

Small Business Notes

Minnesota Department of Employment and
Economic Development (MN DEED)

President Signs Tax Extender Bill

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On December 18, 2015 the President signed the long-awaited “Protecting Americans From Tax Hikes (PATH) Act of 2016.” Among its major provision of interest to small business are the following.

IRC Section 179 expensing. The act makes permanent the previous business expense limitation and phase-out amount that were in place from 2010 to 2014 (\$500,000 limitation and \$2 million phase out) rather than the scheduled drop to \$25,000 and \$200,000. The permanent amounts will be indexed for inflation beginning in 2016.

Research and development credit. The act makes permanent the R&D credit and, starting in 2016, allows small businesses with gross receipts under \$50 million to claim the credit against the business’ alternative minimum tax liability. In addition, certain small start-ups can use the credit against federal employer tax (FICA) liability.

Qualified small business stock. The act extends the temporary exclusion of one hundred percent of gains on qualified small business stock held for more than five years.

S corporation gains. The act makes permanent the rule reducing to five years the period for which an S corporation must hold its assets following conversion from a C corporation in order to avoid the built-in gain tax.

Employer credit for wages for employees called to active duty military service. The act makes permanent the 20 percent employer wage credit for employees called to active military duty. In 2016 the credit expands to employers of any size rather than the current law limit of 50 or fewer employees.

New markets tax credit. The act extends the credit through 2019 and authorizes the allocation of \$3.5 billion in credits for each year from 2015 through 2019.

Work opportunity tax credit. The act extends the work opportunity credit through 2019, modifies it to apply to employers who hire individuals unemployed for 27 weeks or more, and increases the credit to 40 percent of the first \$6,000 in wages.

Securities Law Changes Found Deep in New Transportation Law

On December 4, 2015, the president signed into law the Fixing America's Surface Transportation (FAST) Act. Contained in that law are several important changes to federal securities law.

Road shows. The Act provides that road shows associated with an initial public offering may begin fifteen days after the issuer's confidential registration statement has been made public. Previously the waiting period was 21 days.

Emerging growth company status. Federal law defines an emerging growth company as an issuer that has not more than \$1 billion in gross revenue in the preceding year. The FAST Act provides that a company that had emerging growth status at the time of its filing of a confidential registration statement or an initial public offering registration but then ceases to meet the definition may continue to be treated as an emerging growth company through the date of its initial public offering or the end of one year from the date on which the company ceases to be an emerging growth company, whichever is earlier.

Restricted securities exemption. The Act provides codification to the exemption for sale of restricted securities (for example, so called "founders' stock") to allow sales to an accredited investor provided no general solicitation is used and, in the case of a non-public company, the seller and the buyer of the stock have obtained current financial information from the issuer. Securities sold under this exemption are exempt from state regulation.

Additional changes are required by the Act to SEC forms and the SEC is directed to conduct, and report to Congress, a study on ways in which Regulation S-K can be changed to reduce the filing burden on small issuers while still ensuring the disclosure of material information on the issuer.

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