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Year-End Tax Deal Achieves ACPPA Priorities



On Dec. 18, President Obama signed a year-end tax and budget deal that accomplishes several of ACPPA's policy priorities. Among other things, as described below, the Protecting Americans from Tax Hikes (or PATH) Act reinstates bonus depreciation, higher Sec. 179 expensing levels and the R&D tax credit for 2015 and beyond.

Bonus Depreciation. The PATH Act generally extends bonus depreciation for new property acquired and placed in service through 2019. The bonus depreciation amount is 50 percent for property placed in service during 2015, 2016 and 2017 and phases down to 40 percent in 2018 and 30 percent in 2019.

Bonus depreciation is an economic stimulus tool Congress has employed over the past decade and a half during economic downturns. The capital investment incentive allows companies to cut their tax bills by writing off a percentage (described above) of the cost of certain assets. To qualify for bonus depreciation in 2015, the equipment must meet the following criteria:

- The equipment must be depreciable under the modified accelerated cost recovery system (MACRS) and have a depreciation recovery period of 20 years or fewer. For an IRS chart detailing the MACRS recovery periods for various types of property, [click here](#).
- The original use of the equipment must commence with the taxpayer claiming the depreciation bonus after Dec. 31, 2014 (i.e., it must be new).
- The equipment must be purchased prior to Jan. 1, 2016.
- The equipment must be placed in service before Jan. 1, 2016. Certain equipment with a recovery period of 10 years or more and certain transportation property can be placed in service before Jan. 1, 2017 and still qualify for the depreciation bonus.

The deal also continues to allow taxpayers to elect to accelerate the use of alternative minimum tax (AMT) credits in lieu of bonus depreciation under special rules for property placed in service during 2015. The provision modifies the AMT rules beginning in 2016 by increasing the amount of unused AMT credits that may be claimed in lieu of bonus depreciation.

Sec. 179. The PATH act also permanently increased the Sec. 179 expensing level and phase out cap and indexed them for inflation. For 2015, companies can use Sec. 179 to expense up to \$500,000 worth of

Tax Deal Resources

- [IRS MARCS Periods](#)
- [PATH Act JCT Summary](#)
- [Tax Bill Explanation](#)
- [Legislative Text](#)
- [ACPPA's Tax Agenda](#)

capital investment as long as aggregate investment does not exceed \$2 million. For every dollar in excess of \$2 million, the expensing allowance is reduced by \$1, so companies making more than \$2.5 million in capital investments cannot take advantage of Sec. 179.

R&D tax credit. The PATH Act also makes the R&D tax credit permanent and makes some adjustments to the law. For example, starting in 2016, companies with less than \$50 million gross receipts can claim the credit against AMT liability and, in certain cases, against payroll tax (FICA) liability.

A detailed discussion of each section of the PATH Act from the Joint Committee on Taxation is [here](#) (the discussion of the R&D tax credit begins on page 25; the discussion of bonus depreciation starts on page 60; the discussion of Sec. 179 starts on page 37). A section-by-section explanation of the tax bill from the House Ways & Means Committee is [here](#). The full text of the legislation is [here](#).

While enactment of the PATH Act is welcome news, there is more left for Congress to do on the tax front. ACPPA's other tax policy priorities include reducing the corporate tax rate, identifying revenue streams to support infrastructure programs and, in the context of tax reform, protecting parts of the tax code that encourage capital investment (e.g., the business interest and domestic manufacturing deductions). More about ACPPA's tax agenda is available [here](#).

Omnibus Spending Bill is a Mixed Bag

On Dec. 18, the president signed a \$1.1 trillion spending bill to keep the government open through Sept. 30, 2016 that was overwhelmingly approved earlier in the day by the House and Senate.

While budget certainty is welcomed, unfortunately, the new funding law included a slight reduction in Clean Water and Drinking Water State Revolving Fund (SRF) program investment levels. For the duration of the 2016 fiscal year, the Clean Water SRF will receive \$1.39 billion (a \$50 million cut) and the Drinking Water SRF will get \$863 million (a \$43 million reduction). ACPPA will continue to prioritize restoring SRF funding and encouraging private investment in water infrastructure projects.

Importantly, absent from the spending package is problematic language subverting the Bureau of Reclamation's judgment on corrosion prevention and the "Corrosion Considerations for Buried Metallic Water Pipe" technical memorandum for determining the type of pipe used in projects.

In addition, the omnibus appropriations bill contained several policy riders pushed by the broader business community and the construction industry:

- **Crude Oil Exports.** The omnibus lifts the crude oil export ban, which will create more than \$26 billion in economic activity and support more than 124,000 jobs, many of them in the supply chain (i.e., companies that provide goods and services to oil and gas producers).
- **"Cadillac" Tax.** Congress approved a provision to delay the "Cadillac" tax until 2020, a huge victory for the business community. A central piece of the Affordable Care Act, the tax imposes a 40 percent levy starting in 2018 on health plans valued at more than \$10,200 for individual coverage and \$27,500 for a family (it only applies to the amounts that exceed the threshold).

- **Hours-of-Service.** The omnibus prevents enforcement of two controversial parts of the Federal Motor Carrier Safety Administration's hours of service regulations, including the requirement that a 34-hour restart include two 1 a.m. to 5 a.m. periods and the once-per-week limit applied to the restart's use. Before enforcement, the spending law mandates the agency to clearly demonstrate the restart provision benefits.

Supreme Court to Review Jurisdictional Rights Under Clean Water Act

The U.S. Supreme Court has announced it will consider whether "jurisdictional determinations" made by the Army Corps of Engineers under the Clean Water Act (CWA) are subject to judicial review. The case ([Hawkes Co., Inc. v. U.S. Army Corps of Engineers](#)), which was last heard by the U.S. Court of Appeals for the 8th Circuit, involves the right of a company to challenge in court a determination that property contains wetlands that qualify as "waters of the United States."



When the Corps makes a jurisdictional determination that waters regulated under the Clean Water Act are present on a particular site, landowners must seek appropriate permits before developing the land. The district and appellate courts were split on whether these determinations were immediately subject to judicial review or developers must wait for enforcement action.

In a previous hearing considering CWA oversight, the Supreme Court determined that getting a federal wetlands permit costs more than \$200,000 and years of waiting before likely rejection. Providing applicants with the potential for immediate legal remedy of the jurisdictional determination could save precious time and financial resources for American industry. The Court's final decision in *Hawkes* could provide such an avenue for landholders.

In October, the U.S. Court of Appeals for the 6th Circuit issued a [nationwide stay of enforcement](#) of a new rule redefining the scope of "waters of the United States." Considering that the expanded "waters" definition would dramatically impact federal and local collaboration in wetlands and industrial oversight, the 6th Circuit determined the expanded definition sought by the Corps and the Environmental Protection Agency in [the rule issued May 27](#) should be delayed until the many legal challenges against it could be resolved.

While the *Hawkes* case is legally unrelated to the expanded definition, the right of judicial review will be an essential tool for businesses seeking to mitigate the impact of agency attempts to expand jurisdiction over wetlands. Visit [ACPPA-action.org](#) and help the association fight to stave off these harmful and unnecessary regulations.

President Signs Multi-Year Surface Transportation Bill into Law

Following overwhelming House ([359-65](#)) and Senate ([83-16](#)) approval, on Dec. 4, President Obama signed into law the [Fixing America's Surface Transportation \(FAST\) Act](#) (H.R. 22), a five-year, \$305 billion initiative (including \$207.4 billion for the federal highway program). Here are the highlights:



- **Funding.** The FAST Act provides \$207.4 billion over five years for the federal-aid highway program, a slight annual increase over MAP-21 (the last surface transportation authorization law). Despite urging by industry allies, Congress chose not to replenish the Highway Trust Fund (HTF) by increasing user fees (e.g., increasing the gas tax). Instead, the roughly \$70 billion needed to fully fund the FAST Act and supplement the projected five-year HTF shortfall will essentially be a combination of general fund transfers resulting from savings and revenues generated by:
 - Passport revocation for “seriously delinquent” taxpayers
 - Federal Reserve Board dividend payment reduction and surplus account transfer
 - Strategic Petroleum Reserve sale of 66 million barrels of oil
 - Customs fees on airline and cruise passengers
 - Internal Revenue Service hiring private tax collectors
 - Office of Natural Resources Revenue royalty overpayment fix
- **WIFIA Fix.** The FAST Act removes a limitation prohibiting projects funded under the Water Infrastructure Finance & Innovation Act (WIFIA) from being funded with tax-exempt financing tools. WIFIA’s effectiveness has been severely hindered by a bar on using tax-exempt financing (such as private activity bonds) to partially fund any project that also receives WIFIA assistance. Since WIFIA loans are only able to fund up to 49 percent of a project, local communities are left with a significant barrier to acquiring the remainder of the financing. The modification will allow local communities to take full advantage of the program by giving the option to use tax-exempt financing and other public-private partnerships in combination with WIFIA funds for major water and wastewater projects.
- **Permit Streamlining.** The Fast Act creates a new Permitting Council to establish best practices and model timelines with the goal of reducing the federal permitting process. The council’s authority extends to any project requiring authorization or environmental reviews from a federal agency involving infrastructure construction for renewable, conventional energy production, electricity transmission and pipelines as well as surface transportation, aviation, ports and waterways. The hope is that the council will help expedite the approval of a vast array of infrastructure projects. The FAST Act contains several other provisions aimed to expedite the environmental review process.
- **Export-Import Bank.** The FAST ACT includes a provision to renew and reauthorize the Export-Import Bank through 2019, a top priority for the business community.

Every Student Succeeds with Technical Skills



On Dec. 10, President Obama signed the [Every Student Succeeds Act](#) (S. 1177), after it passed both houses of Congress by overwhelming, bipartisan majorities. The legislation replaces No Child Left Behind, which became law in 2002 and was much-maligned for over-relying on standardized testing to assess and incentivize school and student performance.

By 2020, S. 1177 will increase total appropriations for early and secondary education programs by nearly 12 percent, with money identified for teacher development, school improvement and programs to target disadvantaged and underperforming students. Although the law

maintains the testing structure so unpalatable under No Child Left Behind, it shifts authority for mitigating sub-par results on those tests to state education authorities.

The new law places high value on science, technology, engineering and math (STEM) programs. By including technology and engineering into assessment regimes, allowing states to fund professional development and pay differentials for teachers of STEM-related subjects and creating standards for the use of federal funds in support of science and math, S. 1177 broadly empowers schools to provide useful skills for elementary and secondary students.

For the infrastructure industry, the focus on these disciplines is an important development. As reported in a [2013 Brookings Institution study](#), half of all STEM jobs are in manufacturing, health care or construction and are available to workers without a four-year college degree. The Every Student Succeeds Act encourages schools to provide all students with a solid foundation in these disciplines. The market for future technical workers will be strengthened by core training in hands-on, applied skills.

For a complete assessment of S. 1177's commitment to STEM programs, review the [STEM Education Coalition's analysis](#) of the law.

Pressure Pipe Post

ACPPA's Monthly Source for Industry News

December 2015

To keep members aware of the activities of government and standards organizations, we regularly sweep public databases and publications for the industry-specific terms indicated below. We then provide our members with links to documents identified in the search. Please note that in some cases the URLs may link to subscription-only databases. The purpose of this service is to identify emerging threats and trends as well as opportunities for collective action by ACPPA.

NEWS RESULTS

Pipes

Industry Cooperation Key to Improving Infrastructure Pipeline Safety

12/01/15 <http://www.pgionline.com/industry-cooperation-key-improving-infrastructure-pipeline-safety?page=show>

If one looks at the United States, a newcomer in terms of developed countries, as an incubator of developing technologies, it becomes apparent that what is underfoot is a veritable cacophony of pipe systems. For example, in 1815, clay pipe was first installed for water in Washington, D.C.

Do Aging Pipes Pose an Unseen Threat?

12/16/15 <http://www.lamorindaweekly.com/archive/issue0921/Do-Aging-Pipes-Pose-an-Unseen-Threat.html>

With about 4,200 miles of aging water pipeline, EBMUD is currently replacing 10 miles of pipe each year, but is looking to quadruple that replacement rate to 40 miles per year in the future, according to EBMUD Senior Public Information Representative Abby Figueroa.

Cement & Concrete

Research Delivers Insight into the United States Cement & Concrete Additives Industry Report for 2015

12/09/15 <http://prsync.com/wiseguyreports/research-delivers-insight-into-the-united-states-cement--concrete-additives-industry-report-for--811923/>

The United States Cement & Concrete Additives Industry 2015 Market Research Report is a professional and in-depth study on the current state of the Cement & Concrete Additives industry. The report provides a basic overview of the industry including definitions, classifications, applications and industry chain structure.

Water Usage

Improving Mandatory State Cutbacks of Urban Water Use for a 5th Year of Drought

12/13/15 <http://californiawaterblog.com/2015/12/13/improving-mandatory-state-cutbacks-of-urban-water-use-for-a-5th-year-of-drought/>

There is usually great uncertainty about when a drought will end, but certainty that longer droughts bring tougher economic and ecosystem conditions as water in aquifers and reservoirs is further depleted. Long droughts, like the current one, also bring opportunities to use water more efficiently, based on lessons from the drought so far.

Coal & Fly Ash

Federal Agency Takes Soil Test Samples Along Wabash River to Find Impact of Coal Tar

12/04/15 <http://www.greenfieldreporter.com/view/story/c1a0f04615d541ceb88c4bafb5281148/IN--Wabash-River-Testing>

The federal Environmental Protection Agency says it has taken soil test samples along a drainage ditch that empties into the Wabash River to see if there has been coal tar contamination.

Pipeline Rush in Upper Midwest: Gas to Replace Coal

12/07/15 <http://www.pipelineandgasjournal.com/pipeline-rush-upper-midwest-gas-replace-coal>

What Copello was alluding to was the heavy interest – particularly in the Upper Midwest – in switching or replacing coal-generation plants with gas-fired facilities, and that is keeping the demand for more gas pipeline infrastructure in play. “Pipeline construction remains healthy as there is always a need for more pipe as the shale plays continue to produce more and more supplies.”

The Trouble with Coal: Is the Lansing Ash Landfill Dangerous?

12/09/15 http://www.ithaca.com/news/the-trouble-with-coal-is-the-lansing-ash-landfill-dangerous/article_48714f46-987c-11e5-a16d-9313cff3da86.html

This was the essence of the argument made by Mark Quarles, an environmental consultant from Nashville, Tennessee, when he gave a presentation about contamination leaking from the coal-combustion waste landfills at the Cayuga power plant in Lansing to the county Planning, Energy, and Environmental Quality (PEEQ) Committee on Sept. 16.

Headwaters Provides Update on American Coal Ash Associations Recent Findings on Utilization of Coal Combustion Products

12/14/15 <http://www.nbcrightnow.com/story/30738334/headwaters-provides-update-on-american-coal-ash-associations-recent-findings-on-utilization-of-coal-combustion-products>

Headwaters Incorporated, a building products company dedicated to improving lives through innovative advancements in construction materials, today provided an update on The American Coal Ash Association’s recent findings on utilization of coal combustion products.

Underground Infrastructure

Geospatial Releases GeoUnderground Version 2.2

12/21/15 <http://www.cioreview.com/news/geospatial-releases-geounderground-version-22-nid-6184-cid-93.html>

Geospatial that utilizes integrated technologies to determine the accurate location and positions of underground pipelines, conduits and other underground infrastructure data announces the release of GeoUnderground version 2.2 – a secure enterprise strength, location-based Infrastructure Management System delivered via the cloud in a SaaS model.

REGULATORY RESULTS

Steel Pressure Pipes

International Trade Commission | Final Phase Investigation | Welded Stainless Steel Pressure Pipe From India

12/20/15 <https://www.gpo.gov/fdsys/pkg/FR-2015-11-20/pdf/2015-29608.pdf>

On the basis of the record 1 developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of welded stainless steel pressure pipe from India.

Water Supply

Environmental Protection Agency | Proposed Rule and Notice of Public Meeting | Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 4) for Public Water Systems and Announcement of a Public Meeting

12/11/15 <https://www.gpo.gov/fdsys/pkg/FR-2015-12-11/pdf/2015-30824.pdf>

The U.S. Environmental Protection Agency (EPA) is proposing a Safe Drinking Water Act (SDWA) rule that requires public water systems to collect occurrence data for contaminants that may be present in tap water but are not yet subject to EPA’s drinking water standards set under SDWA.

Legislative Results

Water Supply

H.R.4220 | Introduced by Rep. Buck, Ken [R-CO-4] | Water and Agriculture Tax Reform Act of 2015

12/10/15 <https://www.congress.gov/bill/114th-congress/house-bill/4220>

To amend the Internal Revenue Code of 1986 to facilitate water leasing and water transfers to promote conservation and efficiency.

S.2358 | Sen. Brown, Sherrod [D-OH] | Clean Water Compliance and Affordability Act

12/03/15 <https://www.congress.gov/bill/114th-congress/senate-bill/2358>

To direct the Administrator of the Environmental Protection Agency to carry out a pilot program to work with municipalities that are seeking to develop and implement integrated plans to meet wastewater and stormwater obligations under the Federal Water Pollution Control Act, and for other purposes.