limitations

(1) Maximum credit for fuel cells. In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed \$500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.

(2) Certification of solar water heating property. No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) Carryforward of unused credit. If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(d) Definitions. For purposes of this section—

- (1) Qualified solar water heating property expenditure. The term “qualified solar water heating property expenditure” means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.
- (2) Qualified solar electric property expenditure. The term “qualified solar electric property expenditure” means an expenditure for property which uses solar energy to generate

electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

(3) Qualified fuel cell property expenditure. The term “qualified fuel cell property expenditure” means an expenditure for qualified fuel cell property (as defined in section 48(c)(1)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

(4) Qualified small wind energy property expenditure. The term “qualified small wind energy property expenditure” means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(5) Qualified geothermal heat pump property expenditure

(A) In general. The term “qualified geothermal heat pump property expenditure” means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(B) Qualified geothermal heat pump property. The term “qualified geothermal heat pump property” means any equipment which—

(i) uses the ground or ground water as a thermal energy source to heat the dwelling unit referred to in subparagraph (A) or as a thermal energy sink to cool such dwelling unit, and

(ii) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made.

(e) Special rules For purposes of this section—

(1) Labor costs. Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in subsection (d) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

(2) Solar panels. No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (d) solely because it constitutes a structural component of the structure on which it is installed.

(3) Swimming pools, etc., used as storage medium. Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

(4) Fuel cell expenditure limitations in case of joint occupancy. In the case of any dwelling unit with respect to which qualified fuel cell property expenditures are made and which is

jointly occupied and used during any calendar year as a residence by two or more individuals, the following rules shall apply:

- (A) Maximum expenditures for fuel cells. The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be \$1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.
- (B) Allocation of expenditures. The expenditures allocated to any individual for the taxable year in which such calendar year ends shall be an amount equal to the lesser of—
 - (i) the amount of expenditures made by such individual with respect to such dwelling during such calendar year, or
 - (ii) the maximum amount of such expenditures set forth in subparagraph (A) multiplied by a fraction—
 - (I) the numerator of which is the amount of such expenditures with respect to such dwelling made by such individual during such calendar year, and
 - (II) the denominator of which is the total expenditures made by all such individuals with respect to such dwelling during such calendar year.

- (5) Tenant-stockholder in cooperative housing corporation. In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(6) Condominiums

- (A) In general. In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.
- (B) Condominium management association. For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

- (7) Allocation in certain cases. If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

(8) When expenditure made; amount of expenditure

- (A) In general. Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.
- (B) Expenditures part of building construction. In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be

treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

- (f) Basis adjustments. For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) APPLICABLE PERCENTAGE.—For purposes of paragraphs (1) and (2) of subsection (a), the applicable percentage shall be—

(1) in the case of property placed in service after December 31, 2016, and before January 1, 2020, 30 percent,

(2) in the case of property placed in service after December 31, 2019, and before January 1, 2021, 26 percent, and

(3) in the case of property placed in service after December 31, 2020, and before January 1, 2022, 22 percent.

(h) Termination. The credit allowed under this section shall not apply to property placed in service after December 31, 2016 (December 31, 2021, in the case of any qualified solar electric property expenditures and qualified solar water heating property expenditures).

Effective Date of PATH changes to §25D (Sec. 304):

Changes by Section 304 of Division P of P.L. 114-113 are effective on 1/1/17.