In December 2015, Congress passed and President Obama signed into law the Consolidated Appropriations Act (Senate amendment to H.R. 2029) and tax measures legislation. The legislation funds all federal agencies for the remainder of fiscal year 2016 (through Sept. 30, 2016) and makes significant changes in the tax code. The bill contains a number of provisions of interest to NRCA members, several of which have been priorities for NRCA’s government relations efforts during recent years.

The final bill contains the Protecting Americans from Tax Hikes (PATH) Act, legislation that contains tax relief provisions NRCA believes will benefit its members as they seek to grow their businesses. NRCA is particularly pleased several tax provisions of importance have been extended on a permanent basis, providing greater certainty in tax policy and helping employers with investment planning for their businesses in the future.

During the past decade, many of these tax provisions had been authorized periodically on a temporary basis for only one to two years at a time, causing much uncertainty in tax and investment planning for roofing contractors and other employers. Most recently, these provisions had expired at the end of 2014, and without passage of the PATH Act, they would not have been reauthorized.

The PATH Act provides permanent extensions of small-business expensing provisions

Built-in gains tax
The bill provides for permanent extension of a provision that reduces the holding period for the Built-in Gains (BIG) tax from 10 years to five years. This is of great interest to certain pass-through businesses (those that pay their business taxes through the individual tax code) that have converted from a C corporation to an S corporation (or those businesses that may wish to convert in the future). The BIG tax is levied on such businesses at the highest corporate tax rate on the appreciation in asset value that existed on the date the corporation became an S corporation. Such businesses now will be able to take advantage of the shorter five-year built-in gains period, increasing their access to capital for investment.

Bonus depreciation
The bill provides a five-year extension of bonus depreciation, another important tool that supports business investment. This provision has been in place since 2008 and is aimed at helping businesses purchase business equipment. Businesses will continue to be able to use bonus depreciation on qualified property and equipment with a recovery period of 20 years or less during the next five years. The bonus depreciation percentage is 50 percent for property placed in service during 2015, 2016 and 2017 and then phases down, reducing to 40 percent in 2018 and 30 percent in 2019. The provision 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 and modifies the AMT rules beginning in 2016 by increasing the amount of unused AMT credits that may be claimed in lieu of bonus depreciation.

Investment tax credit
The rooftop solar sector scored a big win in the PATH Act with the extension of the renewable energy investment tax credit (ITC). The ITC is a 30 percent tax credit for renewable-energy systems on residential (IRC Section 25D) and commercial (IRC Section 48) properties. The credit originally was authorized by Congress in 2006 and had been scheduled to expire at the end of 2016. NRCA made the extension of the ITC a major focus of its legislative
Manufacturers should be pleased the tax credit for research and experimentation permanently has been extended by the PATH Act. This credit allows businesses that conduct “qualified research” (something that improves a “product, process, computer software, technique, formula, or invention which is to be held for sale, lease, or license, or used”) to write off a portion of their expenses. The new law now allows eligible small businesses ($50 million or less in gross receipts) to claim the credit against the AMT, which previously was not allowed. As well, small businesses ($5 million or less in gross receipts) can offset the credit against payroll tax liability (for up to five years).

Work opportunity tax credit

The PATH Act extends the work opportunity tax credit for five years, through calendar year 2019. This tax credit is available to employers for hiring individuals from certain targeted groups, such as qualifying veterans and unemployed workers, who have faced significant barriers to employment. The PATH Act also modifies the credit beginning in 2016 to apply to employers who hire qualified long-term unemployed individuals (those who have been unemployed for 27 weeks or more) and increases the credit with respect to such individuals to 40 percent of the first $6,000 in wages.

Residential energy-efficiency tax credit

The PATH Act contains a two-year extension (2015 and 2016) for the energy-efficiency tax credit for existing homes (IRC Section 25C). This 10 percent tax credit for energy-efficient improvements, including roof system improvements to residential building envelopes, originally was enacted by Congress in 2005 and is capped at $500 annually. The PATH Act includes new language to ensure all ENERGY STAR®-rated roofing products qualify for the credit. Previously, the credit only was available for “metal roofs with appropriate pigmented coatings” and “asphalt roofs with appropriate cooling granules.” NRCA worked closely with key lawmakers to have this clarifying language, a long-time objective, included in the bill.

Commercial building tax deduction

The PATH Act also contains a two-year extension (2015 and 2016) of the tax deduction for energy-efficient improvements to commercial buildings (IRC Section 179D). Originally enacted by Congress in 2005, this is a deduction of up to $1.80 per square foot for commercial buildings, including multifamily buildings that attain energy savings of 50 percent or more of a specific energy efficiency standard. The PATH Act establishes a new standard of ASHRAE 90.1-2007 for all properties placed in service after Dec. 31, 2015, updating the old ASHRAE 90.1-2001 standard. The deduction is based on the building floor area and can be prorated to 60 cents per square foot for buildings that achieve energy savings below the ASHRAE 90.1-2007 standard.

Research and experimentation tax credit

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Health Insurance Tax

For years, NRCA has been working in support of legislation to repeal the Health Insurance Tax (HIT) authorized by the Affordable Care Act. This new tax became effective in 2014 and is levied on health insurance companies that pass it on as premium increases to businesses and individuals who purchase health insurance in the fully insured market. This tax adds, on average, between $250 to $500 to the cost of a health plan annually. NRCA is pleased the PATH Act contains a one-year suspension of the HIT for calendar year 2017, giving small and midsized businesses affected by the tax a short reprieve. NRCA considers this an incremental victory and will continue to work in support of full repeal of this onerous tax.

Medical Device Excise Tax

The PATH Act also includes a suspension of the ACA’s tax on medical devices for calendar years 2016 and 2017. This tax imposes a nondeductible tax on the sale of any taxable medical device sold by a manufacturer, producer or importer of the device in the amount of 2.3 percent of the price for which the medical device is sold. Although not directly relevant to the roofing industry, this suspension of an ACA tax that serves to increase the cost of health care benefits is welcome news.

The PATH Act includes numerous other extensions and changes to the IRC. NRCA members are urged to check with their tax advisers about these and other provisions in the PATH Act that may be beneficial for reducing tax liability.

H-2B program

Given the difficult workforce development challenges faced by roofing contractors, NRCA worked in support of several amendments to the Consolidated Appropriations Act to improve the operation of the H-2B seasonal guest worker program. This program
is used by many NRCA members to fill seasonal job openings with foreign nonimmigrant workers when U.S. workers are not available.

The amendments included in the Consolidated Appropriations Act will provide relief from burdensome regulations issued in recent years by the Department of Labor that have made the program more cumbersome for employers to use. The amendments also would expand the number of visas issued for 2016 by exempting “returning workers” (workers who have participated in previous years and meet certain criteria) from the statutory annual cap of 66,000 visas for the program. This will allow the program to keep pace with economic conditions and allow more employers to participate in 2016. For more information about the H-2B program, visit www.dol.gov/whd/immigration/h2b.htm.

Successful relief
NRCA is pleased to see Congress work in a bipartisan effort to provide tax relief and greater certainty to employers, and it believes this tax package will serve as a bridge to consideration of comprehensive tax reform that provides further tax relief in 2017. NRCA will continue working with lawmakers in the House and Senate in support of pro-growth tax legislation that supports greater levels of economic growth in the construction industry.

If you have any questions or need more information about any of the legislative provisions, contact NRCA’s Washington, D.C., office at (800) 338-5765.

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