116TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
116–379

TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ON

H.R. 3301

TOGETHER WITH

DISSENTING VIEWS

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U.S. GOVERNMENT PUBLISHING OFFICE

39–389 WASHINGTON : 2020

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JANUARY 21, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3301]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3301) to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide disaster relief, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer Certainty and Disaster Tax Relief Act of 2019".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

(c) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—EXTENSION OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Tax Relief and Support for Families and Individuals

SEC. 101. EXCLUSION FROM GROSS INCOME OF DISCHARGE OF QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.

(a) IN GENERAL.—Section 108(a)(1)(E) is amended by striking "January 1, 2018" each place it appears and inserting "January 1, 2021".

(b) CONFORMING AMENDMENT.—Section 108(h)(2) is amended by inserting "and determined without regard to the substitution described in section 163(h)(3)(F)(i)(II)" after "clause (ii) thereof".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness after December 31, 2017.

SEC. 102. TREATMENT OF MORTGAGE INSURANCE PREMIUMS AS QUALIFIED RESIDENCE INTEREST.

(a) IN GENERAL.—Section 163(h)(3)(E)(iv)(I) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 2017.

SEC. 103. REDUCTION IN MEDICAL EXPENSE DEDUCTION FLOOR.

(a) IN GENERAL.—Section 213(f) is amended to read as follows:

"(f) TEMPORARY SPECIAL RULE.—In the case of taxable years beginning before January 1, 2021, subsection (a) shall be applied with respect to a taxpayer by substituting '7.5 percent' for '10 percent'.".

(b) ALTERNATIVE MINIMUM TAX.—Section 56(b)(1) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), (E), and (F), as subparagraphs (B), (C), (D), and (E), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2018.

SEC. 104. DEDUCTION OF QUALIFIED TUITION AND RELATED EXPENSES.

(a) IN GENERAL.—Section 222(e) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 105. BLACK LUNG DISABILITY TRUST FUND EXCISE TAX.

(a) IN GENERAL.—Section 4121(e)(2)(A) is amended by striking "December 31, 2018" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on and after the first day of the first calendar month beginning after the date of the enactment of this Act.

Subtitle B—Incentives for Employment, Economic Growth, and Community Development

SEC. 111. INDIAN EMPLOYMENT CREDIT.

(a) IN GENERAL.—Section 45A(f) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 112. RAILROAD TRACK MAINTENANCE CREDIT.

(a) IN GENERAL.—Section 45G(f) is amended by striking "January 1, 2018" and inserting "January 1, 2021".

(b) SAFE HARBOR ASSIGNMENTS.—Any assignment, including related expenditures paid or incurred, under section 45G(b)(2) of the Internal Revenue Code of 1986 for a taxable year beginning on or after January 1, 2018, and before January 1, 2019, shall be treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than 90 days following the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2017.

SEC. 113. MINE RESCUE TEAM TRAINING CREDIT.

(a) IN GENERAL.—Section 45N(e) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 114. 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.

(a) IN GENERAL.—Section 168(i)(15)(D) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2017.

SEC. 115. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATIONS.

(a) IN GENERAL.—Section 168(j)(9) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2017.

SEC. 116. EXPENSING RULES FOR CERTAIN PRODUCTIONS.

(a) IN GENERAL.—Section 181(g) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to productions commencing after December 31, 2017.

SEC. 117. EMPOWERMENT ZONE TAX INCENTIVES.

(a) IN GENERAL.—Section 1391(d)(1)(A)(i) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS.—In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2017.

SEC. 118. AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.

(a) IN GENERAL.—Section 119(d) of division A of the Tax Relief and Health Care Act of 2006 is amended—

(1) by striking "January 1, 2018" each place it appears and inserting "January 1, 2021",

(2) by striking "first 12 taxable years" in paragraph (1) and inserting "first 15 taxable years",

(3) by striking "first 6 taxable years" in paragraph (2) and inserting "first 9 taxable years", and

(4) by adding at the end the following flush sentence:

"In the case of a corporation described in subsection (a)(2), the Internal Revenue Code of 1986 shall be applied and administered without regard to the amendments made by section 401(d)(1) of the Tax Technical Corrections Act of 2018.".

(b) CONFORMING AMENDMENT.—Section 119(e) of division A of the Tax Relief and Health Care Act of 2006 is amended by inserting "(as in effect before its repeal)" after "section 199 of the Internal Revenue Code of 1986".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

Subtitle C—Incentives for Energy Production, Efficiency, and Green Economy Jobs

SEC. 121. BIODIESEL AND RENEWABLE DIESEL.

(a) INCOME TAX CREDIT.—

(1) IN GENERAL.—Section 40A(g) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to fuel sold or used after December 31, 2017.

(b) EXCISE TAX INCENTIVES.—

(1) TERMINATION.—

(A) IN GENERAL.—Section 6426(c)(6) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(B) PAYMENTS.—Section 6427(e)(6)(B) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to fuel sold or used after December 31, 2017.

(3) SPECIAL RULE.—Notwithstanding any other provision of law, in the case of any biodiesel mixture credit properly determined under section 6426(c) of the Internal Revenue Code of 1986 for the period beginning on January 1, 2018, and ending with the close of the last calendar quarter beginning before the date of the enactment of this Act, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act providing for a one-time submission of claims covering periods described in the preceding sentence. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest

from such date determined by using the overpayment rate and method under section 6621 of such Code.

SEC. 122. SECOND GENERATION BIOFUEL PRODUCER CREDIT.

(a) IN GENERAL.—Section 40(b)(6)(J)(i) is amended by striking "January 1, 2018" and inserting "January 1, 2021".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to qualified second generation biofuel production after December 31, 2017.

SEC. 123. NONBUSINESS ENERGY PROPERTY.

(a) IN GENERAL.—Section 25C(g)(2) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) TECHNICAL AMENDMENT.—Section 25C(d)(3) is amended—

(1) by striking "an energy factor of at least 2.0" in subparagraph (A) and inserting "a Uniform Energy Factor of at least 2.2", and

(2) by striking "an energy factor" in subparagraph (D) and inserting "a Uniform Energy Factor".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2017.

SEC. 124. QUALIFIED FUEL CELL MOTOR VEHICLES.

(a) IN GENERAL.—Section 30B(k)(1) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property purchased after December 31, 2017.

SEC. 125. ALTERNATIVE FUEL REFUELING PROPERTY CREDIT.

(a) IN GENERAL.—Section 30C(g) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2017.

SEC. 126. 2-WHEELED PLUG-IN ELECTRIC VEHICLE CREDIT.

(a) IN GENERAL.—Section 30D(g)(3)(E)(ii) is amended by striking "January 1, 2018" and inserting "January 1, 2021".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to vehicles acquired after December 31, 2017.

SEC. 127. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—The following provisions of section 45(d) are each amended by striking "January 1, 2018" each place it appears and inserting "January 1, 2021":

(1) Paragraph (2)(A).
(2) Paragraph (3)(A).
(3) Paragraph (4)(B).
(4) Paragraph (6).
(5) Paragraph (7).
(6) Paragraph (9).
(7) Paragraph (11)(B).

(b) EXTENSION OF ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—Section 48(a)(5)(C)(ii) is amended by striking "January 1, 2018 (January 1, 2020, in the case of any facility which is described in paragraph (1) of section 45(d))" and inserting "January 1, 2021".

(c) APPLICATION OF EXTENSION TO WIND FACILITIES.—

(1) IN GENERAL.—Section 45(d)(1) is amended by striking "January 1, 2020" and inserting "January 1, 2021".

(2) APPLICATION OF PHASEOUT PERCENTAGE.—Sections 45(b)(5)(C) and 48(a)(5)(E)(iii) are each amended by striking "and before January 1, 2020,".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2018.

SEC. 128. PRODUCTION CREDIT FOR INDIAN COAL FACILITIES.

(a) IN GENERAL.—Section 45(e)(10)(A) is amended by striking "12-year period" each place it appears and inserting "15-year period".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to coal produced after December 31, 2017.

SEC. 129. ENERGY EFFICIENT HOMES CREDIT.

(a) IN GENERAL.—Section 45L(g) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to homes acquired after December 31, 2017.

SEC. 130. SPECIAL ALLOWANCE FOR SECOND GENERATION BIOFUEL PLANT PROPERTY.

(a) IN GENERAL.—Section 168(l)(2)(D) is amended by striking "January 1, 2018" and inserting "January 1, 2021".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2017.

SEC. 131. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Section 179D(h) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to property placed in service after December 31, 2017.

SEC. 132. SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.

(a) IN GENERAL.—Section 451(k)(3) is amended by striking "January 1, 2018" and inserting "January 1, 2021".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after December 31, 2017.

SEC. 133. EXTENSION AND CLARIFICATION OF EXCISE TAX CREDITS RELATING TO ALTERNATIVE FUELS.

(a) EXTENSION.—

(1) IN GENERAL.—Sections 6426(d)(5) and 6426(e)(3) are each amended by striking "December 31, 2017" and inserting "December 31, 2020".

(2) OUTLAY PAYMENTS FOR ALTERNATIVE FUELS.—Section 6427(e)(6)(C) is amended by striking "December 31, 2017" and inserting "December 31, 2020".

(3) SPECIAL RULE.—Notwithstanding any other provision of law, in the case of any alternative fuel credit properly determined under section 6426(d) of the Internal Revenue Code of 1986 for the period beginning on January 1, 2018, and ending with the close of the last calendar quarter beginning before the date of the enactment of this Act, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act providing for a one-time submission of claims covering periods described in the preceding sentence. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to fuel sold or used after December 31, 2017.

(b) CLARIFICATION OF RULES REGARDING ALTERNATIVE FUEL MIXTURE CREDIT.—

(1) IN GENERAL.—Paragraph (2) of section 6426(e) is amended by striking "mixture of alternative fuel" and inserting "mixture of alternative fuel (other than a fuel described in subparagraph (A), (C), or (F) of subsection (d)(2))".

(2) EFFECTIVE DATE.—The amendment made by this section shall apply to—

(A) fuel sold or used on or after the date of the enactment of this Act, and

(B) fuel sold or used before such date of enactment, but only to the extent that credits and claims of credit under section 6426(e) of the Internal Revenue Code of 1986 with respect to such sale or use have not been paid or allowed as of such date.

SEC. 134. OIL SPILL LIABILITY TRUST FUND RATE.

(a) IN GENERAL.—Section 4611(f)(2) is amended by striking "December 31, 2018" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on and after the first day of the first calendar month beginning after the date of the enactment of this Act.

Subtitle D—Certain Provisions Expiring at the End of 2019

SEC. 141. NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Section 45D(f)(1) is amended by striking "and" at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting ", and", and by adding at the end the following new subparagraph:

"(H) $5,000,000,000 for 2020.".

(b) CARRYOVER OF UNUSED LIMITATION.—Section 45D(f)(3) is amended by striking "2024" and inserting "2025".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2019.

SEC. 142. EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE.

(a) IN GENERAL.—Section 45S(i) is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to wages paid in taxable years beginning after December 31, 2019.

SEC. 143. WORK OPPORTUNITY CREDIT.

(a) IN GENERAL.—Section 51(c)(4) is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work for the employer after December 31, 2019.

SEC. 144. CERTAIN PROVISIONS RELATED TO BEER, WINE, AND DISTILLED SPIRITS.

(a) EXEMPTION FOR AGING PROCESS OF BEER, WINE, AND DISTILLED SPIRITS.—

(1) IN GENERAL.—Section 263A(f)(4)(B) is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to interest costs paid or accrued after December 31, 2019.

(b) REDUCED RATE OF EXCISE TAX ON BEER.—

(1) IN GENERAL.—Paragraphs (1)(C) and (2)(A) of section 5051(a) are each amended by striking "January 1, 2020" and inserting "January 1, 2021".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to beer removed after December 31, 2019.

(c) TRANSFER OF BEER BETWEEN BONDED FACILITIES.—

(1) IN GENERAL.—Section 5414(b)(3) is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to calendar quarters beginning after December 31, 2019.

(d) REDUCED RATE OF EXCISE TAX ON CERTAIN WINE.—

(1) IN GENERAL.—Section 5041(c)(8)(A) is amended by striking "January 1, 2020" and inserting "January 1, 2021".

(2) CONFORMING AMENDMENT.—The heading of section 5041(c)(8) is amended by striking "SPECIAL RULE FOR 2018 AND 2019" and inserting "TEMPORARY SPECIAL RULE".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to wine removed after December 31, 2019.

(e) ADJUSTMENT OF ALCOHOL CONTENT LEVEL FOR APPLICATION OF EXCISE TAXES.—

(1) IN GENERAL.—Paragraphs (1) and (2) of section 5041(b) are each amended by striking "January 1, 2020" and inserting "January 1, 2021".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to wine removed after December 31, 2019.

(f) DEFINITION OF MEAD AND LOW ALCOHOL BY VOLUME WINE.—

(1) IN GENERAL.—Section 5041(h)(3) is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to wine removed after December 31, 2019.

(g) REDUCED RATE OF EXCISE TAX ON CERTAIN DISTILLED SPIRITS.—

(1) IN GENERAL.—Section 5001(c)(4) is amended by striking "December 31, 2019" and inserting "December 31, 2020".

(2) CONFORMING AMENDMENT.—The heading of section 5001(c) is amended by striking "REDUCED RATE FOR 2018 AND 2019" and inserting "TEMPORARY REDUCED RATE".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distilled spirits removed after December 31, 2019.

(h) BULK DISTILLED SPIRITS.—

(1) IN GENERAL.—Section 5212 is amended by striking "January 1, 2020" and inserting "January 1, 2021".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to distilled spirits transferred in bond after December 31, 2019.

(i) SIMPLIFICATION OF RULES REGARDING RECORDS, STATEMENTS, AND RETURNS.—

(1) IN GENERAL.—Section 5555(a) is amended by striking "January 1, 2020" and inserting "January 1, 2021".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to calendar quarters beginning after December 31, 2019.

SEC. 145. LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.

(a) IN GENERAL.—Section 954(c)(6)(C) is amended by striking "January 1, 2020" and inserting "January 1, 2021".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2019, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 146. CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 35(b)(1)(B) is amended by striking "January 1, 2020" and inserting "January 1, 2021".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning after December 31, 2019.

TITLE II—ESTATE AND GIFT TAX

SEC. 201. REDUCTION OF UNIFIED CREDIT AGAINST ESTATE TAX.

(a) IN GENERAL.—Section 2010(c)(3)(C) is amended by striking "January 1, 2026" and inserting "January 1, 2023".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying and gifts made after December 31, 2022.

TITLE III—DISASTER TAX RELIEF

SEC. 301. DEFINITIONS.

For purposes of this title—

(1) QUALIFIED DISASTER AREA.—

(A) IN GENERAL.—The term "qualified disaster area" means any area with respect to which a major disaster was declared, during the period beginning on January 1, 2018, and ending on the date which is 60 days after the date of the enactment of this Act, by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act if the incident period of the disaster with respect to which such declaration is made begins on or before the date of the enactment of this Act.

(B) DENIAL OF DOUBLE BENEFIT.—Such term shall not include the California wildfire disaster area (as defined in section 20101 of subdivision 2 of division B of the Bipartisan Budget Act of 2018).

(2) QUALIFIED DISASTER ZONE.—The term "qualified disaster zone" means that portion of any qualified disaster area which was determined by the President, during the period beginning on January 1, 2018, and ending on the date which is 60 days after the date of the enactment of this Act, to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of the qualified disaster with respect to such disaster area.

(3) QUALIFIED DISASTER.—The term "qualified disaster" means, with respect to any qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area.

(4) INCIDENT PERIOD.—The term "incident period" means, with respect to any qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred (except that for purposes of this title such period shall not be treated as beginning before January 1, 2018, or ending after the date which is 30 days after the date of the enactment of this Act).

SEC. 302. SPECIAL DISASTER-RELATED RULES FOR USE OF RETIREMENT FUNDS.

(a) TAX-FAVORED WITHDRAWALS FROM RETIREMENT PLANS.—

(1) IN GENERAL.—Section 72(t) of the Internal Revenue Code of 1986 shall not apply to any qualified disaster distribution.

(2) AGGREGATE DOLLAR LIMITATION.—

(A) IN GENERAL.—For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as qualified disaster distributions for any taxable year shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amounts treated as qualified disaster distributions received by such individual for all prior taxable years.

(B) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would (without regard to subparagraph (A)) be a qualified disaster distribution, a plan shall not be treated as violating any requirement of the Internal Revenue Code of 1986 merely because the plan treats such distribution as a qualified disaster distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $100,000.

(C) CONTROLLED GROUP.—For purposes of subparagraph (B), the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

(D) SPECIAL RULE FOR INDIVIDUALS AFFECTED BY MORE THAN ONE DISASTER.—The limitation of subparagraph (A) shall be applied separately with respect to distributions made with respect to each qualified disaster.

(3) AMOUNT DISTRIBUTED MAY BE REPAID.—

(A) IN GENERAL.—Any individual who receives a qualified disaster distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make 1 or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), of the Internal Revenue Code of 1986, as the case may be.

(B) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to subparagraph (A) with respect to a qualified disaster distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified disaster distribution in an eligible rollover distribution (as defined in section 402(c)(4) of such Code) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(C) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM IRAS.—For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to subparagraph (A) with respect to a qualified disaster distribution from an individual retirement plan (as defined by section 7701(a)(37) of such Code), then, to the extent of the amount of the contribution, the qualified disaster distribution shall be treated as a distribution described in section 408(d)(3) of such Code and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) DEFINITIONS.—For purposes of this subsection—

(A) QUALIFIED DISASTER DISTRIBUTION.—Except as provided in paragraph (2), the term "qualified disaster distribution" means any distribution from an eligible retirement plan made—

(i) on or after the first day of the incident period of a qualified disaster and before the date which is 180 days after the date of the enactment of this Act, and

(ii) to an individual whose principal place of abode at any time during the incident period of such qualified disaster is located in the qualified disaster area with respect to such qualified disaster and who has sustained an economic loss by reason of such qualified disaster.

(B) ELIGIBLE RETIREMENT PLAN.—The term "eligible retirement plan" shall have the meaning given such term by section 402(c)(8)(B) of the Internal Revenue Code of 1986.

(5) INCOME INCLUSION SPREAD OVER 3-YEAR PERIOD.—

(A) IN GENERAL.—In the case of any qualified disaster distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable-year period beginning with such taxable year.

(B) SPECIAL RULE.—For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) of the Internal Revenue Code of 1986 shall apply.

(6) SPECIAL RULES.—

(A) EXEMPTION OF DISTRIBUTIONS FROM TRUSTEE TO TRUSTEE TRANSFER AND WITHHOLDING RULES.—For purposes of sections 401(a)(31), 402(f), and 3405 of the Internal Revenue Code of 1986, qualified disaster distributions shall not be treated as eligible rollover distributions.

(B) QUALIFIED DISASTER DISTRIBUTIONS TREATED AS MEETING PLAN DISTRIBUTION REQUIREMENTS.—For purposes the Internal Revenue Code of 1986, a qualified disaster distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A) of such Code.

(b) RECONTRIBUTIONS OF WITHDRAWALS FOR HOME PURCHASES.—

(1) RECONTRIBUTIONS.—

(A) IN GENERAL.—Any individual who received a qualified distribution may, during the applicable period, make 1 or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Internal Revenue Code of 1986) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), of such Code, as the case may be.

(B) TREATMENT OF REPAYMENTS.—Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(3) shall apply for purposes of this subsection.

(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection, the term "qualified distribution" means any distribution—

(A) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F), of the Internal Revenue Code of 1986,

(B) which was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not so used on account of the qualified disaster with respect to such area, and

(C) which was received during the period beginning on the date which is 180 days before the first day of the incident period of such qualified disaster and ending on the date which is 30 days after the last day of such incident period.

(3) APPLICABLE PERIOD.—For purposes of this subsection, the term "applicable period" means, in the case of a principal residence in a qualified disaster area with respect to any qualified disaster, the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the date of the enactment of this Act.

(c) LOANS FROM QUALIFIED PLANS.—

(1) INCREASE IN LIMIT ON LOANS NOT TREATED AS DISTRIBUTIONS.—In the case of any loan from a qualified employer plan (as defined under section 72(p)(4) of the Internal Revenue Code of 1986) to a qualified individual made during the 180-day period beginning on the date of the enactment of this Act—

(A) clause (i) of section 72(p)(2)(A) of such Code shall be applied by substituting "$100,000" for "$50,000", and

(B) clause (ii) of such section shall be applied by substituting "the present value of the nonforfeitable accrued benefit of the employee under the plan" for "one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan".

(2) DELAY OF REPAYMENT.—In the case of a qualified individual (with respect to any qualified disaster) with an outstanding loan (on or after the first day of the incident period of such qualified disaster) from a qualified employer plan (as defined in section 72(p)(4) of the Internal Revenue Code of 1986)—

(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) of such Code for any repayment with respect to such loan occurs during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period, such due date shall be delayed for 1 year (or, if later, until the date which is 180 days after the date of the enactment of this Act),

(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under subparagraph (A) and any interest accruing during such delay, and

(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2) of such Code, the period described in subparagraph (A) of this paragraph shall be disregarded.

(3) QUALIFIED INDIVIDUAL.—For purposes of this subsection, the term "qualified individual" means any individual—

(A) whose principal place of abode at any time during the incident period of any qualified disaster is located in the qualified disaster area with respect to such qualified disaster, and

(B) who has sustained an economic loss by reason of such qualified disaster.

(d) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i).

(2) AMENDMENTS TO WHICH SUBSECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any provision of this section, or pursuant to any regulation issued by the Secretary or the Secretary of Labor under any provision of this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2020, or such later date as the Secretary may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) CONDITIONS.—This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date that this section or the regulation described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by this section or such regulation, the effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

(ii) such plan or contract amendment applies retroactively for such period.

SEC. 303. EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY QUALIFIED DISASTERS.

(a) IN GENERAL.—For purposes of section 38 of the Internal Revenue Code of 1986, in the case of an eligible employer, the 2018 qualified disaster employee retention credit shall be treated as a credit listed at the end of subsection (b) of such section. For purposes of this subsection, the 2018 qualified disaster employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. The amount of qualified wages with respect to any employee which may be taken into account under this subsection by the employer for any taxable year shall not exceed $6,000 (reduced by the amount of qualified wages with respect to such employee which may be so taken into account for any prior taxable year).

(b) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE EMPLOYER.—The term "eligible employer" means any employer—

(A) which conducted an active trade or business in a qualified disaster zone at any time during the incident period of the qualified disaster with respect to such qualified disaster zone, and

(B) with respect to whom the trade or business described in subparagraph (A) is inoperable at any time during the period beginning on the first day of the incident period of such qualified disaster and ending on the date of the enactment of this Act, as a result of damage sustained by reason of such qualified disaster.

(2) ELIGIBLE EMPLOYEE.—The term "eligible employee" means with respect to an eligible employer an employee whose principal place of employment with such eligible employer (determined immediately before the qualified disaster re-

ferred to in paragraph (1)) was in the qualified disaster zone referred to in such paragraph.

(3) QUALIFIED WAGES.—The term "qualified wages" means wages (as defined in section 51(c)(1) of the Internal Revenue Code of 1986, but without regard to section 3306(b)(2)(B) of such Code) paid or incurred by an eligible employer with respect to an eligible employee at any time on or after the date on which the trade or business described in paragraph (1) first became inoperable at the principal place of employment of the employee (determined immediately before the qualified disaster referred to in such paragraph) and before the earlier of—

(A) the date on which such trade or business has resumed significant operations at such principal place of employment, or

(B) the date which 150 days after the last day of the incident period of the qualified disaster referred to in paragraph (1).

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(c) CERTAIN RULES TO APPLY.—For purposes of this subsection, rules similar to the rules of sections 51(i)(1), 52, and 280C(a), of the Internal Revenue Code of 1986, shall apply.

(d) EMPLOYEE NOT TAKEN INTO ACCOUNT MORE THAN ONCE.—An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under section 51 of the Internal Revenue Code of 1986 with respect to such employee for such period.

SEC. 304. OTHER DISASTER-RELATED TAX RELIEF PROVISIONS.

(a) TEMPORARY INCREASE IN LIMITATION ON QUALIFIED CONTRIBUTIONS.—

(1) SUSPENSION OF CURRENT LIMITATION.—Except as otherwise provided in paragraph (2), qualified contributions shall be disregarded in applying subsections (b) and (d) of section 170 of the Internal Revenue Code of 1986.

(2) APPLICATION OF INCREASED LIMITATION.—For purposes of section 170 of the Internal Revenue Code of 1986—

(A) INDIVIDUALS.—In the case of an individual—

(i) LIMITATION.—Any qualified contribution shall be allowed as a deduction only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's contribution base (as defined in subparagraph (H) of section 170(b)(1) of such Code) over the amount of all other charitable contributions allowed under section 170(b)(1) of such Code.

(ii) CARRYOVER.—If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(1) of such Code) exceeds the limitation of clause (i), such excess shall be added to the excess described in section 170(b)(1)(G)(ii).

(B) CORPORATIONS.—In the case of a corporation—

(i) LIMITATION.—Any qualified contribution shall be allowed as a deduction only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income (as determined under paragraph (2) of section 170(b) of such Code) over the amount of all other charitable contributions allowed under such paragraph.

(ii) CARRYOVER.—If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(2) of such Code) exceeds the limitation of clause (i), such excess shall be appropriately taken into account under section 170(d)(2) subject to the limitations thereof.

(3) QUALIFIED CONTRIBUTIONS.—

(A) IN GENERAL.—For purposes of this subsection, the term "qualified contribution" means any charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) if—

(i) such contribution—

(I) is paid, during the period beginning on January 1, 2018, and ending on the date which is 60 days after the date of the enactment of this Act, in cash to an organization described in section 170(b)(1)(A) of such Code, and

(II) is made for relief efforts in one or more qualified disaster areas,

(ii) the taxpayer obtains from such organization contemporaneous written acknowledgment (within the meaning of section 170(f)(8) of such Code) that such contribution was used (or is to be used) for relief efforts described in clause (i)(II), and

(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

(B) EXCEPTION.—Such term shall not include a contribution by a donor if the contribution is—

(i) to an organization described in section 509(a)(3) of the Internal Revenue Code of 1986, or

(ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2) of such Code).

(C) APPLICATION OF ELECTION TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.

(b) SPECIAL RULES FOR QUALIFIED DISASTER-RELATED PERSONAL CASUALTY LOSSES.—

(1) IN GENERAL.—If an individual has a net disaster loss for any taxable year—

(A) the amount determined under section 165(h)(2)(A)(ii) of the Internal Revenue Code of 1986 shall be equal to the sum of—

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of section 165(h)(2)(A) of such Code (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual,

(B) section 165(h)(1) of such Code shall be applied by substituting "$500" for "$500 ($100 for taxable years beginning after December 31, 2009)",

(C) the standard deduction determined under section 63(c) of such Code shall be increased by the net disaster loss, and

(D) section 56(b)(1)(E) of such Code shall not apply to so much of the standard deduction as is attributable to the increase under subparagraph (C) of this paragraph.

(2) NET DISASTER LOSS.—For purposes of this subsection, the term "net disaster loss" means the excess of qualified disaster-related personal casualty losses over personal casualty gains (as defined in section 165(h)(3)(A) of the Internal Revenue Code of 1986).

(3) QUALIFIED DISASTER-RELATED PERSONAL CASUALTY LOSSES.—For purposes of this subsection, the term "qualified disaster-related personal casualty losses" means losses described in section 165(c)(3) of the Internal Revenue Code of 1986 which arise in a qualified disaster area on or after the first day of the incident period of the qualified disaster to which such area relates, and which are attributable to such qualified disaster.

(c) SPECIAL RULE FOR DETERMINING EARNED INCOME.—

(1) IN GENERAL.—In the case of a qualified individual, if the earned income of the taxpayer for the applicable taxable year is less than the earned income of the taxpayer for the preceding taxable year, the credits allowed under sections 24(d) and 32 of the Internal Revenue Code of 1986 may, at the election of the taxpayer, be determined by substituting—

(A) such earned income for the preceding taxable year, for

(B) such earned income for the applicable taxable year.

(2) QUALIFIED INDIVIDUAL.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified individual" means any individual whose principal place of abode at any time during the incident period of any qualified disaster was located—

(i) in the qualified disaster zone with respect to such qualified disaster, or

(ii) in the qualified disaster area with respect to such qualified disaster (but outside the qualified disaster zone with respect to such qualified disaster) and such individual was displaced from such principal place of abode by reason of such qualified disaster.

(B) HURRICANE SANDY.—The term "qualified individual" includes any individual whose principal place of abode at any time during the period beginning on October 29, 2012, and ending on November 3, 2012, was located—

(i) in that portion of the area described in clause (ii) which was determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Sandy, or

(ii) in the area with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Sandy

and such individual was displaced from such principal place of abode by reason of Hurricane Sandy.

(3) APPLICABLE TAXABLE YEAR.—The term "applicable taxable year" means—

(A) in the case of a qualified individual other than an individual described in subparagraph (B), any taxable year which includes any portion of the incident period of the qualified disaster to which the qualified disaster area referred to in paragraph (2)(A) relates, or

(B) in the case of a qualified individual described in subparagraph (B) of paragraph (2), any taxable year which includes any portion of the period described in such subparagraph.

(4) EARNED INCOME.—For purposes of this subsection, the term "earned income" has the meaning given such term under section 32(c) of the Internal Revenue Code of 1986.

(5) SPECIAL RULES.—

(A) APPLICATION TO JOINT RETURNS.—For purposes of paragraph (1), in the case of a joint return for an applicable taxable year—

(i) such paragraph shall apply if either spouse is a qualified individual, and

(ii) the earned income of the taxpayer for the preceding taxable year shall be the sum of the earned income of each spouse for such preceding taxable year.

(B) UNIFORM APPLICATION OF ELECTION.—Any election made under paragraph (1) shall apply with respect to both sections 24(d) and 32 of the Internal Revenue Code of 1986.

(C) ERRORS TREATED AS MATHEMATICAL ERROR.—For purposes of section 6213 of the Internal Revenue Code of 1986, an incorrect use on a return of earned income pursuant to paragraph (1) shall be treated as a mathematical or clerical error.

(D) NO EFFECT ON DETERMINATION OF GROSS INCOME, ETC.—Except as otherwise provided in this subsection, the Internal Revenue Code of 1986 shall be applied without regard to any substitution under paragraph (1).

(E) EXTENSION OF PERIOD OF LIMITATION FOR CERTAIN INDIVIDUALS AFFECTED BY HURRICANE SANDY.—

(i) IN GENERAL.—In the case of an individual described in paragraph (2)(B), the period of limitation prescribed by section 6511(a) of the Internal Revenue Code of 1986 for any applicable taxable year shall be extended until the date prescribed by law (including extensions) for filing the return of tax for the taxable year that includes the date of the enactment of this Act, and section 6511(b)(2) of such Code shall not apply to any claim of credit or refund with respect to the return for such applicable tax year.

(ii) AMENDMENTS, ETC. RESTRICTED TO CHANGES TO EARNED INCOME.—Clause (i) shall apply only with respect to amendments to the return of tax, and claims for credit or refund, relating to a change in the earned income of the individual.

SEC. 305. AUTOMATIC EXTENSION OF FILING DEADLINES IN CASE OF CERTAIN TAXPAYERS AFFECTED BY FEDERALLY DECLARED DISASTERS.

(a) IN GENERAL.—Section 7508A is amended by adding at the end the following new subsection:

"(d) MANDATORY 60-DAY EXTENSION.—

"(1) IN GENERAL.—In the case of any qualified taxpayer, the period—

"(A) beginning on the earliest incident date specified in the declaration to which the disaster area referred to in paragraph (2) relates, and

"(B) ending on the date which is 60 days after the latest incident date so specified,

shall be disregarded in the same manner as a period specified under subsection (a).

"(2) QUALIFIED TAXPAYER.—For purposes of this subsection, the term 'qualified taxpayer' means—

"(A) any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a disaster area,

"(B) any taxpayer if the taxpayer's principal place of business (other than the business of performing services as an employee) is located in a disaster area,

"(C) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a disaster area,

"(D) any taxpayer whose records necessary to meet a deadline for an act described in section 7508(a)(1) are maintained in a disaster area,

"(E) any individual visiting a disaster area who was killed or injured as a result of the disaster, and

"(F) solely with respect to a joint return, any spouse of an individual described in any preceding subparagraph of this paragraph.

"(3) DISASTER AREA.—For purposes of this subsection, the term 'disaster area' has the meaning given such term under subparagraph (B) of section 165(i)(5) with respect to a Federally declared disaster (as defined in subparagraph (A) of such section).

"(4) APPLICATION TO RULES REGARDING PENSIONS.—In the case of any person described in subsection (b), a rule similar to the rule of paragraph (1) shall apply for purposes of subsection (b) with respect to—

"(A) making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2),

"(B) making distributions under section 408(d)(4),

"(C) recharacterizing contributions under section 408A(d)(6), and

"(D) making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3).

"(5) COORDINATION WITH PERIODS SPECIFIED BY THE SECRETARY.—Any period described in paragraph (1) with respect to any person (including by reason of the application of paragraph (4)) shall be in addition to (or concurrent with, as the case may be) any period specified under subsection (a) or (b) with respect to such person.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to federally declared disasters declared after the date of the enactment of this Act.

SEC. 306. MODIFICATION OF THE TAX RATE FOR THE EXCISE TAX ON INVESTMENT INCOME OF PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Section 4940(a) is amended by striking "2 percent" and inserting "1.39 percent".

(b) ELIMINATION OF REDUCED TAX WHERE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 of such Code is amended by striking subsection (e).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 307. ADDITIONAL LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR QUALIFIED 2017 AND 2018 CALIFORNIA DISASTER AREAS.

(a) IN GENERAL.—For purposes of section 42 of the Internal Revenue Code of 1986, the State housing credit ceiling for California for calendar year 2019 shall be increased by the lesser of—

(1) the aggregate housing credit dollar amount allocated by the State housing credit agencies of California for such calendar year to buildings located in qualified 2017 and 2018 California disaster areas, or

(2) 50 percent of the sum of the State housing credit ceilings for California for calendar years 2017 and 2018.

(b) ALLOCATIONS TREATED AS MADE FIRST FROM ADDITIONAL ALLOCATION FOR PURPOSES OF DETERMINING CARRYOVER.—For purposes of determining the unused State housing credit ceiling for any calendar year under section 42(h)(3)(C) of the Internal Revenue Code of 1986, any increase in the State housing credit ceiling under subsection (a) shall be treated as an amount described in clause (ii) of such section.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED 2017 AND 2018 CALIFORNIA DISASTER AREAS.—The term "qualified 2017 and 2018 California disaster areas" means any area in California which was determined by the President (before January 1, 2019) to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of a major disaster the incident period of which begins or ends in calendar year 2017 or 2018. Notwithstanding section 301, for purposes of the preceding sentence, the term "incident period" means the period specified by the Federal Emergency Management Agency as the period during which the disaster occurred.

(2) OTHER DEFINITIONS.—Terms used in this section which are also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning in this section as in such section 42.

SEC. 308. TREATMENT OF CERTAIN POSSESSIONS.

(a) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury shall pay to each possession of the United States which has a mirror

code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this title. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(b) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this title if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to its residents.

(c) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(d) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3301, the "Taxpayer Certainty and Disaster Relief Act of 2019" as amended and ordered reported by the Committee on Ways and Means on June 20 2019, (1) extends certain expired and expiring tax provisions, (2) reduces the unified credit against the estate tax effective January 1, 2023, (3) provides tax relief for areas affected by certain natural disasters occurring on or after January 1, 2018, and (4) makes certain other changes.

B. BACKGROUND AND NEED FOR LEGISLATION

The responsible stewardship of temporary tax policy is essential to sound tax administration. Temporary tax policy can be used to address a one-time need, to provide transition rules for new policy, and for other valid purposes. However, certainty in tax policy is important. Uncertainty can reduce consumer confidence, increase volatility in the stock market, and threaten investment and job growth in crucial sectors across our economy, including defense, healthcare, finance, and infrastructure.

H.R. 3301 extends 26 provisions that expired in 2017 and 2018. It also prospectively extends six provisions set to expire at the end of 2019. Some of the temporary provisions extended in this bill enhance support for families and individuals. Others provide incentives for employment, economic growth, and community development. Finally, certain provisions in this bill extend incentives for energy production, efficiency, and green economy jobs. The costs of extending these provisions are offset by a reduction to the unified credit against the estate tax, effective January 1, 2023.

In addition to the extensions of certain provisions as described above, H.R. 3301 provides critical tax relief for communities that have been hurt by natural disasters. This relief not only addresses disasters that occurred in 2018, but also extends to disasters that occur up to 30 days after the date of enactment of the legislation.

C. LEGISLATIVE HISTORY

Background

H.R. 3301, the "Taxpayer Certainty and Disaster Tax Relief Act of 2019," was introduced on June 18, 2019 by Mr. Thompson of California, and was referred to the Committee on Ways and Means.

Committee hearings

The Subcommittee on Select Revenue Measures held a hearing on Temporary Policy in the Internal Revenue Code on Tuesday, March 12, 2019. The Committee heard testimony from Mark Mazur of the Urban-Brookings Tax Policy Center, Pam Olson of PricewaterhouseCoopers, Chye-Ching Huang of the Center on Budget and Policy Priorities, Judy K. Sakaki of Sonoma State University and Kyle Pomerleau of the Tax Foundation.

In addition, the Committee on Ways and Means held a hearing on the 2017 Tax Law and Who It Left Behind on March 27, 2019. Witnesses included Nancy Abromowitz of the American University Washington College of Law, Elise Gould of the Economic Policy Institute, Douglas Holtz-Eakin of the American Action Forum, Jason Oh of the University of California Los Angeles, and Christopher Shelton of the Communications Workers of America.

A number of Members of Congress also testified on many of the provisions contained in H. R. 3301 at the Committee's Member Day Hearing held on June 4, 2019.

Committee action

The Committee on Ways and Means marked up H.R. 3301 on June 20, 2019, and ordered the bill, as amended, favorably reported (with a quorum being present) by a vote of 25 yeas and 17 nays.

II. EXPLANATION OF THE BILL

TITLE I—EXTENSION OF CERTAIN EXPIRING PROVISIONS

A. TAX RELIEF AND SUPPORT FOR FAMILIES AND INDIVIDUALS

1. EXCLUSION FROM GROSS INCOME OF DISCHARGE OF QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS (SEC. 101 OF THE BILL AND SEC. 108(a)(1)(E) OF THE CODE)

PRESENT LAW [1]

In general

Gross income includes income that is realized by a debtor from the discharge of indebtedness,[2] subject to certain exceptions for debtors in Title 11 bankruptcy cases, insolvent debtors, certain student loans, certain farm indebtedness, and certain real property business indebtedness.[3] In cases involving discharges of indebtedness that are excluded from gross income under the exceptions to the general rule, taxpayers generally reduce certain tax attributes,

[1] All discussions of Present Law in this report refer to present law as of the date of the mark-up (*i.e.*, June 20, 2019) and do not reflect subsequent law changes.

[2] A debt cancellation that constitutes a gift or bequest is not treated as income to the donee debtor. Sec. 102.

[3] Secs. 61(a)(11) and 108.

including basis in property, by the amount of the discharge of indebtedness.

The amount of discharge of indebtedness excluded from income by an insolvent debtor not in a Title 11 bankruptcy case cannot exceed the amount by which the debtor is insolvent. In the case of a discharge due to bankruptcy or where the debtor is insolvent, any reduction in basis may not exceed the excess of the aggregate bases of properties held by the taxpayer immediately after the discharge over the aggregate of the liabilities of the taxpayer immediately after the discharge.[4]

For all taxpayers, the amount of discharge of indebtedness generally is equal to the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy the debt. These rules generally apply to the exchange of an old obligation for a new obligation, including a modification of indebtedness that is treated as an exchange (a debt-for-debt exchange).

Qualified principal residence indebtedness

An exclusion from gross income is provided for any discharge of indebtedness income by reason of a discharge (in whole or in part) of qualified principal residence indebtedness. Qualified principal residence indebtedness means acquisition indebtedness (within the meaning of section 163(h)(3)(B), except that the dollar limitation is $2 million) with respect to the taxpayer's principal residence.[5] Acquisition indebtedness with respect to a principal residence generally means indebtedness which is incurred in the acquisition, construction, or substantial improvement of the principal residence of the individual and is secured by the residence. It also includes refinancing of such indebtedness to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness. For these purposes, the term "principal residence" has the same meaning as under section 121.

If immediately before the discharge, only a portion of a discharged indebtedness is qualified principal residence indebtedness, the exclusion applies only to so much of the amount discharged as exceeds the portion of the debt which is not qualified principal residence indebtedness. For example, assume that a principal residence is secured by an indebtedness of $1 million, of which $700,000 is qualified principal residence indebtedness. If the residence is sold for $600,000 and $400,000 debt is discharged, then only $100,000 of the amount discharged may be excluded from gross income under the qualified principal residence indebtedness exclusion.

The basis of the individual's principal residence is reduced by the amount excluded from income under the provision.

The qualified principal residence indebtedness exclusion does not apply to a taxpayer in a Title 11 case; instead, the general exclusion rules apply. In the case of an insolvent taxpayer not in a Title 11 case, the qualified principal residence indebtedness exclusion applies unless the taxpayer elects to have the general exclusion rules apply instead.

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[4] Sec. 1017.
[5] Sec. 108(h)(2).

The exclusion does not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

The exclusion for qualified principal residence indebtedness is effective for discharges of indebtedness before January 1, 2018.

REASONS FOR CHANGE

The Committee believes that taxpayers restructuring their acquisition indebtedness on a principal residence or losing their principal residence in a foreclosure are likely, due to their economic circumstances, to lack the necessary liquidity to pay taxes on the resulting discharge of indebtedness. Therefore, the Committee believes the exclusion from gross income for discharges of qualified principal residence indebtedness should be extended.

EXPLANATION OF PROVISION

The provision extends for three additional years (through December 31, 2020) the exclusion from gross income for discharges of qualified principal residence indebtedness. The provision also provides for an exclusion from gross income in the case of those taxpayers whose qualified principal residence indebtedness was discharged on or after January 1, 2021, if the discharge was subject to a written arrangement entered into prior to January 1, 2021.

EFFECTIVE DATE

The provision generally applies to discharges of indebtedness after December 31, 2017.

2. TREATMENT OF MORTGAGE INSURANCE PREMIUMS AS QUALIFIED RESIDENCE INTEREST (SEC. 102 OF THE BILL AND SEC. 163(h) OF THE CODE)

PRESENT LAW

In general

Qualified residence interest is deductible notwithstanding the general rule that personal interest is nondeductible.[6]

Acquisition indebtedness

Qualified residence interest is interest on acquisition indebtedness with respect to a principal and a second residence of the taxpayer. The maximum amount of acquisition indebtedness is $750,000 ($375,000 in the case of married taxpayers filing separately). Acquisition indebtedness means debt that is incurred in acquiring, constructing, or substantially improving a qualified residence of the taxpayer, and that is secured by the residence.

Qualified mortgage insurance

Certain premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a qualified residence of the taxpayer are treated as interest that is qualified residence interest and thus de-

[6] Sec. 163(h).

ductible. The amount allowable as a deduction is phased out ratably by 10 percent for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction is not allowed if the taxpayer's adjusted gross income exceeds $109,000 ($54,000 in the case of married individual filing a separate return).

For this purpose, qualified mortgage insurance means mortgage insurance provided by the Department of Veterans Affairs, the Federal Housing Administration, or the Rural Housing Service, and private mortgage insurance (defined in section two of the Homeowners Protection Act of 1998 as in effect on the date of enactment of the provision).

Amounts paid for qualified mortgage insurance that are properly allocable to periods after the close of the taxable year are treated as paid in the period to which they are allocated. No deduction is allowed for the unamortized balance if the mortgage is paid before the end of its term (except in the case of qualified mortgage insurance provided by the Department of Veterans Affairs or Rural Housing Service).

The deduction does not apply with respect to any mortgage insurance contract issued before January 1, 2007. The deduction is disallowed for any amount paid or accrued after December 31, 2017, or properly allocable to any period after that date.

Information reporting rules apply to mortgage insurance premiums for premiums paid or accrued during periods to which the deductibility provision applies.[7]

REASONS FOR CHANGE

The Committee believes that permitting the deduction of mortgage insurance premiums is consistent with the policy underlying the home mortgage interest deduction, *i.e.*, encouraging home ownership. Therefore, the Committee believes the deduction for qualified mortgage insurance premiums should be extended.

EXPLANATION OF PROVISION

The provision extends the deduction for qualified mortgage insurance premiums for three years (with respect to contracts entered into after December 31, 2006). Thus, the provision applies to amounts paid or accrued in 2018, 2019, and 2020 (and not properly allocable to any period after December 31, 2020).

EFFECTIVE DATE

The provision applies to amounts paid or accrued after December 31, 2017.

3. REDUCTION IN MEDICAL EXPENSE DEDUCTION FLOOR (SEC. 103 OF THE BILL AND SEC. 213 OF THE CODE)

PRESENT LAW

For taxable years ending before January 1, 2019, individuals may claim an itemized deduction for unreimbursed medical expenses paid during the taxable year, but only to the extent that the

[7] Sec. 6050H(h) and Treas. Reg. sec. 1.6050H-3.

expenses exceed 7.5 percent of adjusted gross income ("AGI") for purposes of regular tax and the alternative minimum tax ("AMT").[8] For taxable years ending after December 31, 2018, the 7.5-percent threshold is increased to 10 percent.

REASONS FOR CHANGE

The Committee believes that the itemized deduction for unreimbursed medical expenses serves the purpose of allowing taxpayers to offset the cost of unexpected medical expenses that may impose an economic hardship. The Committee believes that extending the availability of the deduction to more taxpayer expenses is consistent with that purpose. Therefore, the Committee believes that the reduced threshold of 7.5 percent of AGI should be extended.

EXPLANATION OF PROVISION

The provision extends for two years the threshold for deducting medical expenses of 7.5 percent of AGI. The 7.5-percent threshold applies for purposes of the AMT as well as the regular tax. The provision applies for taxable years beginning before January 1, 2021.

EFFECTIVE DATE

The provision applies to taxable years ending after December 31, 2018.

4. DEDUCTION OF QUALIFIED TUITION AND RELATED EXPENSES (SEC. 104 OF THE BILL AND SEC. 222 OF THE CODE)

PRESENT LAW

An individual is allowed a deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year.[9] The deduction is allowed in computing adjusted gross income. The term qualified tuition and related expenses is defined in the same manner as for the American Opportunity and Lifetime Learning credits, and includes tuition and fees required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction for a personal exemption,[10] at an eligible institution of higher education for courses of instruction of such individual at such institution.[11] The expenses must be in connection with enrollment at an institution of higher education during the taxable year, or with an academic period beginning during

[8] Sec. 213. The threshold was amended by the Patient Protection and Affordable Care Act (Pub. L. No. 111-148). For taxable years beginning after December 31, 2012, the threshold was 10 percent for regular tax purposes and AMT purposes. A temporary special rule applied in the case of a taxpayer who attained age 65 (or, in the case of a married taxpayer, if either the taxpayer or the taxpayer's spouse attained age 65) before the close of the taxable year, in which case the threshold was 7.5 percent for regular tax purposes. The 2017 Tax Act (Pub. L. No. 115-97) reduced the floor to 7.5 percent for all taxpayers for taxable years beginning after December 31, 2016, and ending before January 1, 2019.

[9] Sec. 222.

[10] Notwithstanding that the exemption amount is zero for taxable years beginning after December 31, 2017, and before January 1, 2026, the reduction of the exemption amount to zero is not taken into account in determining whether a deduction for a personal exemption is still allowed or allowable. Sec. 151(d)(5)(B).

[11] The deduction generally is not available for expenses with respect to a course or education involving sports, games, or hobbies, and is not available for student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction. Secs. 222(d)(1) and 25A(f).

the taxable year or during the first three months of the next taxable year. The deduction is not available for tuition and related expenses paid for elementary or secondary education.

The maximum deduction is $4,000 for an individual whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for an individual whose adjusted gross income does not exceed $80,000 ($160,000 in the case of a joint return). No deduction is allowed for an individual whose adjusted gross income exceeds the relevant adjusted gross income limitations, for a married individual who does not file a joint return, or for an individual with respect to whom a personal exemption deduction is allowable to another taxpayer for the taxable year.

The amount of qualified tuition and related expenses must be reduced by certain scholarships, educational assistance allowances, and other amounts paid for the benefit of such individual,[12] as well as by the amount of such expenses taken into account for purposes of determining any exclusion from gross income of (1) income from certain U.S. savings bonds used to pay higher education tuition and fees and (2) income from a Coverdell education savings account.[13] Additionally, such expenses must be reduced by the earnings portion (but not the return of principal) of distributions from a qualified tuition program if an exclusion under section 529 is claimed with respect to expenses eligible for the qualified tuition deduction. No deduction is allowed for any expense for which a deduction is otherwise allowed or with respect to an individual for whom an American Opportunity or Lifetime Learning credit is elected for such taxable year.

The deduction is not available for taxable years beginning after December 31, 2017.

REASONS FOR CHANGE

The Committee believes that the deduction for qualified tuition mitigates the effect of rising tuition costs on students and their families. The Committee further believes that the deduction provides an important financial incentive for individuals to pursue higher education. Therefore, the Committee believes the qualified tuition deduction should be extended.

EXPLANATION OF PROVISION

The provision extends the qualified tuition deduction for three years, through 2020.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2017.

[12] Secs. 222(d)(1) and 25A(g)(2).

[13] Sec. 222(c). These reductions are the same as those that apply to the American Opportunity and Lifetime Learning credits.

5. BLACK LUNG DISABILITY TRUST FUND EXCISE TAX (SEC. 105 OF THE BILL AND SEC. 4121 OF THE CODE)

PRESENT LAW

Before January 1, 2019, coal extracted from mines was taxed at either $1.10 per ton if from an underground mine, or $0.55 per ton if from a surface mine.[14] The total amount of tax was not to exceed 4.4 percent of the price at which such ton of coal was sold by the producer.

After December 31, 2018, the "temporary increase termination date," the tax rates declined to rates of $0.50 for underground mines, and $0.25 for surface mines. After the temporary increase termination date, the total amount of tax is not to exceed two percent of the price at which such ton of coal is sold by the producer.

REASONS FOR CHANGE

The Government Accountability Office has reported that the expenditures of the Black Lung Disability Trust Fund have consistently exceed revenues.[15] The Committee believes that the Black Lung Disability Trust Fund should be provided with a level of funding sufficient to cover its expenditures.

EXPLANATION OF PROVISION

The provision reinstates the increased rates on coal through December 31, 2020. Coal extracted will be taxed at $1.10 per ton if from an underground mine, or $0.55 per ton if from a surface mine. The total amount of tax cannot exceed 4.4 percent of the price at which such ton of coal is sold by the producer.

EFFECTIVE DATE

The provision applies on and after the first day of the first calendar month beginning after the date of enactment.

B. INCENTIVES FOR EMPLOYMENT, ECONOMIC GROWTH, AND COMMUNITY DEVELOPMENT

1. INDIAN EMPLOYMENT TAX CREDIT (SEC. 111 OF THE BILL AND SEC. 45A OF THE CODE)

PRESENT LAW

In general, a credit against income tax liability is allowed to employers for the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees.[16] The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable

[14] Sec. 4121.
[15] Government Accountability Office, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, (GAO 18-351, May 2018).
[16] Sec. 45A.

costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.[17]

Qualified wages means wages paid or incurred by an employer for services performed by a qualified employee. A qualified employee means any employee who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. An "Indian reservation" is a reservation as defined in section 3(d) of the Indian Financing Act of 1974 [18] or section 4(10) of the Indian Child Welfare Act of 1978.[19] For purposes of the preceding sentence, section 3(d) is applied by treating "former Indian reservations in Oklahoma" as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).

An employee is not treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during the taxable year exceeds an amount determined at an annual rate of $30,000 (which after adjustment for inflation is $45,000 for 2017).[20] In addition, an employee will not be treated as a qualified employee under certain specific circumstances, such as where the employee is related to the employer (in the case of an individual employer) or to one of the employer's specified shareholders, owners, partners, grantors, beneficiaries, or fiduciaries, or is a dependent thereof.[21] Similarly, an employee will not be treated as a qualified employee where the employee has more than a five percent ownership interest in the employer. Finally, an employee will not be considered a qualified employee to the extent the employee's services relate to gaming activities or are performed in a building housing such activities.

The wage credit is available for wages paid or incurred in taxable years beginning on or before December 31, 2017.

REASONS FOR CHANGE

To further encourage employment on Indian reservations, the Committee believes the Indian employment credit should be extended.

EXPLANATION OF PROVISION

The provision extends the Indian employment credit for three years (through taxable years beginning before January 1, 2021).

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2017.

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[17] Sec. 280C(a).
[18] Pub. L. No. 93–262.
[19] Pub. L. No. 95–608.
[20] See Instructions for Form 8845, Indian Employment Credit (2017).
[21] Sec. 51(i)(1).

2. RAILROAD TRACK MAINTENANCE CREDIT (SEC. 112 OF THE BILL AND SEC. 45G OF THE CODE)

PRESENT LAW

In general

A business tax credit is allowed for 50 percent of qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during taxable years beginning before January 1, 2018 (the "railroad track maintenance credit" or "credit").[22] For purposes of calculating the credit, all members of a controlled group of corporations or a group of businesses under common control are treated as a single taxpayer, and each member's credit is determined on a proportionate basis to each member's share of the aggregate qualified railroad track maintenance expenditures taken into account by the group for the credit.[23] The credit may reduce a taxpayer's tax liability below its tentative minimum tax.[24]

Limitation

The railroad track maintenance credit is limited to the product of $3,500 times the number of miles of railroad track[25] (1) owned or leased by an eligible taxpayer as of the close of its taxable year,[26] and (2) assigned to the eligible taxpayer by a Class II or Class III railroad that owns or leases such track at the close of the taxable year.[27] Amounts that exceed the limitation are not carried over to another taxable year.[28]

Assignments

Each mile of railroad track may be taken into account only once, either by the owner of such mile or by the owner's assignee, in computing the per-mile limitation.[29] Any assignment of a mile of railroad track may be made only once per taxable year of the Class II or Class III railroad, and is treated as made at the close of such taxable year.[30] Such assignment is taken into account for the tax-

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[22] Sec. 45G(a) and (f). An eligible taxpayer generally claims the railroad track maintenance credit by filing Form 8900, Qualified Railroad Track Maintenance Credit. If a taxpayer's only source of the credit is a partnership or S corporation, the taxpayer may report the credit directly on Form 3800, General Business Credit (see Part III, line 4g).

[23] Sec. 45G(e)(2) and Treas. Reg. sec. 1.45G–1(f). See also Notice 2013–20, 2013–15 I.R.B. 902, April 8, 2013; and Field Attorney Advice 20151601F, December 19, 2014.

[24] Sec. 38(c)(4).

[25] Double track is treated as multiple lines of railroad track, rather than as a single line of railroad track (*i.e.*, one mile of single track is one mile, but one mile of double track is two miles). Treas. Reg. sec. 1.45G–1(b)(9).

[26] A Class II or Class III owns railroad track if the railroad track is subject to the allowance for depreciation under section 167 by such Class II or Class III railroad. Treas. Reg. sec. 1.45G–1(b)(2). Railroad track generally has a seven-year MACRS recovery period. Sec. 168(e)(3)(C)(i) and asset class 40.4 of Rev. Proc. 87–56, 1987–2 C.B. 674. Alternatively, railroad structures and similar improvements (e.g., bridges, elevated structures, fences, etc.) generally have a 20-year MACRS recovery period (see asset class 40.2 of Rev. Proc. 87–56), while railroad grading and tunnel bores have a 50-year recovery period (see sec. 168(c)). The term "railroad grading or tunnel bore" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track. Sec. 168(e)(4).

[27] Sec. 45G(b)(1).

[28] Treas. Reg. sec. 1.45G–1(c)(2)(iii).

[29] Sec. 45G(b)(2). See also Treas. Reg. sec. 1.45G–1(d).

[30] An assignor must file Form 8900 with its timely filed (including extensions) Federal income tax return for the taxable year for which it assigns any mile of eligible railroad track, even if it is not itself claiming the railroad track maintenance credit for that taxable year. Treas. Reg.

Continued

able year of the assignee that includes the date that such assignment is treated as effective. However, assignments, including related expenditures paid or incurred, for taxable years ending after January 1, 2017, and before January 1, 2018, are treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than May 10, 2018.[31]

Eligible taxpayer

An eligible taxpayer means any Class II or Class III railroad, and any person (including a Class I railroad)[32] who transports property using the rail facilities[33] of a Class II or Class III railroad or who furnishes railroad-related property[34] or services[35] to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such railroad under the provision.[36]

The terms Class II or Class III railroad have the meanings given by the Surface Transportation Board without regard to the controlled group rules under section 45G(e)(2).[37]

Qualified railroad track maintenance expenditures

Qualified railroad track maintenance expenditures are defined as gross expenditures (whether or not otherwise chargeable to capital account[38]) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad, determined without regard to any consideration for such expenditure given by the Class II or Class III railroad which made the assignment of such track.[39]

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sec. 1.45G–1(d)(4). Both the assignor and the assignee must attach a statement to Form 8900 detailing the information required by Treas. Reg. sec. 1.45G–1(d)(4).

[31] Bipartisan Budget Act of 2018, Pub. L. No. 115–123, Division D, Title I, Subtitle B, sec. 40302(b)(2), February 9, 2018.

[32] The Surface Transportation Board currently classifies a Class I railroad as a carrier with annual operating revenue of $447,621,226 or more. The seven Class I railroads are BNSF Railway Company, Kansas City Southern Railway Company, Union Pacific Railway Company, Soo Line Railroad Company (Canadian Pacific's U.S. operations), CSX Transportation Inc., Norfolk Southern Railway Company, and Grand Trunk Corporation (Canadian National's U.S. operations). See the Surface Transportation Board FAQs—Economic and Industry Information, available at *https://www.stb.gov/stb/faqs.html*.

[33] Rail facilities of a Class II or Class III railroad are railroad yards, tracks, bridges, tunnels, wharves, docks, stations, and other related assets that are used in the transport of freight by a railroad and owned or leased by that railroad. Treas. Reg. sec. 1.45G–1(b)(6).

[34] Railroad-related property is property that is unique to railroads and provided directly to a Class II or Class III railroad. See Treas. Reg. sec. 1.45G–1(b)(7) for a detailed description.

[35] Railroad-related services are services that are provided directly to, and are unique to, a railroad and that relate to railroad shipping, loading and unloading of railroad freight, or repairs of rail facilities or railroad-related property. See Treas. Reg. sec. 1.45G–1(b)(8) for a detailed description.

[36] Sec. 45G(c).

[37] Sec. 45G(e)(1) and Treas. Reg. sec. 1.45G–1(b)(1). The Surface Transportation Board currently classifies a Class II railroad as a carrier with annual operating revenue of less than $447,621,226 but in excess of $35,809,698, and a Class III railroad as a carrier with annual operating revenue of $35,809,698 or less. See the Surface Transportation Board FAQs—Economic and Industry Information, available at *https://www.stb.gov/stb/faqs.html*.

[38] All or some of the qualified railroad track maintenance expenditures may be required to be capitalized under section 263(a) as a tangible or intangible asset. See, e.g., Treas. Reg. sec. 1.263(a)–4(d)(8), which requires the capitalization of amounts paid or incurred by a taxpayer to produce or improve real property owned by another (except to the extent the taxpayer is selling services at fair market value to produce or improve the real property) if the real property can reasonably be expected to produce significant economic benefits for the taxpayer. The basis of the tangible or intangible asset includes the capitalized amount of the qualified railroad track maintenance expenditures. Treas. Reg. sec. 1.45G–1(e)(1). Note that for purposes of Treas. Reg. sec. 1.263(a)–4(d)(8), real property includes property that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time. Treas. Reg. sec. 1.263(a)–4(d)(8)(iii). Intangible assets described in Treas. Reg. sec. 1.263(a)–4(d)(8) are generally depreciable ratably over 25 years. See Treas. Reg. sec. 1.167(a)–3.

[39] Sec. 45G(d); Treas. Reg. sec. 1.45G–1(b)(5).

However, consideration received directly or indirectly from persons other than the Class II or Class III railroad does reduce the amount of qualified railroad track maintenance expenditures.[40] Any amount that an assignee pays an assignor in exchange for an assignment of one or more miles of eligible railroad is treated as qualified railroad track maintenance expenditures paid or incurred by the assignee at the time and to the extent the assignor pays or incurs qualified railroad track maintenance expenditures.[41]

BASIS ADJUSTMENT

Basis of the railroad track must be reduced (but not below zero) by an amount equal to 100 percent of the taxpayer's qualified railroad track maintenance tax credit determined for the taxable year.[42] The basis reduction is taken into account before the depreciation deduction with respect to such railroad track is determined for the taxable year for which the railroad track maintenance credit is allowable.[43] If all or some of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year is capitalized under section 263(a) to more than one asset, whether tangible or intangible, the reduction to the basis of these assets is allocated among each of the assets subject to the reduction in proportion to the unadjusted basis of each asset at the time the qualified railroad track maintenance expenditures are paid or incurred during that taxable year.[44]

REASONS FOR CHANGE

The Committee believes that Class II and Class III railroads are an important part of the nation's railway system. Therefore, the Committee believes that this incentive for railroad track maintenance expenditures should be extended.

EXPLANATION OF PROVISION

The provision extends the present law credit for three years, for qualified railroad track maintenance expenditures paid or incurred during taxable years beginning before January 1, 2021.

EFFECTIVE DATE

The provision generally applies to expenditures paid or incurred during taxable years beginning after December 31, 2017.

The provision also provides a safe harbor that treats assignments, including related expenditures paid or incurred, for taxable years beginning on or after January 1, 2018, and before January 1, 2019, as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than 90 days following the date of enactment.

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[40] Treas. Reg. sec. 1.45G–1(c)(3)(ii).
[41] Treas. Reg. sec. 1.45G–1(c)(3).
[42] Sec. 45G(e)(3). See also sec. 1016(a)(29) and Treas. Reg. Sec. 1.45G–1(e).
[43] Treas. Reg. sec. 1.45G–1(e)(2).
[44] *Ibid.*

3. MINE RESCUE TEAM TRAINING CREDIT (SEC. 113 OF THE BILL AND SEC. 45N OF THE CODE)

PRESENT LAW

An eligible employer may claim a general business credit against income tax with respect to each qualified mine rescue team employee equal to the lesser of (1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of the qualified mine rescue team employee (including the wages of the employee while attending the program) or (2) $10,000.[45]

A qualified mine rescue team employee is any full-time employee of the taxpayer who is a miner eligible for more than six months of a taxable year to serve as a mine rescue team member by virtue of either having completed the initial 20-hour course of instruction prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or receiving at least 40 hours of refresher training in such instruction.[46]

An eligible employer is any taxpayer which employs individuals as miners in underground mines in the United States.[47] The term "wages" has the meaning given to such term by section 3306(b)[48] (determined without regard to any dollar limitation contained in that section).[49]

No deduction is allowed for the portion of the expenses otherwise deductible that is equal to the amount of the credit.[50] The credit does not apply to taxable years beginning after December 31, 2017.[51] Additionally, the credit is not allowable for purposes of computing the alternative minimum tax.[52]

REASONS FOR CHANGE

The Committee believes that mine rescue teams help ensure the safety of those operating in and around a mine in the event of an accident. Therefore, the Committee believes that this incentive for costs incurred to train mine rescue teams should be extended.

EXPLANATION OF PROVISION

The provision extends the credit for three years through taxable years beginning before January 1, 2021.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2017.

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[45] Sec. 45N(a).
[46] Sec. 45N(b).
[47] Sec. 45N(c).
[48] Section 3306(b) defines wages for purposes of Federal Unemployment Tax.
[49] Sec. 45N(d).
[50] Sec. 280C(e).
[51] Sec. 45N(e).
[52] Sec. 38(c). Note that the corporate alternative minimum tax was repealed for taxable years beginning after December 31, 2017. See An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115–97, sec. 12001, December 22, 2017.

4. SEVEN-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES (SEC. 114 OF THE BILL AND SEC. 168(i)(15) OF THE CODE)

PRESENT LAW

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.[53] The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.[54] Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention.[55]

The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance.[56] The "type of property" of an asset is used to determine the "class life" of the asset, which in turn dictates the applicable recovery period for the asset.

The MACRS recovery periods applicable to most tangible personal property range from three to 20 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods,[57] switching to the straight line method for the first taxable year where using the straight line method with respect to the adjusted basis as of the beginning of that year yields a larger depreciation allowance.

Real property

The recovery periods for most real property are 39 years for nonresidential real property and 27.5 years for residential rental property.[58] The straight line depreciation method is required for the aforementioned real property.[59] In addition, nonresidential real

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[53] See secs. 263(a) and 167. In general, only the tax owner of property (*i.e.,* the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not used exclusively in a taxpayer's business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, *e.g.,* sec. 280A.

[54] See Treas. Reg. secs. 1.167(a)–10(b), –3, –14, and 1.197–2(f). See also Treas. Reg. sec. 1.167(a)–11(e)(1)(i).

[55] Sec. 168.

[56] Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87–56, 1987–2 C.B. 674, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88–22, 1988–1 C.B. 785. In November 1988, Congress revoked the Secretary's authority to modify the class lives of depreciable property. Rev. Proc. 87–56, as modified, remains in effect except to the extent that the Congress has, since 1988, statutorily modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.

[57] Under the declining balance method, the depreciation rate is determined by dividing the appropriate percentage (here 150 or 200) by the appropriate recovery period. This leads to accelerated depreciation when the declining balance percentage is greater than 100. The table below illustrates depreciation for an asset with a cost of $1,000 and a seven-year recovery period under the 200-percent declining balance method, the 150-percent declining balance method, and the straight line method.

Recovery method	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total
200-percent declining balance	285.71	204.08	145.77	104.12	86.77	86.77	86.77	1,000.00
150-percent declining balance	214.29	168.37	132.29	121.26	121.26	121.26	121.26	1,000.00
Straight-line	142.86	142.86	142.86	142.86	142.86	142.86	142.86	1,000.00

* Details may not add to totals due to rounding.

[58] Sec. 168(c).

[59] Sec. 168(b)(3).

and residential rental property are both subject to the mid-month convention, which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.[60] All other property generally is subject to the half-year convention, which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.[61]

Land improvements (such as roads and fences) are generally recovered using the 150-percent declining balance method, a recovery period of 15 years, and the half-year convention.[62] An exception exists for the theme and amusement park industry, whose assets are generally assigned a recovery period of seven years by asset class 80.0 of Rev. Proc. 87–56.[63] Racetrack facilities are excluded from the definition of theme and amusement park facilities classified under asset class 80.0.[64]

Although racetrack facilities are excluded from asset class 80.0, the statute assigns a recovery period of seven years to motorsports entertainment complexes placed in service before January 1, 2018.[65] For this purpose, a motorsports entertainment complex means a racing track facility which (1) is permanently situated on land, and (2) during the 36-month period following its placed-in-service date, hosts one or more racing events for automobiles, (of any type) trucks, or motorcycles which are open to the public for the price of admission.[66]

A motorsports entertainment complex also includes ancillary facilities, land improvements (*e.g.,* parking lots, sidewalks, waterways, bridges, fences, and landscaping), support facilities (*e.g.,* food and beverage retailing, souvenir vending, and other nonlodging accommodations), and appurtenances associated with such facilities and related attractions and amusements (*e.g.,* ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery

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[60] Sec. 168(d)(2) and (d)(4)(B).

[61] Sec. 168(d)(1) and (d)(4)(A). However, if substantial property is placed in service during the last three months of a taxable year, a special rule requires use of the mid-quarter convention, which treats all property placed in service (or disposed of) during any quarter as placed in service (or disposed of) on the mid-point of such quarter. Sec. 168(d)(3) and (d)(4)(C). Nonresidential real property, residential rental property, and railroad grading or tunnel bore are not taken into account for purposes of the mid-quarter convention.

[62] Sec. 168(b)(2)(A) and asset class 00.3 of Rev. Proc. 87–56. Under the 150-percent declining balance method, the depreciation rate is determined by dividing 150 percent by the appropriate recovery period, switching to the straight-line method for the first taxable year where using the straight-line method with respect to the adjusted basis as of the beginning of that year will yield a larger depreciation allowance. Sec. 168(b)(2) and (b)(1)(B).

[63] This asset class includes assets used in the provision of rides, attractions, and amusements in activities defined as theme and amusement parks, and includes appurtenances associated with a ride, attraction, amusement or theme setting within the park such as ticket booths, facades, shop interiors, and props, special purpose structures, and buildings other than warehouses, administration buildings, hotels, and motels. It also includes all land improvements for or in support of park activities (*e.g.,* parking lots, sidewalks, waterways, bridges, fences, landscaping, *etc.*) and support functions (*e.g.,* food and beverage retailing, souvenir vending and other nonlodging accommodations) if owned by the park and provided exclusively for the benefit of park patrons. Theme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission. This asset class is a composite of all assets used in this industry except transportation equipment (general purpose trucks, cars, airplanes, *etc.*, which are included in asset classes with the prefix 00.2), assets used in the provision of administrative services (asset classes with the prefix 00.1), and warehouses, administration buildings, hotels and motels.

[64] See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress* (JCS–5–05), May 2005, p. 328.

[65] Sec. 168(e)(3)(C)(ii) and (i)(15)(D).

[66] Sec. 168(i)(15)(A).

of entertainment services, other special purpose structures, facades, shop interiors, and buildings).[67] Such ancillary and support facilities must be (1) owned by the taxpayer who owns the motorsports entertainment complex, and (2) provided for the benefit of patrons of the motorsports entertainment complex.

A motorsports entertainment complex does not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.[68]

REASONS FOR CHANGE

The Committee believes that certain depreciation incentives encourage State and local economic development. Therefore, the Committee believes that the seven-year recovery period for motorsports entertainment complex property should be extended.

EXPLANATION OF PROVISION

The provision extends the seven-year recovery period for motorsports entertainment complexes for three years to apply to property placed in service before January 1, 2021.

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2017.

5. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATIONS (SEC. 115 OF THE BILL AND SEC. 168(j) OF THE CODE)

PRESENT LAW

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, depreciation deductions under section 168(j) are determined using the following recovery periods:

3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years[69]

"Qualified Indian reservation property" eligible for accelerated depreciation includes property described in the table above which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; (2) not used or located outside the reservation on a regular basis; (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer;[70] and (4) is not property placed in service for purposes of conducting or housing certain gaming activities.[71]

Certain "qualified infrastructure property" may be eligible for the accelerated depreciation, even if located outside an Indian reserva-

[67] Sec. 168(i)(15)(B).
[68] Sec. 168(i)(15)(C).
[69] Section 168(j)(2) does not provide shorter recovery periods for water utility property, residential rental property, or railroad grading and tunnel bores.
[70] For these purposes, the term "related persons" is defined in section 465(b)(3)(C).
[71] Sec. 168(j)(4)(A).

tion, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities).[72]

An "Indian reservation" means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d))[73] or section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).[74] For purposes of the preceding sentence, section 3(d) is applied by treating "former Indian reservations in Oklahoma" as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).[75]

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax.[76]

The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2018.[77] A taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis.[78]

REASONS FOR CHANGE

To further encourage economic development within and expand employment opportunities on Indian reservations, the Committee believes accelerated depreciation for qualified Indian reservation property should be extended.

EXPLANATION OF PROVISION

The provision extends for three years the accelerated depreciation for qualified Indian reservation property to apply to property placed in service before January 1, 2021.

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2017.

6. EXPENSING RULES FOR CERTAIN PRODUCTIONS (SEC. 116 OF THE BILL AND SEC. 181 OF THE CODE)

PRESENT LAW

Under section 181, a taxpayer may elect[79] to deduct up to $15 million of the aggregate production costs of any qualified film, television or live theatrical production, commencing prior to January 1, 2018,[80] in the year the costs are paid or incurred by the tax-

[72] Sec. 168(j)(4)(C).
[73] Pub. L. No. 93–262.
[74] Pub. L. No. 95–608.
[75] Sec. 168(j)(6).
[76] Sec. 168(j)(3). Note that the corporate alternative minimum tax was repealed for taxable years beginning after December 31, 2017. See An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115–97, sec. 12001, December 22, 2017.
[77] Sec. 168(j)(9).
[78] Sec. 168(j)(8).
[79] See Treas. Reg. sec. 1.181–2 for rules on making (and revoking) an election under section 181.
[80] For purposes of determining whether a production is eligible for section 181 expensing, a qualified film or television production is treated as commencing on the first date of principal

payer, in lieu of capitalizing the costs and recovering them through depreciation allowances once the production is placed in service.[81] The dollar limitation is increased to $20 million if a significant amount of the production costs are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress.[82]

A section 181 election may only be made by an owner of the production.[83] An owner of a production is any person that is required under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person.[84] In addition, the aggregate production costs of a qualified production that is co-produced include all production costs, regardless of funding source, in determining if the applicable dollar limit is exceeded. Thus, the term "aggregate production costs" means all production costs paid or incurred by any person, whether paid or incurred directly by an owner or indirectly on behalf of an owner.[85] The costs of the production in excess of the applicable dollar limitation are capitalized and recovered under the taxpayer's method of accounting for the recovery of such property once placed in service.[86]

A qualified film, television, or live theatrical production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format), television program, or live staged play if at least 75 percent of the total compensation expended on the production is for services performed in the United States by actors, directors, producers, and other relevant production personnel.[87] Solely for purposes of this rule, the

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photography. The date on which a qualified live theatrical production commences is the date of the first public performance of such production for a paying audience.

[81] Sec. 181(a)(2)(A). See Treas. Reg. sec. 1.181–1 for rules on determining eligible production costs. Eligible production costs under section 181 include participations and residuals paid or incurred. Treas. Reg. sec. 1.181–1(a)(3)(i). The special rule in section 167(g)(7) that allows taxpayers using the income forecast method of depreciation to include participations and residuals that have not met the economic performance requirements in the adjusted basis of the property for the taxable year the property is placed in service does not apply for purposes of section 181. Treas. Reg. sec. 1.181–1(a)(8). Thus, under section 181, a taxpayer may only include participations and residuals actually paid or incurred in eligible production costs. Further, production costs do not include the cost of obtaining a production after its initial release or broadcast. See Treas. Reg. sec. 1.181–1(a)(3). For this purpose, "initial release or broadcast" means the first commercial exhibition or broadcast of a production to an audience. Treas. Reg. sec. 1.181–1(a)(7). Thus, e.g., a taxpayer may not expense the purchase of an existing film library under section 181. See T.D. 9551, 76 Fed. Reg. 64816, October 19, 2011.

[82] Sec. 181(a)(2)(B).

[83] Treas. Reg. sec. 1.181–1(a).

[84] Treas. Reg. sec. 1.181–1(a)(2)(i).

[85] Treas. Reg. sec. 1.181–1(a)(4). See Treas. Reg. sec. 1.181–2(c)(3) for the information required to be provided to the Internal Revenue Service when more than one person will claim deductions under section 181 for a production (to ensure that the applicable deduction limitation is not exceeded).

[86] See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 110th Congress* (JCS–1–09), March 2009, p. 448; and Treas. Reg. sec. 1.181–1(c)(2). A production is generally considered to be placed in service at the time of initial release, broadcast, or live staged performance (*i.e.*, at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience). See, *e.g.*, Rev. Rul. 79–285, 1979–2 C.B. 91; and Priv. Ltr. Rul. 9010011, March 9, 1990. See also, Treas. Reg. sec. 1.181–1(a)(7). However, a production generally may not be considered to be placed in service if it is only exhibited, broadcasted or performed for a limited test audience in advance of the commercial exhibition, broadcast, or performance to general audiences. See Priv. Ltr. Rul. 9010011 and Treas. Reg. sec. 1.181–1(a)(7).

[87] Sec. 181(d)(3)(A).

term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)).[88]

Each episode of a television series is treated as a separate production, and only the first 44 episodes of a particular series qualify under the provision.[89] Qualified productions do not include sexually explicit productions as referenced by section 2257 of title 18 of the U.S. Code.[90]

A qualified live theatrical production is defined as a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a commercial entity in any venue which has an audience capacity of not more than 3,000, or a series of venues the majority of which have an audience capacity of not more than 3,000.[91] In addition, qualified live theatrical productions include any live staged production which is produced or presented by a taxable entity no more than 10 weeks annually in any venue which has an audience capacity of not more than 6,500.[92] In general, in the case of multiple live-staged productions, each such live-staged production is treated as a separate production. Similar to the exclusion for sexually explicit productions from the definition of qualified film or television productions, qualified live theatrical productions do not include stage performances that would be excluded by section 2257(h)(1) of title 18 of the U.S. Code, if such provision were extended to live stage performances.[93]

For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.[94] Thus, the deduction under section 181 may be subject to recapture as ordinary income in the taxable year in which (1) the taxpayer revokes a section 181 election, (2) the production fails to meet the requirements of section 181, or (3) the taxpayer sells or otherwise disposes of the production.[95]

REASONS FOR CHANGE

To further encourage investment in and financing of domestic film, television, and certain live theatrical productions, the Committee believes that section 181 should be extended.

EXPLANATION OF PROVISION

The provision extends the special treatment for qualified film, television, and live theatrical productions under section 181 for three years to qualified productions commencing prior to January 1, 2021.

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[88] Sec. 181(d)(3)(B). Participations and residuals are defined as, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property. See also Treas. Reg. sec. 1.181–3(c).

[89] Sec. 181(d)(2)(B).

[90] Sec. 181(d)(2)(C).

[91] Sec. 181(e)(2)(A).

[92] Sec. 181(e)(2)(D).

[93] Sec. 181(e)(2)(E).

[94] Sec. 1245(a)(2)(C). For a discussion of the recapture rules applicable to depreciation and amortization deductions, see Joint Committee on Taxation, *Background and Present Law Relating to Cost Recovery and Domestic Production Activities*, (JCX–19–12) February 27, 2012, pp. 45–46.

[95] See Treas. Reg. sec. 1.181–4.

EFFECTIVE DATE

The provision applies to productions commencing after December 31, 2017.

7. EMPOWERMENT ZONE TAX INCENTIVES (SEC. 117 OF THE BILL AND SECS. 1391, 1394, 1396, 1397A, AND 1397B OF THE CODE)

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1993 ("OBRA 93")[96] authorized the designation of nine empowerment zones ("Round I empowerment zones") to provide tax incentives for businesses to locate within certain targeted areas[97] designated by the Secretaries of the Department of Housing and Urban Development ("HUD") and the U.S. Department of Agriculture ("USDA"). The first empowerment zones were established in large rural areas and large cities. OBRA 93 also authorized the designation of 95 enterprise communities,[98] which were located in smaller rural areas and cities.[99]

The Taxpayer Relief Act of 1997[100] authorized the designation of two additional urban Round I empowerment zones, and 20 additional empowerment zones ("Round II empowerment zones"). The Community Renewal Tax Relief Act of 2000 ("2000 Community Renewal Act")[101] authorized a total of 10 new empowerment zones ("Round III empowerment zones"), bringing the total number of authorized, and not relinquished, empowerment zones to 41.[102] In addition, the 2000 Community Renewal Act conformed the tax incentives that are available to businesses in the Round I, Round II, and Round III empowerment zones, and extended the empowerment zone incentives through December 31, 2009. Subsequent legisla-

[96] Pub. L. No. 103–66.

[97] The targeted areas are those that have pervasive poverty, high unemployment, and general economic distress, and that satisfy certain eligibility criteria, including specified poverty rates and population and geographic size limitations.

[98] Sec. 1391(b)(1).

[99] Enterprise communities were eligible for only one tax benefit: tax-exempt bond financing. For tax purposes, the areas designated as enterprise communities continued as such for the ten-year period starting 1995 and ending at the end of 2004. However, after 2004 the enterprise communities may still be eligible for other Federal benefits (e.g., grants and preferences).

[100] Pub. L. No. 105–34.

[101] Pub. L. No. 106–554. The 2000 Community Renewal Act also authorized the designation of 40 "renewal communities" within which special tax incentives were available. The tax incentives were generally available through December 31, 2009 when the renewal community designation expired. One of the tax incentives involving the exclusion of capital gain from the sale or exchange of a qualified community asset continued through 2014.

[102] The urban part of the program is administered by HUD and the rural part of the program is administered by the USDA. The eight urban Round I empowerment zones are Atlanta, GA; Baltimore, MD; Chicago, IL; Cleveland, OH; Detroit, MI; Los Angeles, CA; New York, NY; and Philadelphia, PA/Camden, NJ. Atlanta relinquished its empowerment zone designation in Round III. The three rural Round I empowerment zones are Kentucky Highlands, KY; Mid-Delta, MI; and Rio Grande Valley, TX. The 15 urban Round II empowerment zones are Boston, MA; Cincinnati, OH; Columbia, SC; Columbus, OH; Cumberland County, NJ; El Paso, TX; Gary/Hammond/East Chicago, IN; Ironton, OH/Huntington, WV; Knoxville, TN; Miami/Dade County, FL; Minneapolis, MN; New Haven, CT; Norfolk/Portsmouth, VA; Santa Ana, CA; and St. Louis, Missouri/East St. Louis, IL. The five rural Round II empowerment zones are Desert Communities, CA; Griggs-Steele, ND; Oglala Sioux Tribe, SD; Southernmost Illinois Delta, IL; and Southwest Georgia United, GA. The eight urban Round III empowerment zones are Fresno, CA; Jacksonville, FL; Oklahoma City, OK; Pulaski County, AR; San Antonio, TX; Syracuse, NY; Tucson, AZ; and Yonkers, NY. The two rural Round III empowerment zones are Aroostook County, ME; and Futuro, TX.

tion, most recently the Bipartisan Budget Act of 2018, extended the empowerment zone incentives through December 31, 2017.[103]

The tax incentives available within the designated empowerment zones include a Federal income tax credit for employers who hire qualifying employees (the "wage credit"), increased expensing of qualifying depreciable property, tax-exempt bond financing, and deferral of capital gains tax on the sale of qualified assets sold and replaced.

The following is a description of the empowerment zone tax incentives as in effect through 2017.

Wage credit

A 20-percent wage credit is available to employers for the first $15,000 of qualified wages paid to each employee (i.e., a maximum credit of $3,000 with respect to each qualified employee) who (1) is a resident of the empowerment zone, and (2) performs substantially all employment services within the empowerment zone in a trade or business of the employer.[104]

The wage credit rate applies to qualifying wages paid before January 1, 2018. Wages paid to a qualified employee who earns more than $15,000 are eligible for the wage credit (although only the first $15,000 of wages is eligible for the credit). The wage credit is available with respect to a qualified full-time or part-time employee (employed for at least 90 days), regardless of the number of other employees who work for the employer. In general, any taxable business carrying out activities in the empowerment zone may claim the wage credit.[105]

An employer's deduction otherwise allowed for wages paid is reduced by the amount of wage credit claimed for that taxable year.[106] Wages are not to be taken into account for purposes of the wage credit if taken into account in determining the employer's work opportunity tax credit under section 51.[107] In addition, the $15,000 cap is reduced by any wages taken into account in computing the work opportunity tax credit.[108] The wage credit may be used to offset up to 25 percent of the employer's alternative minimum tax liability.[109]

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[103] Pub. L. No. 111–312, sec. 753 (2010); Pub. L. No. 112–240, sec. 327(a) (2013); Pub. L. No. 113–295, sec. 139 (2014); Pub. L. No. 114–113, Div. Q, sec. 171(a) (2015); and Pub. L. No. 115–123, sec. 40311 (2018). The empowerment zone tax incentives may expire earlier than December 31, 2017 if a State or local government provided for an expiration date in the nomination of an empowerment zone, or the appropriate Secretary revokes an empowerment zone's designation. The State or local government may, however, amend the nomination to provide for a new termination date.

[104] Sec. 1396. The $15,000 limit is annual, not cumulative, such that the limit is the first $15,000 of wages paid in a calendar year which ends with or within the taxable year.

[105] However, the wage credit is not available for wages paid in connection with certain business activities described in section 144(c)(6)(B), including a golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, liquor store, or certain farming activities. In addition, wages are not eligible for the wage credit if paid to: (1) a person who owns more than five percent of the stock (or capital or profits interests) of the employer, (2) certain relatives of the employer, or (3) if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business.

[106] Sec. 280C(a).

[107] Sec. 1396(c)(3)(A).

[108] Sec. 1396(c)(3)(B).

[109] Sec. 38(c)(2). The corporate alternative minimum tax is repealed for taxable years beginning after December 31, 2017. However, the full amount of the minimum tax credit will be allowed in taxable years beginning before 2022.

Increased section 179 expensing limitation

An enterprise zone business[110] is allowed up to an additional $35,000 of section 179 expensing for qualified zone property placed in service before January 1, 2018.[111] For taxable years beginning in 2017, the total amount that may be expensed is $545,000.[112] The section 179 expensing allowed to a taxpayer is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds a specified dollar amount.[113] However, an enterprise zone business is only required to take into account 50 percent of the cost of qualified zone property placed in service during the year in determining whether the cost of qualifying property exceeds the specified dollar amount.[114]

The term "qualified zone property" is defined as depreciable tangible property (including buildings) provided that (i) the property is acquired by the taxpayer by purchase (from an unrelated party) after the date on which the designation of the empowerment zone took effect, (ii) the original use of the property in an empowerment zone commences with the taxpayer, and (iii) substantially all of the use of the property is in an empowerment zone in the active conduct of a qualified trade or business by the taxpayer in such zone.[115] Special rules are provided in the case of property that is substantially renovated by the taxpayer.[116]

An enterprise zone business means any qualified business entity and any qualified proprietorship. A qualified business entity means any corporation or partnership if for such year: (1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone; (2) at least 50 percent of the total gross income of such entity is derived from the active conduct of

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[110] Sec. 1397C. The term "enterprise zone business" is separate and distinct from the term "enterprise community." Enterprise community, for purposes of the Code, means the areas designated as such under section 1391. Sec. 1393(b). Note, however, that for purposes of section 1394 relating to tax-exempt enterprise zone facility bonds, references to empowerment zones shall be treated as including references to enterprise communities. Sec. 1394(b)(3).

[111] Sec. 1397A. Note that an Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 provides 100-percent bonus depreciation for qualified property acquired and placed in service after September 27, 2017, and before January 1, 2023. The 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes qualified zone property other than buildings.

[112] $510,000 section 179(b)(1) limitation + $35,000 increase for qualified zone property = $545,000 maximum dollar limitation. See sec. 179(b)(1) and Section 3.25 of Rev. Proc. 2016–55, 2016–45 I.R.B. 707. For taxable years beginning after 2017, the relevant dollar amount under section 179(b)(1) is $1,000,000 (indexed for inflation for taxable years beginning after 2018). See also Section 3.25 of Rev. Proc. 2018–18, 2018–10 I.R.B. 392.

[113] For taxable years beginning in 2017, the relevant dollar amount is $2,030,000. Sec. 179(b)(2) and Section 3.25 of Rev. Proc. 2016–55, 2016–45 I.R.B. 707. For taxable years beginning after 2017, the relevant dollar amount under section 179(b)(2) is $2,500,000 (indexed for inflation for taxable years beginning after 2018). See also Section 3.25 of Rev. Proc. 2018–18, 2018–10 I.R.B. 392.

[114] Sec. 1397A(a)(2). For example, assume that during 2017 a calendar year taxpayer in an enterprise zone business purchased and placed in service $4,500,000 of section 179 property that is qualified zone property. The $510,000 section 179(b)(1) dollar amount for 2017 is increased to $545,000 (by the lesser of $35,000 or $4,500,000). That amount is reduced by the excess section 179 property cost amount of $220,000 ((50 percent × $4,500,000) − $2,030,000)). The taxpayer's expensing limitation is $325,000 ($545,000 − $220,000). If the taxpayer had not been an enterprise zone business, its expensing limitation would be zero because the taxpayer would have been fully phased out.

[115] Sec. 1397D(a)(1). Note, however, that to be eligible for the increased section 179 expensing, the qualified zone property has to also meet the definition of section 179 property (*e.g.*, building property would only qualify if it constitutes qualified real property under section 179(f) (prior to amendments by Pub. L. Nos. 115–97 and 115–141)).

[116] Sec. 1397D(a)(2).

such business; (3) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone; (4) a substantial portion of the intangible property of such entity is used in the active conduct of any such business; (5) a substantial portion of the services performed for such entity by its employees are performed in an empowerment zone; (6) at least 35 percent of its employees are residents of an empowerment zone; (7) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (8) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.[117]

A qualified proprietorship is any qualified business carried on by an individual as a proprietorship if for such year: (1) at least 50 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone; (2) a substantial portion of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone; (3) a substantial portion of the intangible property of such business is used in the active conduct of such business; (4) a substantial portion of the services performed for such individual in such business by employees of such business are performed in an empowerment zone; (5) at least 35 percent of such employees are residents of an empowerment zone; (6) less than five percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (7) less than five percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.[118]

A qualified business is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license or any business prohibited in connection with the empowerment zone employment credit.[119] In addition, the leasing of real property that is located within the empowerment zone is treated as a qualified business only if (1) the leased property is not residential rental property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property is not a qualified business unless at least 50 percent of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

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[117] Sec. 1397C(b).

[118] Sec. 1397C(c). For these purposes, the term "employee" includes the proprietor.

[119] Sec. 1397C(d). Excluded businesses include any private or commercial golf course, country club, massage parlor, hot tub facility, sun tan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for off-premises consumption. Sec. 144(c)(6). Also, a qualified business does not include certain large farms. Sec. 1397C(d)(5)(B).

Expanded tax-exempt financing for certain zone facilities

States or local governments can issue enterprise zone facility bonds to raise funds to provide an enterprise zone business with qualified zone property.[120] These bonds can be used in areas designated enterprise communities as well as areas designated empowerment zones. To qualify, 95 percent (or more) of the net proceeds from the bond issue must be used to finance: (1) qualified zone property whose principal user is an enterprise zone business, and (2) certain land functionally related and subordinate to such property.

The term enterprise zone business is the same as that used for purposes of the increased section 179 deduction limitation (discussed above) with certain modifications for start-up businesses. First, an employee is considered a resident of an empowerment zone for purposes of the 35-percent in-zone employment requirement if they are a resident of an empowerment zone, an enterprise community, or a qualified low-income community within an applicable nominating jurisdiction.[121] The applicable nominating jurisdiction means, with respect to any empowerment zone or enterprise community, any local government that nominated such community for designation under section 1391. The definition of a qualified low-income community is similar to the definition of a low income community provided in section 45D(e) (concerning eligibility for the new markets tax credit). A "qualified low-income community" is a population census tract with either (1) a poverty rate of at least 20 percent, or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a nonmetropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary is authorized to designate "targeted populations" as qualified low-income communities. For this purpose, a "targeted population" is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994[122] (the "Act") to mean individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that "low-income" means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a nonmetropolitan area, less than the greater of (a) 80 percent of the area median family income, or (b) 80 percent of the statewide nonmetropolitan area median family income.

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[120] Sec. 1394.
[121] Pub. L. No. 114–113, Div. Q, sec. 171 (2015) (effective for bonds issued after 2015).
[122] Pub. L. No. 103–325.

Second, a business will be treated as an enterprise zone business during a start-up period if (1) at the beginning of the period, it is reasonable to expect the business to be an enterprise zone business by the end of the start-up period, and (2) the business makes bona fide efforts to be an enterprise zone business. The start-up period is the period that ends with the start of the first tax year beginning more than two years after the later of (1) the issue date of the bond issue financing the qualified zone property, and (2) the date this property is first placed in service (or, if earlier, the date that is three years after the issue date).[123]

Third, a business that qualifies as an enterprise zone business at the end of the start-up period must continue to qualify during a testing period that ends three tax years after the start-up period ends. After the three-year testing period, a business will continue to be treated as an enterprise zone business as long as 35 percent of its employees are residents of an empowerment zone, enterprise community, or a qualified low-income community within an applicable nominating jurisdiction.

The face amount of the bonds may not exceed $60 million for an empowerment zone in a rural area, $130 million for an empowerment zone in an urban area with zone population of less than 100,000, and $230 million for an empowerment zone in an urban area with zone population of at least 100,000.

Elective rollover of capital gain from the sale or exchange of any qualified empowerment zone asset

Taxpayers can elect to defer recognition of gain on the sale of a qualified empowerment zone asset held for more than one year and replaced within 60 days by another qualified empowerment zone asset in the same zone.[124] A qualified empowerment zone asset generally means stock or a partnership interest acquired at original issue for cash in an enterprise zone business, or tangible property originally used in an enterprise zone business by the taxpayer. The deferral is accomplished by reducing the basis of the replacement asset by the amount of the gain recognized on the sale of the asset.

REASONS FOR CHANGE

To further encourage economic development within and expand employment opportunities in empowerment zones, the Committee believes that the empowerment zone tax incentives should be extended.

EXPLANATION OF PROVISION

The provision extends for three years, through December 31, 2020, the period for which the designation of an empowerment zone is in effect, thus extending for three years the empowerment zone tax incentives, including the wage credit, increased section 179 expensing for qualifying property, tax-exempt bond financing, and deferral of capital gains tax on the sale of qualified assets replaced with other qualified assets. In the case of a designation of an empowerment zone the nomination for which included a termination

[123] Sec. 1394(b)(3).
[124] Sec. 1397B.

date which is December 31, 2017, termination shall not apply with respect to such designation if the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary may provide.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2017.

8. AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT (SEC. 118 OF THE BILL)

PRESENT LAW

Since 2006, certain domestic corporations have been entitled to an economic development credit with respect to operations in American Samoa. The credit is not part of the Code but is computed based on the rules of former sections 30A, 199, and 936.

For taxable years beginning before January 1, 2011, as originally enacted, the credit was limited to domestic corporations that were existing credit claimants with respect to American Samoa who had elected the application of section 936 for its last taxable year beginning before January 1, 2006. The credit is based on the corporation's economic activity-based limitation with respect to American Samoa. An existing claimant is a domestic corporation that (1) was engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, and (2) elected the benefits of the possession tax credit [125] in an election in effect for its taxable year that included October 13, 1995.[126] A corporation that added a substantial new line of business (other than in a qualifying acquisition of all the assets of a trade or business of an existing credit claimant) ceased to be an existing credit claimant as of the close of the

[125] For taxable years beginning before January 1, 2006, certain domestic corporations with business operations in the U.S. possessions were eligible for the possession tax credit. Secs. 27(b) and 936. This credit offset the U.S. tax imposed on certain income related to operations in the U.S. possessions. Subject to certain limitations, the amount of the possession tax credit allowed to any domestic corporation equaled the portion of that corporation's U.S. tax that was attributable to the corporation's non-U.S. source taxable income from (1) the active conduct of a trade or business within a U.S. possession, (2) the sale or exchange of substantially all of the assets that were used in such a trade or business, or (3) certain possessions investment. No deduction or foreign tax credit was allowed for any possessions or foreign tax paid or accrued with respect to taxable income that was taken into account in computing the credit under section 936. Under the economic activity-based limit, the amount of the credit could not exceed an amount equal to the sum of (1) 60 percent of the taxpayer's qualified possession wages and allocable employee fringe benefit expenses, (2) 15 percent of depreciation allowances with respect to short-life qualified tangible property, plus 40 percent of depreciation allowances with respect to medium-life qualified tangible property, plus 65 percent of depreciation allowances with respect to long-life qualified tangible property, and (3) in certain cases, a portion of the taxpayer's possession income taxes. A taxpayer could elect, instead of the economic activity-based limit, a limit equal to the applicable percentage of the credit that otherwise would have been allowable with respect to possession business income, beginning in 1998, the applicable percentage was 40 percent.

To qualify for the possession tax credit for a taxable year, a domestic corporation was required to satisfy two conditions. First, the corporation was required to derive at least 80 percent of its gross income for the three-year period immediately preceding the close of the taxable year from sources within a possession. Second, the corporation was required to derive at least 75 percent of its gross income for that same period from the active conduct of a possession business. Sec. 936(a)(2). The section 936 credit generally expired for taxable years beginning after December 31, 2005.

[126] A corporation will qualify as an existing credit claimant if it acquired all the assets of a trade or business of a corporation that (1) actively conducted that trade or business in a possession on October 13, 1995, and (2) had elected the benefits of the possession tax credit in an election in effect for the taxable year that included October 13, 1995.

taxable year ending before the date on which that new line of business was added.

The amount of the credit allowed to a qualifying domestic corporation under the provision is equal to the sum of the amounts used in computing the corporation's economic activity-based limitation with respect to American Samoa, except that no credit is allowed for the amount of any American Samoa income taxes. Thus, for any qualifying corporation the amount of the credit equals the sum of (1) 60 percent of the corporation's qualified American Samoa wages and allocable employee fringe benefit expenses and (2) 15 percent of the corporation's depreciation allowances with respect to short-life qualified American Samoa tangible property, plus 40 percent of the corporation's depreciation allowances with respect to medium-life qualified American Samoa tangible property, plus 65 percent of the corporation's depreciation allowances with respect to long-life qualified American Samoa tangible property.

The section 936(c) rule denying a credit or deduction for any possessions or foreign tax paid with respect to taxable income taken into account in computing the credit under section 936 does not apply with respect to the credit allowed by the provision.

For taxable years beginning after December 31, 2011, the credit rules are modified in two ways. First, domestic corporations with operations in American Samoa are allowed the credit even if those corporations are not existing credit claimants. Second, the credit is available to a domestic corporation (either an existing credit claimant or a new credit claimant) only if the corporation has qualified production activities income (as defined in section 199(c) by substituting "American Samoa" for "the United States" in each place that the latter term appears).

In the case of a corporation that is an existing credit claimant with respect to American Samoa and that elected the application of section 936 for its last taxable year beginning before January 1, 2006, the credit applies to the first 12 taxable years of the corporation which begin after December 31, 2005, and before January 1, 2018. For any other corporation, the credit applies to the first six taxable years of that corporation which begin after December 31, 2011, and before January 1, 2018.

REASONS FOR CHANGE

To further encourage economic development in American Samoa, the Committee believes the American Samoa economic development credit should be extended.

EXPLANATION OF PROVISION

The provision extends the credit for three years to apply (a) in the case of a corporation that is an existing credit claimant with respect to American Samoa and that elected the application of section 936 for its last taxable year beginning before January 1, 2006, to the first 15 taxable years of the corporation which begin after December 31, 2005, and before January 1, 2021, and (b) in the case of any other corporation, to the first nine taxable years of the corporation which begin after December 31, 2011 and before January 1, 2021.

For purposes of this credit, the Code is applied without regard to the repeal of sections 30A and 936 in 2018,[127] or the repeal of section 199 in 2017.[128]

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2017.

C. INCENTIVES FOR ENERGY PRODUCTION, EFFICIENCY, AND GREEN ECONOMY JOBS

1. BIODIESEL AND RENEWABLE DIESEL (SEC. 121 OF THE BILL AND SEC. 40A OF THE CODE)

PRESENT LAW

Biodiesel

Present law provides an income tax credit for biodiesel fuels (the "biodiesel fuels credit"). The biodiesel fuels credit is the sum of three credits: (1) the biodiesel mixture credit, (2) the biodiesel credit, and (3) the small agri-biodiesel producer credit. The biodiesel fuels credit is treated as a general business credit. The amount of the biodiesel fuels credit is includible in gross income. The biodiesel fuels credit is coordinated to take into account benefits from the biodiesel excise tax credit and payment provisions discussed below. The credit does not apply to fuel sold or used after December 31, 2017.

Biodiesel is monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet (1) the registration requirements established by the EPA under section 211 of the Clean Air Act (42 U.S.C. sec. 7545) and (2) the requirements of the American Society of Testing and Materials ("ASTM") D6751. Agri-biodiesel is biodiesel derived solely from virgin oils including oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, camelina, or animal fats.

Biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

Biodiesel mixture credit

The biodiesel mixture credit is $1.00 for each gallon of biodiesel (including agri-biodiesel) used by the taxpayer in the production of a qualified biodiesel mixture. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) used as a fuel by the taxpayer producing such mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs.

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[127] See *The Consolidated Appropriations Act 2018*, Pub. L. No. 115–141, Division U, Title IV, at sec. 401(d)(1)(C) (the repeal of section 936) and sec. 401(d)(1)(D)(viii)(I) (definition of intangible property added to section 367(d)) (March 23, 2018).

[128] Pub. L. 115–97, section 13305(a).

No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

Per IRS guidance a mixture need only contain 1/10th of one percent of diesel fuel to be a qualified mixture. Thus, a qualified biodiesel mixture can contain 99.9 percent biodiesel and 0.1 percent diesel fuel.

Biodiesel credit (B–100)

The biodiesel credit is $1.00 for each gallon of biodiesel that is not in a mixture with diesel fuel (100 percent biodiesel or B–100) and which during the taxable year is (1) used by the taxpayer as a fuel in a trade or business or (2) sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

Small agri-biodiesel producer credit

The Code provides a small agri-biodiesel producer income tax credit, in addition to the biodiesel and biodiesel mixture credits. The credit is 10 cents per gallon for up to 15 million gallons of agri-biodiesel produced by small producers, defined generally as persons whose agri-biodiesel production capacity does not exceed 60 million gallons per year. The agri-biodiesel must (1) be sold by such producer to another person (a) for use by such other person in the production of a qualified biodiesel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c).

Biodiesel mixture excise tax credit

The Code also provides an excise tax credit for biodiesel mixtures. The credit is $1.00 for each gallon of biodiesel used by the taxpayer in producing a biodiesel mixture for sale or use in a trade or business of the taxpayer. A biodiesel mixture is a mixture of biodiesel and diesel fuel that (1) is sold by the taxpayer producing such mixture to any person for use as a fuel or (2) is used as a fuel by the taxpayer producing such mixture. No credit is allowed unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

The credit is not available for any sale or use for any period after December 31, 2017. This excise tax credit is coordinated with the income tax credit for biodiesel such that credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

Payments with respect to biodiesel fuel mixtures

If any person produces a biodiesel fuel mixture in such person's trade or business, the Secretary is to pay such person an amount equal to the biodiesel mixture credit. The biodiesel fuel mixture credit must first be taken against tax liability for taxable fuels. To the extent the biodiesel fuel mixture credit exceeds such tax liability, the excess may be received as a payment. Thus, if the person has no section 4081 liability, the credit is refundable. The Sec-

retary is not required to make payments with respect to biodiesel fuel mixtures sold or used after December 31, 2017.

Renewable diesel

Renewable diesel is liquid fuel that (1) is derived from biomass (as defined in section 45K(c)(3)), (2) meets the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act, and (3) meets the requirements of the ASTM D975 or D396, or equivalent standard established by the Secretary. ASTM D975 provides standards for diesel fuel suitable for use in diesel engines. ASTM D396 provides standards for fuel oil intended for use in fuel-oil burning equipment, such as furnaces. Renewable diesel also includes fuel derived from biomass that meets the requirements of a Department of Defense specification for military jet fuel or an ASTM specification for aviation turbine fuel.

For purposes of the Code, renewable diesel is generally treated the same as biodiesel. In the case of renewable diesel that is aviation fuel, kerosene is treated as though it were diesel fuel for purposes of a qualified renewable diesel mixture. Like biodiesel, the incentive may be taken as an income tax credit, an excise tax credit, or as a payment from the Secretary. The incentive for renewable diesel is $1.00 per gallon. There is no small producer credit for renewable diesel. The incentives for renewable diesel expired after December 31, 2017.

REASONS FOR CHANGE

To encourage the domestic production of biodiesel fuel, the Committee believes that the income tax credit, excise tax credit, and payment provisions for biodiesel and renewable diesel should be extended.

EXPLANATION OF PROVISION

The provision extends the present-law income tax credit, excise tax credit and payment provisions for biodiesel and renewable diesel through December 31, 2020. The provision creates a special rule to address claims regarding excise tax credits and claims for payment for fuel sold or used during the period beginning on January 1, 2018, through the close of the last calendar quarter beginning before the date of enactment. In particular, the provision directs the Secretary to issue guidance within 30 days of the date of enactment. Such guidance is to provide for a one-time submission of claims covering those periods. The guidance is to provide for a 180-day period for the submission of such claims (in such manner as prescribed by the Secretary) to begin no later than 30 days after such guidance is issued. Such claims shall be paid by the Secretary of the Treasury not later than 60 days after receipt. If the claim is not paid within 60 days of the date of the filing, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

EFFECTIVE DATE

The provision applies to fuel sold or used after December 31, 2017.

2. SECOND GENERATION BIOFUEL PRODUCER CREDIT (SEC. 122 OF THE BILL AND SEC. 40 OF THE CODE)

PRESENT LAW

The second generation biofuel producer credit is a nonrefundable income tax credit that a producer may claim for each gallon of qualified second generation biofuel production for the taxable year. The amount of the credit per gallon is $1.01. The provision does not apply to qualified second generation biofuel production after December 31, 2017.

"Qualified second generation biofuel production" is any second generation biofuel which is produced by the taxpayer and which, during the taxable year, is: (1) sold by the taxpayer to another person (a) for use by such other person in the production of a qualified second generation biofuel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or (c) who sells such second generation biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person; or (2) used by the producer for any purpose described in (1)(a), (b), or (c).[129] Special rules apply for fuel derived from algae.

"Second generation biofuel" means any liquid fuel that (1) is produced in the United States and used as fuel in the United States, (2) is derived by or from qualified feedstocks and (3) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency ("EPA") under section 211 of the Clean Air Act. "Qualified feedstock" means any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and any cultivated algae, cyanobacteria or lemna. Second generation biofuel does not include fuels that (1) are more than four percent (determined by weight) water and sediment in any combination, (2) have an ash content of more than one percent (determined by weight), or (3) have an acid number greater than 25 ("unprocessed or excluded fuels"). It also does not include any alcohol with a proof of less than 150.

The second generation biofuel producer credit cannot be claimed unless the taxpayer is registered by the Internal Revenue Service ("IRS") as a producer of second generation biofuel. Second generation biofuel eligible for the section 40 credit is precluded from qualifying as biodiesel, renewable diesel, or alternative fuel for purposes of the applicable income tax credit, excise tax credit, or payment provisions relating to those fuels.

Because it is a credit under section 40(a), the second generation biofuel producer credit is part of the general business credits in section 38. However, the credit can only be carried forward three taxable years after the termination of the credit. The credit is also allowable against the alternative minimum tax. Under section 87, the credit is included in gross income.

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[129] In addition, for fuels derived from algae, cyanobacterial or lemna, a special rule provides that qualified second generation biofuel includes fuel that is sold by the taxpayer to another person for refining by such other person into a fuel that meets the registration requirements for fuels and fuel additives under section 211 of the Clean Air Act.

REASONS FOR CHANGE

To further encourage the domestic production of second generation biofuels, the Committee believes that the second generation biofuel producer credit should be extended.

EXPLANATION OF PROVISION

The provision extends the credit for three years, through December 31, 2020.

EFFECTIVE DATE

The provision applies to qualified second generation biofuel production after December 31, 2017.

3. NONBUSINESS ENERGY PROPERTY (SEC. 123 OF THE BILL AND SEC. 25C OF THE CODE)

PRESENT LAW

A 10-percent credit is available for the purchase of qualified energy efficiency improvements to existing homes.[130] A qualified energy efficiency improvement is any energy efficient building envelope component (1) that is installed in or on a dwelling located in the United States and owned and used by the taxpayer as the taxpayer's principal residence, (2) the original use of which commences with the taxpayer, and (3) that reasonably can be expected to remain in use for at least five years. The credit is nonrefundable.

Energy efficient building envelope components are building envelope components that meet (1) the applicable Energy Star program requirements, in the case of a roof or roof products, (2) version 6.0 Energy Star program requirements, in the case of an exterior window, a skylights, or an exterior door, and (3) the prescriptive criteria for such components established by the 2009 International Energy Conservation Code, as in effect on the date of enactment of the American Recovery and Reinvestment Tax Act of 2009, in the case of any other component.

Building envelope components are (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling when installed in or on such dwelling unit, (2) exterior windows (including skylights), (3) exterior doors, and (4) metal or asphalt roofs installed on a dwelling unity, but only if such roof has appropriate pigmented coatings or cooling granules that are specifically and primarily designed to reduce the heat gain for a dwelling.

Additionally, credits are also available for the purchase of specific energy efficient property originally placed in service by the taxpayer during the taxable year. The allowable credit for the purchase of certain property is (1) $50 for each advanced main air circulating fan, (2) $150 for each qualified natural gas, propane, or oil furnace or hot water boiler, and (3) $300 for each item of energy efficient building property.

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than two percent of the total annual energy use of the

[130] Sec. 25C.

furnace (as determined in the standard Department of Energy test procedures).

A qualified natural gas, propane, or oil furnace or hot water boiler is a natural gas, propane, or oil furnace or hot water boiler with an annual fuel utilization efficiency rate of at least 95.

Energy-efficient building property is: (1) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure, (2) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,[131] (3) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency as in effect on January 1, 2009,[132] (4) a natural gas, propane, or oil water heater which has an energy factor of at least 0.82 or thermal efficiency of at least 90 percent, and (5) a stove which burns biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such dwelling unity, and which has a thermal efficiency rating of at least 75 percent. Biomass fuel is any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

Generally, the credit is available for property placed in service prior to January 1, 2018. The maximum credit for a taxpayer for all taxable years is $500, and no more than $200 of such credit may be attributable to expenditures on windows.

The taxpayer's basis in the property is reduced by the amount of the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. If less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, expenditures which are made from subsidized energy financing are not taken into account. The term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

REASONS FOR CHANGE

The Committee believes that it is in the national interest to conserve energy and that many existing homes continue to be inadequately insulated and have inefficient heating, ventilation, and cooling equipment. Therefore, the Committee believes that the nonbusiness energy efficient property credit should be extended.

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[131] These standards are a seasonal energy efficiency ratio ("SEER") greater than or equal to 15, an energy efficiency ratio ("EER") greater than or equal to 12.5, and heating seasonal performance factor ("HSPF") greater than or equal to 8.5 for split heat pumps, and SEER greater than or equal to 14, EER greater than or equal to 12, and HSPF greater than or equal to 8.0 for packaged heat pumps.

[132] These standards are a SEER greater than or equal to 16 and EER greater than or equal to 13 for split systems, and SEER greater than or equal to 14 and EER greater than or equal to 12 for packaged systems.

EXPLANATION OF PROVISION

The provision extends the nonbusiness energy property credit for three years, through December 31, 2020. The provision also updates the credit's requirements to reflect the fact that the Department of Energy has replaced the energy factor previously used to measure efficiency with a new standard called the uniform energy factor.

EFFECTIVE DATE

The provision is effective for property placed in service after December 31, 2017.

4. QUALIFIED FUEL CELL MOTOR VEHICLES (SEC. 124 OF THE BILL AND SEC. 30B OF THE CODE)

PRESENT LAW

A credit is available through 2017 for vehicles propelled by chemically combining oxygen with hydrogen and creating electricity ("fuel cell vehicles").[133] The base credit is $4,000 for vehicles weighing 8,500 pounds or less. Heavier vehicles can get up to a $40,000 credit, depending on their weight. An additional $1,000 to $4,000 credit is available to cars and light trucks to the extent their fuel economy exceeds the 2002 base fuel economy set forth in the Code.

REASONS FOR CHANGE

The Committee believes that further investments in advanced technology vehicles are necessary to transform automotive transportation in the United States to be cleaner, more fuel efficient, and less reliant on petroleum fuels. Therefore, the Committee believes the credit for fuel cell motor vehicles should be extended.

EXPLANATION OF PROVISION

The provision extends the credit for fuel cell vehicles for three years, through December 31, 2020.

EFFECTIVE DATE

The provision applies to property purchased after December 31, 2017.

5. ALTERNATIVE FUEL REFUELING PROPERTY CREDIT (SEC. 125 OF THE BILL AND SEC. 30C OF THE CODE)

PRESENT LAW

Taxpayers may claim a 30-percent credit for the cost of installing qualified clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer.[134] The credit may not exceed $30,000 per taxable year per location, in the case of qualified refueling property used in a trade or business and $1,000 per taxable year per location, in the case of qualified refueling property installed on property which is used as a principal residence.

[133] Sec. 30B.
[134] Sec. 30C.

Qualified refueling property is property (not including a building or its structural components) for the storage or dispensing of a clean-burning fuel or electricity into the fuel tank or battery of a motor vehicle propelled by such fuel or electricity, but only if the storage or dispensing of the fuel or electricity is at the point of delivery into the fuel tank or battery of the motor vehicle. The original use of such property must begin with the taxpayer.

Clean-burning fuels are any fuel at least 85 percent of the volume of which consists of ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen. In addition, any mixture of biodiesel and diesel fuel, determined without regard to any use of kerosene and containing at least 20 percent biodiesel, qualifies as a clean fuel.

Credits for qualified refueling property used in a trade or business are part of the general business credit and may be carried back for one year and forward for 20 years. Credits for residential qualified refueling property cannot exceed for any taxable year the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. Generally, in the case of qualified refueling property sold to a tax-exempt entity, the taxpayer selling the property may claim the credit.

A taxpayer's basis in qualified refueling property is reduced by the amount of the credit. In addition, no credit is available for property used outside the United States or for which an election to expense has been made under section 179.

The credit is available for property placed in service before January 1, 2018.

REASONS FOR CHANGE

The Committee believes that further investments in advanced technology vehicles and related infrastructure are necessary to transform automotive transportation in the United States to be cleaner, more fuel efficient, and less reliant on petroleum fuels. Therefore, the Committee believes the credit for alternative fuel refueling property should be extended.

EXPLANATION OF PROVISION

The provision extends for three years the 30-percent credit for alternative fuel refueling property, through December 31, 2020.

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2017.

6. EXTENSION OF CREDIT FOR ELECTRIC MOTORCYCLES (SEC. 126 OF THE BILL AND SEC. 30D OF THE CODE)

PRESENT LAW

In general, for vehicles acquired before 2018, a 10-percent credit is available for qualifying plug-in electric motorcycles.[135] Qualifying electric motorcycles must have a battery capacity of at least

[135] Sec. 30D(g). The credit lapsed and was not available for vehicles placed in service in calendar year 2014. Before 2014, the credit was also available for qualified vehicles having 3-wheels.

2.5 kilowatt-hours, be manufactured primarily for use on public streets, roads, and highways, and be capable of achieving speeds of at least 45 miles per hour. The maximum credit for any qualifying vehicle is $2,500.

REASONS FOR CHANGE

The Committee believes that further investments in advanced technology vehicles are necessary to transform automotive transportation in the United States to be cleaner, more fuel efficient, and less reliant on petroleum fuels. Therefore, the Committee believes the credit for electric motorcycles should be extended.

EXPLANATION OF PROVISION

The provision extends the electric motorcycles credit for three years, through December 31, 2020.

EFFECTIVE DATE

The provision applies to vehicles acquired after December 31, 2017.

7. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES (SEC. 127 OF THE BILL AND SEC. 45 OF THE CODE)

PRESENT LAW

Renewable electricity production credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit").[136] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

SUMMARY OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

Eligible electricity production activity (sec. 45)	Credit amount for 2019 [1] (cents per kilowatt-hour)	Expiration [2]
Wind	2.5	December 31, 2019
Closed-loop biomass	2.5	December 31, 2017
Open-loop biomass (including agricultural livestock waste nutrient facilities).	1.2	December 31, 2017
Geothermal	2.5	December 31, 2017
Municipal solid waste (including landfill gas facilities and trash combustion facilities).	1.2	December 31, 2017
Qualified hydropower	1.2	December 31, 2017
Marine and hydrokinetic	1.2	December 31, 2017

[1] In general, the credit is available for electricity produced during the first 10 years after a facility has been placed in service. For wind facilities, the credit is reduced by 20 percent for facilities the construction of which begins in calendar year 2017, by 40 percent for facilities the construction of which begins in calendar year 2018, and by 60 percent for facilities the construction of which begins in calendar year 2019.

[2] Expires for property the construction of which begins after this date.

[136] Sec. 45. In addition to the renewable electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

Election to claim energy credit in lieu of renewable electricity production credit

A taxpayer may make an irrevocable election to have certain property which is part of a qualified renewable electricity production facility be treated as energy property eligible for a 30 percent investment credit under section 48. For wind facilities, the credit is reduced by 20 percent for facilities the construction of which begins in calendar year 2017, by 40 percent for facilities the construction of which begins in calendar year 2018, and by 60 percent for facilities the construction of which begins in calendar year 2019. For purposes of the investment credit, qualified facilities are facilities otherwise eligible for the renewable electricity production credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the renewable electricity production credit. The eligible basis for the investment credit for taxpayers making this election is the basis of the depreciable (or amortizable) property that is part of a facility capable of generating electricity eligible for the renewable electricity production credit.

REASONS FOR CHANGE

The Committee believes that extending the existing incentives for the production of electricity from renewable resources will help limit the environmental consequences of continued reliance on power generated using fossil fuels.

EXPLANATION OF PROVISION

For renewable power facilities, the provision extends for three years (one year in the case of wind facilities), through December 31, 2020, the beginning of construction deadline for the renewable electricity production credit and the election to claim the energy credit in lieu of the electricity production credit. For wind facilities the construction of which begins in calendar year 2020, the credit is reduced by 60 percent.

EFFECTIVE DATE

The provision takes effect January 1, 2018.

8. ENERGY-EFFICIENT HOMES CREDIT (SEC. 129 OF THE BILL AND SEC. 45L OF THE CODE)

PRESENT LAW

A credit is available to an eligible contractor for each qualified new energy-efficient home that is constructed by the eligible contractor and acquired by a person from such eligible contractor for use as a residence during the taxable year. To qualify as a new energy-efficient home, the home must be: (1) a dwelling located in the United States, (2) substantially completed after August 8, 2005, and (3) certified in accordance with guidance prescribed by the Secretary to have a projected level of annual heating and cooling energy consumption that meets the standards for either a 30-percent or 50-percent reduction in energy usage, compared to a comparable dwelling constructed in accordance with the standards of chapter 4 of the 2006 International Energy Conservation Code as in effect

(including supplements) on January 1, 2006, and any applicable Federal minimum efficiency standards for equipment. With respect to homes that meet the 30-percent standard, one-third of such 30-percent savings must come from the building envelope, and with respect to homes that meet the 50-percent standard, one-fifth of such 50-percent savings must come from the building envelope.

Manufactured homes that conform to Federal manufactured home construction and safety standards are eligible for the credit provided all the criteria for the credit are met. The eligible contractor is the person who constructed the home, or in the case of a manufactured home, the producer of such home.

The credit equals $1,000 in the case of a new home that meets the 30-percent standard and $2,000 in the case of a new home that meets the 50-percent standard. Only manufactured homes are eligible for the $1,000 credit.

In lieu of meeting the standards of chapter 4 of the 2006 International Energy Conservation Code, manufactured homes certified by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program are eligible for the $1,000 credit provided criteria (1) and (2), above, are met.

The credit applies to homes that are purchased prior to January 1, 2018.

REASONS FOR CHANGE

The Committee believes that it is in the national interest to conserve energy. The Committee further recognizes that residential energy use for heating and cooling represents a significant share of national energy consumption and accordingly believes that measures to reduce heating and cooling energy requirements have the potential to reduce national energy consumption. The Committee also recognizes that the most cost-effective time to achieve home energy efficiency is when the home is under construction. Therefore, the Committee believes the credit for energy-efficient homes should be extended.

EXPLANATION OF PROVISION

The provision extends the credit for three years, to homes that are acquired prior to January 1, 2021.

EFFECTIVE DATE

The provision applies to homes acquired after December 31, 2017.

9. SPECIAL ALLOWANCE FOR SECOND GENERATION BIOFUEL PLANT PROPERTY (SEC. 130 OF THE BILL AND SEC. 168(l) OF THE CODE)

PRESENT LAW

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or

amortization.[137] The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.[138] Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period,[139] and convention.[140]

Special depreciation allowance for second generation biofuel plant property

An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified second generation biofuel plant property for the taxable year in which the property is placed in service.[141] In order to qualify, the property generally must be placed in service before January 1, 2018.[142]

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes,[143] but is not allowed in computed earnings and profits.[144] The additional first-year depreciation deduction is subject to the general rules regarding whether a cost is subject to capitalization under section 263A. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction.[145]

Qualified property

Qualified second generation biofuel plant property means depreciable property used in the U.S. solely to produce any liquid fuel that (1) is derived by, or from, qualified feedstocks, and (2) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency ("EPA") under section 211 of the Clean Air Act.[146] Qualified feedstock means any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis,[147] and any cultivated algae,

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[137] See secs. 263(a) and 167. In general, only the tax owner of property (*i.e.*, the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not used exclusively in a taxpayer's business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, *e.g.*, sec. 280A.

[138] See Treas. Reg. secs. 1.167(a)–10(b), 1.167(a)–3, 1.167(a)–14, and 1.197–2(f). See also Treas. Reg. sec. 1.167(a)–11(e)(1)(i).

[139] The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance. Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87–56, 1987–2 C.B. 674, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88–22, 1988–1 C.B. 785. In November 1988, Congress revoked the Secretary's authority to modify the class lives of depreciable property. Rev. Proc. 87–56, as modified, remains in effect except to the extent that the Congress has, since 1988, statutorily modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.

[140] Sec. 168.

[141] Sec. 168(l).

[142] Sec. 168(l)(2)(D).

[143] Sec. 168(l)(5). Note that the corporate minimum tax was repealed for taxable years beginning after December 31, 2017. See an Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115–97, sec. 2001, December 22, 2017.

[144] Sec. 312(k)(3).

[145] Sec. 168(l)(1)(B).

[146] Secs. 168(l)(2)(A) and 40(b)(6)(E).

[147] For example, lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis includes bagasse (from sugar cane), corn stalks, and switchgrass. See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 109th Congress* (JCS–1–07), January 2007, p. 722.

cyanobacteria, or lemna.[148] Second generation biofuel does not include any alcohol with a proof of less than 150 or certain unprocessed fuel.[149] Unprocessed fuels are fuels that (1) are more than four percent (determined by weight) water and sediment in any combination, (2) have an ash content of more than one percent (determined by weight), or (3) have an acid number greater than 25.[150]

In order for such property to qualify for the additional first-year depreciation deduction, it must also meet the following requirements: (1) the original use of the property must commence with the taxpayer; and (2) the property must be (i) acquired by purchase (as defined under section 179(d)) by the taxpayer, and (ii) placed in service before January 1, 2018.[151] Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies if the taxpayer begins the manufacture, construction, or production of the property before January 1, 2018 (and all other requirements are met).[152] Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

Exceptions

Property not eligible for the additional first-year depreciation deduction under section 168(l) includes (1) any property to which the additional first-year depreciation allowance under section 168(k) applies,[153] (2) any property required to be depreciated under the alternative depreciation system of section 168(g),[154] (3) any property any portion of which is financed with the proceeds of a tax-exempt obligation under section 103,[155] and (4) any property with respect to which the taxpayer has elected 50-percent expensing under section 179C (relating to election to expense certain refineries).[156]

A taxpayer may elect out of the additional first-year depreciation for any class of property for any taxable year.[157]

In addition, recapture rules apply if the property ceases to be qualified second generation biofuel plant property.[158]

REASONS FOR CHANGE

The Committee acknowledges that encouraging the manufacturing of biofuels (including algae-based fuels) in the United States is important for fostering innovative new technology, encouraging energy independence, supporting the commercial production of these fuels, and creating manufacturing jobs in the United States. Therefore, the Committee believes the special depreciation allow-

[148] Sec. 40(b)(6)(F).
[149] Sec. 40(b)(6)(E)(ii) and (iii).
[150] Sec. 40(b)(6)(E)(iii).
[151] Sec. 168(l)(2). Requirements relating to actions taken before 2007 are not described herein since they have little (if any) remaining effect.
[152] Sec. 168(l)(4) and (k)(2)(E).
[153] Sec. 168(l)(3)(A).
[154] Sec. 168(l)(3)(B).
[155] Sec. 168(l)(3)(C).
[156] Sec. 168(l)(7).
[157] Sec. 168(l)(3)(D).
[158] Sec. 168(l)(6).

ance for second generation biofuel plant property should be extended.

EXPLANATION OF PROVISION

The provision extends the special depreciation allowance for three years, to qualified second generation biofuel plant property placed in service prior to January 1, 2021.

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2017.

10. ENERGY-EFFICIENT COMMERCIAL BUILDINGS DEDUCTION (SEC. 131 OF THE BILL AND SEC. 179D OF THE CODE)

PRESENT LAW

In general

Section 179D provides an election under which a taxpayer may take an immediate deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property is defined as property (1) which is installed on or in any building located in the United States that is within the scope of Standard 90.1–2007 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America ("ASHRAE/IESNA"), (2) which is installed as part of (i) the interior lighting systems, (ii) the heating, cooling, ventilation, and hot water systems, or (iii) the building envelope, and (3) which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2007 (as in effect before the date of the adoption of ASHRAE/IESNA Standard 90.1–2010). The deduction is limited to an amount equal to $1.80 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs using qualified computer software based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

The Secretary is granted authority to prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.[159] Individuals qualified to determine compliance shall only be those rec-

[159] See IRS Notice 2006–52, 2006–1 C.B. 1175, June 2, 2006; IRS Notice 2008–40, 2008–14 I.R.B. 725 March 11, 2008.

ognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a public entity, such as public schools, the deduction may be allocated to the person primarily responsible for designing the property in lieu of the public entity.

If a deduction is allowed under this section, the basis of the property is reduced by the amount of the deduction.

The deduction applies to property placed in service prior to January 1, 2018.

Partial allowance of deduction

(1) System-specific deductions

In the case of a building that does not meet the overall building requirement of 50-percent energy savings, a partial deduction is allowed with respect to each separate building system that comprises energy efficient property and which is certified by a qualified professional as meeting or exceeding the applicable system-specific savings targets established by the Secretary. The applicable system-specific savings targets to be established by the Secretary are those that would result in a total annual energy savings with respect to the whole building of 50 percent, if each of the separate systems met the system specific target. The separate building systems are (1) the interior lighting system, (2) the heating, cooling, ventilation and hot water systems, and (3) the building envelope. The maximum allowable deduction is $0.60 per square foot for each separate system.

(2) Interim rules for lighting systems

In general, in the case of system-specific partial deductions, no deduction is allowed until the Secretary establishes system-specific targets.[160] However, in the case of lighting system retrofits, until such time as the Secretary issues final regulations, the system-specific energy savings target for the lighting system is deemed to be met by a reduction in lighting power density of 40 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 of ASHRAE/IESNA Standard 90.1–2007. Also, in the case of a lighting system that reduces lighting power density by 25 percent, a partial deduction of 30 cents per square foot is allowed. A pro-rated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions under the interim rule.

[160] IRS Notice 2008–40, *supra,* set a target of a 10-percent reduction in total energy and power costs with respect to the building envelope, and 20 percent each with respect to the interior lighting system and the heating, cooling, ventilation and hot water systems. IRS Notice 2012–26 (2012–17 I.R.B. 847 April 23, 2012) established new targets of 10-percent reduction in total energy and power costs with respect to the building envelope, 25 percent with respect to the interior lighting system and 15 percent with respect to the heating, cooling, ventilation and hot water systems, effective beginning March 12, 2012. The targets from Notice 2008–40 may be used until December 31, 2013, but the targets of Notice 2012–26 apply thereafter.

REASONS FOR CHANGE

The Committee believes that it is in the national interest to conserve energy. The Committee further recognizes that commercial buildings consume a significant amount of energy resources and that reductions in commercial energy use have the potential to reduce national energy consumption. Therefore, the Committee believes that the energy efficient commercial building deduction should be extended.

EXPLANATION OF PROVISION

The provision extends the deduction for three years, through December 31, 2020.

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2017.

11. SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES (SEC. 132 OF THE BILL AND SEC. 451(k) OF THE CODE)

PRESENT LAW

A taxpayer selling property generally realizes gain to the extent the sales price (and any other consideration received) exceeds the taxpayer's basis in the property.[161] The realized gain is subject to current income tax[162] unless the recognition of the gain is deferred or excluded from income under a special tax provision.[163]

One such special tax provision permits taxpayers to elect to recognize gain from qualifying electric transmission transactions ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property within the applicable period[164] (the "reinvestment property").[165] If the amount realized exceeds the amount used to purchase reinvestment property, any realized gain is recognized to the extent of such excess in the year of the qualifying electric transmission transaction.

A qualifying electric transmission transaction is the sale or other disposition of property used by a qualified electric utility to an independent transmission company prior to January 1, 2018.[166] A qualified electric utility is defined as an electric utility, which as of the date of the qualifying electric transmission transaction, is vertically integrated in that it is both (1) a transmitting utility (as defined in the Federal Power Act[167]) with respect to the trans-

[161] See sec. 1001.
[162] See secs. 61 and 451.
[163] See, *e.g.,* secs. 453, 1031, and 1033.
[164] The applicable period for a taxpayer to reinvest the proceeds is four years after the close of the taxable year in which the qualifying electric transmission transaction occurs.
[165] Sec. 451(k).
[166] Sec. 451(k)(3).
[167] Sec. 3(23), 16 U.S.C. sec. 796, defines "transmitting utility" as any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency that owns or operates electric power transmission facilities that are used for the sale of electric energy at wholesale.

mission facilities to which the election applies, and (2) an electric utility (as defined in the Federal Power Act[168]).[169]

In general, an independent transmission company is defined as: (1) an independent transmission provider[170] approved by the Federal Energy Regulatory Commission ("FERC"); (2) a person (i) who the FERC determines under section 203 of the Federal Power Act[171] (or by declaratory order) is not a "market participant" and (ii) whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider no later than four years after the close of the taxable year in which the transaction occurs; or (3) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas, (i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization, or (ii) a political subdivision, or affiliate thereof, whose transmission facilities are under the operational control of an organization described in (i).[172]

Exempt utility property is defined as: (1) property used in the trade or business of (i) generating, transmitting, distributing, or selling electricity or (ii) producing, transmitting, distributing, or selling natural gas; or (2) stock in a controlled corporation whose principal trade or business consists of the activities described in (1).[173] Exempt utility property does not include any property that is located outside of the United States.[174]

If a taxpayer is a member of an affiliated group of corporations filing a consolidated return, the reinvestment property may be purchased by any member of the affiliated group (in lieu of the taxpayer).[175]

REASONS FOR CHANGE

The Committee believes that the "unbundling" of electric transmission assets held by vertically integrated utilities, with the transmission assets ultimately placed under the ownership or control of independent transmission providers (or other similarly-approved operators), continues to be an important policy. To continue facilitating the implementation of this policy, the Committee believes it is appropriate to assist taxpayers in moving forward with industry restructuring by continuing to provide a tax deferral for gain associated with certain dispositions of electric transmission assets. The Committee believes this provision will encourage the sale of transmission property from electric utilities to independent transmission companies to improve transmission management and facilitate competitive transmission markets.

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[168] Sec. 3(22), 16 U.S.C. sec. 796, defines "electric utility" as any person or State agency (including any municipality) that sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.

[169] Sec. 451(k)(6).

[170] For example, a regional transmission organization, an independent system operator, or an independent transmission company.

[171] 16 U.S.C. sec. 824b.

[172] Sec. 451(k)(4).

[173] Sec. 451(k)(5).

[174] Sec. 451(k)(5)(C).

[175] Sec. 451(k)(7).

EXPLANATION OF PROVISION

The provision extends for three years, through December 31, 2020, the deferral provision for qualifying electric transmission transactions.

EFFECTIVE DATE

The provision applies to dispositions after December 31, 2017.

12. EXTENSION AND CLARIFICATION OF EXCISE TAX CREDITS RELATING TO ALTERNATIVE FUELS (SEC. 133 OF THE BILL AND SECS. 6426 AND 6427 OF THE CODE)

PRESENT LAW

The Code provides two per-gallon excise tax credits with respect to alternative fuel: the alternative fuel credit, and the alternative fuel mixture credit. For this purpose, the term "alternative fuel" means liquefied petroleum gas, P Series fuels (as defined by the Secretary of Energy under 42 U.S.C. sec. 13211(2)), compressed or liquefied natural gas, liquefied hydrogen, liquid fuel derived from coal through the Fischer-Tropsch process ("coal-to-liquids"), compressed or liquefied gas derived from biomass, or liquid fuel derived from biomass. Such term does not include ethanol, methanol, or biodiesel. "Alternative fuel" also does not include fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp.

For coal-to-liquids produced after December 30, 2009, the fuel must be certified as having been derived from coal produced at a gasification facility that separates and sequesters 75 percent of such facility's total carbon dioxide emissions.

The alternative fuel credit is allowed against section 4041 liability, and the alternative fuel mixture credit is allowed against section 4081 liability.[176] Neither credit is allowed unless the taxpayer is registered with the Secretary. The alternative fuel credit is generally 50 cents per gallon (or applicable gasoline or diesel gallon equivalents[177]) of alternative fuel sold by the taxpayer for use as a motor fuel in a motor vehicle or motorboat, sold for use in aviation or so used by the taxpayer.

The alternative fuel mixture credit is 50 cents per gallon of alternative fuel used in producing an alternative fuel mixture for sale or use in a trade or business of the taxpayer. An "alternative fuel mixture" is a mixture of alternative fuel and taxable fuel (gasoline, diesel fuel or kerosene) that contains at least 1/10 of one percent taxable fuel.[178] The mixture must be sold by the taxpayer pro-

[176] Relating to the excise tax imposed upon removal of gasoline, aviation gasoline, diesel fuel and kerosene.

[177] With respect to any nonliquid alternative fuel (*e.g.,* compressed natural gas), "gasoline gallon equivalent" means the amount of such fuel having a Btu (British thermal unit) content of 124,800 (higher heating value). For liquefied petroleum gas, the credit is determined by reference to the energy equivalent of a gallon gasoline, and for liquidized natural gas, it is the energy equivalent of a gallon of diesel.

[178] It has been argued that, for purposes of the alternative fuel mixture credit, butane is liquefied petroleum gas. The term "liquefied petroleum gas" is not defined for purposes of section 6426. Butane is a gasoline blendstock under section 48.4081–1(c)(3)(i) of the Treasury regulations and, therefore, is gasoline for purposes of section 4083. In Revenue Ruling 2018–2, the Internal Revenue Service determined that butane is not an alternative fuel but is a gasoline blendstock as defined in the regulations. As a result, a mixture of butane and gasoline is a mixture of two taxable fuels. The IRS held that it is not an alternative fuel mixture and does not qualify for the alternative fuel mixture credit.

ducing such mixture to any person for use as a fuel, or used by the taxpayer producing the mixture as a fuel. The credits expired after December 31, 2017.

A person may file a claim for payment equal to the amount of the alternative fuel credit (but not the alternative fuel mixture credit). The alternative fuel credit must first be applied to the applicable excise tax liability under section 4041, and any excess credit may be taken as a payment. The payment provision for alternative fuel expired after December 31, 2017.

REASONS FOR CHANGE

The alternative fuel mixture credit first appeared as part of the Senate Finance Committee's markup of the Energy Tax Incentives Act of 2005 [179] and was enacted as part of the Safe, Efficient Transportation Equity Act: A Legacy for Users in 2005.[180] The alternative fuel mixture credit is part of a suite of incentives intended to reduce U.S. reliance on conventional gasoline, diesel, and kerosene by focusing on alternative fuels, thereby lessening U.S. dependence on foreign oil.[181]

More than a decade after its enactment, in late 2016 or early 2017, promotional literature appeared urging taxpayers to assert on amended returns that butane (a standard component chemical present in all gasoline), when blended with gasoline, constituted an alternative fuel mixture. The theory behind this aggressive tax position is that the butane in the mixture was a form of liquefied petroleum gas, an alternative fuel.[182] The Code does not provide a definition of liquefied petroleum gas for purposes of the alternative fuel mixture credit. The use of butane as an ingredient in gasoline predates the enactment of the alternative fuel mixture credit by many years and Congress never intended to incentivize such a widespread and established practice in the production of conventional gasoline necessary to meet environmental and performance standards.

Others have claimed that butane mixed with propane is an alternative fuel mixture, asserting that butane is the taxable fuel component of the mixture. However, the presence of butane in propane does not further the goals of the mixture credit and the amount that can be added to propane for sale is significantly limited by in-

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[179] Joint Committee on Taxation, *Description of Provisions of the "Energy Policy Tax Incentives Act of 2005,"* (JCX–44–05, June 14, 2005) at p. 46.

[180] Pub. L. No. 109–59, sec. 11113.

[181] For example, see, H. Rpt. No. 110-658, at page 76: Alternative fuels are a significant component of establishing the nation's independence from foreign oil. The fuel incentives were not intended to subsidize fuels with no nexus to the United States. The Committee is aware of situations in which foreign-produced fuel is imported into the United States, mixed with a small amount of diesel fuel, in order to qualify for the credit for qualified biodiesel fuel mixtures, and then the fuel is exported. This practice does not contribute to establishing the country's fuel independence, therefore, the provision denies the fuel credits and payments to such fuel.

[182] Taxpayers have filed several lawsuits recently challenging the IRS position that mixtures of butane and gasoline do not qualify for the alternative fuel mixture credit. See Rev. Rul. 2018–2, 2018–2 I.R.B. 277. The Committee is also aware of disputes regarding the meaning of compressed natural gas ("CNG"). IRS Chief Counsel issued informal advice on the meaning of "compressed natural gas" for purposes of section 6426. FSA No. 20151001F (March 6, 2016) https://www.irs.gov/pub/irs-lafa/151001f.pdf. The advice notes that CNG is generally defined as natural gas in its gaseous form that is contained under pressure of approximately 2,400 to 3600 psi (per square inch) and of the quality required for use as a fuel in vehicles. The Committee is aware that some taxpayers argue that lower levels of pressure sufficient to get any natural gas through a pipeline from the wellhead should qualify as CNG for purposes of the alternative fuel mixture credit. This interpretation is not consistent with Congressional intent to subsidize fuel capable of being used as a substitute for traditional motor vehicle fuel.

dustry standards.[183] It is the understanding of the Committee that butane is being added in minor amounts to the propane sold simply to qualify for the alternative mixture credit. Such practice does not further the goals of energy independence.

It is the Committee's understanding that if the taxpayers' claims (including lawsuits) are successful, the government stands to lose tens of billions of dollars in revenue resulting from amended returns seeking to retroactively take advantage of the unintended loophole for prior years, and also an additional estimated $5 billion per year from any prospective extensions of the alternative fuel mixture credit if this issue is not addressed.

For the foregoing reasons, the Committee has determined that it must close this unintended loophole to protect the public fisc and to prevent a windfall resulting from erroneous interpretations of the law. The Committee believes that once the loophole is properly closed, it is appropriate to extend the incentives. Such an extension will encourage the use and development of alternative motor fuels as substitutes for traditional motor fuels, and will reduce reliance on traditional motor fuels by displacing a significant portion of that traditional volume with alternative fuels included as part of an alternative fuel mixture.

EXPLANATION OF PROVISION

The provision extends the alternative fuel credit and related payment provisions, and the alternative fuel mixture credit through December 31, 2020.

The provision creates a special rule to address claims regarding excise tax credits and claims for payment for alternative fuel sold or used during the period beginning on January 1, 2018, through the close of the last calendar quarter beginning before the date of enactment. In particular, the provision directs the Secretary to issue guidance within 30 days of the date of enactment. Such guidance is to provide for a one-time submission of claims covering those periods. The guidance is to provide for a 180-day period for the submission of such claims (in such manner as prescribed by the Secretary) to begin no later than 30 days after such guidance is issued. Such claims shall be paid by the Secretary of the Treasury not later than 60 days after receipt. If the claim is not paid within 60 days of the date of the filing, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

The provision also makes it clear that for purposes of the alternative fuel mixtures credit, an alternative fuel mixture is not a mixture that includes liquefied petroleum gas, compressed or liquefied natural gas, or compressed or liquefied gas derived from biomass.

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[183] Propane for sale must adhere to commercial and international grades and standards for purity. U.S. Energy Information Administration, *Hydrocarbon Gas Liquids (HGL): Recent Market Trends and Issues* (November 2014) at 24 (https://www.eia.gov/analysis/hgl/pdf/hgl.pdf). It is understood that in an effort to qualify for the mixture credit while still remaining within required standards, in practice only a minimum amount of butane (generally one-tenth of one percent) is added to the propane. "Propane is consumed in the United States primarily in residential and commercial buildings for water heating, cooking, and seasonally as a fuel for space heating, located in regions where natural gas supply is limited or unavailable." *Ibid.* Unlike the alternative fuel credit, the mixture credit is not limited to transportation applications.

EFFECTIVE DATE

The provision generally applies to fuel sold or used after December 31, 2017. The clarification applies to fuel sold or used on or after the date of enactment and fuel sold or used before such date of enactment, but only to the extent that credits and claims of credit under section 6426(e) (relating to the alternative fuel mixture credit) with respect to such sale or use have not been paid or allowed as of such date.

13. OIL SPILL LIABILITY TRUST FUND RATE (SEC. 134 OF THE BILL AND SEC. 4611 OF THE CODE)

PRESENT LAW

Prior to its expiration, the Oil Spill Liability Trust Fund financing rate ("oil spill tax") was nine cents per barrel. It generally applies to crude oil received at a U.S. refinery and to petroleum products entered into the United States for consumption, use, or warehousing.[184] The oil spill tax also applies to certain uses and the exportation of domestic crude oil.[185] If any domestic crude oil is used in or exported from the United States, and before such use or exportation no oil spill tax was imposed on such crude oil, then the oil spill tax is imposed on such crude oil. The tax does not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

For crude oil received at a refinery, the operator of the U.S. refinery is liable for the tax. For imported petroleum products, the person entering the product for consumption, use, or warehousing is liable for the tax. For certain uses and exports, the person using or exporting the crude oil is liable for the tax. No tax is imposed with respect to any petroleum product if the person who would be liable for such tax establishes that a prior oil spill tax has been imposed with respect to such product.

The tax does not apply to any periods after December 31, 2018.

REASONS FOR CHANGE

The Committee believes it is appropriate to reinstate the oil spill tax to provide funding for expenditures from the Oil Spill Liability Trust Fund.

EXPLANATION OF PROVISION

The provision extends the oil spill tax through December 31, 2020.

EFFECTIVE DATE

The provision applies beginning on the first day of the first calendar month beginning after the date of enactment of this Act.

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[184] The term "crude oil" includes crude oil condensates and natural gasoline. The term "petroleum product" includes crude oil.

[185] The term "domestic crude oil" means any crude oil produced from a well located in the United States.

D. Certain Provisions Expiring at the End of 2019

1. NEW MARKETS TAX CREDIT (SEC. 141 OF THE BILL AND SEC. 45D OF THE CODE)

PRESENT LAW

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity ("CDE").[186] The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years.[187] The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year.[188] The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity (1) ceases to be a qualified CDE, (2) the proceeds of the investment cease to be used as required, or (3) the equity investment is redeemed.[189]

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE.[190] A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired at its original issue directly (or through an underwriter) from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder.[191] Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments and the investment must be designated as a qualified equity investment by the CDE. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.[192]

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[186] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106–554.
[187] Sec. 45D(a)(2).
[188] Sec. 45D(a)(3).
[189] Sec. 45D(g).
[190] Sec. 45D(c).
[191] Sec. 45D(b).
[192] Sec. 45D(d).

A "low-income community" is a population census tract with either (1) a poverty rate of at least 20 percent, or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income.[193] For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary is authorized to designate "targeted populations'" as low-income communities for purposes of the new markets tax credit.[194] For this purpose, a "targeted population" is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 [195] (the "Act") to mean individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that "low-income" means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income, and (2) for a targeted population within a non-metropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide non-metropolitan area median family income. A targeted population is not required to be within any census tract. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of the business is used in a low-income community; (3) a substantial portion of the services performed for the business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of the business is attributable to certain financial property or to certain collectibles.[196]

The maximum annual amount of qualified equity investments is $3.5 billion for calendar years 2010 through 2019. No amount of unused allocation limitation may be carried to any calendar year after 2024.

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[193] Sec. 45D(e).
[194] Sec. 45D(e)(2).
[195] Pub. L. No. 103–325.
[196] Sec. 45D(d)(2).

REASONS FOR CHANGE

The Committee believes that the new markets tax credit has proven to be an effective means of providing needed capital to businesses in low-income communities. Therefore, the Committee believes that the new markets tax credit should be extended, and that up to $5 billion in qualified equity investments should be permitted for the 2020 calendar year.

EXPLANATION OF PROVISION

This provision extends the new markets tax credit for one year, through 2020, permitting up to $5 billion in qualified equity investments for the 2020 calendar year. The provision also extends for one year, through 2025, the carryover period for unused new markets tax credits.

EFFECTIVE DATE

The provision applies to calendar years beginning after December 31, 2019.

2. EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE (SEC. 142 OF THE BILL AND SEC. 45S OF THE CODE)

PRESENT LAW

For wages paid in taxable years beginning after December 31, 2017, and before January 1, 2020, "eligible employers'" may claim a general business credit equal to 12.5 percent of the amount of eligible wages (based on the normal hourly wage rate) paid to "qualifying employees'" during any period in which such employees are on "family and medical leave" if the rate of payment under the program is 50 percent of the wages normally paid to an employee for actual services performed for the employer.[197] The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. The maximum amount of family and medical leave that may be taken into account with respect to any qualifying employee for any taxable year is 12 weeks.

An "eligible employer" is one which has in place a written policy that allows all qualifying full-time employees not less than two weeks of annual paid family and medical leave, and which allows all less-than-full-time qualifying employees a commensurate amount of leave (on a pro rata basis) compared to the leave provided to full-time employees. The policy must also provide that the rate of payment under the program is not less than 50 percent of the wages normally paid to any such employee for services performed for the employer.

In addition, in order to be an eligible employer, the employer is prohibited from certain practices or acts which are also prohibited under the FMLA, regardless of whether the employer is subject to the FMLA. Specifically, the employer must provide paid family and medical leave in compliance with a written policy that ensures that the employer will not interfere with, restrain, or deny the exercise

[197] Wages for this purpose are Federal Unemployment Tax Act wages defined in section 3306(b), without regard to the dollar limitation, but do not include amounts taken into account for purposes of determining any other credit under subpart D of the Code.

of or the attempt to exercise, any right provided under the policy and will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

A "qualifying employee" means any individual who is an employee under tax rules and principles and is defined in section 3(e) of the Fair Labor Standards Act of 1938,[198] as amended, who has been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60 percent of the compensation threshold in such year for highly compensated employees.[199] For 2019, this 60 percent amount is $72,000.

"Family and medical leave" for purposes of section 45S is generally defined as leave described under sections 102(a)(1)(A)–(E) or 102(a)(3) of the FMLA.[200] If an employer provides paid leave as vacation leave, personal leave, or other medical or sick leave [201] (unless the medical or sick leave is specifically for one or more of the "family and medical leave" purposes defined above), such paid leave would not be considered to be family and medical leave. In addition, leave paid for by a State or local government or required by State or local law (including such leave required to be paid by the employer) is not taken into account in determining the amount of paid family and medical leave provided by the employer that is eligible for the credit.

The Secretary will make determinations as to whether an employer or an employee satisfies the applicable requirements for an eligible employer or qualifying employee, based on information provided by the employer that the Secretary determines to be necessary or appropriate.

REASONS FOR CHANGE

The Committee believes that the paid family and medical leave tax credit is an important means to help incentivize employers to protect the wages of lower-paid employees experiencing certain family and medical events that necessitate time off from work. Therefore, the Committee believes that the credit should be extended for the 2020 taxable year.

EXPLANATION OF PROVISION

The provision extends the paid family and medical leave credit for one year (for wages paid in taxable years beginning after December 31, 2019, and before January 1, 2021).

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[198] Pub. L. No. 75–718 (June 25, 1938); 29 U.S.C. sec. 201, et seq.

[199] Sec. 414(q)(1)(B) ($120,000 for 2018).

[200] FMLA section 102(a)(1) provides leave for FMLA purposes due to (A) the birth of a son or daughter of the employee and in order to care for such son or daughter; (B) the placement of a son or daughter with the employee for adoption or foster care; (C) caring for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; (D) a serious health condition that makes the employee unable to perform the functions of the employee's position; (E) any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. In addition, FMLA section 102(a)(3) provides leave for FMLA purposes due to the need of an employee who is a spouse, son, daughter, parent, or next-of-kin of an eligible service member to care for such service member.

[201] These terms mean these types of leave within the meaning of FMLA section 102(d)(2).

EFFECTIVE DATE

The provision applies to wages paid in taxable years beginning after December 31, 2019.

3. WORK OPPORTUNITY CREDIT (SEC. 143 OF THE BILL AND SEC. 51 OF THE CODE)

PRESENT LAW

In general

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of ten targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

Targeted groups eligible for the credit

Generally, an employer is eligible for the credit only for qualified wages paid to members of a targeted group.

(1) Families receiving TANF

An eligible recipient is an individual certified by the designated local agency (e.g., a State employment security agency) as being a member of a family eligible to receive benefits under the Temporary Assistance for Needy Families Program ("TANF") for a period of at least nine months, part of which is during the 18-month period ending on the hiring date. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for the TANF.

(2) Qualified veteran

A qualified veteran is a veteran in one of five categories, certified by the designated local agency as: (1) a member of a family eligible to receive assistance under a supplemental nutritional assistance program (for at least a three month period during the year prior to the hiring date); (2) entitled to compensation for a service connected disability and hired within one year of discharge; (3) entitled to compensation for a service connected disability and unemployed for an aggregate of at least six months during the one year period ending on the hiring date; (4) unemployed for at least four weeks but less than six months (whether or not consecutive) during the one-year period ending on the date of hiring; or (5) unemployed for at least six months (whether or not consecutive) during the one-year period ending on the date of hiring.

A veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability. However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not a qualified veteran if any of this active duty occurred during the 60-

day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(3) Qualified ex-felon

A qualified ex-felon is an individual certified by the designated local agency as (1) having been convicted of a felony under any State or Federal law; and (2) having a hiring date within one year of release from prison or the date of conviction.

(4) Designated community resident

A designated community resident is an individual certified by the designated local agency as being at least age 18 but not yet age 40 on the hiring date and as having a principal place of abode within an empowerment zone, enterprise community, renewal community or a rural renewal community. For these purposes, a rural renewal county is a county outside a metropolitan statistical area (as defined by the Office of Management and Budget) which had a net population loss during the five-year periods 1990–1994 and 1995–1999. Qualified wages do not include wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, renewal community or a rural renewal community.

(5) Vocational rehabilitation referral

A vocational rehabilitation referral is an individual who is certified by the designated local agency as an individual who has a physical or mental disability that constitutes a substantial handicap to employment and who has been referred to the employer while receiving, or after completing vocational rehabilitation services: (1) under an individualized, written plan for employment under a State plan approved under the Rehabilitation Act of 1973; (2) under a rehabilitation plan for veterans carried out under Chapter 31 of Title 38, U.S. Code; or (3) under an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act. Certification is provided by the designated local agency upon assurances from the vocational rehabilitation agency that the employee has met the above conditions.

(6) Qualified summer youth employee

A qualified summer youth employee is an individual: (1) who performs services during any 90-day period between May 1 and September 15; (2) who is certified by the designated local agency as being 16 or 17 years of age on the hiring date; (3) who has not been an employee of that employer before; and (4) who is certified by the designated local agency as having a principal place of abode within an empowerment zone, enterprise community, or renewal community. As with designated community residents, no credit is available on wages paid or incurred for service performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, or renewal community. If, after the end of the 90-day period, the employer continues to employ a youth who was certified during the 90-day period as a member of another tar-

geted group, the limit on qualified first-year wages will take into account wages paid to the youth while a qualified summer youth employee.

(7) Qualified supplemental nutrition assistance program benefits recipient

A qualified supplemental nutrition assistance program benefits recipient is an individual at least age 18 but not yet age 40 certified by the designated local agency as being a member of a family receiving assistance under a food and nutrition program under the Food and Nutrition Act of 2008 for a period of at least six months ending on the hiring date. In the case of families that cease to be eligible for food and nutrition assistance under section 6(o) of the Food and Nutrition Act of 2008, the six-month requirement is replaced with a requirement that the family has been receiving food and nutrition assistance for at least three of the five months ending on the date of hire. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for a food and nutrition assistance program under the Food and Nutrition Act of 2008.

(8) Qualified SSI recipient

A qualified SSI recipient is an individual designated by the designated local agency as receiving supplemental security income ("SSI") benefits under Title XVI of the Social Security Act for any month ending within the 60-day period ending on the hiring date.

(9) Long-term family assistance recipient

A qualified long-term family assistance recipient is an individual certified by the designated local agency as being: (1) a member of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) a member of a family that has received such family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997 (the date of enactment of the welfare-to-work tax credit) if the individual is hired within two years after the date that the 18-month total is reached; or (3) a member of a family who is no longer eligible for family assistance because of either Federal or State time limits, if the individual is hired within two years after the Federal or State time limits made the family ineligible for family assistance.

(10) Long-term unemployment recipient

A qualified long-term unemployment recipient is an individual certified by the designated local agency as being in a period of unemployment which: (1) is 27 consecutive weeks or more; and (2) includes a period in which the individual was receiving unemployment compensation under State or Federal law.

Qualified wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer's deduction for wages is reduced by the amount of the credit.[202]

[202] Sec. 280C(a).

For purposes of the credit, generally, wages are defined by reference to the Federal Unemployment Tax Act (FUTA) definition of wages as contained in section 3306(b) of the Code (without regard to the dollar limitation therein contained). Special rules apply in the case of certain agricultural labor and certain railroad labor.

Calculation of the credit

The credit available to an employer for qualified wages paid to members of all targeted groups except for long-term family assistance recipients equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $2,400 (40 percent of the first $6,000 of qualified first-year wages).

The general $6,000 limitation on qualified first-year wages is different for certain targeted groups: (1) qualified summer youth employees; (2) qualified veterans who are entitled to compensation for a service connected disability, and who are hired within one year of discharge; (3) qualified veterans who are entitled to compensation for a service connected disability, and who have been unemployed for an aggregate of at least six months during the one year period ending on the hiring date; (4) qualified veterans unemployed for at least six months (whether or not consecutive) during the one-year period ending on the date of hiring; and (5) long-term family assistance recipients. The maximum credit (and limitation on qualified wages) per employee for members of these the first four of these groups are, respectively: (1) $1,200 (40 percent of the first $3,000 of qualified first-year wages); (2) $4,800 (40 percent of the first $12,000 of qualified first-year wages); (3) $9,600 (40 percent of the first $24,000 of qualified first-year wages); and (4) $5,600 (40 percent of the first $14,000 of qualified first-year wages);

In the case of long-term family assistance recipients, the credit equals 40 percent (25 percent for employment of 400 hours or less) of $10,000 for qualified first-year wages and 50 percent of the first $10,000 of qualified second-year wages. Generally, qualified second-year wages are qualified wages (not in excess of $10,000) attributable to service rendered by a member of the long-term family assistance category during the one-year period beginning on the day after the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $9,000 (40 percent of the first $10,000 of qualified first-year wages plus 50 percent of the first $10,000 of qualified second-year wages). Except for long-term family assistance recipients, no credit is allowed for second-year wages.

Certification rules

Generally, an individual is not treated as a member of a targeted group unless: (1) on or before the day on which an individual begins work for an employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group; or (2) on or before the day an individual is offered employment with the employer, a pre-screening

notice is completed by the employer with respect to such individual, and not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for certification. For these purposes, a pre-screening notice is a document (in such form as the Secretary may prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

An otherwise qualified unemployed veteran is treated as certified by the designated local agency as having aggregate periods of unemployment (whichever is applicable under the qualified veterans rules described above) if such veteran is certified by such agency as being in receipt of unemployment compensation under a State or Federal law for such applicable periods. The Secretary of the Treasury is authorized to provide alternative methods of certification for unemployed veterans.

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Qualified tax-exempt organizations employing qualified veterans

The credit is not available to qualified tax-exempt organizations other than those employing qualified veterans. If a qualified tax-exempt organization employs a qualified veteran (as described above) a tax credit against the FICA taxes of the organization is allowed on the wages of the qualified veteran which are paid for the veteran's services in furtherance of the activities related to the function or purpose constituting the basis of the organization's exemption under section 501.[203]

The credit available to such tax-exempt employer for qualified wages paid to a qualified veteran equals 26 percent (16.25 percent for employment of 400 hours or less) of qualified first-year wages. The amount of qualified first-year wages eligible for the credit is the same as those for non-tax-exempt employers (i.e., $6,000, $12,000, $14,000 or $24,000, depending on the category of qualified veteran).

A qualified tax-exempt organization means an employer that is described in section 501(c) and exempt from tax under section 501(a).

The Social Security Trust Funds are held harmless from the effects of this provision by a transfer from the Treasury General Fund.

Treatment of possessions

The VOW to Hire Heroes Act of 2011 (the "VOW Act")[204] provided a reimbursement mechanism for the U.S. possessions (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands). The Secretary of the Treasury is to pay to each mirror code possession (Guam, the Commonwealth of the Northern

[203] Sec. 3111(e).
[204] Pub. L. No. 112–56.

Mariana Islands, and the United States Virgin Islands) an amount equal to the loss to that possession as a result of the VOW Act changes to the qualified veterans rules.[205] Similarly, the Secretary of the Treasury is to pay to each non-mirror Code possession (American Samoa and the Commonwealth of Puerto Rico) the amount that the Secretary estimates as being equal to the loss to that possession that would have occurred as a result of the VOW Act changes if a mirror code tax system had been in effect in that possession. The Secretary will make this payment to a non-mirror Code possession only if that possession establishes to the satisfaction of the Secretary that the possession has implemented (or, at the discretion of the Secretary, will implement) an income tax benefit that is substantially equivalent to the qualified veterans credit allowed under the VOW Act modifications.

An employer that is allowed a credit against U.S. tax under the VOW Act with respect to a qualified veteran must reduce the amount of the credit claimed by the amount of any credit (or, in the case of a non-mirror Code possession, another tax benefit) that the employer claims against its possession income tax.

Other rules

The work opportunity tax credit is not allowed for wages paid to a relative or dependent of the taxpayer. No credit is allowed for wages paid to an individual who is a more than 50-percent owner of the entity. Similarly, wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

The work opportunity tax credit is not available for individuals who begin work for an employer after December 31, 2019.

REASONS FOR CHANGE

To further encourage employment of individuals in certain targeted groups, the Committee believes that the work opportunity tax credit should be extended.

EXPLANATION OF PROVISION

The provision extends for one year the work opportunity tax credit making it available with respect to individuals who begin work for an employer on or before December 31, 2020.

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[205] Prior to enactment of the VOW Act there were two categories of qualified veterans to whom wages paid by an employer were eligible for the credit. Employers who hired veterans who were eligible to receive assistance under a supplemental nutritional assistance program were entitled to a maximum credit of 40 percent of $6,000 of qualified first-year wages paid to such individual. Employers who hired veterans who were entitled to compensation for a service-connected disability were entitled to a maximum wage credit of 40 percent of $12,000 of qualified first-year wages paid to such individual. The VOW Act expanded the work opportunity credit with respect to qualified veterans resulting in the present-law treatment of qualified veterans described above.

EFFECTIVE DATE

The provision generally applies to individuals who begin work for the employer after December 31, 2019.

4. CERTAIN PROVISIONS RELATED TO BEER, WINE, AND DISTILLED SPIRITS (SEC. 144 OF THE BILL AND SECS. 263A, 5001, 5041, 5051, 5212, 5415, AND 5555 OF THE CODE)

Exemption for aging process of beer, wine, and distilled spirits

PRESENT LAW

The uniform capitalization ("UNICAP") rules require certain direct and indirect costs allocable to real property or tangible personal property produced by the taxpayer to be included in either inventory or capitalized into the basis of such property, as applicable.[206] For real or personal property acquired by the taxpayer for resale, section 263A generally requires certain direct and indirect costs allocable to such property to be included in inventory.

In the case of interest expense, the uniform capitalization rules apply only to interest paid or incurred during the property's production period[207] and that is allocable to property produced by the taxpayer or acquired for resale which (1) is either real property or property with a class life of at least 20 years, (2) has an estimated production period exceeding two years, or (3) has an estimated production period exceeding one year and a cost exceeding $1,000,000.[208] The production period with respect to any property is the period beginning on the date on which production of the property begins,[209] and, except as described below, ending on the date on which the property is ready to be placed in service or held for sale.[210]

For interest costs paid or accrued after December 31, 2017, and before January 1, 2020, the aging period for beer,[211] wine,[212] or distilled spirits[213] is excluded from the production period as determined for purposes of the UNICAP interest capitalization rules. Thus, producers of beer, wine, or distilled spirits (other than spirits unfit for beverage purposes) are able to deduct interest expenses (subject to any other applicable limitation) attributable to a shorter production period that does not include the aging period of the beer, wine, or distilled spirits. In the case of interest costs paid or accrued after December 31, 2019, the production period as deter-

[206] Sec. 263A.
[207] See Treas. Reg. sec. 1.263A–12.
[208] Sec. 263A(f).
[209] In the case of tangible personal property, the production period begins on the first date the taxpayer's accumulated production expenditures, including planning and design expenditures, are at least five percent of the taxpayer's total estimated accumulated production expenditures for the property unit. Treas. Reg. sec. 1.263A–12(c)(3). Thus, the production period may begin before physical production activity has commenced. See Treas. Reg. sec. 1.263A–12(c)(3). For example, in the case of the beer, wine, and distilled spirits industry, the production period may include time spent planning and designing ingredients, production space, or production personnel.
[210] Sec. 263A(f)(5)(B). The production period for a unit of property produced for sale ends on the date that the unit is ready to be held for sale and all production activities reasonably expected to be undertaken by, or for, the taxpayer or a related person are complete. Treas. Reg. sec. 1.263A–12(d)(1).
[211] As defined in section 5052(a).
[212] As defined in section 5041(a).
[213] As defined in section 5002(a)(8), except such spirits that are unfit for use for beverage purposes.

mined for purposes of the UNICAP interest capitalization rules will include the aging period for beer, wine, or distilled spirits.

REASONS FOR CHANGE

The Committee believes that extending the exception to the interest capitalization rules for the alcoholic beverage industry will continue to simplify tax administration and taxpayer compliance.[214]

EXPLANATION OF PROVISION

The provision extends for one year, through December 31, 2020, the exclusion of the aging period for beer, wine, or distilled spirits from the production period as determined for purposes of the UNICAP interest capitalization rules.

EFFECTIVE DATE

The provision applies to interest costs paid or accrued after December 31, 2019.

REDUCED RATE OF EXCISE TAX ON BEER AND TRANSFER OF BEER BETWEEN BONDED FACILITIES

PRESENT LAW

In general

Federal excise taxes are imposed at different rates on distilled spirits, wine, and beer and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), except the taxes on imported bottled distilled spirits, wine, and beer are collected by the Customs and Border Protection Bureau (the "CBP") of the Department of Homeland Security (under delegation by the Secretary of the Treasury).

Liability for the excise tax on beer arises when the alcohol is produced or imported but is not payable until the beer is removed from the brewery or customs custody for consumption or sale. Generally, beer may be transferred between commonly owned breweries without payment of tax; however, tax liability follows these products. Imported bulk beer may be released from customs custody without payment of tax and transferred in bond to a brewery, which becomes liable for the tax on such beer. Beer may be exported without payment of tax and may be withdrawn from a brewery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.[215]

Notwithstanding the current, temporary rates described below, the rate of tax on beer is $18 per barrel (31 gallons).[216] Small brewers are eligible for a reduced tax rate of $7 per barrel on the first 60,000 barrels of beer domestically produced and removed each year.[217] Small brewers are defined as brewers producing

[214] Note that taxpayers in the alcoholic beverage industry that meet the $25 million gross receipts test of section 448(c) are exempt from all uniform capitalization rules under section 263A, including the interest capitalization rules. See sec. 263A(i).

[215] Sec. 5053.

[216] Sec. 5051.

[217] Sec. 5051(a)(2).

fewer than two million barrels of beer during a calendar year. The lower rates for small producers reduce the effective per-gallon tax rate from approximately 58 cents per gallon to approximately 22.6 cents per gallon for this beer.

In the case of a controlled group, the two million barrel limitation for small brewers is applied to the controlled group, and the 60,000 barrels eligible for the reduced rate of tax, are apportioned among the brewers who are component members of such group. The term "controlled group" has the meaning assigned to it by section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" in each place it appears in section 1563(a).

Individuals may produce limited quantities of beer for personal or family use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

For calendar years 2018 and 2019, the rate of tax on beer is temporarily lowered to $16 per barrel on the first six million barrels brewed by the brewer or imported by the importer. In general, in the case of a controlled group of brewers, the six million barrel limitation is applied and apportioned at the level of the controlled group. Beer brewed or imported in excess of the six million barrel limit continues to be taxed at $18 per barrel. In the case of small brewers, such brewers are taxed at a rate of $3.50 per barrel on the first 60,000 barrels domestically produced, and $16 per barrel on any further barrels produced.

Transfer rules and removals without tax

Certain removals or transfers of beer are exempt from tax. Beer may be transferred without payment of the tax between bonded premises under certain conditions specified in the regulations.[218] The tax liability accompanies the beer that is transferred in bond. However, beer may only be transferred without payment of tax between breweries if both breweries are owned by the same brewer.

The shared ownership requirement of section 5414 is temporarily relaxed for calendar years 2018 and 2019. Thus, a brewer may transfer beer from one brewery to another without payment of tax, provided that: (1) the breweries are owned by the same person; (2) one brewery owns a controlling interest in the other; (3) the same person or persons have a controlling interest in both breweries; or (4) the proprietors of the transferring and receiving premises are independent of each other, and the transferor has divested itself of all interest in the beer so transferred, and the transferee has accepted responsibility for payment of the tax.

For purposes of transferring the tax liability pursuant to (4) above, such relief from liability is effective from the time of removal from the transferor's bonded premises, or from the time of divestment, whichever is later.

[218] Sec. 5414.

REASONS FOR CHANGE

The Committee believes that extending these provisions will continue to encourage growth and increased employment in the beer industry.

EXPLANATION OF PROVISION

The provision extends for one year the temporary rate schedule on beer.

The provision extends for one year the temporary rules regarding shared ownership.

EFFECTIVE DATE

The provision to extend the temporary rate schedule applies to beer removed after December 31, 2019.

The provision to extend the temporary rules regarding shared ownership applies to calendar quarters beginning after December 31, 2019.

REDUCED RATE OF EXCISE TAX ON CERTAIN WINE, ADJUSTMENT OF ALCOHOL CONTENT LEVEL FOR APPLICATION OF EXCISE TAXES, AND DEFINITION OF MEAD AND LOW ALCOHOL BY VOLUME WINE

PRESENT LAW

In general

Excise taxes are imposed on wine according to the wine's alcohol content and carbonation levels. Notwithstanding temporary changes to alcohol content allowances described below, the following table outlines the rates of tax on wine.

Tax (and Code Section)	Tax Rates
Wines (sec. 5041)	
"Still wines" [219] not more than 14 percent alcohol	$1.07 per wine gallon [220]
"Still wines" more than 14 percent, but not more than 21 percent, alcohol.	$1.57 per wine gallon
"Still wines" more than 21 percent, but not more than 24 percent, alcohol.	$3.15 per wine gallon
"Still wines" more than 24 percent alcohol	$13.50 per proof gallon (taxed as distilled spirits)
Champagne and other sparkling wines	$3.40 per wine gallon
Artificially carbonated wines	$3.30 per wine gallon

Liability for the excise taxes on wine arises when the wine is produced or imported, but is not payable until the wine is removed from the bonded wine cellar or winery, or from customs control, for consumption or sale. Generally, bulk and bottled wine may be transferred between bonded premises; however, the tax liability on such wine becomes the responsibility of the transferee. Bulk natural wine may be released from customs custody without payment of tax and transferred in bond to a winery. Wine may be exported without payment of tax and may be withdrawn from a wine cellar

[219]A "still wine" is a non-effervescent or minimally effervescent wine containing no more than 0.392 grams of carbon dioxide per hundred milliliters of wine. Champagne wine typically contains more than twice that amount.

[220]A wine gallon is a U.S. liquid gallon.

or winery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.[221]

Credits and exemptions for certain wine producers

Notwithstanding the current temporary credits described below, domestic wine producers having aggregate annual production not exceeding 250,000 gallons ("small domestic producers") receive a credit against the wine excise tax equal to 90 cents per gallon (the amount of a wine tax increase enacted in 1990) on the first 100,000 gallons of wine domestically produced and removed during a calendar year.[222] The credit is reduced (but not below zero) by one percent for each 1,000 gallons produced in excess of 150,000 gallons; the credit may not be applied to the tax liability on sparkling wines. In the case of a controlled group, the 250,000 gallon limitation for wineries is applied to the controlled group, and the 100,000 gallons eligible for the credit, are apportioned among the wineries who are component members of such group. The term "controlled group" has the meaning assigned to it by sec. 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" in each place it appears in sec 1563(a).

The credit against the wine excise tax for small domestic producers is temporarily modified for calendar year 2018 and 2019 in several ways. First, the 250,000 wine gallon domestic production limitation is removed (thus making the credit available for all wine producers and importers). Second, under the modifications, the credit may be applied to the tax liability on sparkling wine. Third, with respect to wine produced in, or imported into, the United States during a calendar year, the credit amount is modified to (1) $1.00 per wine gallon for the first 30,000 wine gallons of wine, plus, (2) 90 cents per wine gallon on the next 100,000 wine gallons of wine, plus (3) 53.5 cents per wine gallon on the next 620,000 wine gallons of wine.[223] Finally, there is no phase-out of the credit with additional production.

Other temporary changes

Alcohol-by-volume levels of the first two tiers of the excise tax on wine are temporarily modified for calendar years 2018 and 2019, by changing 14 percent to 16 percent. Thus, a wine producer or importer may temporarily produce or import "still wine" that has an alcohol-by-volume level of up to 16 percent and remain subject to the lowest rate of $1.07 per wine gallon.

Mead and certain sparkling, low alcohol-by-volume wines are temporarily designated to be taxed at the lowest rate applicable to "still wine," $1.07 per wine gallon of wine for calendar years 2018 and 2019. Mead is defined as a wine that contains not more than 0.64 grams of carbon dioxide per hundred milliliters of wine,[224] which is derived solely from honey and water, contains no fruit product or fruit flavoring, and contains less than 8.5 percent alcohol-by-volume. The sparkling wines eligible to be taxed at the lowest rate are those wines that contain more than 0.64 grams of car-

[221] Sec. 5042.
[222] Sec. 5041(c).
[223] The credit rate for hard cider is tiered at the same level of production or importation, but is equal to 6.2 cents, 5.6 cents, and 3.3 cents, respectively.
[224] The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.

bon dioxide per hundred milliliters of wine,[225] which are derived primarily from grapes or grape juice concentrate and water, which contain no fruit flavoring other than grape, and which contain less than 8.5 percent alcohol by volume.

REASONS FOR CHANGE

The Committee believes that extending these provisions will continue to encourage growth and increased employment in the wine industry.

EXPLANATION OF PROVISION

The provision extends for one year the temporary modifications to the credit against the wine excise tax.

The provision extends for one year the temporary modification to the alcohol-by-volume levels for purposes of the excise tax.

The provision extends for one year the temporary rates on mead and certain sparkling, low alcohol-by-volume wines.

EFFECTIVE DATE

The provisions apply to wine removed after December 31, 2019.

REDUCED RATE OF EXCISE TAX ON CERTAIN DISTILLED SPIRITS AND BULK DISTILLED SPIRITS

PRESENT LAW

Notwithstanding the current, temporary rates described below, distilled spirits are taxed at a rate of $13.50 per proof gallon.[226] Liability for the excise tax on distilled spirits arises when the alcohol is produced or imported but is not determined and payable until bottled distilled spirits are removed from the bonded premises of the distilled spirits plant where they are produced, or customs custody. Generally, bulk distilled spirits may be transferred in bond between bonded premises; however, tax liability follows these products. Imported bulk distilled spirits may be released from customs custody without payment of tax and transferred in bond to a distillery. Distilled spirits be exported without payment of tax and may be withdrawn from a distillery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.

For calendar years 2018 and 2019, there is a temporary tax rate schedule for distilled spirits based on annual quantity produced or imported. The rate of tax is lowered to $2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits produced, $13.34 for all proof gallons in excess of that amount but below 22,130,000 proof gallons, and $13.50 for amounts thereafter. Rules prevent members of the same controlled group from receiving the lower rate on more than 100,000 proof gallons of distilled spirits. Additionally, importers of distilled spirits are eligible for the temporary lower rates subject to documentation of the annual total production of the producer.

[225] The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.

[226] Secs. 5001, 5006, 5043, and 5054.

Additionally, for calendar years 2018 and 2019, distillers may transfer spirits in bond in containers other than bulk containers without payment of tax.

REASONS FOR CHANGE

The Committee believes that extending these provisions will continue to encourage growth and increased employment in the distilled spirits industry.

EXPLANATION OF PROVISION

The provision extends for one year the temporary rate schedule on distilled spirits and the eligibility of that rate schedule for importers.

The provision extends for one year the allowance for distillers to transfer spirits in bond in containers other than bulk containers without payment of tax.

EFFECTIVE DATE

The provision to extend the temporary rate schedule applies to distilled spirits removed after December 31, 2019.

The provision to extend the allowance for distillers to transfer spirits in bond in containers other than bulk containers without payment of tax applies to distilled spirits transferred in bond after December 31, 2019.

SIMPLIFICATION OF RULES REGARDING RECORDS, STATEMENTS, AND RETURNS FOR CRAFT BEVERAGE MODERNIZATION AND TAX REFORM

PRESENT LAW

The Code requires those liable for taxation on alcoholic beverages to keep such records, render such statements, make such returns, and comply with such rules and regulations as prescribed by the Secretary.[227] For calendar quarters beginning after February 9, 2018, and before January 1, 2020, the Secretary shall permit a unified system for any records, statements, and returns required to be kept, rendered, or made for any beer produced in a brewery for which tax is imposed, including any beer which has been removed for consumption on the premises of the brewery.

REASONS FOR CHANGE

The Committee believes that extending this provision will continue to simplify recordkeeping for brewers.

EXPLANATION OF PROVISION

The provision extends for one year the Secretary's permission of a unified system for any records, statements, and returns required to be kept, rendered, or made for any beer produced in a brewery for which tax is imposed, including any beer which has been removed for consumption on the premises of the brewery.

[227] Sec. 5555(a).

EFFECTIVE DATE

The provision applies to calendar quarters beginning December 31, 2019.

5. LOOK-THROUGH RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS (SEC. 145 OF THE BILL AND SEC. 954(c)(6) OF THE CODE)

PRESENT LAW

In general

The rules of subpart F[228] require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("CFC") to include certain income of the CFC (referred to as "subpart F income") on a current basis for U.S. tax purposes.[229]

Subpart F income includes foreign base company income.[230] One category of foreign base company income is foreign personal holding company income, which includes passive income such as dividends, interest, rents, and royalties, among other types of income.[231] There are several exceptions to these rules. For example, foreign personal holding company income does not include dividends and interest received by a CFC from a related corporation organized and operating in the same foreign country in which the CFC is organized, or rents and royalties received by a CFC from a related corporation for the use of property within the country in which the CFC is organized.[232] Interest, rent, and royalty payments do not qualify for this exclusion to the extent that such payments reduce the subpart F income of the payor.

In addition, subpart F income of a CFC does not include any item of income from sources within the United States that is effectively connected with the conduct by such CFC of a trade or business within the United States ("ECI") unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a tax treaty.[233]

The "CFC look-through" rule

Section 954(c)(6), colloquially referred to as the "CFC look-through" rule, provides that dividends, interest (including factoring income that is treated as equivalent to interest under section 954(c)(1)(E)), rents, and royalties received or accrued by one CFC from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to income of the payor that is neither subpart F income nor treated as ECI. For this purpose, a related CFC is a CFC that controls or is controlled by the other CFC, or a CFC that is controlled by the same person or persons that control the other CFC. Ownership of more than 50 percent of the CFC's stock (by vote or value) constitutes control for these purposes.

The Secretary is authorized to prescribe regulations that are necessary or appropriate to carry out the look-through rule, including

[228] Secs. 951–964.
[229] Sec. 951(a).
[230] Secs. 952(a)(2) and 954.
[231] Sec. 954(c)(1).
[232] Sec. 954(c)(3).
[233] Sec. 952(b).

such regulations as may be necessary or appropriate to prevent the abuse of the purposes of such rule.

The look-through rule applies to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.[234]

REASONS FOR CHANGE

The Committee believes that the CFC look-through rule streamlines the financing of the overseas operations of U.S. multinational companies by allowing the redeployment of active foreign earnings of one CFC in a related CFC without the imposition of an income inclusion under subpart F. Furthermore, the Committee believes that not extending the CFC look-through rule would be a policy change that would cause U.S. multinational companies to incur certain administrative and transaction costs in restructuring existing and future financings of their overseas operations conducted through CFCs. Finally, the CFC look-through rule prevents the affirmative use of related party transactions among related CFCs to convert income that is not subpart F income of one CFC into subpart F income of a related CFC. Absent the CFC look-through rule, such transactions in some cases may have the effect of reducing the total U.S. tax payable on foreign earnings. Accordingly, the Committee believes that the CFC look-through rule should be extended.

EXPLANATION OF PROVISION

The provision extends for one year the application of the look-through rule, to taxable years of foreign corporations beginning before January 1, 2021, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

EFFECTIVE DATE

The provision applies to taxable years of foreign corporations beginning after December 31, 2019, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

6. CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS (SEC. 146 OF THE BILL AND SEC. 35 OF THE CODE)

PRESENT LAW

Eligible coverage months

For months beginning before January 1, 2020, in the case of an eligible individual, a refundable tax credit is provided for 72.5 percent of the individual's premiums for qualified health insurance of the individual and qualifying family members for each eligible cov-

[234] See section 144 of the Protecting Americans from Tax Hikes Act of 2015 (Division Q of Pub. L. No. 114–113), H.R. 2029 (the "PATH Act of 2015"), which extended section 954(c)(6) for five years. Congress has previously extended the application of section 954(c)(6) several times, most recently in the Tax Increase Prevention Act of 2014, Pub. L. No. 113–295; Pub. L. No. 107–147, sec. 614, 2002; Pub. L. No. 106–170, sec. 503, 1999; Pub. L. No. 105–277, 1998.

erage month beginning in the taxable year.[235] The credit is commonly referred to as the health coverage tax credit. The credit is available only with respect to amounts paid by the individual for qualified health insurance. Advance monthly payments paid directly to the health plan administrator are available.[236]

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if (1) the month begins before January 1, 2020, and (2) as of the first day of the month, the individual is an eligible individual, is covered by qualified health insurance, the premium for which is paid by the individual, does not have other specified coverage, and is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements.

Eligible individuals

An eligible individual is an individual who is (1) an eligible Trade Adjustment Assistance ("TAA") recipient, (2) an eligible alternative TAA recipient, or (3) an eligible Pension Benefit Guaranty Corporation ("PBGC") pension recipient. In general, an individual is an eligible TAA recipient for a month if the individual (1) receives for any day of the month a trade readjustment allowance under the Trade Act of 1974 or would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a required certification. An individual is an eligible alternative TAA recipient for a month if the individual participates in a certain program under the Trade Act of 1974 and receives a related benefit for the month. Generally, an individual is an eligible PBGC pension recipient for any month if the individual (1) is age 55 or over as of the first day of the month and (2) receives a benefit for the month, any portion of which is paid by the PBGC. A person who may be claimed as a dependent on another person's tax return is not an eligible individual. In addition, an otherwise eligible individual is not eligible for the credit for a month if, as of the first day of the month, the individual has certain specified coverage, such as certain employer-provided coverage or coverage under certain governmental health programs.

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) coverage under a COBRA continuation provision;[237] (2) State-based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by a State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State ar-

[235] Qualifying family members are the individual's spouse and any dependent for whom the individual is entitled to claim a dependency exemption. Any individual who has certain specified coverage is not a qualifying family member.

[236] Sec. 7527.

[237] COBRA continuation provision is defined by section 9832(d)(1).

rangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; (9) coverage under individual health insurance[238] (other than coverage purchased through an American Health Benefit Exchange);[239] and (10) coverage under an employee benefit plan funded by a voluntary employee beneficiary association ("VEBA")[240] established pursuant to an order of a bankruptcy court (or by agreement with an authorized representative).[241]

Qualified health insurance does not include any State-based coverage (*i.e.*, coverage described in (2)–(7) in the preceding paragraph) unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain consumer-protection requirements.[242] Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals.

A qualifying individual for this purpose is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage[243] of three months or longer, does not have other specified coverage, and is not imprisoned. However, State-based coverage that satisfies any or all of the consumer-protection requirements for State-based coverage with respect to all eligible individuals is also qualified health insurance for purposes of the health coverage tax credit.[244]

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is for excepted benefits.

REASONS FOR CHANGE

The Committee believes that the health coverage tax credit should be extended for 12 months, through 2020, so that health coverage continues to be affordable for eligible TAA recipients, alternative TAA recipients, and PBGC recipients.

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[238] For this purpose, "individual health insurance" means any insurance that constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

[239] The premium assistance credit is provided for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange. See sec. 36B.

[240] See section 501(c)(9) for the definition of a VEBA.

[241] See 11 U.S.C. sec. 1114.

[242] For guidance on how a State elects a health program to be qualified health insurance for purposes of the credit, see Rev. Proc. 2004–12, 2004–1 C.B. 528.

[243] Creditable coverage is determined under section 9801(c).

[244] See Q&A–10 of Notice 2005–50, 2005–2 C.B. 14.

EXPLANATION OF PROVISION

The provision extends the availability of the health coverage tax credit for 12 months, by amending the definition of eligible coverage month to include months beginning before January 1, 2021, if the requirements for an eligible coverage month are otherwise met.

EFFECTIVE DATE

The provision is effective for months beginning after December 31, 2019.

TITLE II—ESTATE AND GIFT TAX

1. REDUCTION OF UNIFIED CREDIT AGAINST ESTATE TAX (SEC. 201 OF THE BILL AND SEC. 2010 OF THE CODE)

PRESENT LAW

In general

A gift tax is imposed on certain lifetime transfers, and an estate tax is imposed on certain transfers at death. A generation-skipping transfer tax generally is imposed on transfers, either directly or in trust or similar arrangement, to a "skip person" (*i.e.*, a beneficiary in a generation more than one generation younger than that of the transferor). Transfers subject to the generation-skipping transfer tax include direct skips, taxable terminations, and taxable distributions.

Income tax rules determine the recipient's tax basis in property acquired from a decedent or by gift. Gifts and bequests generally are excluded from the recipient's gross income.[245]

Unified credit (exemption) and tax rates

Unified credit

A unified credit is available with respect to taxable transfers by gift and at death.[246] The unified credit offsets tax, computed using the applicable estate and gift tax rates, on a specified amount of transfers, referred to as the applicable exclusion amount, or exemption amount. Exemption used during life to offset taxable gifts reduces the amount of exemption that remains at death to offset the value of a decedent's estate. An election is available under which exemption that is not used by a decedent may be used by the decedent's surviving spouse (exemption portability).

For decedents dying and gifts made before January 1, 2018, the basic exclusion amount that is used to determine the unified credit is $5 million, indexed for inflation occurring after 2011. Public Law 115–97, however, temporarily increases the basic exclusion amount for estates of decedents dying and gifts made after December 31, 2017 and before January 1, 2026. This is accomplished by doubling the basic exclusion amount provided in section 2010(c)(3) of the Code from $5 million to $10 million. The $10 million amount is in-

[245] Sec. 102.
[246] Sec. 2010.

dexed for inflation occurring after 2011. For 2019, the basic exclusion amount is $11,400,000.[247]

The temporary increase in the basic exclusion amount expires for decedents dying and gifts made after December 31, 2025. At that time, the basic exclusion amount returns to $5 million, indexed for inflation occurring after 2011.

Common tax rate table

A common tax-rate table with a top marginal tax rate of 40 percent is used to compute gift tax and estate tax. The 40-percent rate applies to transfers in excess of $1 million (to the extent not exempt). Because the 2019 exemption amount shields the first $11.4 million in gifts and bequests from tax, transfers in excess of the exemption amount generally are subject to tax at the highest marginal rate (40 percent).

Generation-skipping transfer tax exemption and rate

The generation-skipping transfer tax is a separate tax that can apply in addition to either the gift tax or the estate tax. The tax rate and exemption amount for generation-skipping transfer tax purposes, however, are set by reference to the estate tax rules. Generation-skipping transfer tax is imposed using a flat rate equal to the highest estate tax rate (40 percent). Tax is imposed on cumulative generation-skipping transfers in excess of the generation-skipping transfer tax exemption amount in effect for the year of the transfer. The generation-skipping transfer tax exemption for a given year is equal to the estate tax exemption amount in effect for that year ($11.4 million for 2019).

REASONS FOR CHANGE

The Committee believes that it is appropriate to return to the pre-Public Law 115–97 basic exclusion amount in order to require the wealthiest estates to pay their fair share, without increasing the tax burden on lower- or middle-income Americans.

EXPLANATION OF PROVISION

The provision accelerates by three years the expiration of the increase in the estate and gift tax exemption. As a result, the basic exclusion amount returns to $5 million (indexed for inflation occurring after 2011) for decedents dying and gifts made after December 31, 2022.

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[247] Rev. Proc. 2018–57, 2018–49 I.R.B. 827, p. 835 (December 3, 2018). As a conforming amendment to the increase in the basic exclusion amount, Public Law 115–97 also amends section 2001(g) (regarding computation of estate tax). This conforming amendment, which was enacted as a permanent provision, provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out the purposes of section 2001 with respect to differences between the basic exclusion amount in effect at the time of the decedent's death and at the time of any gifts made by the decedent. The purpose of the regulatory authority is to address the computation of the estate tax where (1) a decedent dies in a year in which the basic exclusion amount is lower than the basic exclusion amount that was in effect when the decedent made taxable gifts during his or her life, and (2) such taxable gifts exceeded the basic exclusion amount in effect at the time of the decedent's death. Because the temporary increase in the basic exclusion amount under Public Law 115–97 does not apply for estates of decedents dying after December 31, 2025, it was expected that such guidance would prevent the estate tax computation under section 2001(g) from recapturing, or "clawing back," all or a portion of the benefit of the increased basic exclusion amount used to offset gift tax for certain decedents who make large taxable gifts between January 1, 2018, and December 31, 2025, and die after December 31, 2025. In November 2018, the IRS issued proposed regulations pursuant to this regulatory authority. See REG–106706–18, 26 C.F.R. Part 20 (November 23, 2018).

EFFECTIVE DATE

The provision is effective for estates of decedents dying and gifts made after December 31, 2022.

TITLE III—DISASTER TAX RELIEF

1. DEFINITIONS (SEC. 301 OF THE BILL)

The provisions below provide temporary tax relief to those areas affected by certain major disasters declared in 2018 and some portion of 2019. The provisions use the terms "qualified disaster area," "qualified disaster zone," "qualified disaster," and "incident period." As used in the bill, "qualified disaster area" refers to an area with respect to which a major disaster has been declared by the President during the period beginning on January 1, 2018, and ending on the date which is 60 days after the date of enactment of the bill, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act"), if the incident period of the disaster with respect to which such declaration is made begins on or before the date of the enactment of the bill. However, the "California wildfire disaster area," as defined in the Bipartisan Budget Act of 2018,[248] is not a qualified disaster area. A "qualified disaster zone" refers to that portion of the applicable "qualified disaster area," as described above, which has been determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act by reason of the applicable qualified disaster. A "qualified disaster" means, with respect to the applicable qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area. "Incident period" means, with respect to the applicable qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred, except that such period shall not be treated as beginning before January 1, 2018, or ending after the date which is 30 days after the date of enactment of this bill.

2. SPECIAL DISASTER-RELATED RULES FOR USE OF RETIREMENT FUNDS (SEC. 302 OF THE BILL AND SEC. 72 OF THE CODE)

PRESENT LAW

Distributions from tax-favored retirement plans

A distribution from a qualified retirement plan, a tax-sheltered annuity plan (a "section 403(b) plan"), an eligible deferred compensation plan of a State or local government employer (a "governmental section 457(b) plan"), or an individual retirement arrangement (an "IRA") generally is included in income for the year distributed.[249] These plans are referred to collectively as "eligible retirement plans." In addition, unless an exception applies, a distribution from a qualified retirement plan, a section 403(b) plan, or an IRA received before age 59½ is subject to a 10-percent addi-

[248] Pub. L. No. 115–123, sec. 20102.

[249] Secs. 401(a), 403(a), 403(b), 457(b) and 408. Under section 3405, distributions from these plans are generally subject to income tax withholding unless the recipient elects otherwise. In addition, certain distributions from a qualified retirement plan, a section 403(b) plan, or a governmental section 457(b) plan are subject to mandatory income tax withholding at a 20-percent rate unless the distribution is rolled over.

tional tax (referred to as the "early withdrawal tax") on the amount includible in income.[250]

In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual.

The terms of a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan generally determine when distributions are permitted. However, in some cases, restrictions may apply to distributions before an employee's termination of employment, referred to as "in-service" distributions. Despite such restrictions, an in-service distribution may be permitted in the case of financial hardship or an unforeseeable emergency.

Loans from tax-favored retirement plans

Employer-sponsored retirement plans may provide loans to participants. Unless the loan satisfies certain requirements in both form and operation, the amount of a retirement plan loan is a deemed distribution from the retirement plan. Among the requirements that the loan must satisfy are that the loan amount must not exceed the lesser of 50 percent of the participant's account balance or $50,000 (generally taking into account outstanding balances of previous loans), and the loan's terms must provide for a repayment period of not more than five years (except for a loan specifically to purchase a home) and for level amortization of loan payments to be made not less frequently than quarterly.[251] Thus, if an employee stops making payments on a loan before the loan is repaid, a deemed distribution of the outstanding loan balance generally occurs. A deemed distribution of an unpaid loan balance is generally taxed as though an actual distribution occurred, including being subject to a 10-percent early distribution tax, if applicable. A deemed distribution is not eligible for rollover to another eligible retirement plan. Subject to the limit on the amount of loans, which precludes any additional loan that would cause the limit to be exceeded, the rules relating to loans do not limit the number of loans an employee may obtain from a plan.

Tax-favored retirement plan compliance

Tax-favored retirement plans are generally required to be operated in accordance with the terms of the plan document, and amendments to reflect changes to the plan generally must be adopted within a limited period.

REASONS FOR CHANGE

When a disaster occurs, taxpayers living or working in the affected areas may experience damage to their homes and personal property, in some cases significant. As a result, they may need access to their financial resources to recover from the consequences of such events to repair such damage and to pay for immediate liv-

[250] Sec. 72(t). Under present law, the 10-percent early withdrawal tax does not apply to distributions from a governmental section 457(b) plan.
[251] Sec. 72(p).

ing expenses. The Committee believes that when a major Federal disaster is declared under the Stafford Act, affected taxpayers of qualified disasters should be able to take distributions or loans from their retirement accounts for such purposes.

EXPLANATION OF PROVISION

Distributions and recontributions

Under the provision, an exception to the 10-percent early withdrawal tax applies in the case of "qualified disaster distributions" from a qualified retirement plan, a section 403(b) plan, or an IRA. In addition, as discussed further, income attributable to a qualified disaster distribution may be included in income ratably over three years, and the amount of a qualified disaster distribution may be recontributed to an eligible retirement plan within three years.

A "qualified disaster distribution" is any distribution from a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan, made on or after the first day of the incident period of a qualified disaster and before the date which is 180 days after the date of enactment, to an individual whose principal place of abode at any time during the incident period is located in the qualified disaster area and who has sustained an economic loss by reason of such disaster, regardless of whether a distribution otherwise would be permissible.[252]

A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified disaster distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer's controlled group or affiliated service group does not exceed $100,000 for each qualified disaster. The total amount of distributions to an individual from all eligible retirement plans that may be treated as qualified disaster distributions with respect to each qualified disaster is $100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $100,000, taking into account distributions from plans of other employers or IRAs, or because an individual may have been affected by more than one qualified disaster.

Any amount required to be included in income as a result of a qualified disaster distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply.

Any portion of a qualified disaster distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income. For example, if an individual receives a qualified disaster distribution in 2019, that amount is included in income, generally ratably over the year of the distribution and the following two years but is not subject to the 10-percent early withdrawal tax. If, in 2021, the amount of the qualified disaster distribution is recontributed to an eligible retirement plan,

[252] A qualified disaster distribution is subject to income tax withholding unless the recipient elects otherwise. Mandatory 20-percent withholding does not apply.

the individual may file an amended return to claim a refund of the tax attributable to the amount previously included in income. In addition, if, under the ratable inclusion provision, a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includible in income.

Recontributions of withdrawals for purchase of a home

Any individual who received a qualified disaster distribution [253] during the period beginning on the date which is 180 days before the first day of the incident period of the qualified disaster and ending on the date which is 30 days after the last day of such incident period, which was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not so purchased or constructed on account of the qualified disaster, may, during the "applicable period," make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made.[254] The "applicable period" is, in the case of a principal residence in a qualified disaster area with respect to any qualified disaster, the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the date of enactment. A plan is not treated as violating any Code requirement merely because it repays such distributions as provided above, provided that the aggregate amount of such repayments from plans maintained by the employer and members of the employer's controlled group or affiliated service group does not exceed $100,000.

Loans

In the case of a "qualified individual" who obtained a loan from a qualified employer plan [255] made during the 180-day period beginning on the date of enactment, in lieu of the permitted maximum loan amount as the lesser of 50 percent of the participant's account balance or $50,000, the permitted maximum loan amount is the lesser of "the present value of the nonforfeitable accrued benefit of the employee under the plan" (rather than "one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan") or $100,000, and the loan is not treated as a distribution.[256] For this purpose, a "qualified individual" is an individual whose principal place of abode, during any portion of the incident period of any qualified disaster, was located in the qualified disaster area and who sustained an economic loss by reason of the qualified disaster.

In the case of such a qualified individual (with respect to a qualified disaster) with an outstanding loan (on or after the first day of the incident period of such qualified disaster), from a qualified employer plan, if the due date for any repayment with respect to such a loan [257] occurs during the period beginning on the first day of the incident period of such qualified disaster and ending on the date

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[253] As described in sections 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F).
[254] Under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.
[255] As defined under section 72(p)(4).
[256] See section 72(p)(2)(A).
[257] See section 72(p)(2).

which is 180 days after the last day of such incident period, the due date is delayed for one year (or, if later, until the date which is 180 days after the date of enactment) and any subsequent repayments will be appropriately adjusted to reflect the delay in any repayment date noted above and any interest accruing during such delay, but the repayment delay is disregarded in determining the 5-year period and the term of the loan.[258]

Plan amendments

A plan amendment made pursuant to the provision (or a regulation issued thereunder) may be retroactively effective if, in addition to the requirements described below, the amendment is made on or before the last day of the first plan year beginning after January 1, 2020 (or in the case of a governmental plan, January 1, 2022), or a later date prescribed by the Secretary. In addition, the plan is treated as operated in accordance with plan terms during the period beginning with the date the provision or regulation takes effect (or the date specified by the plan if the amendment is not required by the provision or regulation) and ending on the last permissible date for the amendment (or, if earlier, the date the amendment is adopted). For an amendment to be retroactively effective, it must apply retroactively for that period, and the plan must be operated in accordance with the amendment during that period.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. DISASTER RELATED EMPLOYMENT RELIEF (SEC. 303 OF THE BILL AND SEC. 38 OF THE CODE)

PRESENT LAW

The Code provides an employer credit for employers affected by Hurricane Katrina, Hurricane Rita, and Hurricane Wilma,[259] for employers affected by Hurricane Harvey, Hurricane Irma, and Hurricane Maria,[260] and for employers affected by certain California wildfires for which a major disaster had been declared by the President between January 1, 2017, through January 18, 2018. There is not a generally applicable employer tax credit for wages paid in connection with other disaster areas.

REASONS FOR CHANGE

The Committee desires to provide targeted relief to employers affected by qualified disasters in order to encourage them to retain their workforce, both to assist in the employer's recovery and so that the employees dealing with the hardship of a disaster may continue to receive salaries.

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[258] Under section 72(p)(2)(B) or (C).

[259] Sec. 1400R. This provision was repealed by the Consolidated Appropriations Act, Pub L. No. 115–141, sec. 401(d)(6)(A).

[260] Section 503 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. No. 115–63.

EXPLANATION OF PROVISION

The provision provides a credit of 40 percent of the qualified wages (up to a maximum of $6,000 in qualified wages per employee) paid by an eligible employer to an eligible employee.

An eligible employer is any employer that (1) conducted an active trade or business in a qualified disaster zone at any time during the applicable incident period of the applicable qualified disaster with respect to such qualified disaster zone and (2) with respect to which the trade or business described in (1) is inoperable on any day during the period beginning on the first day of the applicable incident period of the applicable qualified disaster and ending on the date of the enactment of this bill, as a result of damage sustained by reason of the applicable qualified disaster.

An eligible employee is, with respect to an eligible employer, an employee whose principal place of employment, determined immediately before the applicable qualified disaster, with such eligible employer was in the applicable qualified disaster zone. An employee may not be treated as an eligible employee for any period with respect to an employer if such employer is allowed a credit under section 51, the work opportunity credit, with respect to the employee for the period.

Qualified wages are wages (as defined in section 51(c)(1) of the Code, but without regard to section 3306(b)(2)(B) of the Code) paid or incurred by an eligible employer with respect to an eligible employee during the period (1) beginning on the date on which the trade or business first became inoperable at the principal place of employment of the employee immediately before the applicable qualified disaster and (2) ending on the earlier of (i) the date on which such trade or business has resumed significant operations at such principal place of employment or (ii) the date which is 150 days after the last day of the applicable incident period. Qualified wages include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

The credit is treated as a current year business credit under section 38(b) and therefore is subject to the tax liability limitations of section 38(c). Rules similar to sections 51(i)(1), 52, and 280C(a) apply to the credit.

EFFECTIVE DATE

The provision is effective on the date of enactment.

4. TEMPORARY SUSPENSION OF LIMITATION ON CHARITABLE CONTRIBUTIONS (SEC. 304(a) OF THE BILL AND SEC. 170 OF THE CODE)

PRESENT LAW

In general

In general, an income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type

of taxpayer, the property contributed, and the donee organization.[261]

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

Percentage limitations

Contributions by individuals

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base. The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. The contribution base is defined as the taxpayer's adjusted gross income computed without regard to any net operating loss carryback.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (*e.g.*, public charities, private foundations other than private non-operating foundations, and certain governmental units) may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base.

For contributions taken into account for taxable years beginning after December 31, 2017 and before January 1, 2026, section 170(b)(1)(G) increases the percentage limit for contributions by an individual taxpayer of cash to an organization described in section 170(b)(1)(A) to 60 percent. The 60-percent limit does not apply to noncash contributions. The 60-percent limit is intended to be applied after, and reduced by, the amount of noncash contributions to organizations described in section 170(b)(1)(A).

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring all these contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private nonoperating foundations) are deductible up to 20 percent of the taxpayer's contribution base.

[261] Sec. 170.

Contributions by corporations

For corporations, in any taxable year, charitable contributions are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation's taxable income computed without regard to net operating loss or capital loss carrybacks.

For purposes of determining whether a corporation's aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

Carryforward of excess contributions

Charitable contributions that exceed the applicable percentage limitation may be carried forward for up to five years.[262] The amount that may be carried forward from a taxable year ("contribution year") to a succeeding taxable year may not exceed the applicable percentage of the contribution base for the succeeding taxable year less the sum of contributions made in the succeeding taxable year plus contributions made in taxable years prior to the contribution year and treated as paid in the succeeding taxable year under this provision.

REASONS FOR CHANGE

Charities play a critical role in providing relief to citizens and communities that are affected by natural disasters. The Committee believes it is important to ensure that charities have sufficient resources to provide such relief by encouraging taxpayers to donate to charities that are on the front lines of providing disaster relief. The provision furthers this goal by suspending the charitable percentage limits for certain charitable contributions to public charities of cash that will be used to provide disaster relief.

EXPLANATION OF PROVISION

Under the provision, in the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer's contribution base exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years as contributions described in section 170(b)(1)(G)(ii) (generally relating to cash contributions to public charities).

In the case of a corporation, the deduction for qualified contributions is allowed up to the amount by which the corporation's taxable income (as computed under section 170(b)(2)) exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations of section 170(d)(2).

In applying subsections (b) and (d) of section 170 to determine the deduction for other contributions, qualified contributions are not taken into account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Qualified contributions are cash contributions paid during the period beginning on January 1, 2018, and ending on the date which

[262] Sec. 170(d).

is 60 days after the date of enactment, to a charitable organization described in section 170(b)(1)(A), other than contributions to (i) a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. Qualified contributions must be made for relief efforts in one or more qualified disaster areas. Taxpayers must substantiate that the contribution is made for this purpose. A taxpayer must elect to have the contributions treated as qualified contributions.

EFFECTIVE DATE

The provision is effective on the date of enactment.

5. SPECIAL RULES FOR QUALIFIED DISASTER-RELATED PERSONAL CASUALTY LOSSES (SEC. 304(b) OF THE BILL AND SEC. 165 OF THE CODE)

PRESENT LAW

An individual taxpayer may claim an itemized deduction for a personal casualty loss only if such loss was attributable to a disaster declared by the President under section 401 of the Stafford Act.[263] All other personal casualty losses are deductible only to the extent that such losses do not exceed the individual's personal casualty gains. Personal casualty losses are deductible only if they exceed $100 per casualty. In addition, aggregate net losses are deductible only to the extent they exceed 10 percent of the individual taxpayer's adjusted gross income.

REASONS FOR CHANGE

The Committee believes that allowing taxpayers in qualified disaster areas a greater ability to take a personal casualty loss will assist in the taxpayers in recovering from the hardship caused by the applicable disaster.

EXPLANATION OF PROVISION

Under the provision, in the case of a personal casualty loss which arose in a qualified disaster area on or after the first day of the incident period of the applicable qualified disaster and which were attributable to such qualified disaster, such losses are deductible without regard to whether aggregate net losses exceed 10 percent of a taxpayer's adjusted gross income. In order to be deductible, however, such losses must exceed $500 per casualty. Finally, such losses may be claimed in addition to the standard deduction and may be claimed by tax payers subject to the alternative minimum tax.

[263] 165(h)(5).

EFFECTIVE DATE

The provision is effective on the date of enactment.

6. SPECIAL RULE FOR DETERMINING EARNED INCOME (SEC. 304(C) OF THE BILL AND SECS. 24 AND 32 OF THE CODE)

PRESENT LAW

The Code provides eligible taxpayers with an earned income tax credit and a child credit. In general, the earned income tax credit is a refundable credit for low-income workers.[264] The amount of the credit depends on the earned income of the taxpayer and whether the taxpayer has one, more than one, or no qualifying children. Earned income generally includes wages, salaries, tips, and other employee compensation, plus net earnings from self-employment.

Taxpayers with incomes below certain threshold amounts are eligible for a $2,000 credit for each qualifying child.[265] In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable credit (the "additional child tax credit"). Generally, the amount of the additional child tax credit equals 15 percent of the taxpayer's earned income in excess of $2,500, capped at $1,400 (indexed for inflation).

REASONS FOR CHANGE

A qualified disaster may negatively affect taxpayers eligible to claim the earned income tax credit or child tax credit by temporarily preventing them from working, causing a loss in earned income. This could reduce the amount of such taxpayers' credits, through no fault of their own, during a time when they are suffering the hardship associated with recovering from disasters. The Committee believes that allowing such taxpayers to use prior year earned income for purposes of these credits is reasonable, just, and will aid in disaster recovery.

EXPLANATION OF PROVISION

In general

The provision permits qualified individuals to elect to calculate their earned income tax credit and additional child tax credit for an applicable taxable year using their earned income from the prior taxable year. Qualified individuals are permitted to make the election with respect to an applicable taxable year only if their earned income for such taxable year is less than their earned income for the preceding taxable year.

Qualified individuals are (1) individuals who, at any time during the incident period of a qualified disaster, had their principal place of abode in the applicable qualified disaster zone, or (2) individuals who during any portion of such incident period were not in the applicable qualified disaster zone but whose principal place of abode was in the applicable qualified disaster area and were displaced from such principal place of abode by reason of the qualified disaster. An applicable taxable year is any taxable year which includes any portion of the incident period of a qualified disaster.

[264] Sec. 32.
[265] Sec. 24.

For purposes of the provision, in the case of a joint return for a taxable year which includes an applicable taxable year, the provision applies if either spouse is a qualified individual. In such cases, the earned income which is attributable to the taxpayer for the preceding taxable year is the sum of the earned income which is attributable to each spouse for such preceding taxable year.

Any election to use the prior year's earned income under the provision applies with respect to both the earned income credit and additional child tax credit. For administrative purposes, the incorrect use on a return of earned income pursuant to an election under this provision is treated as a mathematical or clerical error. An election under the provision is disregarded for purposes of calculating gross income in the election year.

Hurricane Sandy

The provision provides a similar rule for individuals affected by Hurricane Sandy. Such individuals can elect to calculate their earned income tax credit and additional child tax credit for the taxable year that includes the dates of Hurricane Sandy (October 29, 2012 through November 3, 2012, hereinafter "Hurricane Sandy period") using their earned income for the prior taxable year if it is greater than their earned income for the year that includes Hurricane Sandy.

Qualified individuals affected by Hurricane Sandy are those individuals whose principal place of abode during the Hurricane Sandy period, was located in (i) the portion of the area determined by the President to warrant individual or individual and public assistance under the Stafford Act by reason of Hurricane Sandy or (ii) in the area for which a major disaster was declared by the President under section 401 of the Stafford Act by reason of Hurricane Sandy and such individual was displaced from the individual's principal place of abode.

The provision extends the statute of limitations for individuals affected by Hurricane Sandy to make any claims for credit or refund relating to a change in the earned income of such individuals.

EFFECTIVE DATE

The provision is effective on the date of enactment.

7. AUTOMATIC EXTENSION OF FILING DEADLINES IN CASE OF CERTAIN TAXPAYERS AFFECTED BY FEDERALLY DECLARED DISASTERS (SEC. 305 OF THE BILL AND SEC. 7508A OF THE CODE)

PRESENT LAW

General time limits for filing tax returns

Individuals generally must file their Federal income tax returns by April 15 of the year following the close of a taxable year.[266] Present law also provides that the Secretary may grant reasonable extensions of time for filing such returns.[267] Treasury regulations provide, upon application on the proper form, an automatic six-month extension (until October 15 for calendar-year individuals) for any individual timely filing that form and paying the amount of tax

[266] Sec. 6072.
[267] Sec. 6081.

estimated to be due.[268] In general, individuals must make quarterly estimated tax payments by April 15, June 15, September 15, and January 15 of the following taxable year. Wage withholding is considered to be a payment of estimated taxes.

Suspension of time periods

In general, the Secretary may specify a period of up to one year that may be disregarded for performing various acts under the Internal Revenue Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, for any taxpayer determined by the Secretary to be affected by a Federally declared disaster or a terroristic or military action with respect to any tax liability of the taxpayer.[269] In addition, the period specified by the Secretary may be disregarded in determining the amount of any interest, penalty, additional amount, or addition to tax, and the amount of any credit or refund.

There are special rules provided for pensions and other employee benefit plans. The Secretary may prescribe a period of up to one year which may be disregarded in determining the date by which any action by a pension or other employee benefit plan, or by any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Federally declared disaster or a terroristic or military action would be required or permitted to be completed. A plan is not treated as operating in a manner inconsistent with its terms or in violation of its terms merely due to disregarding any such periods.

The suspension of time may apply to the following acts:

1. Filing any return of income, estate, gift, employment, or excise tax;
2. Payment of any income, estate, or gift, employment, or excise tax or any installment thereof or of any other liability to the United States in respect thereof;
3. Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;
4. Allowance of a credit or refund of any tax;
5. Filing a claim for credit or refund of any tax;
6. Bringing suit upon any such claim for credit or refund;
7. Assessment of any tax;
8. Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
9. Collection of the amount of any liability in respect of any tax;
10. Bringing suit by the United States in respect of any liability in respect of any tax; and
11. Any other act required or permitted under the internal revenue laws specified in regulations prescribed by the Secretary of the Treasury.[270]

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[268] Treas. Reg. sec. 1.6081–4.

[269] Sec. 7508A.

[270] Sec. 7508(a)(1). Under Treasury regulations, an additional act was added to this list with respect to affected pension plans and affected taxpayers with respect to such plans: Making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2); making distributions under section 408(d)(4); recharacterizing contributions under section 408A(d)(6); or making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3). Treas. Reg. sec. 301.7508A–1(c)(1)(iii).

REASONS FOR CHANGE

The Committee believes that the certainty and additional time provided by an automatic extension of filing deadlines for taxpayers affected by Federally declared disasters will ease the burden of tax compliance for taxpayers dealing with the hardship of disaster recovery.

EXPLANATION OF PROVISION

The provision provides to qualified taxpayers in the case of a Federally declared disaster a mandatory 60-day period that is disregarded in determining whether the acts listed above were performed in the time prescribed; the amount of interest, penalty, additional amount, or addition to tax; and the amount of credit or refund. The 60-day period begins on the earliest incident date specified in the declaration of the relevant disaster and ends on the date which is 60 days after the latest incident date so specified. A disaster area is the geographic area of a Federally declared disaster, which is any disaster subsequently determined by the President to warrant assistance by the Federal government under the Stafford Act.[271]

Qualified taxpayers are (1) any individual whose principal residence is located in a disaster area, (2) any taxpayer if the taxpayer's principal place of business (other than the business of performing services as an employee) is located in a disaster area, (3) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a disaster area, (4) any taxpayer whose records necessary to meet a deadline for the acts listed above are maintained in a disaster area, (5) any individual visiting a disaster area who was killed or injured as a result of the disaster, and (6) solely with respect to a joint return, any spouse of an individual who is a qualified taxpayer.

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary or other person with respect to such a plan,[272] the provision provides that a rule similar to the mandatory 60-day period rule described above applies with respect to any of the following actions:

1. Making contributions to a section 401(a) qualified retirement plan, a section 403(a) annuity, a section 403(b) tax-sheltered annuity, or a section 408 individual retirement account or annuity (IRA);
2. Making distributions of contributions to an IRA prior to the due date for filing the individual's tax return for the year in which the contribution was made;
3. Recharacterizing IRA contributions by making a trustee-to-trustee transfer from a traditional IRA to a Roth IRA, or vice versa, before the due date (including extensions) for the individual's income tax return for that year;[273] or

[271] Sec. 165(i)(5).

[272] For this purpose, a definition similar to the definition of "qualified taxpayer" is intended to generally apply.

[273] In the case of a recharacterization, the contribution will be treated as having been made to the transferee IRA (and not the original, transferor IRA) as of the date of the original con-

Continued

4. Making a rollover.[274]

The mandatory 60-day period provided under the provision is in addition to, or concurrent with as the case may be, any period of suspension provided by the Secretary.

EFFECTIVE DATE

The provision applies to Federally declared disasters declared after the date of enactment.

8. MODIFICATION OF THE TAX RATE FOR THE EXCISE TAX ON INVESTMENT INCOME OF PRIVATE FOUNDATIONS (SEC. 306 OF THE BILL AND SEC. 4940 OF THE CODE)

PRESENT LAW

Excise tax on the net investment income of private foundations

Under section 4940(a), private foundations that are recognized as exempt from Federal income tax under section 501(a) (other than exempt operating foundations[275]) are subject to a two-percent excise tax on their net investment income. Net investment income generally includes interest, dividends, rents, royalties (and income from similar sources), and capital gain net income, and is reduced by expenses incurred to earn this income. The two-percent rate of tax is reduced to one-percent in any year in which a foundation exceeds the average historical level of its charitable distributions. Specifically, the excise tax rate is reduced if the foundation's qualifying distributions (generally, amounts paid to accomplish exempt purposes)[276] equal or exceed the sum of (1) the amount of the foundation's assets for the taxable year multiplied by the average percentage of the foundation's qualifying distributions over the five taxable years immediately preceding the taxable year in question, and (2) one percent of the net investment income of the foundation for the taxable year.[277] In addition, the foundation cannot have been subject to tax in any of the five preceding years for failure to meet minimum qualifying distribution requirements in section 4942.

Private foundations that are not exempt from tax under section 501(a), such as certain charitable trusts, are subject to an excise tax under section 4940(b). The tax is equal to the excess of the sum of the excise tax that would have been imposed under section 4940(a) if the foundation were tax exempt and the amount of the tax on unrelated business income that would have been imposed if the foundation were tax exempt, over the income tax imposed on the foundation under subtitle A of the Code.

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tribution. Pursuant to section 13611 of Pub. L. No. 115–97, this rule does not apply to a conversion contribution to a Roth IRA effective for taxable years beginning after December 31, 2017.

[274] Such actions are those provided under Treas. Reg. sec. 301.7508A–1(c)(1)(iii), described above.

[275] Sec. 4940(d)(1). Exempt operating foundations generally include organizations such as museums or libraries that devote their assets to operating charitable programs but have difficulty meeting the "public support" tests necessary not to be classified as a private foundation. To be an exempt operating foundation, an organization must: (1) be an operating foundation (as defined in section 4942(j)(3)); (2) be publicly supported for at least 10 taxable years; (3) have a governing body no more than 25 percent of whom are disqualified persons and that is broadly representative of the general public; and (4) have no officers who are disqualified persons. Sec. 4940(d)(2).

[276] Sec. 4942(g).

[277] Sec. 4940(e).

Private foundations are required to make a minimum amount of qualifying distributions each year to avoid tax under section 4942. The minimum amount of qualifying distributions a foundation has to make to avoid tax under section 4942 is reduced by the amount of section 4940 excise taxes paid.[278]

REASONS FOR CHANGE

Under the present-law, two-tier private foundation excise tax rate structure, a foundation must carefully manage the timing and amount of its grant making to minimize its excise tax burden. Compliance can be costly and consume resources that otherwise would have been used for grant making or other charitable activity.

In addition, to qualify for the lower, one-percent tax rate in a year, a foundation must ensure that its distributions for the year exceed a historical, average level of distributions. This structure creates an incentive for foundations to limit distributions in any one year, because a significant increase in distributions will raise the foundation's average level of distributions, making it more difficult to qualify for the reduced rate in future years. As a result, a foundation that might have been inclined to distribute an unusually large amount in a time of public need, such as during the response to a natural disaster, has a disincentive to do so.

For these reasons, the Committee believes it is appropriate to replace the present-law, two-tier private foundation excise tax rate structure with a simplified structure that uses a single tax rate of 1.39 percent, the revenue-neutral rate.

EXPLANATION OF PROVISION

The provision replaces the two rates of excise tax on tax-exempt private foundations with a single rate of tax of 1.39 percent. Thus, under the provision, a tax-exempt private foundation generally is subject to an excise tax of 1.39 percent on its net investment income. A taxable private foundation is subject to an excise tax equal to the excess (if any) of the sum of the 1.39-percent net investment income excise tax and the amount of the tax on unrelated business income (both calculated as if the foundation were tax-exempt), over the income tax imposed on the foundation. The provision repeals the special reduced excise tax rate for private foundations that exceed their historical level of qualifying distributions.

EFFECTIVE DATE

The provision is effective for taxable years beginning after the date of enactment.

9. ADDITIONAL LOW-INCOME HOUSING TAX CREDIT ALLOCATIONS FOR QUALIFIED 2017 AND 2018 CALIFORNIA DISASTER AREAS (SEC. 307 OF THE BILL AND SEC. 42 OF THE CODE)

PRESENT LAW

In general

The low-income housing tax credit may be claimed over a 10-year period for the cost of building rental housing occupied by tenants

[278] Sec. 4942(d)(2).

having incomes below specified levels. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

The credit percentage for newly constructed or substantially rehabilitated housing that is not Federally subsidized is adjusted monthly by the IRS so that the 10 annual installments of the credit have a present value of 70 percent of the total qualified basis. The credit percentage for newly constructed or substantially rehabilitated housing that is Federally subsidized and for existing housing that is substantially rehabilitated is calculated to have a present value of 30 percent of qualified basis. These are referred to as the 70-percent credit and 30-percent credit, respectively.

Credit ceiling

Credits are first allocated from the Federal government to each State according to population, then allocated by each State to developers according to State determined Qualified Allocation Plans ("QAPs"). QAPs must set forth selection criterion to be used to determine housing priorities; give preference to projects serving the lowest income tenants for the longest periods of time, and which are located in qualified census tracts that contribute to a concerted community revitalization plan; and provide a procedure for monitoring noncompliance and notifying the IRS of any noncompliance.[279]

In addition to other requirements, a low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. The total amount of housing credits available for allocation by each State is limited by a ceiling. For determining the current-year State dollar amount of the ceiling in any calendar year, the greater of (1) $1.75 multiplied by the State population, or (2) $2,000,000 is taken into account, with both amounts indexed for inflation. For 2019, the indexed amount is $2.76 per resident with a minimum annual cap of $3,166,875 for certain States with small populations.[280] These limits do not apply in the case of projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit.

Carryover allocation rule

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. In general, the allocation must be made not later than the close of the calendar year in which the building is placed in service. One exception to this rule is a carryover allocation. In the case of a carryover allocation, an allocation may be made to a building that has not yet been placed in service, provided that: (1) more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation) is incurred

[279] Sec. 42(m).

[280] These amounts include a temporary increase enacted in the Consolidated Appropriations Act of 2018, Pub. L. No. 115–141.

as of the later of six months after the allocation is made or the end of the calendar year in which the allocation is made; and (2) the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation.

REASONS FOR CHANGE

The Committee is concerned that many homes of low-income families were destroyed in the 2017 and 2018 wildfires in California. Therefore, the Committee wishes to promote the construction or rehabilitation of affordable housing in affected areas of California by providing the state with additional low-income housing credits.

EXPLANATION OF PROVISION

Under the provision, in calendar year 2019, the State housing credit ceiling is increased for California. The California credit ceiling is increased by the amount of the aggregate housing credits allocated by the State housing credit agencies of California for 2019 to buildings located in qualified 2017 and 2018 California disaster areas,[281] up to the average amount of the State's housing credit ceiling in 2017 and 2018.[282]

The provision also specifies that allocations are treated as made first from these additional amounts for purposes of determining the unused State housing credit ceiling to be carried over in a calendar year.

EFFECTIVE DATE

The provision is effective upon enactment.

10. TREATMENT OF CERTAIN POSSESSIONS (SEC. 308 OF THE BILL)

PRESENT LAW

Citizens of the United States are generally subject to Federal income tax on their worldwide income, including those citizens in the U.S. possessions or territories. Residents of the U.S. possessions are generally subject to the Federal income tax system based on their status as U.S. citizens or residence in the possessions, with certain special rules for determining residence and source of income specific to the possession. Broadly, a bona fide individual resident of a possession is exempt from U.S. tax on income derived from sources within that possession but is subject to U.S. tax on U.S.-source and non-possession-source income.[283]

The application of the Federal tax rules to the possessions varies from one possession to another. Three possessions, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code possessions because the Code serves as the internal tax law of those possessions (substituting the particular possessions for the United States wherever the Code refers to the United States). A resident of one of those possessions gen-

[281] Qualified 2017 and 2018 California disaster areas are those which are determined by the President to warrant assistance from the Federal government under the Stafford Act by reason of a disaster which begins or ends in calendar year 2017 or 2018, as specified by the Federal Emergency Management Agency.

[282] This average amount is 50% of the sum of the State housing credit ceiling for California for calendar years 2017 and 2018.

[283] See secs. 932, 933, and 937.

erally files a single tax return only with the possession of which the individual is a resident, and not with the United States. American Samoa and Puerto Rico, by contrast, are non-mirror Code possessions. These two possessions have their own internal tax laws, and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the possessions of residence and the United States.

REASONS FOR CHANGE

The Committee recognizes the importance of providing funding to all of the possessions, the citizens of which are U.S. citizens or nationals, in order to assist in disaster recovery.

EXPLANATION OF PROVISION

The provision requires the Secretary to make a payment to the mirror Code possessions in an amount equal to the loss in revenue by reason of the temporary disaster-related tax relief allowable by reason of Title III of the bill to residents of such possessions against their income tax. This amount will be determined by the Secretary based on information provided by the governments of the respective possessions.

The provision requires the Secretary to make a payment to the non-mirror Code possessions in an amount estimated by the Secretary as the aggregate benefits (if any) of the temporary disaster-related tax relief that would have been provided to residents of such possessions if a mirror code tax system had been in effect in such possession. Accordingly, the amount of each payment to a non-mirror Code possession will be an estimate of the aggregate benefit that would be allowed to the possession's residents if the temporary tax relief provided by Title III of the bill to U.S. residents were provided by the possession to its residents. This payment will not be made unless the possession has a plan that has been approved by the Secretary under which the possession will promptly distribute the payments to its residents.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 3301, the "Taxpayer Certainty and Disaster Tax Relief Act of 2019," on June 20, 2019.

An amendment to the amendment in the nature of a substitute offered by Representative Schweikert, which would make permanent the current individual tax rates, was defeated by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Blumenauer				Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X					

An amendment to the amendment in the nature of a substitute offered by Representative Smith of Missouri, which would make permanent the increased child tax credit, was defeated by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell				Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X					

An amendment to the amendment in the nature of a substitute offered by Representative Marchant, which would permanently lower the threshold for an itemized medical expense deduction from 10 percent of adjusted gross income to 7.5 percent, was defeated by a roll call vote of 16 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X					

An amendment to the amendment in the nature of a substitute offered by Representative Reed, which would make permanent the family and medical leave tax credit, was defeated by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell	X			Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Rice, which would make permanent increased standard deduction, was defeated by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Estes, which would make permanent the railroad maintenance tax credit at 30% (instead of 50%) of eligible expenses, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Representative Smith of Nebraska, which would extend and phase out certain biodiesel and renewable diesel tax provisions, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Representative Estes, which would make permanent the tax treatment of certain income earned by controlled foreign corporations, was defeated by a roll call vote of 16 yeas to 22 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi							
Mr. Panetta		X					
Ms. Murphy							
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Walorski, which would permanently repeal the 2.3 percent excise tax on medical devices, was defeated by a roll call vote of 16 yeas to 22 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi							
Mr. Panetta		X					
Ms. Murphy							
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Kelly, which would permanently repeal the 40 percent excise tax on high-cost employer-sponsored health coverage, was defeated by a roll call vote of 16 yeas to 23 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant			
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore				Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Holding was ruled nongermane. Mr. Holding moved to appeal the ruling of the Chair. A motion was made by Representative Thompson to table the appeal of the ruling of the Chair. The motion passed by a roll call vote of 23 yeas to 16 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X			Mr. Brady		X	
Mr. Lewis	X			Mr. Nunes		X	
Mr. Doggett	X			Mr. Buchanan		X	
Mr. Thompson	X			Mr. Smith		X	
Mr. Larson	X			Mr. Marchant			
Mr. Blumenauer	X			Mr. Reed		X	
Mr. Kind	X			Mr. Kelly		X	
Mr. Pascrell	X			Mr. Holding		X	
Mr. Davis	X			Mr. Smith		X	
Ms. Sanchez	X			Mr. Rice		X	
Mr. Higgins	X			Mr. Schweikert		X	
Ms. Sewell	X			Ms. Walorski		X	
Ms. DelBene	X			Mr. LaHood (IL)		X	
Ms. Chu (CA)	X			Mr. Wenstrup		X	
Ms. Moore				Mr. Arrington		X	
Mr. Kildee	X			Mr. Ferguson		X	
Mr. Boyle	X			Mr. Estes		X	
Mr. Beyer	X						
Mr. Evans	X						
Mr. Schneider	X						
Mr. Suozzi	X						
Mr. Panetta	X						
Ms. Murphy	X						
Mr. Gomez	X						
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Nunes, which would make permanent the 100% expensing, was defeated by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore				Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Schweikert, which would make certain technical corrections to legislation enacted in 2017, was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Ferguson was ruled nongermane. Mr. Ferguson moved to appeal the ruling of the Chair and Mr. Thompson moved to table the appeal. The motion to table the appeal passed by a roll call vote of 24 yeas to 16 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X			Mr. Brady		X	
Mr. Lewis	X			Mr. Nunes		X	
Mr. Doggett	X			Mr. Buchanan		X	
Mr. Thompson	X			Mr. Smith		X	
Mr. Larson	X			Mr. Marchant		X	
Mr. Blumenauer	X			Mr. Reed			
Mr. Kind	X			Mr. Kelly		X	
Mr. Pascrell	X			Mr. Holding		X	
Mr. Davis	X			Mr. Smith		X	
Ms. Sanchez	X			Mr. Rice		X	
Mr. Higgins	X			Mr. Schweikert		X	
Ms. Sewell	X			Ms. Walorski		X	
Ms. DelBene	X			Mr. LaHood (IL)		X	
Ms. Chu (CA)	X			Mr. Wenstrup		X	
Ms. Moore	X			Mr. Arrington		X	
Mr. Kildee	X			Mr. Ferguson		X	
Mr. Boyle	X			Mr. Estes		X	
Mr. Beyer	X						
Mr. Evans	X						
Mr. Schneider	X						
Mr. Suozzi	X						
Mr. Panetta	X						
Ms. Murphy	X						
Mr. Gomez	X						
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Smith of Missouri, which would make certain expenses eligible under section 529, was defeated by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Smith of Missouri, which would prevent an increase in the death tax, was defeated by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes			
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

An amendment to the amendment in the nature of a substitute offered by Representative Rice, which would modify the low-income housing credit allocation for certain disaster areas, was defeated by a roll call vote of 17 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sanchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X					

An amendment to the amendment in the nature of a substitute offered by Representative Doggett, which would strike the production credit for Indian coal facilities, passed by a voice vote (with a quorum being present).

An amendment to the amendment in the nature of a substitute offered by Representative Brady, which would clarify the alternative fuel mixture tax credit without a retroactive tax increase, failed by a voice vote (with a quorum being present).

An amendment to the amendment in the nature of a substitute offered by Representative Wenstrup, which would make permanent the modernization of the taxation of craft beverages, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Representative Schweikert, which would provide tax incentives for certain energy-producing activities, was withdrawn.

An amendment to the amendment in the nature of a substitute offered by Representative Brady, which would modify the discharge of acquisition indebtedness not includible in gross income, was defeated by a roll call vote of 17 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Davis		X		Mr. Smith	X		
Ms. Sánchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. LaHood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X		.			

An amendment to the amendment in the nature of a substitute offered by Representative Smith of Nebraska, which would strike the extension of the wind energy production tax credit, was withdrawn.

The Chairman's Amendment to the amendment in the nature of a substitute as amended was agreed to by voice vote (with a quorum being present).

H.R. 3301 was ordered favorably reported to the House of Representatives as amended by an amendment in the nature of a substitute by a roll call vote of 25 yeas to 17 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X			Mr. Brady		X	
Mr. Lewis	X			Mr. Nunes		X	
Mr. Doggett	X			Mr. Buchanan		X	
Mr. Thompson	X			Mr. Smith		X	
Mr. Larson	X			Mr. Marchant		X	
Mr. Blumenauer	X			Mr. Reed		X	
Mr. Kind	X			Mr. Kelly		X	
Mr. Pascrell	X			Mr. Holding		X	
Mr. Davis	X			Mr. Smith (MO)		X	
Ms. Sánchez	X			Mr. Rice		X	
Mr. Higgins	X			Mr. Schweikert		X	
Ms. Sewell	X			Ms. Walorski		X	
Ms. DelBene	X			Mr. LaHood		X	
Ms. Chu	X			Mr. Wenstrup		X	
Ms. Moore	X			Mr. Arrington		X	
Mr. Kildee	X			Mr. Ferguson		X	
Mr. Boyle	X			Mr. Estes		X	
Mr. Beyer	X						
Mr. Evans	X						
Mr. Schneider	X						
Mr. Suozzi	X						
Mr. Panetta	X						
Ms. Murphy	X						
Mr. Gomez	X						
Mr. Horsford	X						

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill.

The bill is estimated to decrease Federal fiscal year budget receipts by $4.894 billion dollars for the period 2019 through 2029.

ESTIMATED BUDGET EFFECTS OF H.R. 3301,
THE "TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF 2019,"
AS ORDERED REPORTED BY THE COMMITTEE ON WAYS AND MEANS ON JUNE 20, 2019

Fiscal Years 2019 - 2029

[Millions of Dollars]

Provision	Effective	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
I. Extension of Certain Expiring Provisions														
A. Tax Relief and Support for Families and Individuals														
1. Exclusion from gross income of discharge of indebtedness on qualified principal residence indebtedness (sunset 12/31/20)	doia 12/31/17	-853	-764	-666	---	---	---	---	---	---	---	---	-2,283	-2,283
2. Extension of mortgage insurance premiums treated as qualified residence interest (sunset 12/31/20)	apoia 12/31/17	-261	-566	-426	---	---	---	---	---	---	---	---	-1,253	-1,253
3. Medical expense deduction for expenses in excess of 7.5 percent of adjusted gross income (sunset 12/31/20)	tyca 12/31/18	-170	-2,010	-1,433	---	---	---	---	---	---	---	---	-3,613	-3,613
4. Extension of above-the-line deduction for qualified tuition and related expenses (sunset 12/31/20)	tyba 12/31/17	-58	-431	-175	---	---	---	---	---	---	---	---	-664	-664
5. Black Lung Disability Trust Fund - increase in amount of excise tax on coal (sunset 12/31/20)	[1]	56	161	41	---	---	---	---	---	---	---	---	257	257
B. Incentives for Employment, Economic Growth, and Community Development														
1. Extension of Indian employment tax credit (sunset 12/31/20)	tyba 12/31/17	-78	-77	-69	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	-223	-223
2. Extension of railroad track maintenance credit (sunset 12/31/20)	epoid tyba 12/31/17	-334	-216	-97	---	---	---	---	---	---	---	---	-647	-647
3. Extension of mine rescue team training credit (sunset 12/31/20)	tyba 12/31/17	-2	-1	-1	-1	[2]	[2]	[2]	[2]	[2]	[2]	---	-6	-7
4. Extension of 7-year recovery period for motorsports entertainment complexes (sunset 12/31/20)	ppisa 12/31/17	-32	-39	-41	-30	-21	-17	-13	-7	1	5	7	-180	-187
5. Extension of accelerated depreciation for business property on Indian reservations (sunset 12/31/20)	ppisa 12/31/17	-16	-47	-27	-12	-3	-2	-4	-9	-12	-14	-14	-106	-159
6. Extension of special expensing rules for certain film, television, and live theatrical productions (sunset 12/31/20)	pca 12/31/17	-1,471	-289	601	899	260	---	---	---	---	---	---	---	---
7. Extension of empowerment zone tax incentives (sunset 12/31/20)	tyba 12/31/17	-320	-326	-185	2	1	1	[2]	[2]	[2]	[2]	[2]	-826	-826
8. Extension of American Samoa economic development credit (sunset 12/31/20)	tyba 12/31/17	-12	-8	-4	---	---	---	---	---	---	---	---	-25	-25

Provision	Effective	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
C. Incentives for Energy Production, Efficiency, and Green Economy Jobs														
1. Biodiesel and renewable diesel incentives - extend present-law income tax credits, excise tax credit, and outlay payments (sunset 12/31/20)	fsoua 12/31/17	-5,068	-3,042	-830	---	---	---	---	---	---	---	---	-8,940	-8,940
2. Extension of second generation biofuel producer credit (sunset 12/31/20)	qsgbpa 12/31/17	-21	-15	-7	---	---	---	---	---	---	---	---	-43	-43
3. Extension of credit for section 25C nonbusiness energy property (sunset 12/31/20)	ppisa 12/31/17	-208	-624	-393	---	---	---	---	---	---	---	---	-1,225	-1,225
4. Extension of alternative motor vehicle credit for qualified fuel cell motor vehicles (sunset 12/31/20)	ppa 12/31/17	-7	-5	-2	---	---	---	---	---	---	---	---	-14	-14
5. Extension of credit for alternative fuel vehicle refueling property (sunset 12/31/20)	ppisa 12/31/17	-88	-111	-97	-9	-8	-8	-7	-4	-1	1	1	-323	-332
6. Extension of credit for two-wheeled plug-in electric vehicles (sunset 12/31/20)	vaa 12/31/17	-1	-1	-1	[2]	[2]	[2]	[2]	---	---	---	---	-3	-3
7. Extension of beginning-of-construction date for renewable power facilities eligible to claim the electricity production credit or investment credit in lieu of the production credit (sunset 12/31/20)	tyba 12/31/17 & tyba 12/31/19	---	-102	-185	-214	-162	-169	-208	-239	-258	-261	-262	-831	-2,060
8. Extension of credit for construction of energy-efficient new homes (sunset 12/31/20)	haa 12/31/17	-230	-184	-119	-64	-56	-56	-45	-26	-7	---	---	-710	-788
9. Extension of special depreciation allowance for second generation biofuel plant property (sunset 12/31/20)	ppisa 12/31/17	*Negligible Revenue Effect*												
10. Extension of energy efficient commercial buildings deduction (sunset 12/31/20)	ppisa 12/31/17	-140	-83	-25	5	4	4	3	3	2	2	2	-234	-224
11. Extension of special rule for sales or dispositions to implement Federal Energy Regulatory Commission ("FERC") or State electric restructuring policy for qualified electric utilities (sunset 12/31/20)	da 12/31/17	-276	-147	2	78	78	78	78	62	37	10	---	-186	---
12. Extension and clarification of excise tax credits relating to alternative fuels (sunset 12/31/20)	fsoua 12/31/17	-1,241	-747	-202	---	---	---	---	---	---	---	---	-2,191	-2,191
13. Extension of Oil Spill Liability Trust Fund financing rate (sunset 12/31/20)	fdofcmba DOE	*No Revenue Effect*												
D. Certain Provisions Expiring at the End of 2019														
1. New markets tax credit (sunset 12/31/20) [3]	cyba 12/31/19	---	[2]	-8	-37	-113	-173	-200	-226	-247	-248	-215	-332	-1,468
2. Employer credit for paid family and medical leave (sunset 12/31/20) [4]	wpi tyba 12/31/19	---	-767	-803	-334	-167	-119	-48	---	---	---	---	-2,190	-2,237
3. Work opportunity tax credit (sunset 12/31/20)	iwbwftea 12/31/19	---	-571	-826	-289	-113	-86	-78	-32	-28	-16	-2	-1,885	-2,042
4. Excise taxes on beer, wine, and distilled spirits (sunset 12/31/20):														
a. Special rule for the production period for beer, wine, and distilled spirits	icpoaa 12/31/19	---	-27	5	5	5	4	-1	[2]	[2]	[2]	[2]	-8	-10
b. Modifying the rates of taxation of beer and certain other rules	bra 12/31/19	---	-86	-39	---	---	---	---	---	---	---	---	-126	-126

Provision	Effective	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
c. Modifying the rates of taxation of wine and certain other rules	wra 12/31/19	---	-114	-72	---	---	---	---	---	---	---	---	-186	-186
d. Modifying the rates of taxation of distilled spirits and certain other rules	dsra 12/31/19	---	-427	-415	---	---	---	---	---	---	---	---	-842	-842
e. Simplification of rules regarding records, statements, and returns	cqba 12/31/19	*Negligible Revenue Effect*												
5. Look-through treatment of payments between related CFCs under foreign personal holding company income rules (sunset 12/31/20)	[5]	---	-471	-202	---	---	---	---	---	---	---	---	-673	-673
6. Credit for health insurance costs of eligible individuals (health coverage tax credit) (sunset 12/31/20) [6]	mba 12/31/19	---	-28	-15	---	---	---	---	---	---	---	---	-43	-43
Total of Extension of Certain Expiring Provisions		**-10,831**	**-12,165**	**-6,716**	**-1**	**-295**	**-543**	**-523**	**-478**	**-513**	**-521**	**-483**	**-30,554**	**-33,077**
II. Estate and Gift Tax - Reduction of Unified Credit Against Estate Tax	**dda & gma 12/31/22**	**---**	**---**	**19**	**144**	**1,121**	**10,264**	**11,481**	**11,990**	**1,733**	**667**	**142**	**11,548**	**37,561**
III. Disaster Tax Relief														
1. Special disaster-related rules for use of retirement funds	DOE	-19	-198	-159	-68	-58	-24	[2]	[2]	[2]	[2]	[2]	-525	-525
2. Employee retention credit for employers affected by qualified disasters	[7]	-167	-28	-14	-8	-4	[2]	[2]	[2]	[2]	[2]	[2]	-221	-221
3. Other disaster-related tax relief provisions:														
a. Temporary increase in limitation on qualified contributions	DOE	-2,752	-131	1,202	471	294	187	---	---	---	---	---	-728	-728
b. Special rules for qualified disaster-related personal casualty losses	DOE	-2,677	-2,646	-957	-408	-70	---	---	---	---	---	---	-6,758	-6,758
c. Special rule for determining earned income [6]	DOE	-122	-30	---	---	---	---	---	---	---	---	---	-152	-152
4. Automatic extension of filing deadlines in case of certain taxpayers affected by Federally declared disasters	Fddda DOE	*Negligible Revenue Effect*												
5. Modification of the tax rate for the excise tax on investment income of private foundations	tyba DOE	[2]	[2]	[2]	-1	-1	-1	-1	-1	-1	-1	-1	-2	-6
6. Additional low-income housing credit allocations for qualified 2017 and 2018 California disaster areas	DOE	-2	-25	-65	-92	-99	-99	-99	-99	-99	-99	-97	-382	-875
7. Treatment of certain possessions	DOE	*Estimate Included in Items III.1.- III.6.*												
Total of Disaster Tax Relief		**-5,739**	**-3,058**	**7**	**-106**	**62**	**63**	**-100**	**-100**	**-100**	**-100**	**-98**	**-8,768**	**-9,265**
NET TOTAL		**-16,570**	**-15,223**	**-6,690**	**37**	**888**	**9,784**	**10,858**	**11,412**	**1,120**	**46**	**-439**	**-27,774**	**-4,781**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

[Legend and Footnotes for Table #19-1 050 R appear on the following page]

Legend and Footnotes for Table #19-1 050 R:

Legend for "Effective" column:

apoia = amounts paid or incurred after
bra = beer removed after
cba = construction beginning after
cpa = coal produced after
cqba = calendar quarters beginning after
cyba = calendar years beginning after
da = dispositions after
dda = decedents dying after
DOE = date of enactment
doia = discharge of indebtedness after
dsra = distilled spirits removed after
epoid = expenditures paid or incurred during
gma = gifts made after
fdlofomba = first day of first calendar month beginning after
Fddda = Federally declared disasters declared after
fsoua = fuel sold or used after
haa = homes acquired after
icpoaa = interest costs paid or accrued after
iwbwftea = individuals who begin work for the employer after
mba = months beginning after
pca = productions commencing after
ppa = property purchased after
ppisa = property placed in service after
qsgbpa = qualified second generation biofuel production after
tyba = taxable years beginning after
vaa = vehicles acquired after
wpi = wages paid in
wra = wine removed after

[1] Effective on and after the first day of the first calendar month beginning after the date of the enactment of this Act.

[2] Loss of less than $500,000.

[3] Allocation in calendar year 2020 increased to $5 billion.

[4] Estimate includes the following budget effects:

	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
Total Revenue Effect	---	-767	-803	-334	-167	-119	-48	---	---	---	---	-2,190	-2,237
On-budget effects	---	-774	-806	-334	-167	-119	-48	---	---	---	---	-2,199	-2,246
Off-budget effects	---	7	3	---	---	---	---	---	---	---	---	9	9

[5] Effective for taxable years of foreign corporations beginning after December 31, 2019, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

[6] Estimates contain the following outlay effect:

	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
Credit for health insurance costs of eligible individuals (health coverage tax credit)	---	26	9	---	---	---	---	---	---	---	---	35	35
Special rule for determining earned income	88	22	---	---	---	---	---	---	---	---	---	110	110

[7] For employers affected by qualified disasters, effective for wages paid or incurred from the incident beginning date of such qualified disaster and 150 days after the last day of the last day of the incident period of such qualified disaster.

#19-105.R
VERY PRELIMINARY
21-Jun-19

ESTIMATED BUDGET EFFECTS OF H.R. 3300,
THE "ECONOMIC MOBILITY ACT OF 2019,"
AS ORDERED REPORTED BY THE COMMITTEE ON WAYS AND MEANS ON JUNE 20, 2019

Fiscal Years 2019 - 2029

[Millions of Dollars]

Provision	Effective	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
I. Earned Income Tax Credit														
1. Strengthening the earned income tax credit for individuals with no qualifying children (sunset 12/31/20) [1]	tyba 12/31/18	-141	-9,920	-9,309	---	---	---	---	---	---	---	---	-19,370	-19,370
2. Taxpayer eligible for childless earned income credit in case of qualifying children who fail to meet certain identification requirements [1]	tyba DOE	[2]	-8	-8	-2	-2	-2	-2	-2	-2	-2	-2	-22	-32
3. Credit allowed in case of certain separated spouses [1]	tyba DOE	[2]	-15	-15	-16	-17	-18	-18	-19	-19	-20	-21	-81	-178
4. Elimination of disqualified investment income test [1]	tyba DOE	-8	-436	-416	-349	-370	-389	-391	-389	-378	-377	-378	-1,969	-3,881
5. Application of earned income tax credit in possessions of United States [1]	DOE	---	---	-696	-703	-720	-737	-753	-769	-785	-802	-819	-2,855	-6,783
Total of Earned Income Tax Credit		**-149**	**-10,379**	**-10,444**	**-1,070**	**-1,109**	**-1,146**	**-1,164**	**-1,179**	**-1,184**	**-1,201**	**-1,220**	**-24,297**	**-30,244**
II. Child Tax Credit - Fully Refundable Child Credit, and $3,000 for Children Younger than 4 Years Old (sunset 12/31/20) and Payments to Possessions [1]	**tyba 12/31/18**	**---**	**-41,487**	**-33,984**	**-715**	**-728**	**-741**	**-745**	**-741**	**-376**	**-380**	**-384**	**-77,655**	**-80,282**
III. Dependent Care Assistance														
1. Refundability and enhancement of child and dependent care tax credit (sunset 12/31/20) [1]	tyba 12/31/18	-389	-11,382	-3,993	---	---	---	---	---	---	---	---	-15,764	-15,764
2. Increase in exclusion for employer-provided dependent care assistance (sunset 12/31/21)	tyba 12/31/19	---	-936	-1,602	-515	---	---	---	---	---	---	---	-3,053	-3,053
Total of Dependent Care Assistance		**-389**	**-12,318**	**-5,595**	**-515**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**-18,817**	**-18,817**

Provision	Effective	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
IV. Certain Fringe Benefit Expenses														
1. Repeal of inclusion of certain fringe benefit expenses in unrelated business taxable income	apoia 12/31/17	-99	-146	-145	-156	-166	-175	-186	-197	-208	-220	-234	-887	-1,931
Total of Certain Fringe Benefit Expenses		**-99**	**-146**	**-145**	**-156**	**-166**	**-175**	**-186**	**-197**	**-208**	**-220**	**-234**	**-887**	**-1,931**
NET TOTAL		**-637**	**-64,330**	**-50,168**	**-2,456**	**-2,003**	**-2,062**	**-2,095**	**-2,117**	**-1,768**	**-1,801**	**-1,838**	**-121,656**	**-131,274**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:
apoia = amounts paid or incurred after DOE = date of enactment tyba = taxable years beginning after

[1] Estimates contain the following outlay effect:	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-24	2019-29
Strengthening the earned income tax credit for individuals with no qualifying children	---	7,519	7597	---	---	---	---	---	---	---	---	15,116	15,116
Taxpayer eligible for childless earned income credit in case of qualifying children who fail to meet certain identification requirements	---	5	5	1	1	[3]	[3]	[3]	[3]	[3]	1	12	13
Credit allowed in case of certain separated spouses	---	13	13	14	14	15	16	16	15	16	16	68	147
Elimination of disqualified investment income test	---	295	294	244	259	274	276	274	265	264	263	1,366	2,708
Application of earned income tax credit in possessions of United States	---	---	696	703	720	737	753	769	785	802	819	2,855	6,783
Child tax credit - fully refundable child credit, and $3,000 for children younger than 4 years old (sunset 12/31/20) and payments to Possessions	---	32,599	32,980	715	728	741	745	741	376	380	384	67,762	70,389
Refundability and enhancement of child and dependent care tax credit	---	5,227	1,756	---	---	---	---	---	---	---	---	6,982	6,982

[2] Loss of less than $500,000.
[3] Increase in outlays of less than $500,000.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing provisions of the bill include increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 9, 2019.

Hon. Richard Neal,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3301, the Taxpayer Certainty and Disaster Tax Relief Act of 2019. It contains estimates of tax provisions prepared by the staff of the Joint Committee on Taxation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ellen Steele.

Sincerely,

Phillip L. Swagel,
Director.

Enclosure.

At a Glance

H.R. 3301, Taxpayer Certainty and Disaster Tax Relief Act of 2019
As ordered reported by the House Committee on Ways and Means on June 20, 2019

By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	88	145	145
Revenues	-16,482	-27,629	-4,636
Deficit Effect	16,570	27,774	4,781
Spending Subject to Appropriation (Outlays)	0	0	0

Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Over Threshold

[n.e. = not estimated]

The bill would

- Extend certain expiring tax provisions, including provisions related to tax relief and support for families and individ-

uals; incentives for employment, economic growth, and community development; and incentives for energy production, efficiency, and green economy jobs

- Reduce the unified credit against the estate tax beginning after December 31, 2022
- Provide tax relief for areas affected by certain natural disasters in 2018 and 2019

Estimated budgetary effects would primarily stem from

- The extension of biodiesel and renewable diesel incentives, an employer credit for paid family and medical leave, and the exclusion from gross income of discharge of qualified personal residence indebtedness
- Accelerating the reduction in the unified credit against the estate tax by three years
- New rules related to the deduction for qualified disaster-related personal casualty losses

The Congressional Budget Act of 1974, as amended, stipulates that revenue estimates provided by the staff of the Joint Committee on Taxation (JCT) are the official estimates for all tax legislation considered by the Congress. CBO therefore incorporates such estimates into its cost estimates of the effects of legislation. All of the estimates for the provisions of H.R. 3301 were provided by JCT.

Bill summary: H.R. 3301, the Taxpayer Certainty and Disaster Tax Relief Act of 2019, would extend a number of expiring tax provisions, reduce the unified credit against the estate tax beginning in 2022, and provide tax relief for certain areas affected by natural disasters.

Estimated Federal cost: The estimated budgetary effect of H.R. 3301 is shown in Table 1. The costs of the legislation fall within budget function 550 (health) and budget function 600 (income security).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 3301

	By fiscal year, millions of dollars—												
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029
Increases or Decreases (−) in Revenues													
Title I. Extension of Certain Expiring Provisions	−10,831	−12,139	−6,707	−1	−295	−543	−523	−478	−513	−521	−483	−30,519	−33,042
Title II. Estate and Gift Tax—Reduction of Unified Credit Against Estate Tax	0	0	19	144	1,121	10,264	11,481	11,990	1,733	667	142	11,548	37,561
Title III. Disaster Tax Relief	−5,651	−3,036	7	−106	62	63	−100	−100	−100	−100	−98	−8,658	−9,155
Total Revenues	−16,482	−15,175	−6,681	37	888	9,784	10,858	11,412	1,120	46	−439	−27,629	−4,636
On-Budget	−16,482	−15,182	−6,684	37	888	9,784	10,858	11,412	1,120	46	−439	−27,638	−4,645
Off-Budget	0	7	3	0	0	0	0	0	0	0	0	9	9
Increases or Decreases (−) in Direct Spending													
Title I. Extension of Certain Expiring Provisions:													
Estimated Budget Authority	0	26	9	0	0	0	0	0	0	0	0	35	35
Estimated Outlays	0	26	9	0	0	0	0	0	0	0	0	35	35
Title III. Disaster Tax Relief:													
Estimated Budget Authority	88	22	0	0	0	0	0	0	0	0	0	110	110
Estimated Outlays	88	22	0	0	0	0	0	0	0	0	0	110	110
Total Estimated Changes in Direct Spending:													
Estimated Budget Authority	88	48	9	0	0	0	0	0	0	0	0	145	145
Estimated Outlays	88	48	9	0	0	0	0	0	0	0	0	145	145
Net Increase or Decrease (−) in the Deficit From Changes in Direct Spending and Revenues													
Effect on the Deficit	16,570	15,223	6,690	−37	−888	−9,784	−10,858	−11,412	−1,120	−46	439	27,774	4,781
On-Budget Deficit	16,570	15,230	6,693	−37	−888	−9,784	−10,858	−11,412	−1,120	−46	439	27,783	4,790
Off-Budget Deficit	0	−7	−3	0	0	0	0	0	0	0	0	−9	−9

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.
Components may not sum to totals because of rounding. * = between −$500,000 and $500,000.

Basis of estimate: The Congressional Budget Act of 1974, as amended, stipulates that revenue estimates provided by the staff of the Joint Committee on Taxation will be the official estimates for all tax legislation considered by the Congress. As such, CBO incorporates those estimates into its cost estimates of the effects of legislation. All of the estimates for the provisions of H.R. 3301 were provided by JCT.

Revenues

On net, JCT estimates, enacting the bill would decrease revenues by $4.6 billion over the 2019–2029 period.

Title I. Extension of Certain Expiring Tax Provisions. Title I would extend certain expiring tax provisions. These tax provisions include individual income tax provisions; incentives related to employment, economic growth, and community development; incentives for energy production, efficiency, and green economy jobs; and other provisions expiring at the end of 2019. JCT estimates that those provisions would, on net, reduce revenues by $33.0 billion over the 2019–2029 period.

Title II. Estate and Gift Tax—Reduction of Unified Credit Against Estate Tax. Title II would reduce the unified credit against the estate tax. The exclusion for the estate and gift tax was expanded from $5 million to $10 million (indexed for inflation) under Public Law 115–97 for decedents dying from December 31, 2017 to January 1, 2026. This provision accelerates the expiration of that measure by three years to December 31, 2022. JCT estimates that this provision would, on net, increase revenues by $37.6 billion over the 2019–2029 period.

Title III. Disaster Tax Relief. Title III would provide tax relief to areas affected by certain natural disasters in 2018 and part of 2019. Title III includes special rules for claiming the itemized deduction for qualified disaster-related personal casualty losses and for early withdrawals for disaster-related uses of retirement funds. JCT estimates that this provision would, on net, reduce revenues by $9.2 billion over the 2019–2029 period.

Direct spending

On net, JCT estimates, enacting the bill would increase direct spending by $145 million over the 2019–2029 period.

Title I. Extension of Certain Expiring Tax Provisions. Title I would extend the health coverage tax credit, which is a credit for health insurance costs of eligible individuals, for 12 months. JCT estimates that the extension of the credit would increase direct spending by $35 million over the 2019–2029 period.

Title III. Disaster Tax Relief. Title III would permit individuals living in areas affected by natural disasters to calculate their earned income tax credit and additional child tax credit using their earned income from the prior tax year. JCT estimates that this provision would increase direct spending by $110 million over the 2019–2029 period.

Uncertainty

These budgetary estimates are uncertain because they rely on underlying projections and other estimates that are uncertain. Specifically, they are based in part on CBO's economic projections for

the next decade under current law, and on estimates of changes in taxpayers' behavior in response to changes in tax rules.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 2. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

Table 2.—CBO'S ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF H.R. 3301

	By fiscal year, millions of dollars—												
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029
Net Increase or Decrease (−) in the [On-Budget] Deficit													
Statutory Pay-As-You-Go Effect	16,570	15,230	6,693	−37	−888	−9,784	−10,858	−11,412	−1,120	−46	439	27,783	4,790
Memorandum:													
Change in Outlays	88	48	9	0	0	0	0	0	0	0	0	145	145
Change in On-Budget Revenues	−16,482	−15,182	−6,684	37	888	9,784	10,858	11,412	1,120	46	−439	−27,638	−4,645

Increase in long-term deficits: None.

JCT estimates that enacting H.R. 3301 would not increase on-budget deficits by more than $5 billion in at least one of the four consecutive 10-year periods beginning in 2030.

Mandates: JCT has determined that H.R. 3301 would impose no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

JCT has determined that H.R. 3301 would impose a private-sector mandate as defined in UMRA by reducing the unified credit against the estate tax. JCT estimates that the aggregate direct cost of the mandate would exceed the annual private-sector threshold established in UMRA ($164 million in 2019, adjusted annually for inflation).

Estimate prepared by: Staff of the Joint Committee on Taxation and Ellen Steele; Mandates: Staff of the Joint Committee on Taxation.

Estimate reviewed by: Joshua Shakin, Chief, Revenue Estimating Unit; John McClelland, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI, Clause 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that "It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase." The Committee, after careful review, states that the bill does not involve any retroactive Federal income tax rate increase within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of Public Law 105–206, the Internal Revenue Service Restructuring and Reform Act of 1998 (the "RRA"), requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the RRA because the bill contains no provision that amends the Internal Revenue Code of 1986 and has "widespread applicability" to individuals or small businesses within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant section 6104 of title 31, United States Code.

H. Hearings

In compliance with Sec. 103(i) of H. Res. 6 (116th Congress), the following hearing was used to develop or consider H.R. 3301: The Select Revenue Measures Subcommittee hearing on Temporary Policy in the Internal Revenue Code held on Tuesday, March 12, 2019. The following related hearings were held: (a) The full Committee hearing on the 2017 Tax Law and Who It Left Behind, held on March 27, 2019; and (b) The Member Day Hearing held on June 4, 2019.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL

A. Changes in Existing Law Proposed by the Bill

Pursuant to clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the

bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—DETERMINATION OF TAX LIABILITY

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—NONREFUNDABLE PERSONAL CREDITS

* * * * * * *

SEC. 25C. NONBUSINESS ENERGY 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) 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year, and

(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

(b) LIMITATIONS.—

(1) LIFETIME LIMITATION.—The credit allowed under this section with respect to any taxpayer for any taxable year shall not exceed the excess (if any) of $500 over the aggregate credits allowed under this section with respect to such taxpayer for all prior taxable years ending after December 31, 2005.

(2) WINDOWS.—In the case of amounts paid or incurred for components described in subsection (c)(3)(B) by any taxpayer for any taxable year, the credit allowed under this section with

respect to such amounts for such year shall not exceed the excess (if any) of $200 over the aggregate credits allowed under this section with respect to such amounts for all prior taxable years ending after December 31, 2005.

(3) LIMITATION ON RESIDENTIAL ENERGY PROPERTY EXPENDITURES.—The amount of the credit allowed under this section by reason of subsection (a)(2) shall not exceed—

(A) $50 for any advanced main air circulating fan,

(B) $150 for any qualified natural gas, propane, or oil furnace or hot water boiler, and

(C) $300 for any item of energy-efficient building property.

(c) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section—

(1) IN GENERAL.—The term "qualified energy efficiency improvements" means any energy efficient building envelope component, if—

(A) such component is installed in or on a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

(B) the original use of such component commences with the taxpayer, and

(C) such component reasonably can be expected to remain in use for at least 5 years.

(2) ENERGY EFFICIENT BUILDING ENVELOPE COMPONENT.—The term "energy efficient building envelope component" means a building envelope component which meets—

(A) applicable Energy Star program requirements, in the case of a roof or roof products,

(B) version 6.0 Energy Star program requirements, in the case of an exterior window, a skylight, or an exterior door, and

(C) the prescriptive criteria for such component established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, in the case of any other component.

(3) BUILDING ENVELOPE COMPONENT.—The term "building envelope component" means—

(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit,

(B) exterior windows (including skylights),

(C) exterior doors, and

(D) any metal roof or asphalt roof installed on a dwelling unit, but only if such roof has appropriate pigmented coatings or cooling granules which are specifically and primarily designed to reduce the heat gain of such dwelling unit.

(4) MANUFACTURED HOMES INCLUDED.—The term "dwelling unit" includes a manufactured home which conforms to Federal

Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations).

(d) RESIDENTIAL ENERGY PROPERTY EXPENDITURES.—For purposes of this section—

(1) IN GENERAL.—The term "residential energy property expenditures" means expenditures made by the taxpayer for qualified energy property which is—

(A) installed on or in connection with a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121), and

(B) originally placed in service by the taxpayer.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

(2) QUALIFIED ENERGY PROPERTY.—

(A) IN GENERAL.—The term "qualified energy property" means—

(i) energy-efficient building property,

(ii) a qualified natural gas, propane, or oil furnace or hot water boiler, or

(iii) an advanced main air circulating fan.

(B) PERFORMANCE AND QUALITY STANDARDS.—Property described under subparagraph (A) shall meet the performance and quality standards, and the certification requirements (if any), which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate), and

(ii) are in effect at the time of the acquisition of the property, or at the time of the completion of the construction, reconstruction, or erection of the property, as the case may be.

(C) REQUIREMENTS AND STANDARDS FOR AIR CONDITIONERS AND HEAT PUMPS.—The standards and requirements prescribed by the Secretary under subparagraph (B) with respect to the energy efficiency ratio (EER) for central air conditioners and electric heat pumps—

(i) shall require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

(ii) may be based on the certified data of the Air Conditioning and Refrigeration Institute that are prepared in partnership with the Consortium for Energy Efficiency.

(3) ENERGY-EFFICIENT BUILDING PROPERTY.—The term "energy-efficient building property" means—

(A) an electric heat pump water heater which yields [an energy factor of at least 2.0] *a Uniform Energy Factor of at least 2.2* in the standard Department of Energy test procedure,

(B) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,

(C) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,

(D) a natural gas, propane, or oil water heater which has either [an energy factor] *a Uniform Energy Factor* of at least 0.82 or a thermal efficiency of at least 90 percent, and

(E) a stove which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent.

(4) QUALIFIED NATURAL GAS, PROPANE, OR OIL FURNACE OR HOT WATER BOILER.—The term "qualified natural gas, propane, or oil furnace or hot water boiler" means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.

(5) ADVANCED MAIN AIR CIRCULATING FAN.—The term "advanced main air circulating fan" means a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than 2 percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

(6) BIOMASS FUEL.—The term "biomass fuel" means any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

(e) SPECIAL RULES.—For purposes of this section—

(1) APPLICATION OF RULES.—Rules similar to the rules under paragraphs (4), (5), (6), (7), and (8) of section 25D(e) shall apply.

(2) JOINT OWNERSHIP OF ENERGY ITEMS.—

(A) IN GENERAL.—Any expenditure otherwise qualifying as an expenditure under this section shall not be treated as failing to so qualify merely because such expenditure was made with respect to two or more dwelling units.

(B) LIMITS APPLIED SEPARATELY.—In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to paragraph (1)) be computed separately with respect to the amount of the expenditure made for each dwelling unit.

(3) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any property, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).

(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) TERMINATION.—This section shall not apply with respect to any property placed in service—

(1) after December 31, 2007, and before January 1, 2009, or

(2) after [December 31, 2017] *December 31, 2020*.

* * * * * * *

Subpart B—OTHER CREDITS

* * * * * * *

SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) ALLOWANCE OF CREDIT.—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) the new qualified fuel cell motor vehicle credit determined under subsection (b),

(2) the new advanced lean burn technology motor vehicle credit determined under subsection (c),

(3) the new qualified hybrid motor vehicle credit determined under subsection (d),

(4) the new qualified alternative fuel motor vehicle credit determined under subsection (e), and

(5) the plug-in conversion credit determined under subsection (i).

(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

(A) $8,000 ($4,000 in the case of a vehicle placed in service after December 31, 2009), if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(2) INCREASE FOR FUEL EFFICIENCY.—

(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

(B) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

(i) In the case of a passenger automobile:

(ii) In the case of a light truck:

(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term "vehicle inertia weight class" has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term "new qualified fuel cell motor vehicle" means a motor vehicle—

(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

(B) which, in the case of a passenger automobile or light truck, has received on or after the date of the enactment of this section a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

(C) the original use of which commences with the taxpayer,

(D) which is acquired for use or lease by the taxpayer and not for resale, and

(E) which is made by a manufacturer.

(c) NEW ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the new advanced lean burn technology motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year.

(2) CREDIT AMOUNT.—

(A) FUEL ECONOMY.—

(i) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following table:

(ii) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2002 model year city fuel econ-

omy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to a new advanced lean burn technology motor vehicle shall be increased by the conservation credit amount determined in accordance with the following table:

(3) NEW ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—For purposes of this subsection, the term "new advanced lean burn technology motor vehicle" means a passenger automobile or a light truck—

(A) with an internal combustion engine which—

(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

(ii) incorporates direct injection,

(iii) achieves at least 125 percent of the 2002 model year city fuel economy,

(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds—

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(B) the original use of which commences with the taxpayer,

(C) which is acquired for use or lease by the taxpayer and not for resale, and

(D) which is made by a manufacturer.

(4) LIFETIME FUEL SAVINGS.—For purposes of this subsection, the term "lifetime fuel savings" means, in the case of any new advanced lean burn technology motor vehicle, an amount equal to the excess (if any) of—

(A) 120,000 divided by the 2002 model year city fuel economy for the vehicle inertia weight class, over

(B) 120,000 divided by the city fuel economy for such vehicle.

(d) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year.

(2) CREDIT AMOUNT.—

(A) CREDIT AMOUNT FOR PASSENGER AUTOMOBILES AND LIGHT TRUCKS.—In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which has a gross vehicle weight rating of not more than 8,500 pounds, the amount determined under this paragraph is the sum of the amounts determined under clauses (i) and (ii).

(i) FUEL ECONOMY.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(A) if such vehicle were a vehicle referred to in such subsection.

(ii) CONSERVATION CREDIT.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(B) if such vehicle were a vehicle referred to in such subsection.

(B) CREDIT AMOUNT FOR OTHER MOTOR VEHICLES.—

(i) IN GENERAL.—In the case of any new qualified hybrid motor vehicle to which subparagraph (A) does not apply, the amount determined under this paragraph is the amount equal to the applicable percentage of the qualified incremental hybrid cost of the vehicle as certified under clause (v).

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is—

(I) 20 percent if the vehicle achieves an increase in city fuel economy relative to a comparable vehicle of at least 30 percent but less than 40 percent,

(II) 30 percent if the vehicle achieves such an increase of at least 40 percent but less than 50 percent, and

(III) 40 percent if the vehicle achieves such an increase of at least 50 percent.

(iii) QUALIFIED INCREMENTAL HYBRID COST.—For purposes of this subparagraph, the qualified incremental hybrid cost of any vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a comparable vehicle, to the extent such amount does not exceed—

(I) $7,500, if such vehicle has a gross vehicle weight rating of not more than 14,000 pounds,

(II) $15,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(III) $30,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(iv) COMPARABLE VEHICLE.—For purposes of this subparagraph, the term "comparable vehicle" means, with respect to any new qualified hybrid motor vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in weight, size, and use to such vehicle.

(v) CERTIFICATION.—A certification described in clause (i) shall be made by the manufacturer and shall be determined in accordance with guidance prescribed

by the Secretary. Such guidance shall specify procedures and methods for calculating fuel economy savings and incremental hybrid costs.

(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

(A) IN GENERAL.—The term "new qualified hybrid motor vehicle" means a motor vehicle—

(i) which draws propulsion energy from onboard sources of stored energy which are both—

(I) an internal combustion or heat engine using consumable fuel, and

(II) a rechargeable energy storage system,

(ii) which, in the case of a vehicle to which paragraph (2)(A) applies, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(iii) which has a maximum available power of at least—

(I) 4 percent in the case of a vehicle to which paragraph (2)(A) applies,

(II) 10 percent in the case of a vehicle which has a gross vehicle weight rating of more than 8,500 pounds and not more than 14,000 pounds, and

(III) 15 percent in the case of a vehicle in excess of 14,000 pounds,

(iv) which, in the case of a vehicle to which paragraph (2)(B) applies, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

(v) the original use of which commences with the taxpayer,

(vi) which is acquired for use or lease by the taxpayer and not for resale, and

(vii) which is made by a manufacturer.

Such term shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term "consumable fuel" means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

(C) MAXIMUM AVAILABLE POWER.—

(i) CERTAIN PASSENGER AUTOMOBILES AND LIGHT TRUCKS.—In the case of a vehicle to which paragraph (2)(A) applies, the term "maximum available power" means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

(ii) OTHER MOTOR VEHICLES.—In the case of a vehicle to which paragraph (2)(B) applies, the term "maximum available power" means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. For purposes of the preceding sentence, the term "total traction power" means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

(D) EXCLUSION OF PLUG-IN VEHICLES.—Any vehicle with respect to which a credit is allowable under section 30D (determined without regard to subsection (c) thereof) shall not be taken into account under this section.

(e) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

(A) 50 percent, plus

(B) 30 percent, if such vehicle—

(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Incentives Act of 2005.

(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

(A) IN GENERAL.—The term "new qualified alternative fuel motor vehicle" means any motor vehicle—

(i) which is only capable of operating on an alternative fuel,

(ii) the original use of which commences with the taxpayer,

(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

(iv) which is made by a manufacturer.

(B) ALTERNATIVE FUEL.—The term "alternative fuel" means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

(5) CREDIT FOR MIXED-FUEL VEHICLES.—

(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term "mixed-fuel vehicle" means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

(ii) either—

(I) has received a certificate of conformity under the Clean Air Act, or

(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

(iii) the original use of which commences with the taxpayer,

(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

(v) which is made by a manufacturer.

(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term "75/25 mixed-fuel vehicle" means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term "90/10 mixed-fuel vehicle" means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

(f) LIMITATION ON NUMBER OF NEW QUALIFIED HYBRID AND ADVANCED LEAN-BURN TECHNOLOGY VEHICLES ELIGIBLE FOR CREDIT.—

(1) IN GENERAL.—In the case of a qualified vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (c) or (d) shall be allowed.

(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2005, is at least 60,000.

(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) CONTROLLED GROUPS.—

(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as a single manufacturer.

(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of

section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

(5) QUALIFIED VEHICLE.—For purposes of this subsection, the term "qualified vehicle" means any new qualified hybrid motor vehicle (described in subsection (d)(2)(A)) and any new advanced lean burn technology motor vehicle.

(g) APPLICATION WITH OTHER CREDITS.—

(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(h) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) MOTOR VEHICLE.—The term "motor vehicle" means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(2) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

(3) OTHER TERMS.—The terms "automobile", "passenger automobile", "medium duty passenger vehicle", "light truck", and "manufacturer" have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (g)).

(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter—

(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (e) shall be reduced by the amount of such credit attributable to such cost, and

(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year (determined without regard to subsection (g)).

(6) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of a vehicle whose use is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but

only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (g)). For purposes of subsection (g), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(7) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

(8) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle), except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle.

(9) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(10) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(i) PLUG-IN CONVERSION CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the plug-in conversion credit determined under this subsection with respect to any motor vehicle which is converted to a qualified plug-in electric drive motor vehicle is 10 percent of so much of the cost of the converting such vehicle as does not exceed $40,000.

(2) QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE.—For purposes of this subsection, the term "qualified plug-in electric drive motor vehicle" means any new qualified plug-in electric drive motor vehicle (as defined in section 30D, determined without regard to whether such vehicle is made by a manufacturer or whether the original use of such vehicle commences with the taxpayer).

(3) CREDIT ALLOWED IN ADDITION TO OTHER CREDITS.—The credit allowed under this subsection shall be allowed with respect to a motor vehicle notwithstanding whether a credit has been allowed with respect to such motor vehicle under this section (other than this subsection) in any preceding taxable year.

(4) TERMINATION.—This subsection shall not apply to conversions made after December 31, 2011.

(j) REGULATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

(k) TERMINATION.—This section shall not apply to any property purchased after—

(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), [December 31, 2017] *December 31, 2020*,

(2) in the case of a new advanced lean burn technology motor vehicle (as described in subsection (c)) or a new qualified hybrid motor vehicle (as described in subsection (d)(2)(A)), December 31, 2010,

(3) in the case of a new qualified hybrid motor vehicle (as described in subsection (d)(2)(B)), December 31, 2009, and

(4) in the case of a new qualified alternative fuel vehicle (as described in subsection (e)), December 31, 2010.

SEC. 30C. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year.

(b) LIMITATION.—The credit allowed under subsection (a) with respect to all qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year at a location shall not exceed—

(1) $30,000 in the case of a property of a character subject to an allowance for depreciation, and

(2) $1,000 in any other case.

(c) QUALIFIED ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—For purposes of this section, the term "qualified alternative fuel vehicle refueling property" has the same meaning as the term "qualified clean-fuel vehicle refueling property" would have under section 179A if—

(1) paragraph (1) of section 179A(d) did not apply to property installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer, and

(2) only the following were treated as clean-burning fuels for purposes of section 179A(d):

(A) Any fuel at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquefied petroleum gas, or hydrogen.

(B) Any mixture—

(i) which consists of two or more of the following: biodiesel (as defined in section 40A(d)(1)), diesel fuel (as defined in section 4083(a)(3)), or kerosene, and

(ii) at least 20 percent of the volume of which consists of biodiesel (as so defined) determined without regard to any kerosene in such mixture.

(C) Electricity.

(d) APPLICATION WITH OTHER CREDITS.—

(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) PERSONAL CREDIT.—The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—

(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and section 27, over

(B) the tentative minimum tax for the taxable year.

(e) SPECIAL RULES.—For purposes of this section—

(1) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (d)).

(2) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of any qualified alternative fuel vehicle refueling property the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such property to the person or entity using such property shall be treated as the taxpayer that placed such property in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such property (determined without regard to subsection (d)). For purposes of subsection (d), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(3) PROPERTY USED OUTSIDE UNITED STATES NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

(4) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any property if the taxpayer elects not to have this section apply to such property.

(5) RECAPTURE RULES.—Rules similar to the rules of section 179A(e)(4) shall apply.

(6) REFERENCE.—For purposes of this section, any reference to section 179A shall be treated as a reference to such section as in effect immediately before its repeal.

(f) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

(g) TERMINATION.—This section shall not apply to any property placed in service after ⟦December 31, 2017⟧ *December 31, 2020*.

SEC. 30D. NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.

(a) ALLOWANCE OF CREDIT.—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 the credit amounts determined under subsection (b) with respect to each new qualified plug-in electric drive motor vehicle placed in service by the taxpayer during the taxable year.

(b) PER VEHICLE DOLLAR LIMITATION.—

(1) IN GENERAL.—The amount determined under this subsection with respect to any new qualified plug-in electric drive motor vehicle is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

(2) BASE AMOUNT.—The amount determined under this paragraph is $2,500.

(3) BATTERY CAPACITY.—In the case of a vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $417, plus $417 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $5,000.

(c) APPLICATION WITH OTHER CREDITS.—

(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(d) NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLE.—For purposes of this section—

(1) IN GENERAL.—The term "new qualified plug-in electric drive motor vehicle" means a motor vehicle—

(A) the original use of which commences with the taxpayer,

(B) which is acquired for use or lease by the taxpayer and not for resale,

(C) which is made by a manufacturer,

(D) which is treated as a motor vehicle for purposes of title II of the Clean Air Act,

(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than 4 kilowatt hours, and

(ii) is capable of being recharged from an external source of electricity.

(2) MOTOR VEHICLE.—The term "motor vehicle" means any vehicle which is manufactured primarily for use on public

streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) MANUFACTURER.—The term "manufacturer" has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) BATTERY CAPACITY.—The term "capacity" means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

(e) LIMITATION ON NUMBER OF NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES ELIGIBLE FOR CREDIT.—

(1) IN GENERAL.—In the case of a new qualified plug-in electric drive motor vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of new qualified plug-in electric drive motor vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2009, is at least 200,000.

(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) CONTROLLED GROUPS.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

(f) SPECIAL RULES.—

(1) BASIS REDUCTION.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (c)).

(2) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for a vehicle for which a credit is allowable under subsection (a) shall be reduced by the amount of credit allowed under such subsection for such vehicle (determined without regard to subsection (c)).

(3) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)). For purposes of subsection (c), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(4) PROPERTY USED OUTSIDE UNITED STATES NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

(5) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(6) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(7) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—A vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(g) CREDIT ALLOWED FOR 2- AND 3-WHEELED PLUG-IN ELECTRIC VEHICLES.—

(1) IN GENERAL.—In the case of a qualified 2- or 3-wheeled plug-in electric vehicle—

(A) 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 the applicable amount with respect to each such qualified 2- or 3-wheeled plug-in electric vehicle placed in service by the taxpayer during the taxable year, and

(B) the amount of the credit allowed under subparagraph (A) shall be treated as a credit allowed under subsection (a).

(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount is an amount equal to the lesser of—

(A) 10 percent of the cost of the qualified 2- or 3-wheeled plug-in electric vehicle, or

(B) $2,500.

(3) QUALIFIED 2- OR 3-WHEELED PLUG-IN ELECTRIC VEHICLE.—The term "qualified 2- or 3-wheeled plug-in electric vehicle" means any vehicle which—

(A) has 2 or 3 wheels,

(B) meets the requirements of subparagraphs (A), (B), (C), (E), and (F) of subsection (d)(1) (determined by substituting "2.5 kilowatt hours" for "4 kilowatt hours" in subparagraph (F)(i)),

(C) is manufactured primarily for use on public streets, roads, and highways,

(D) is capable of achieving a speed of 45 miles per hour or greater, and

(E) is acquired—

(i) after December 31, 2011, and before January 1, 2014, or

(ii) in the case of a vehicle that has 2 wheels, after December 31, 2014, and before [January 1, 2018] *January 1, 2021*.

Subpart C—REFUNDABLE CREDITS

* * * * * * *

SEC. 35. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to 72.5 percent of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

(b) ELIGIBLE COVERAGE MONTH.—For purposes of this section—

(1) IN GENERAL.—The term "eligible coverage month" means any month if—

(A) as of the first day of such month, the taxpayer—

(i) is an eligible individual,

(ii) is covered by qualified health insurance, the premium for which is paid by the taxpayer,

(iii) does not have other specified coverage, and

(iv) is not imprisoned under Federal, State, or local authority, and

(B) such month begins more than 90 days after the date of the enactment of the Trade Act of 2002, and before [January 1, 2020] *January 1, 2021*.

(2) JOINT RETURNS.—In the case of a joint return, the requirements of paragraph (1)(A) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirements.

(c) ELIGIBLE INDIVIDUAL.—For purposes of this section—

(1) IN GENERAL.—The term "eligible individual" means—

(A) an eligible TAA recipient,

(B) an eligible alternative TAA recipient, and

(C) an eligible PBGC pension recipient.

(2) ELIGIBLE TAA RECIPIENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "eligible TAA recipient" means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(B) SPECIAL RULE.—In the case of any eligible coverage month beginning after the date of the enactment of this paragraph, the term "eligible TAA recipient" means, with respect to any month, any individual who—

(i) is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974,

(ii) would be eligible to receive such allowance except that such individual is in a break in training provided under a training program approved under section 236 of such Act that exceeds the period specified in section 233(e) of such Act, but is within the period for receiving such allowances provided under section 233(a) of such Act, or

(iii) is receiving unemployment compensation (as defined in section 85(b)) for any day of such month and who would be eligible to receive such allowance for such month if section 231 of such Act were applied without regard to subsections (a)(3)(B) and (a)(5) thereof.

An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(3) ELIGIBLE ALTERNATIVE TAA RECIPIENT.—The term "eligible alternative TAA recipient" means, with respect to any month, any individual who—

(A) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and

(B) is receiving a benefit for such month under section 246(a)(2) of such Act.

An individual shall continue to be treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible alternative TAA recipient by reason of the preceding sentence.

(4) ELIGIBLE PBGC PENSION RECIPIENT.—The term "eligible PBGC pension recipient" means, with respect to any month, any individual who—

(A) has attained age 55 as of the first day of such month, and

(B) is receiving a benefit for such month any portion of which is paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974.

(d) QUALIFYING FAMILY MEMBER.—For purposes of this section—

(1) IN GENERAL.—The term "qualifying family member" means—

(A) the taxpayer's spouse, and

(B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

Such term does not include any individual who has other specified coverage.

(2) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC..—If section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in paragraph (1)(B) with respect to the custodial parent (as defined in section 152(e)(4)(A)) and not with respect to the noncustodial parent.

(e) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

(1) IN GENERAL.—The term "qualified health insurance" means any of the following:

(A) Coverage under a COBRA continuation provision (as defined in section 9832(d)(1)).

(B) State-based continuation coverage provided by the State under a State law that requires such coverage.

(C) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act).

(D) Coverage under a health insurance program offered for State employees.

(E) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.

(F) Coverage through an arrangement entered into by a State and—

(i) a group health plan (including such a plan which is a multiemployer plan as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

(ii) an issuer of health insurance coverage,

(iii) an administrator, or

(iv) an employer.

(G) Coverage offered through a State arrangement with a private sector health care coverage purchasing pool.

(H) Coverage under a State-operated health plan that does not receive any Federal financial participation.

(I) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

(J) In the case of any eligible individual and such individual's qualifying family members, coverage under individual health insurance (other than coverage enrolled in through an Exchange established under the Patient Protection and Affordable Care Act). For purposes of this subparagraph, the term "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal- or State-based health insurance coverage.

(K) Coverage under an employee benefit plan funded by a voluntary employees' beneficiary association (as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code.

(2) REQUIREMENTS FOR STATE-BASED COVERAGE.—

(A) IN GENERAL.—The term "qualified health insurance" does not include any coverage described in subparagraphs (B) through (H) of paragraph (1) unless the State involved has elected to have such coverage treated as qualified health insurance under this section and such coverage meets the following requirements:

(i) GUARANTEED ISSUE.—Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 and pays the remainder of such premium.

(ii) NO IMPOSITION OF PREEXISTING CONDITION EXCLUSION.—No pre-existing condition limitations are imposed with respect to any qualifying individual.

(iii) NONDISCRIMINATORY PREMIUM.—The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

(iv) SAME BENEFITS.—Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

(B) QUALIFYING INDIVIDUAL.—For purposes of this paragraph, the term "qualifying individual" means—

(i) an eligible individual for whom, as of the date on which the individual seeks to enroll in the coverage described in subparagraphs (B) through (H) of paragraph (1), the aggregate of the periods of creditable coverage (as defined in section 9801(c)) is 3 months or longer and who, with respect to any month, meets the requirements of clauses (iii) and (iv) of subsection (b)(1)(A); and

(ii) the qualifying family members of such eligible individual.

(3) EXCEPTION.—The term "qualified health insurance" shall not include—

(A) a flexible spending or similar arrangement, and

(B) any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

(f) OTHER SPECIFIED COVERAGE.—For purposes of this section, an individual has other specified coverage for any month if, as of the first day of such month—

(1) SUBSIDIZED COVERAGE.—

(A) IN GENERAL.—Such individual is covered under any insurance which constitutes medical care (except insurance substantially all of the coverage of which is of excepted benefits described in section 9832(c)) under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and at least 50 percent of the cost of such coverage (determined under section 4980B) is paid or incurred by the employer.

(B) ELIGIBLE ALTERNATIVE TAA RECIPIENTS.—In the case of an eligible alternative TAA recipient, such individual is either—

(i) eligible for coverage under any qualified health insurance (other than insurance described in subparagraph (A), (B), or (F) of subsection (e)(1)) under which at least 50 percent of the cost of coverage (determined under section 4980B(f)(4)) is paid or incurred by an

employer (or former employer) of the taxpayer or the taxpayer's spouse, or

(ii) covered under any such qualified health insurance under which any portion of the cost of coverage (as so determined) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse.

(C) TREATMENT OF CAFETERIA PLANS.—For purposes of subparagraphs (A) and (B), the cost of coverage shall be treated as paid or incurred by an employer to the extent the coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d)).

(2) COVERAGE UNDER MEDICARE, MEDICAID, OR SCHIP.—Such individual—

(A) is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

(3) CERTAIN OTHER COVERAGE.—Such individual—

(A) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

(B) is entitled to receive benefits under chapter 55 of title 10, United States Code.

(g) SPECIAL RULES.—

(1) COORDINATION WITH ADVANCE PAYMENTS OF CREDIT.—With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7527 for months beginning in such taxable year.

(2) COORDINATION WITH OTHER DEDUCTIONS.—Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 162(*l*) or 213.

(3) MEDICAL AND HEALTH SAVINGS ACCOUNTS.—Amounts distributed from an Archer MSA (as defined in section 220(d)) or from a health savings account (as defined in section 223(d)) shall not be taken into account under subsection (a).

(4) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(5) BOTH SPOUSES ELIGIBLE INDIVIDUALS.—The spouse of the taxpayer shall not be treated as a qualifying family member for purposes of subsection (a), if—

(A) the taxpayer is married at the close of the taxable year,

(B) the taxpayer and the taxpayer's spouse are both eligible individuals during the taxable year, and

(C) the taxpayer files a separate return for the taxable year.

(6) MARITAL STATUS; CERTAIN MARRIED INDIVIDUALS LIVING APART.—Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this section.

(7) INSURANCE WHICH COVERS OTHER INDIVIDUALS.—For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with respect to any contract for qualified health insurance under which amounts are payable for coverage of an individual other than the taxpayer and qualifying family members.

(8) TREATMENT OF PAYMENTS.—For purposes of this section—

(A) PAYMENTS BY SECRETARY.—Payments made by the Secretary on behalf of any individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(B) PAYMENTS BY TAXPAYER.—Payments made by the taxpayer for eligible coverage months shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(9) COBRA PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.

(10) CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.—

(A) MEDICARE ELIGIBILITY.—In the case of any month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to such eligible individual solely for purposes of determining the amount of the credit under this section with respect to any qualifying family members of such individual (and any advance payment of such credit under section 7527). This subparagraph shall only apply with respect to the first 24 months after such eligible individual is first entitled to the benefits described in subsection (f)(2)(A).

(B) DIVORCE.—In the case of the finalization of a divorce between an eligible individual and such individual's spouse, such spouse shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such finalization, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such finalization.

(C) DEATH.—In the case of the death of an eligible individual—

(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible indi-

vidual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

(ii) any individual who was a qualifying family member of the decedent immediately before such death (or, in the case of an individual to whom paragraph (4) applies, the taxpayer to whom the deduction under section 151 is allowable) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that in determining the amount of such credit only such qualifying family member may be taken into account.

(11) ELECTION.—

(A) IN GENERAL.—This section shall not apply to any taxpayer for any eligible coverage month unless such taxpayer elects the application of this section for such month.

(B) TIMING AND APPLICABILITY OF ELECTION.—Except as the Secretary may provide—

(i) an election to have this section apply for any eligible coverage month in a taxable year shall be made not later than the due date (including extensions) for the return of tax for the taxable year; and

(ii) any election for this section to apply for an eligible coverage month shall apply for all subsequent eligible coverage months in the taxable year and, once made, shall be irrevocable with respect to such months.

(12) COORDINATION WITH PREMIUM TAX CREDIT.—

(A) IN GENERAL.—An eligible coverage month to which the election under paragraph (11) applies shall not be treated as a coverage month (as defined in section 36B(c)(2)) for purposes of section 36B with respect to the taxpayer.

(B) COORDINATION WITH ADVANCE PAYMENTS OF PREMIUM TAX CREDIT.—In the case of a taxpayer who makes the election under paragraph (11) with respect to any eligible coverage month in a taxable year or on behalf of whom any advance payment is made under section 7527 with respect to any month in such taxable year—

(i) the tax imposed by this chapter for the taxable year shall be increased by the excess, if any, of—

(I) the sum of any advance payments made on behalf of the taxpayer under section 1412 of the Patient Protection and Affordable Care Act and section 7527 for months during such taxable year, over

(II) the sum of the credits allowed under this section (determined without regard to paragraph (1)) and section 36B (determined without regard to subsection (f)(1) thereof) for such taxable year; and

(ii) section 36B(f)(2) shall not apply with respect to such taxpayer for such taxable year, except that if such taxpayer received any advance payments under section 7527 for any month in such taxable year and is later allowed a credit under section 36B for such taxable year, then section 36B(f)(2)(B) shall be applied by substituting the amount determined under clause (i) for the amount determined under section 36B(f)(2)(A).

(13) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, section 6050T, and section 7527.

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Subpart D—BUSINESS RELATED CREDITS

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SEC. 40. ALCOHOL, ETC., USED AS FUEL.

(a) GENERAL RULE.—For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the alcohol mixture credit,

(2) the alcohol credit,

(3) in the case of an eligible small ethanol producer, the small ethanol producer credit, plus

(4) the second generation biofuel producer credit.

(b) DEFINITION OF ALCOHOL MIXTURE CREDIT, ALCOHOL CREDIT, AND SMALL ETHANOL PRODUCER CREDIT.—For purposes of this section, and except as provided in subsection (h)—

(1) ALCOHOL MIXTURE CREDIT.—

(A) IN GENERAL.—The alcohol mixture credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.

(B) QUALIFIED MIXTURE.—The term "qualified mixture" means a mixture of alcohol and gasoline or of alcohol and a special fuel which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC..—Alcohol used in the production of a qualified mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.

(2) ALCOHOL CREDIT.—

(A) IN GENERAL.—The alcohol credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol which is not in a mixture with gasoline or a special fuel

(other than any denaturant) and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) USER CREDIT NOT TO APPLY TO ALCOHOL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any alcohol which was sold in a retail sale described in subparagraph (A)(ii).

(3) SMALLER CREDIT FOR LOWER PROOF ALCOHOL.—In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting "45 cents" for "60 cents".

(4) SMALL ETHANOL PRODUCER CREDIT.—

(A) IN GENERAL.—The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

(B) QUALIFIED ETHANOL FUEL PRODUCTION.—For purposes of this paragraph, the term "qualified ethanol fuel production" means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) LIMITATION.—The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons (determined without regard to any qualified second generation biofuel production).

(D) ADDITIONAL DISTILLATION EXCLUDED.—The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(5) ADDING OF DENATURANTS NOT TREATED AS MIXTURE.—The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(6) SECOND GENERATION BIOFUEL PRODUCER CREDIT.—

(A) IN GENERAL.—The second generation biofuel producer credit of any taxpayer is an amount equal to the applicable amount for each gallon of qualified second generation biofuel production.

(B) APPLICABLE AMOUNT.—For purposes of subparagraph (A), the applicable amount means $1.01, except that such

amount shall, in the case of second generation biofuel which is alcohol, be reduced by the sum of—

(i) the amount of the credit in effect for such alcohol under subsection (b)(1) (without regard to subsection (b)(3)) at the time of the qualified second generation biofuel production, plus

(ii) in the case of ethanol, the amount of the credit in effect under subsection (b)(4) at the time of such production.

(C) QUALIFIED SECOND GENERATION BIOFUEL PRODUCTION.—For purposes of this section, the term "qualified second generation biofuel production" means any second generation biofuel which is produced by the taxpayer, and which during the taxable year—

(i) is sold by the taxpayer to another person—

(I) for use by such other person in the production of a qualified second generation biofuel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such second generation biofuel at retail to another person and places such second generation biofuel in the fuel tank of such other person, or

(ii) is used or sold by the taxpayer for any purpose described in clause (i).

The qualified second generation biofuel production of any taxpayer for any taxable year shall not include any alcohol which is purchased by the taxpayer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(D) QUALIFIED SECOND GENERATION BIOFUEL MIXTURE.—For purposes of this paragraph, the term "qualified second generation biofuel mixture" means a mixture of second generation biofuel and gasoline or of second generation biofuel and a special fuel which—

(i) is sold by the person producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the person producing such mixture.

(E) SECOND GENERATION BIOFUEL.—For purposes of this paragraph—

(i) IN GENERAL.—The term "second generation biofuel" means any liquid fuel which—

(I) is derived by, or from, qualified feedstocks, and

(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

(ii) EXCLUSION OF LOW-PROOF ALCOHOL.—The term "second generation biofuel" shall not include any alcohol with a proof of less than 150. The determination

of the proof of any alcohol shall be made without regard to any added denaturants.

(iii) EXCLUSION OF CERTAIN FUELS.—The term "second generation biofuel" shall not include any fuel if—

(I) more than 4 percent of such fuel (determined by weight) is any combination of water and sediment,

(II) the ash content of such fuel is more than 1 percent (determined by weight), or

(III) such fuel has an acid number greater than 25.

(F) QUALIFIED FEEDSTOCK.—For purposes of this paragraph, the term "qualified feedstock" means—

(i) any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

(ii) any cultivated algae, cyanobacteria, or lemna.

(G) SPECIAL RULES FOR ALGAE.—In the case of fuel which is derived by, or from, feedstock described in subparagraph (F)(ii) and which is sold by the taxpayer to another person for refining by such other person into a fuel which meets the requirements of subparagraph (E)(i)(II) and the refined fuel is not excluded under subparagraph (E)(iii)—

(i) such sale shall be treated as described in subparagraph (C)(i),

(ii) such fuel shall be treated as meeting the requirements of subparagraph (E)(i)(II) and as not being excluded under subparagraph (E)(iii) in the hands of such taxpayer, and

(iii) except as provided in this subparagraph, such fuel (and any fuel derived from such fuel) shall not be taken into account under subparagraph (C) with respect to the taxpayer or any other person.

(H) ALLOCATION OF SECOND GENERATION BIOFUEL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—Rules similar to the rules under subsection (g)(6) shall apply for purposes of this paragraph.

(I) REGISTRATION REQUIREMENT.—No credit shall be determined under this paragraph with respect to any taxpayer unless such taxpayer is registered with the Secretary as a producer of second generation biofuel under section 4101.

(J) APPLICATION OF PARAGRAPH.—

(i) IN GENERAL.—This paragraph shall apply with respect to qualified second generation biofuel production after December 31, 2008, and before ❲January 1, 2018❳ *January 1, 2021*.

(ii) NO CARRYOVER TO CERTAIN YEARS AFTER EXPIRATION.—If this paragraph ceases to apply for any period by reason of clause (i), rules similar to the rules of subsection (e)(2) shall apply.

(c) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with re-

spect to such alcohol solely by reason of the application of section 4041(b)(2), section 6426, or section 6427(e).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) ALCOHOL DEFINED.—

(A) IN GENERAL.—The term "alcohol" includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 150.

(B) DETERMINATION OF PROOF.—The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) SPECIAL FUEL DEFINED.—The term "special fuel" includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) MIXTURE OR ALCOHOL NOT USED AS A FUEL, ETC..—

(A) MIXTURES.—If—

(i) any credit was determined under this section with respect to alcohol used in the production of any qualified mixture, and

(ii) any person—

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) ALCOHOL.—If—

(i) any credit was determined under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) SMALL ETHANOL PRODUCER CREDIT.—If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol.

(D) SECOND GENERATION BIOFUEL PRODUCER CREDIT.—If—

(i) any credit is allowed under subsection (a)(4), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(6)(C),

then there is hereby imposed on such person a tax equal to the applicable amount (as defined in subsection (b)(6)(B)) for each gallon of such second generation biofuel.

(E) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed

under subparagraph (A), (B), (C), or (D) as if such tax were imposed by section 4081 and not by this chapter.

(4) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

(5) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(6) SPECIAL RULE FOR SECOND GENERATION BIOFUEL PRODUCER CREDIT.—No second generation biofuel producer credit shall be determined under subsection (a) with respect to any second generation biofuel unless such second generation biofuel is produced in the United States and used as a fuel in the United States. For purposes of this subsection, the term "United States" includes any possession of the United States.

(7) LIMITATION TO ALCOHOL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term "United States" includes any possession of the United States.

(e) TERMINATION.—

(1) IN GENERAL.—This section shall not apply to any sale or use—

(A) for any period after December 31, 2011, or

(B) for any period before January 1, 2012, during which the rates of tax under section 4081(a)(2)(A) are 4.3 cents per gallon.

(2) NO CARRYOVERS TO CERTAIN YEARS AFTER EXPIRATION.—If this section ceases to apply for any period by reason of paragraph (1), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs.

(3) EXCEPTION FOR SECOND GENERATION BIOFUEL PRODUCER CREDIT.—Paragraph (1) shall not apply to the portion of the credit allowed under this section by reason of subsection (a)(4).

(f) ELECTION TO HAVE ALCOHOL FUELS CREDIT NOT APPLY.—

(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(g) DEFINITIONS AND SPECIAL RULES FOR ELIGIBLE SMALL ETHANOL PRODUCER CREDIT.—For purposes of this section—

(1) ELIGIBLE SMALL ETHANOL PRODUCER.—The term "eligible small ethanol producer" means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to clauses (i) and (ii)) not in excess of 60,000,000 gallons.

(2) AGGREGATION RULE.—For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) PARTNERSHIP, S CORPORATIONS, AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) ALLOCATION.—For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of alcohol during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

(A) ELECTION TO ALLOCATE.—

(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—

(i) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under

subsection (a)(3) for the taxable year of the organization.

(ii) PATRONS.—The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) REDUCED CREDIT FOR ETHANOL BLENDERS.—

(1) IN GENERAL.—In the case of any alcohol mixture credit or alcohol credit with respect to any sale or use of alcohol which is ethanol during calendar years 2001 through 2011—

(A) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting "the blender amount" for "60 cents",

(B) subsection (b)(3) shall be applied by substituting "the low-proof blender amount" for "45 cents" and "the blender amount" for "60 cents", and

(C) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting "the blender amount" for "60 cents" and "the low-proof blender amount" for "45 cents".

(2) AMOUNTS.—For purposes of paragraph (1), the blender amount and the low-proof blender amount shall be determined in accordance with the following table:

(3) REDUCTION DELAYED UNTIL ANNUAL PRODUCTION OR IMPORTATION OF 7,500,000,000 GALLONS.—

(A) IN GENERAL.—In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in subparagraph (B) with respect to all preceding calendar years beginning after 2007, the last row in the table in paragraph (2) shall be applied by substituting "51 cents" for "45 cents".

(B) DETERMINATION.—A determination described in this subparagraph with respect to any calendar year is a determination, in consultation with the Administrator of the Environmental Protection Agency, that an amount less than 7,500,000,000 gallons of ethanol (including cellulosic

ethanol) has been produced in or imported into the United States in such year.

SEC. 40A. BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.

(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the biodiesel mixture credit, plus

(2) the biodiesel credit, plus

(3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit.

(b) DEFINITION OF BIODIESEL MIXTURE CREDIT, BIODIESEL CREDIT, AND SMALL AGRI-BIODIESEL PRODUCER CREDIT.—For purposes of this section—

(1) BIODIESEL MIXTURE CREDIT.—

(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

(B) QUALIFIED BIODIESEL MIXTURE.—The term "qualified biodiesel mixture" means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC..—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

(2) BIODIESEL CREDIT.—

(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

(3) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under paragraph (1) or (2) of subsection (a) unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of

the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(4) SMALL AGRI-BIODIESEL PRODUCER CREDIT.—

(A) IN GENERAL.—The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

(B) QUALIFIED AGRI-BIODIESEL PRODUCTION.—For purposes of this paragraph, the term "qualified agri-biodiesel production" means any agri-biodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) LIMITATION.—The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) BIODIESEL.—The term "biodiesel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D6751.

Such term shall not include any liquid with respect to which a credit may be determined under section 40.

(2) AGRI-BIODIESEL.—The term "agri-biodiesel" means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC..—

(A) MIXTURES.—If—

(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

(ii) any person—

(I) separates the biodiesel from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

(B) BIODIESEL.—If—

(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

(C) PRODUCER CREDIT.—If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such agri-biodiesel.

(D) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(5) LIMITATION TO BIODIESEL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term "United States" includes any possession of the United States.

(e) DEFINITIONS AND SPECIAL RULES FOR SMALL AGRI-BIODIESEL PRODUCER CREDIT.—For purposes of this section—

(1) ELIGIBLE SMALL AGRI-BIODIESEL PRODUCER.—The term "eligible small agri-biodiesel producer" means a person who, at all times during the taxable year, has a productive capacity for agri-biodiesel not in excess of 60,000,000 gallons.

(2) AGGREGATION RULE.—For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) PARTNERSHIP, S CORPORATION, AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection

(b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) ALLOCATION.—For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of agri-biodiesel during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) ALLOCATION OF SMALL AGRI-BIODIESEL CREDIT TO PATRONS OF COOPERATIVE.—

(A) ELECTION TO ALLOCATE.—

(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—

(i) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) PATRONS.—The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit

shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(f) RENEWABLE DIESEL.—For purposes of this title—

(1) TREATMENT IN THE SAME MANNER AS BIODIESEL.—Except as provided in paragraph (2), renewable diesel shall be treated in the same manner as biodiesel.

(2) EXCEPTION.—Subsection (b)(4) shall not apply with respect to renewable diesel.

(3) RENEWABLE DIESEL DEFINED.—The term "renewable diesel" means liquid fuel derived from biomass which meets—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D975 or D396, or other equivalent standard approved by the Secretary.

Such term shall not include any liquid with respect to which a credit may be determined under section 40. Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term "biomass" has the meaning given such term by section 45K(c)(3).

(4) CERTAIN AVIATION FUEL.—

(A) IN GENERAL.—Except as provided in the last 3 sentences of paragraph (3), the term "renewable diesel" shall include fuel derived from biomass which meets the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel.

(B) APPLICATION OF MIXTURE CREDITS.—In the case of fuel which is treated as renewable diesel solely by reason of subparagraph (A), subsection (b)(1) and section 6426(c) shall be applied with respect to such fuel by treating kerosene as though it were diesel fuel.

(g) TERMINATION.—This section shall not apply to any sale or use after [December 31, 2017] *December 31, 2020*.

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SEC. 45. ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES, ETC.

(a) GENERAL RULE.—For purposes of section 38, the renewable electricity production credit for any taxable year is an amount equal to the product of—

(1) 1.5 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer—

(i) from qualified energy resources, and

(ii) at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) LIMITATIONS AND ADJUSTMENTS.—

(1) PHASEOUT OF CREDIT.—The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

(B) 3 cents.

(2) CREDIT AND PHASEOUT ADJUSTMENT BASED ON INFLATION.—The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), the $2 amount in subsection (e)(8)(D)(ii)(I), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002 shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(3) CREDIT REDUCED FOR GRANTS, TAX-EXEMPT BONDS, SUBSIDIZED ENERGY FINANCING, AND OTHER CREDITS.—The amount of the credit determined under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and the lesser of 1/2 or a fraction—

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(i) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(ii) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103,

(iii) the aggregate amount of subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the project, and

(iv) the amount of any other credit allowable with respect to any property which is part of the project, and

(B) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year.

This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).

(4) CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD FROM CERTAIN FACILITIES.—

(A) CREDIT RATE.—In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), (7), (9), or (11) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

(B) CREDIT PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii) or clause (iii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(ii) CERTAIN OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph, the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(iii) TERMINATION.—Clause (i) shall not apply to any facility placed in service after the date of the enactment of this clause.

(5) PHASEOUT OF CREDIT FOR WIND FACILITIES.—In the case of any facility using wind to produce electricity, the amount of the credit determined under subsection (a) (determined after the application of paragraphs (1), (2), and (3) and without regard to this paragraph) shall be reduced by—

(A) in the case of any facility the construction of which begins after December 31, 2016, and before January 1, 2018, 20 percent,

(B) in the case of any facility the construction of which begins after December 31, 2017, and before January 1, 2019, 40 percent, and

(C) in the case of any facility the construction of which begins after December 31, 2018, [and before January 1, 2020,] 60 percent.

(c) RESOURCES.—For purposes of this section:

(1) IN GENERAL.—The term "qualified energy resources" means—

(A) wind,
(B) closed-loop biomass,
(C) open-loop biomass,
(D) geothermal energy,
(E) solar energy,
(F) small irrigation power,
(G) municipal solid waste,
(H) qualified hydropower production, and
(I) marine and hydrokinetic renewable energy.

(2) CLOSED-LOOP BIOMASS.—The term "closed-loop biomass" means any organic material from a plant which is planted ex-

clusively for purposes of being used at a qualified facility to produce electricity.

(3) OPEN-LOOP BIOMASS.—

(A) IN GENERAL.—The term "open-loop biomass" means—

(i) any agricultural livestock waste nutrients, or

(ii) any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from—

(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

(i) IN GENERAL.—The term "agricultural livestock waste nutrients" means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

(ii) AGRICULTURAL LIVESTOCK.—The term "agricultural livestock" includes bovine, swine, poultry, and sheep.

(4) GEOTHERMAL ENERGY.—The term "geothermal energy" means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

(5) SMALL IRRIGATION POWER.—The term "small irrigation power" means power—

(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

(6) MUNICIPAL SOLID WASTE.—The term "municipal solid waste" has the meaning given the term "solid waste" under section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903), except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined).

(7) REFINED COAL.—

(A) IN GENERAL.—The term "refined coal" means a fuel—

(i) which—

(I) is a liquid, gaseous, or solid fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock,

(II) is sold by the taxpayer with the reasonable expectation that it will be used for the purpose of producing steam, and

(III) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction, or

(ii) which is steel industry fuel.

(B) QUALIFIED EMISSION REDUCTION.—The term "qualified emission reduction" means a reduction of at least 20 percent of the emissions of nitrogen oxide and at least 40 percent of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

(C) STEEL INDUSTRY FUEL.—

(i) IN GENERAL.—The term "steel industry fuel" means a fuel which—

(I) is produced through a process of liquifying coal waste sludge and distributing it on coal, and

(II) is used as a feedstock for the manufacture of coke.

(ii) COAL WASTE SLUDGE.—The term "coal waste sludge" means the tar decanter sludge and related by-products of the coking process, including such materials that have been stored in ground, in tanks and in lagoons, that have been treated as hazardous wastes under applicable Federal environmental rules absent liquefaction and processing with coal into a feedstock for the manufacture of coke.

(8) QUALIFIED HYDROPOWER PRODUCTION.—

(A) IN GENERAL.—The term "qualified hydropower production" means—

(i) in the case of any hydroelectric dam which was placed in service on or before the date of the enactment of this paragraph, the incremental hydropower production for the taxable year, and

(ii) in the case of any nonhydroelectric dam described in subparagraph (C), the hydropower production from the facility for the taxable year.

(B) DETERMINATION OF INCREMENTAL HYDROPOWER PRODUCTION.—

(i) IN GENERAL.—For purposes of subparagraph (A), incremental hydropower production for any taxable year shall be equal to the percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity placed in service after the date of the enactment of this paragraph, determined by using the same water flow information used to determine an historic average

annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission.

(ii) OPERATIONAL CHANGES DISREGARDED.—For purposes of clause (i), the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

(C) NONHYDROELECTRIC DAM.—For purposes of subparagraph (A), a facility is described in this subparagraph if—

(i) the hydroelectric project installed on the nonhydroelectric dam is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

(ii) the nonhydroelectric dam was placed in service before the date of the enactment of this paragraph and operated for flood control, navigation, or water supply purposes and did not produce hydroelectric power on the date of the enactment of this paragraph, and

(iii) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

The Secretary, in consultation with the Federal Energy Regulatory Commission, shall certify if a hydroelectric project licensed at a nonhydroelectric dam meets the criteria in clause (iii). Nothing in this section shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act.

(9) INDIAN COAL.—

(A) IN GENERAL.—The term "Indian coal" means coal which is produced from coal reserves which, on June 14, 2005—

(i) were owned by an Indian tribe, or

(ii) were held in trust by the United States for the benefit of an Indian tribe or its members.

(B) INDIAN TRIBE.—For purposes of this paragraph, the term "Indian tribe" has the meaning given such term by section 7871(c)(3)(E)(ii).

(10) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—

(A) IN GENERAL.—The term "marine and hydrokinetic renewable energy" means energy derived from—

(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

(ii) free flowing water in rivers, lakes, and streams,

(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

(iv) differentials in ocean temperature (ocean thermal energy conversion).

(B) EXCEPTIONS.—Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.

(d) QUALIFIED FACILITIES.—For purposes of this section:

(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and the construction of which begins before [January 1, 2020] *January 1, 2021*. Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.

(2) CLOSED-LOOP BIOMASS FACILITY.—

(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term "qualified facility" means any facility—

(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and the construction of which begins before [January 1, 2018] *January 1, 2021*, or

(ii) owned by the taxpayer which before [January 1, 2018] *January 1, 2021*, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

For purposes of clause (ii), a facility shall be treated as modified before [January 1, 2018] *January 1, 2021*, if the construction of such modification begins before such date.

(B) EXPANSION OF FACILITY.—Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause, and

(ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(3) OPEN-LOOP BIOMASS FACILITIES.—

(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which—

(i) in the case of a facility using agricultural livestock waste nutrients—

(I) is originally placed in service after the date of the enactment of this subclause and the construction of which begins before [January 1, 2018] *January 1, 2021*, and

(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

(ii) in the case of any other facility, the construction of which begins before [January 1, 2018] *January 1, 2021*.

(B) EXPANSION OF FACILITY.—Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and which—

(A) in the case of a facility using solar energy, is placed in service before January 1, 2006, or

(B) in the case of a facility using geothermal energy, the construction of which begins before [January 1, 2018] *January 1, 2021*.

Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before October 3, 2008.

(6) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and the construction of which begins before [January 1, 2018] *January 1, 2021*.

(7) TRASH FACILITIES.—In the case of a facility (other than a facility described in paragraph (6)) which uses municipal solid waste to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and the construction of which begins before [January 1, 2018] *January 1, 2021*. Such term shall include a new unit placed in

service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(8) REFINED COAL PRODUCTION FACILITY.—In the case of a facility that produces refined coal, the term "refined coal production facility" means—

(A) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(B) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2012.

(9) QUALIFIED HYDROPOWER FACILITY.—

(A) IN GENERAL.—In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term "qualified facility" means—

(i) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before [January 1, 2018] *January 1, 2021*, and

(ii) any other facility placed in service after the date of the enactment of this paragraph and the construction of which begins before [January 1, 2018] *January 1, 2021*.

(B) CREDIT PERIOD.—In the case of a qualified facility described in subparagraph (A), the 10-year period referred to in subsection (a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.

(C) SPECIAL RULE.—For purposes of subparagraph (A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before [January 1, 2018] *January 1, 2021*, if the construction of such improvement or addition begins before such date.

(10) INDIAN COAL PRODUCTION FACILITY.—The term "Indian coal production facility" means a facility that produces Indian coal.

(11) MARINE AND HYDROKINETIC RENEWABLE ENERGY FACILITIES.—In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term "qualified facility" means any facility owned by the taxpayer—

(A) which has a nameplate capacity rating of at least 150 kilowatts, and

(B) which is originally placed in service on or after the date of the enactment of this paragraph and the construction of which begins before [January 1, 2018] *January 1, 2021*.

(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) ONLY PRODUCTION IN THE UNITED STATES TAKEN INTO ACCOUNT.—Sales shall be taken into account under this section only with respect to electricity the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) COMPUTATION OF INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE.—

(A) IN GENERAL.—The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for such calendar year in accordance with this paragraph.

(B) INFLATION ADJUSTMENT FACTOR.—The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

(C) REFERENCE PRICE.—The term "reference price" means, with respect to a calendar year, the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. For purposes of the preceding sentence, only contracts entered into after December 31, 1989, shall be taken into account.

(3) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

(4) RELATED PERSONS.—Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

(5) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(7) CREDIT NOT TO APPLY TO ELECTRICITY SOLD TO UTILITIES UNDER CERTAIN CONTRACTS.—

(A) IN GENERAL.—The credit determined under subsection (a) shall not apply to electricity—

(i) produced at a qualified facility described in subsection (d)(1) which is originally placed in service after June 30, 1999, and

(ii) sold to a utility pursuant to a contract originally entered into before January 1, 1987 (whether or not amended or restated after that date).

(B) EXCEPTION.—Subparagraph (A) shall not apply if—

(i) the prices for energy and capacity from such facility are established pursuant to an amendment to the contract referred to in subparagraph (A)(ii),

(ii) such amendment provides that the prices set forth in the contract which exceed avoided cost prices determined at the time of delivery shall apply only to annual quantities of electricity (prorated for partial years) which do not exceed the greater of—

(I) the average annual quantity of electricity sold to the utility under the contract during calendar years 1994, 1995, 1996, 1997, and 1998, or

(II) the estimate of the annual electricity production set forth in the contract, or, if there is no such estimate, the greatest annual quantity of electricity sold to the utility under the contract in any of the calendar years 1996, 1997, or 1998, and

(iii) such amendment provides that energy and capacity in excess of the limitation in clause (ii) may be—

(I) sold to the utility only at prices that do not exceed avoided cost prices determined at the time of delivery, or

(II) sold to a third party subject to a mutually agreed upon advance notice to the utility.

For purposes of this subparagraph, avoided cost prices shall be determined as provided for in 18 CFR 292.304(d)(1) or any successor regulation.

(8) REFINED COAL PRODUCTION FACILITIES.—

(A) DETERMINATION OF CREDIT AMOUNT.—In the case of a producer of refined coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to $4.375 per ton of qualified refined coal—

(i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and

(ii) sold by the taxpayer—

(I) to an unrelated person, and

(II) during such 10-year period and such taxable year.

(B) PHASEOUT OF CREDIT.—The amount of the increase determined under subparagraph (A) shall be reduced by an amount which bears the same ratio to the amount of the increase (determined without regard to this subparagraph) as—

(i) the amount by which the reference price of fuel used as a feedstock (within the meaning of subsection

(c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to

(ii) $8.75.

(C) APPLICATION OF RULES.—Rules similar to the rules of the subsection (b)(3) and paragraphs (1) through (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(D) SPECIAL RULE FOR STEEL INDUSTRY FUEL.—

(i) IN GENERAL.—In the case of a taxpayer who produces steel industry fuel—

(I) this paragraph shall be applied separately with respect to steel industry fuel and other refined coal, and

(II) in applying this paragraph to steel industry fuel, the modifications in clause (ii) shall apply.

(ii) MODIFICATIONS.—

(I) CREDIT AMOUNT.—Subparagraph (A) shall be applied by substituting "$2 per barrel-of-oil equivalent" for "$4.375 per ton".

(II) CREDIT PERIOD.—In lieu of the 10-year period referred to in clauses (i) and (ii)(II) of subparagraph (A), the credit period shall be the period beginning on the later of the date such facility was originally placed in service, the date the modifications described in clause (iii) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in clause (iii) were placed in service.

(III) NO PHASEOUT.—Subparagraph (B) shall not apply.

(iii) MODIFICATIONS.—The modifications described in this clause are modifications to an existing facility which allow such facility to produce steel industry fuel.

(iv) BARREL-OF-OIL EQUIVALENT.—For purposes of this subparagraph, a barrel-of-oil equivalent is the amount of steel industry fuel that has a Btu content of 5,800,000 Btus.

(9) COORDINATION WITH CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.—

(A) IN GENERAL.—The term "qualified facility" shall not include any facility which produces electricity from gas derived from the biodegradation of municipal solid waste if such biodegradation occurred in a facility (within the meaning of section 45K) the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year.

(B) REFINED COAL FACILITIES.—

(i) IN GENERAL.—The term "refined coal production facility" shall not include any facility the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year (or

under section 29, as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year).

(ii) EXCEPTION FOR STEEL INDUSTRY COAL.—In the case of a facility producing steel industry fuel, clause (i) shall not apply to so much of the refined coal produced at such facility as is steel industry fuel.

(10) INDIAN COAL PRODUCTION FACILITIES.—

(A) DETERMINATION OF CREDIT AMOUNT.—In the case of a producer of Indian coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal—

(i) produced by the taxpayer at an Indian coal production facility during the ⟦12-year period⟧ *15-year period* beginning on January 1, 2006, and

(ii) sold by the taxpayer—

(I) to an unrelated person (either directly by the taxpayer or after sale or transfer to one or more related persons), and

(II) during such ⟦12-year period⟧ *15-year period* and such taxable year.

(B) APPLICABLE DOLLAR AMOUNT.—

(i) IN GENERAL.—The term "applicable dollar amount" for any taxable year beginning in a calendar year means—

(I) $1.50 in the case of calendar years 2006 through 2009, and

(II) $2.00 in the case of calendar years beginning after 2009.

(ii) INFLATION ADJUSTMENT.—In the case of any calendar year after 2006, each of the dollar amounts under clause (i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under paragraph (2)(B) for the calendar year, except that such paragraph shall be applied by substituting "2005" for "1992".

(C) APPLICATION OF RULES.—Rules similar to the rules of the subsection (b)(3) and paragraphs (1), (3), (4), and (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(11) ALLOCATION OF CREDIT TO PATRONS OF AGRICULTURAL COOPERATIVE.—

(A) ELECTION TO ALLOCATE.—

(i) IN GENERAL.—In the case of an eligible cooperative organization, any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.

(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such

election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to any patrons under subparagraph (A)—

(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

(ii) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

(i) such reduction, over

(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(D) ELIGIBLE COOPERATIVE DEFINED.—For purposes of this section the term "eligible cooperative" means a cooperative organization described in section 1381(a) which is owned more than 50 percent by agricultural producers or by entities owned by agricultural producers. For this purpose an entity owned by an agricultural producer is one that is more than 50 percent owned by agricultural producers.

SEC. 45A. INDIAN EMPLOYMENT CREDIT.

(a) AMOUNT OF CREDIT.—For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(1) the sum of—

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) QUALIFIED WAGES; QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—For purposes of this section—

(1) QUALIFIED WAGES.—

(A) IN GENERAL.—The term "qualified wages" means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) COORDINATION WITH WORK OPPORTUNITY CREDIT.—The term "qualified wages" shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51. If any portion of wages are taken into account under subsection (e)(1)(A) of section 51, the preceding sentence shall be applied by substituting "2-year period" for "1-year period".

(2) QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—

(A) IN GENERAL.—The term "qualified employee health insurance costs" means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

(3) LIMITATION.—The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

(c) QUALIFIED EMPLOYEE.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "qualified employee" means, with respect to any period, any employee of an employer if—

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

(2) INDIVIDUALS RECEIVING WAGES IN EXCESS OF $30,000 NOT ELIGIBLE.—An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

(3) INFLATION ADJUSTMENT.—The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d), except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993.

(4) EMPLOYMENT MUST BE TRADE OR BUSINESS EMPLOYMENT.—An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) CERTAIN EMPLOYEES NOT ELIGIBLE.—The term "qualified employee" shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

(6) INDIAN TRIBE DEFINED.—The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) INDIAN RESERVATION DEFINED.—The term "Indian reservation" has the meaning given such term by section 168(j)(6).

(d) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER.—

(1) IN GENERAL.—If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

(3) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to—

(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of

such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) CHANGES IN FORM OF BUSINESS.—For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

(A) determining the amount of any credit allowable under this chapter, and

(B) determining the amount of the tax imposed by section 55.

(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) WAGES.—The term "wages" has the same meaning given to such term in section 51.

(2) CONTROLLED GROUPS.—(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) CERTAIN OTHER RULES MADE APPLICABLE.—Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(4) COORDINATION WITH NONREVENUE LAWS.—Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

(5) SPECIAL RULE FOR SHORT TAXABLE YEARS.—For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) TERMINATION.—This section shall not apply to taxable years beginning after [December 31, 2017] *December 31, 2020*.

* * * * * * *

SEC. 45D. NEW MARKETS TAX CREDIT.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity for such investment at its original issue.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

(A) 5 percent with respect to the first 3 credit allowance dates, and

(B) 6 percent with respect to the remainder of the credit allowance dates.

(3) CREDIT ALLOWANCE DATE.—For purposes of paragraph (1), the term "credit allowance date" means, with respect to any qualified equity investment—

(A) the date on which such investment is initially made, and

(B) each of the 6 anniversary dates of such date thereafter.

(b) QUALIFIED EQUITY INVESTMENT.—For purposes of this section—

(1) IN GENERAL.—The term "qualified equity investment" means any equity investment in a qualified community development entity if—

(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

(C) such investment is designated for purposes of this section by the qualified community development entity.

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

(2) LIMITATION.—The maximum amount of equity investments issued by a qualified community development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

(3) SAFE HARBOR FOR DETERMINING USE OF CASH.—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

(4) TREATMENT OF SUBSEQUENT PURCHASERS.—The term "qualified equity investment" includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

(5) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

(6) EQUITY INVESTMENT.—The term "equity investment" means—

(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

(B) any capital interest in an entity which is a partnership.

(c) QUALIFIED COMMUNITY DEVELOPMENT ENTITY.—For purposes of this section—

(1) IN GENERAL.—The term "qualified community development entity" means any domestic corporation or partnership if—

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

(B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and

(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

(2) SPECIAL RULES FOR CERTAIN ORGANIZATIONS.—The requirements of paragraph (1) shall be treated as met by—

(A) any specialized small business investment company (as defined in section 1044(c)(3)), and

(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(d) QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS.—For purposes of this section—

(1) IN GENERAL.—The term "qualified low-income community investment" means—

(A) any capital or equity investment in, or loan to, any qualified active low-income community business,

(B) the purchase from another qualified community development entity of any loan made by such entity which is a qualified low-income community investment,

(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

(D) any equity investment in, or loan to, any qualified community development entity.

(2) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "qualified active low-income community business" means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

(B) PROPRIETORSHIP.—Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.—The term "qualified active low-income community business" includes any trades or businesses which would qualify as a qualified active low-income community business if such trades or businesses were separately incorporated.

(3) QUALIFIED BUSINESS.—For purposes of this subsection, the term "qualified business" has the meaning given to such term by section 1397C(d); except that—

(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property, and

(B) paragraph (3) thereof shall not apply.

(e) LOW-INCOME COMMUNITY.—For purposes of this section—

(1) IN GENERAL.—The term "low-income community" means any population census tract if—

(A) the poverty rate for such tract is at least 20 percent, or

(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Subparagraph (B) shall be applied using possessionwide median family income in the case of census tracts located within a possession of the United States.

(2) TARGETED POPULATIONS.—The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community De-

velopment and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.

(3) AREAS NOT WITHIN CENSUS TRACTS.—In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

(4) TRACTS WITH LOW POPULATION.—A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract—

(A) is within an empowerment zone the designation of which is in effect under section 1391, and

(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).

(5) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting "85 percent" for "80 percent".

(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term "high migration rural county" means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.—

(1) IN GENERAL.—There is a new markets tax credit limitation for each calendar year. Such limitation is—

(A) $1,000,000,000 for 2001,

(B) $1,500,000,000 for 2002 and 2003,

(C) $2,000,000,000 for 2004 and 2005,

(D) $3,500,000,000 for 2006 and 2007,

(E) $5,000,000,000 for 2008,

(F) $5,000,000,000 for 2009, [and]

(G) $3,500,000,000 for each of calendar years 2010 through 2019[.], *and*

(H) $5,000,000,000 for 2020.

(2) ALLOCATION OF LIMITATION.—The limitation under paragraph (1) shall be allocated by the Secretary among qualified community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income commu-

nity investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

(3) CARRYOVER OF UNUSED LIMITATION.—If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after ⟦2024⟧ *2025*.

(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

(1) IN GENERAL.—If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if—

(A) such entity ceases to be a qualified community development entity,

(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

(C) such investment is redeemed by such entity.

(4) SPECIAL RULES.—

(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of section 1202.

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

(2) which prevent the abuse of the purposes of this section,

(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

(4) which impose appropriate reporting requirements,

(5) which apply the provisions of this section to newly formed entities, and

(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.

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SEC. 45G. RAILROAD TRACK MAINTENANCE CREDIT.

(a) GENERAL RULE.—For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

(b) LIMITATION.—

(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

(A) $3,500, multiplied by

(B) the sum of—

(i) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year, and

(ii) the number of miles of railroad track assigned for purposes of this subsection to the eligible taxpayer by a Class II or Class III railroad which owns or leases such railroad track as of the close of the taxable year.

(2) ASSIGNMENTS.—With respect to any assignment of a mile of railroad track under paragraph (1)(B)(ii)—

(A) such assignment may be made only once per taxable year of the Class II or Class III railroad and shall be treated as made as of the close of such taxable year,

(B) such mile may not be taken into account under this section by such railroad for such taxable year, and

(C) such assignment shall be taken into account for the taxable year of the assignee which includes the date that such assignment is treated as effective.

(c) ELIGIBLE TAXPAYER.—For purposes of this section, the term "eligible taxpayer" means—

(1) any Class II or Class III railroad, and

(2) any person who transports property using the rail facilities of a Class II or Class III railroad or who furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such Class II or Class III railroad for purposes of subsection (b).

(d) QUALIFIED RAILROAD TRACK MAINTENANCE EXPENDITURES.—For purposes of this section, the term "qualified railroad track maintenance expenditures" means gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad (determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track).

(e) OTHER DEFINITIONS AND SPECIAL RULES.—

(1) CLASS II OR CLASS III RAILROAD.—For purposes of this section, the terms "Class II railroad" and "Class III railroad" have the respective meanings given such terms by the Surface Transportation Board.

(2) CONTROLLED GROUPS.—Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

(3) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

(f) APPLICATION OF SECTION.—This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before [January 1, 2018] *January 1, 2021*.

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SEC. 45L. NEW ENERGY EFFICIENT HOME CREDIT.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the new energy efficient home credit for the taxable year is the applicable amount for each qualified new energy efficient home which is—

(A) constructed by the eligible contractor, and

(B) acquired by a person from such eligible contractor for use as a residence during the taxable year.

(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount is an amount equal to—

(A) in the case of a dwelling unit described in paragraph (1) or (2) of subsection (c), $2,000, and

(B) in the case of a dwelling unit described in paragraph (3) of subsection (c), $1,000.

(b) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE CONTRACTOR.—The term "eligible contractor" means—

(A) the person who constructed the qualified new energy efficient home, or

(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

(2) QUALIFIED NEW ENERGY EFFICIENT HOME.—The term "qualified new energy efficient home" means a dwelling unit—

(A) located in the United States,

(B) the construction of which is substantially completed after the date of the enactment of this section, and

(C) which meets the energy saving requirements of subsection (c).

(3) CONSTRUCTION.—The term "construction" includes substantial reconstruction and rehabilitation.

(4) ACQUIRE.—The term "acquire" includes purchase.

(c) ENERGY SAVING REQUIREMENTS.—A dwelling unit meets the energy saving requirements of this subsection if such unit is—

(1) certified—

(A) to have a level of annual heating and cooling energy consumption which is at least 50 percent below the annual level of heating and cooling energy consumption of a comparable dwelling unit—

(i) which is constructed in accordance with the standards of chapter 4 of the 2006 International Energy Conservation Code, as such Code (including supplements) is in effect on January 1, 2006, and

(ii) for which the heating and cooling equipment efficiencies correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of completion of construction, and

(B) to have building envelope component improvements account for at least 1/5 of such 50 percent,

(2) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which meets the requirements of paragraph (1), or

(3) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which—

(A) meets the requirements of paragraph (1) applied by substituting "30 percent" for "50 percent" both places it appears therein and by substituting "1/3" for "1/5" in subparagraph (B) thereof, or

(B) meets the requirements established by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

(d) CERTIFICATION.—

(1) METHOD OF CERTIFICATION.—A certification described in subsection (c) shall be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy. Such guidance shall specify procedures and methods for calculating energy and cost savings.

(2) FORM.—Any certification described in subsection (c) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance.

(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section in connection with any expenditure for 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 determined.

(f) COORDINATION WITH INVESTMENT CREDIT.—For purposes of this section, expenditures taken into account under section 47 or 48(a) shall not be taken into account under this section.

(g) TERMINATION.—This section shall not apply to any qualified new energy efficient home acquired after [December 31, 2017] *December 31, 2020*.

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SEC. 45N. MINE RESCUE TEAM TRAINING CREDIT.

(a) AMOUNT OF CREDIT.—For purposes of section 38, the mine rescue team training credit determined under this section with respect to each qualified mine rescue team employee of an eligible employer for any taxable year is an amount equal to the lesser of—

(1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of such qualified mine rescue team employee (including wages of such employee while attending such program), or

(2) $10,000.

(b) QUALIFIED MINE RESCUE TEAM EMPLOYEE.—For purposes of this section, the term "qualified mine rescue team employee" means with respect to any taxable year any full-time employee of the taxpayer who is—

(1) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member as a result of completing, at a minimum, an initial 20-hour course of instruction as prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or

(2) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member by virtue of receiving at least 40 hours of refresher training in such instruction.

(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term "eligible employer" means any taxpayer which employs individuals as miners in underground mines in the United States.

(d) WAGES.—For purposes of this section, the term "wages" has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(e) TERMINATION.—This section shall not apply to taxable years beginning after [December 31, 2017] *December 31, 2020*.

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SEC. 45S. EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE.

(a) ESTABLISHMENT OF CREDIT.—

(1) IN GENERAL.—For purposes of section 38, in the case of an eligible employer, the paid family and medical leave credit is an amount equal to the applicable percentage of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term "applicable percentage" means 12.5 percent increased (but not above 25 percent) by 0.25 percentage points for each percentage point by which the rate of payment (as described under subsection (c)(1)(B)) exceeds 50 percent.

(b) LIMITATION.—

(1) IN GENERAL.—The credit allowed under subsection (a) with respect to any employee for any taxable year shall not exceed an amount equal to the product of the normal hourly wage rate of such employee for each hour (or fraction thereof) of actual services performed for the employer and the number of hours (or fraction thereof) for which family and medical leave is taken.

(2) NON-HOURLY WAGE RATE.—For purposes of paragraph (1), in the case of any employee who is not paid on an hourly wage rate, the wages of such employee shall be prorated to an hourly wage rate under regulations established by the Secretary.

(3) MAXIMUM AMOUNT OF LEAVE SUBJECT TO CREDIT.—The amount of family and medical leave that may be taken into account with respect to any employee under subsection (a) for any taxable year shall not exceed 12 weeks.

(c) ELIGIBLE EMPLOYER.—For purposes of this section—

(1) IN GENERAL.—The term "eligible employer" means any employer who has in place a written policy that meets the following requirements:

(A) The policy provides—

(i) in the case of a qualifying employee who is not a part-time employee (as defined in section 4980E(d)(4)(B)), not less than 2 weeks of annual paid family and medical leave, and

(ii) in the case of a qualifying employee who is a part-time employee, an amount of annual paid family and medical leave that is not less than an amount which bears the same ratio to the amount of annual paid family and medical leave that is provided to a qualifying employee described in clause (i) as—

(I) the number of hours the employee is expected to work during any week, bears to

(II) the number of hours an equivalent qualifying employee described in clause (i) is expected to work during the week.

(B) The policy requires that the rate of payment under the program is not less than 50 percent of the wages normally paid to such employee for services performed for the employer.

(2) SPECIAL RULE FOR CERTAIN EMPLOYERS.—

(A) IN GENERAL.—An added employer shall not be treated as an eligible employer unless such employer provides paid family and medical leave in compliance with a written policy which ensures that the employer—

(i) will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy, and

(ii) will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

(B) ADDED EMPLOYER; ADDED EMPLOYEE.—For purposes of this paragraph—

(i) ADDED EMPLOYEE.—The term "added employee" means a qualifying employee who is not covered by

title I of the Family and Medical Leave Act of 1993, as amended.

(ii) ADDED EMPLOYER.—The term "added employer" means an eligible employer (determined without regard to this paragraph), whether or not covered by that title I, who offers paid family and medical leave to added employees.

(3) AGGREGATION RULE.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(4) TREATMENT OF BENEFITS MANDATED OR PAID FOR BY STATE OR LOCAL GOVERNMENTS.—For purposes of this section, any leave which is paid by a State or local government or required by State or local law shall not be taken into account in determining the amount of paid family and medical leave provided by the employer.

(5) NO INFERENCE.—Nothing in this subsection shall be construed as subjecting an employer to any penalty, liability, or other consequence (other than ineligibility for the credit allowed by reason of subsection (a) or recapturing the benefit of such credit) for failure to comply with the requirements of this subsection.

(d) QUALIFYING EMPLOYEES.—For purposes of this section, the term "qualifying employee" means any employee (as defined in section 3(e) of the Fair Labor Standards Act of 1938, as amended) who—

(1) has been employed by the employer for 1 year or more, and

(2) for the preceding year, had compensation not in excess of an amount equal to 60 percent of the amount applicable for such year under clause (i) of section 414(q)(1)(B).

(e) FAMILY AND MEDICAL LEAVE.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this section, the term "family and medical leave" means leave for any 1 or more of the purposes described under subparagraph (A), (B), (C), (D), or (E) of paragraph (1), or paragraph (3), of section 102(a) of the Family and Medical Leave Act of 1993, as amended, whether the leave is provided under that Act or by a policy of the employer.

(2) EXCLUSION.—If an employer provides paid leave as vacation leave, personal leave, or medical or sick leave (other than leave specifically for 1 or more of the purposes referred to in paragraph (1)), that paid leave shall not be considered to be family and medical leave under paragraph (1).

(3) DEFINITIONS.—In this subsection, the terms "vacation leave", "personal leave", and "medical or sick leave" mean those 3 types of leave, within the meaning of section 102(d)(2) of that Act.

(f) DETERMINATIONS MADE BY SECRETARY OF TREASURY.—For purposes of this section, any determination as to whether an employer or an employee satisfies the applicable requirements for an eligible employer (as described in subsection (c)) or qualifying employee (as described in subsection (d)), respectively, shall be made by the Secretary based on such information, to be provided by the

employer, as the Secretary determines to be necessary or appropriate.

(g) WAGES.—For purposes of this section, the term "wages" has the meaning given such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). Such term shall not include any amount taken into account for purposes of determining any other credit allowed under this subpart.

(h) ELECTION TO HAVE CREDIT NOT APPLY.—

(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (3) of section 51(j) shall apply for purposes of this subsection.

(i) TERMINATION.—This section shall not apply to wages paid in taxable years beginning after [December 31, 2019] *December 31, 2020*.

Subpart E—RULES FOR COMPUTING INVESTMENT CREDIT

* * * * * * *

SEC. 48. ENERGY CREDIT.

(a) ENERGY CREDIT.—

(1) IN GENERAL.—For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), and (3)(B) of subsection (c), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

(2) ENERGY PERCENTAGE.—

(A) IN GENERAL.—Except as provided in paragraphs (6) and (7), the energy percentage is—

(i) 30 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in paragraph (3)(A)(i) but only with respect to property the construction of which begins before January 1, 2022,

(III) energy property described in paragraph (3)(A)(ii), and

(IV) qualified small wind energy property, and

(ii) in the case of any energy property to which clause (i) does not apply, 10 percent.

(B) COORDINATION WITH REHABILITATION CREDIT.—The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) ENERGY PROPERTY.—For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to property the construction of which begins before January 1, 2022,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iv) qualified fuel cell property or qualified microturbine property,

(v) combined heat and power system property,

(vi) qualified small wind energy property, or

(vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to property the construction of which begins before January 1, 2022,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

(4) SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.—

(A) REDUCTION OF BASIS.—For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

(i) subsidized energy financing, or

(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

(B) DETERMINATION OF FRACTION.—For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

(ii) the denominator of which is the basis of the property.

(C) SUBSIDIZED ENERGY FINANCING.—For purposes of subparagraph (A), the term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(D) TERMINATION.—This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(5) ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—

(A) IN GENERAL.—In the case of any qualified property which is part of a qualified investment credit facility—

(i) such property shall be treated as energy property for purposes of this section, and

(ii) the energy percentage with respect to such property shall be 30 percent.

(B) DENIAL OF PRODUCTION CREDIT.—No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term "qualified investment credit facility" means any facility—

(i) which is a qualified facility (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d),

(ii) which is placed in service after 2008 and the construction of which begins before ⟦January 1, 2018 (January 1, 2020, in the case of any facility which is described in paragraph (1) of section 45(d))⟧ *January 1, 2021*, and

(iii) with respect to which—

(I) no credit has been allowed under section 45, and

(II) the taxpayer makes an irrevocable election to have this paragraph apply.

(D) QUALIFIED PROPERTY.—For purposes of this paragraph, the term "qualified property" means property—

(i) which is—

(I) tangible personal property, or

(II) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility,

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(iii) which is constructed, reconstructed, erected, or acquired by the taxpayer, and

(iv) the original use of which commences with the taxpayer.

(E) PHASEOUT OF CREDIT FOR WIND FACILITIES.—In the case of any facility using wind to produce electricity which is treated as energy property by reason of this paragraph,

the amount of the credit determined under this section (determined after the application of paragraphs (1) and (2) and without regard to this subparagraph) shall be reduced by—

(i) in the case of any facility the construction of which begins after December 31, 2016, and before January 1, 2018, 20 percent,

(ii) in the case of any facility the construction of which begins after December 31, 2017, and before January 1, 2019, 40 percent, and

(iii) in the case of any facility the construction of which begins after December 31, 2018, [and before January 1, 2020,] 60 percent.

(6) PHASEOUT FOR SOLAR ENERGY PROPERTY.—

(A) IN GENERAL.—Subject to subparagraph (B), in the case of any energy property described in paragraph (3)(A)(i) the construction of which begins before January 1, 2022, the energy percentage determined under paragraph (2) shall be equal to—

(i) in the case of any property the construction of which begins after December 31, 2019, and before January 1, 2021, 26 percent, and

(ii) in the case of any property the construction of which begins after December 31, 2020, and before January 1, 2022, 22 percent.

(B) PLACED IN SERVICE DEADLINE.—In the case of any energy property described in paragraph (3)(A)(i) the construction of which begins before January 1, 2022, and which is not placed in service before January 1, 2024, the energy percentage determined under paragraph (2) shall be equal to 10 percent.

(7) PHASEOUT FOR FIBER-OPTIC SOLAR, QUALIFIED FUEL CELL, AND QUALIFIED SMALL WIND ENERGY PROPERTY.—

(A) IN GENERAL.—Subject to subparagraph (B), in the case of any qualified fuel cell property, qualified small wind property, or energy property described in paragraph (3)(A)(ii), the energy percentage determined under paragraph (2) shall be equal to—

(i) in the case of any property the construction of which begins after December 31, 2019, and before January 1, 2021, 26 percent, and

(ii) in the case of any property the construction of which begins after December 31, 2020, and before January 1, 2022, 22 percent.

(B) PLACED IN SERVICE DEADLINE.—In the case of any energy property described in subparagraph (A) which is not placed in service before January 1, 2024, the energy percentage determined under paragraph (2) shall be equal to 0 percent.

(b) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED FUEL CELL PROPERTY.—

(A) IN GENERAL.—The term "qualified fuel cell property" means a fuel cell power plant which—

(i) has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process, and

(ii) has an electricity-only generation efficiency greater than 30 percent.

(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $1,500 for each 0.5 kilowatt of capacity of such property.

(C) FUEL CELL POWER PLANT.—The term "fuel cell power plant" means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

(D) TERMINATION.—The term "qualified fuel cell property" shall not include any property the construction of which does not begin before January 1, 2022.

(2) QUALIFIED MICROTURBINE PROPERTY.—

(A) IN GENERAL.—The term "qualified microturbine property" means a stationary microturbine power plant which—

(i) has a nameplate capacity of less than 2,000 kilowatts, and

(ii) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

(B) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $200 for each kilowatt of capacity of such property.

(C) STATIONARY MICROTURBINE POWER PLANT.—The term "stationary microturbine power plant" means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(D) TERMINATION.—The term "qualified microturbine property" shall not include any property the construction of which does not begin before January 1, 2022.

(3) COMBINED HEAT AND POWER SYSTEM PROPERTY.—

(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term "combined heat and power system property" means property comprising a system—

(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

(ii) which produces—

(I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

(iii) the energy efficiency percentage of which exceeds 60 percent, and

(iv) the construction of which begins before January 1, 2022.

(B) LIMITATION.—

(i) IN GENERAL.—In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.

(ii) APPLICABLE CAPACITY.—For purposes of clause (i), the term "applicable capacity" means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(iii) MAXIMUM CAPACITY.—The term "combined heat and power system property" shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(C) SPECIAL RULES.—

(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this paragraph, the energy efficiency percentage of a system is the fraction—

(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

(II) the denominator of which is the lower heating value of the fuel sources for the system.

(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(ii) shall be determined on a Btu basis.

(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term "combined heat and power system property" does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(D) SYSTEMS USING BIOMASS.—If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

(i) subparagraph (A)(iii) shall not apply, but

(ii) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this subparagraph) as the energy efficiency percentage of such system bears to 60 percent.

(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—

(A) IN GENERAL.—The term "qualified small wind energy property" means property which uses a qualifying small wind turbine to generate electricity.

(B) QUALIFYING SMALL WIND TURBINE.—The term "qualifying small wind turbine" means a wind turbine which has a nameplate capacity of not more than 100 kilowatts.

(C) TERMINATION.—The term "qualified small wind energy property" shall not include any property the construction of which does not begin before January 1, 2022.

(d) COORDINATION WITH DEPARTMENT OF TREASURY GRANTS.—In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

(1) DENIAL OF PRODUCTION AND INVESTMENT CREDITS.—No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

(2) RECAPTURE OF CREDITS FOR PROGRESS EXPENDITURES MADE BEFORE GRANT.—If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

(3) TREATMENT OF GRANTS.—Any such grant—

(A) shall not be includible in the gross income or alternative minimum taxable income of the taxpayer, but

(B) shall be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c)

in the same manner as a credit allowed under subsection (a).

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Subpart F—RULES FOR COMPUTING WORK OPPORTUNITY CREDIT

* * * * * * *

SEC. 51. AMOUNT OF CREDIT.

(a) DETERMINATION OF AMOUNT.—For purposes of section 38, the amount of the work opportunity credit determined under this section for the taxable year shall be equal to 40 percent of the qualified first-year wages for such year.

(b) QUALIFIED WAGES DEFINED.—For purposes of this subpart—

(1) IN GENERAL.—The term "qualified wages" means the wages paid or incurred by the employer during the taxable year to individuals who are members of a targeted group.

(2) QUALIFIED FIRST-YEAR WAGES.—The term "qualified first-year wages" means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

(3) LIMITATION ON WAGES PER YEAR TAKEN INTO ACCOUNT.—The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed $6,000 per year ($12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(I), $14,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(iv), and $24,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(II)).

(c) WAGES DEFINED.—For purposes of this subpart—

(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (h)(2), the term "wages" has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(2) ON-THE-JOB TRAINING AND WORK SUPPLEMENTATION PAYMENTS.—

(A) EXCLUSION FOR EMPLOYERS RECEIVING ON-THE-JOB TRAINING PAYMENTS.—The term "wages" shall not include any amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

(B) REDUCTION FOR WORK SUPPLEMENTATION PAYMENTS TO EMPLOYERS.—The amount of wages which would (but for this subparagraph) be qualified wages under this section for an employer with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of the payments made to such employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under section 482(e) of the Social Security Act.

(3) PAYMENTS FOR SERVICES DURING LABOR DISPUTES.—If—

(A) the principal place of employment of an individual with the employer is at a plant or facility, and

(B) there is a strike or lockout involving employees at such plant or facility,

the term "wages" shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout.

(4) TERMINATION.—The term "wages" shall not include any amount paid or incurred to an individual who begins work for the employer after [December 31, 2019] *December 31, 2020*.

(5) COORDINATION WITH PAYROLL TAX FORGIVENESS.—The term "wages" shall not include any amount paid or incurred to a qualified individual (as defined in section 3111(d)(3)) during the 1-year period beginning on the hiring date of such individual by a qualified employer (as defined in section 3111(d)) unless such qualified employer makes an election not to have section 3111(d) apply.

(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

(1) IN GENERAL.—An individual is a member of a targeted group if such individual is—

(A) a qualified IV–A recipient,

(B) a qualified veteran,

(C) a qualified ex-felon,

(D) a designated community resident,

(E) a vocational rehabilitation referral,

(F) a qualified summer youth employee,

(G) a qualified supplemental nutrition assistance program benefits recipient,

(H) a qualified SSI recipient,

(I) a long-term family assistance recipient, or

(J) a qualified long-term unemployment recipient.

(2) QUALIFIED IV–A RECIPIENT.—

(A) IN GENERAL.—The term "qualified IV–A recipient" means any individual who is certified by the designated local agency as being a member of a family receiving assistance under a IV–A program for any 9 months during the 18-month period ending on the hiring date.

(B) IV–A PROGRAM.—For purposes of this paragraph, the term "IV–A program" means any program providing assistance under a State program funded under part A of title IV of the Social Security Act and any successor of such program.

(3) QUALIFIED VETERAN.—

(A) IN GENERAL.—The term "qualified veteran" means any veteran who is certified by the designated local agency as—

(i) being a member of a family receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for at least a 3-month period ending during the 12-month period ending on the hiring date,

(ii) entitled to compensation for a service-connected disability, and—

(I) having a hiring date which is not more that 1 year after having been discharged or released from active duty in the Armed Forces of the United States, or

(II) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months,

(iii) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 4 weeks (but less than 6 months), or

(iv) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months.

(B) VETERAN.—For purposes of subparagraph (A), the term "veteran" means any individual who is certified by the designated local agency as—

(i)(I) having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or

(II) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability, and

(ii) not having any day during the 60-day period ending on the hiring date which was a day of extended active duty in the Armed Forces of the United States.

For purposes of clause (ii), the term "extended active duty" means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

(C) OTHER DEFINITIONS.—For purposes of subparagraph (A), the terms "compensation" and "service-connected" have the meanings given such terms under section 101 of title 38, United States Code.

(4) QUALIFIED EX-FELON.—The term "qualified ex-felon" means any individual who is certified by the designated local agency—

(A) as having been convicted of a felony under any statute of the United States or any State, and

(B) as having a hiring date which is not more than 1 year after the last date on which such individual was so convicted or was released from prison.

(5) DESIGNATED COMMUNITY RESIDENTS.—

(A) IN GENERAL.—The term "designated community resident" means any individual who is certified by the designated local agency—

(i) as having attained age 18 but not age 40 on the hiring date, and

(ii) as having his principal place of abode within an empowerment zone, enterprise community, renewal community, or rural renewal county.

(B) INDIVIDUAL MUST CONTINUE TO RESIDE IN ZONE, COMMUNITY, OR COUNTY.—In the case of a designated community resident, the term "qualified wages" shall not include

wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, renewal community, or rural renewal county.

(C) RURAL RENEWAL COUNTY.—For purposes of this paragraph, the term "rural renewal county" means any county which—

(i) is outside a metropolitan statistical area (defined as such by the Office of Management and Budget), and

(ii) during the 5-year periods 1990 through 1994 and 1995 through 1999 had a net population loss.

(6) VOCATIONAL REHABILITATION REFERRAL.—The term "vocational rehabilitation referral" means any individual who is certified by the designated local agency as—

(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

(i) an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973,

(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code, or

(iii) an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act with respect to which the requirements of such subsection are met.

(7) QUALIFIED SUMMER YOUTH EMPLOYEE.—

(A) IN GENERAL.—The term "qualified summer youth employee" means any individual—

(i) who performs services for the employer between May 1 and September 15,

(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

(iii) who has not been an employee of the employer during any period prior to the 90-day period described in subparagraph (B)(i), and

(iv) who is certified by the designated local agency as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

(B) SPECIAL RULES FOR DETERMINING AMOUNT OF CREDIT.—For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

(i) subsection (b)(2) shall be applied by substituting "any 90-day period between May 1 and September 15" for "the 1-year period beginning with the day the individual begins work for the employer", and

(ii) subsection (b)(3) shall be applied by substituting "$3,000" for "$6,000".

The preceding sentence shall not apply to an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee.

(C) YOUTH MUST CONTINUE TO RESIDE IN ZONE OR COMMUNITY.—Paragraph (5)(B) shall apply for purposes of subparagraph (A)(iv).

(8) QUALIFIED SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS RECIPIENT.—

(A) IN GENERAL.—The term "qualified supplemental nutrition assistance program benefits recipient" means any individual who is certified by the designated local agency—

(i) as having attained age 18 but not age 40 on the hiring date, and

(ii) as being a member of a family—

(I) receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for the 6-month period ending on the hiring date, or

(II) receiving such assistance for at least 3 months of the 5-month period ending on the hiring date, in the case of a member of a family who ceases to be eligible for such assistance under section 6(*o*) of the Food and Nutrition Act of 2008.

(B) PARTICIPATION INFORMATION.—Notwithstanding any other provision of law, the Secretary of the Treasury and the Secretary of Agriculture shall enter into an agreement to provide information to designated local agencies with respect to participation in the supplemental nutrition assistance program.

(9) QUALIFIED SSI RECIPIENT.—The term "qualified SSI recipient" means any individual who is certified by the designated local agency as receiving supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 1616 of such Act or section 212 of Public Law 93–66) for any month ending within the 60-day period ending on the hiring date.

(10) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—The term "long-term family assistance recipient" means any individual who is certified by the designated local agency—

(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

(ii) as having a hiring date which is not more than 2 years after the date of such cessation.

(11) HIRING DATE.—The term "hiring date" means the day the individual is hired by the employer.

(12) DESIGNATED LOCAL AGENCY.—The term "designated local agency" means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49–49n).

(13) SPECIAL RULES FOR CERTIFICATIONS.—

(A) IN GENERAL.—An individual shall not be treated as a member of a targeted group unless—

(i) on or before the day on which such individual begins work for the employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group, or

(ii)(I) on or before the day the individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and

(II) not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for such a certification from such agency.

For purposes of this paragraph, the term "pre-screening notice" means a document (in such form as the Secretary shall prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

(B) INCORRECT CERTIFICATIONS.—If—

(i) an individual has been certified by a designated local agency as a member of a targeted group, and

(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

(C) EXPLANATION OF DENIAL OF REQUEST.—If a designated local agency denies a request for certification of membership in a targeted group, such agency shall provide to the person making such request a written explanation of the reasons for such denial.

(D) CREDIT FOR UNEMPLOYED VETERANS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), for purposes of paragraph (3)(A)—

(I) a veteran will be treated as certified by the designated local agency as having aggregate periods of unemployment meeting the requirements of clause (ii)(II) or (iv) of such paragraph (whichever is applicable) if such veteran is certified by such agency as being in receipt of unemployment compensation under State or Federal law for not less than 6 months during the 1-year period ending on the hiring date, and

(II) a veteran will be treated as certified by the designated local agency as having aggregate periods of unemployment meeting the requirements of clause (iii) of such paragraph if such veteran is certified by such agency as being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks (but less than 6 months) during the 1-year period ending on the hiring date.

(ii) REGULATORY AUTHORITY.—The Secretary may provide alternative methods for certification of a veteran as a qualified veteran described in clause (ii)(II), (iii), or (iv) of paragraph (3)(A), at the Secretary's discretion.

(14) CREDIT ALLOWED FOR UNEMPLOYED VETERANS AND DISCONNECTED YOUTH HIRED IN 2009 OR 2010.—

(A) IN GENERAL.—Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

(B) DEFINITIONS.—For purposes of this paragraph—

(i) UNEMPLOYED VETERAN.—The term "unemployed veteran" means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

(I) having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date, and

(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

(ii) DISCONNECTED YOUTH.—The term "disconnected youth" means any individual who is certified by the designated local agency—

(I) as having attained age 16 but not age 25 on the hiring date,

(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

(III) as not regularly employed during such 6-month period, and

(IV) as not readily employable by reason of lacking a sufficient number of basic skills.

(15) QUALIFIED LONG-TERM UNEMPLOYMENT RECIPIENT.—The term "qualified long-term unemployment recipient" means any individual who is certified by the designated local agency as being in a period of unemployment which—

(A) is not less than 27 consecutive weeks, and

(B) includes a period in which the individual was receiving unemployment compensation under State or Federal law.

(e) CREDIT FOR SECOND-YEAR WAGES FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

(1) IN GENERAL.—With respect to the employment of a long-term family assistance recipient—

(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term "qualified second-year wages" means qualified wages—

(A) which are paid to a long-term family assistance recipient, and

(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

(3) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

(A) such subparagraph (A) shall be applied by substituting "$10,000" for "$6,000", and

(B) such subparagraph (B) shall be applied by substituting "$833.33" for "$500".

(f) REMUNERATION MUST BE FOR TRADE OR BUSINESS EMPLOYMENT.—

(1) IN GENERAL.—For purposes of this subpart, remuneration paid by an employer to an employee during any taxable year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in a trade or business of the employer.

(2) SPECIAL RULE FOR CERTAIN DETERMINATION.—Any determination as to whether paragraph (1), or subparagraph (A) or (B) of subsection (h)(1), applies with respect to any employee for any taxable year shall be made without regard to subsections (a) and (b) of section 52.

(g) UNITED STATES EMPLOYMENT SERVICE TO NOTIFY EMPLOYERS OF AVAILABILITY OF CREDIT.—The United States Employment Service, in consultation with the Internal Revenue Service, shall take such steps as may be necessary or appropriate to keep employers apprised of the availability of the work opportunity credit determined under this subpart.

(h) SPECIAL RULES FOR AGRICULTURAL LABOR AND RAILWAY LABOR.—For purposes of this subpart—

(1) UNEMPLOYMENT INSURANCE WAGES.—

(A) AGRICULTURAL LABOR.—If the services performed by any employee for an employer during more than one-half of any pay period (within the meaning of section 3306(d)) taken into account with respect to any year constitute agricultural labor (within the meaning of section 3306(k)), the term "unemployment insurance wages" means, with

respect to the remuneration paid by the employer to such employee for such year, an amount equal to so much of such remuneration as constitutes "wages" within the meaning of section 3121(a), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

(B) RAILWAY LABOR.—If more than one-half of remuneration paid by an employer to an employee during any year is remuneration for service described in section 3306(c)(9), the term "unemployment insurance wages" means, with respect to such employee for such year, an amount equal to so much of the remuneration paid to such employee during such year which would be subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) if the maximum amount subject to such contributions were $500 per month.

(2) WAGES.—In any case to which subparagraph (A) or (B) of paragraph (1) applies, the term "wages" means unemployment insurance wages (determined without regard to any dollar limitation).

(i) CERTAIN INDIVIDUALS INELIGIBLE.—

(1) RELATED INDIVIDUALS.—No wages shall be taken into account under subsection (a) with respect to an individual who—

(A) bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation, or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50 percent of the capital and profits interests in the entity (determined with the application of section 267(c)),

(B) if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to a grantor, beneficiary, or fiduciary of the estate or trust, or

(C) is a dependent (described in section 152(d)(2)(H)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(2) NONQUALIFYING REHIRES.—No wages shall be taken into account under subsection (a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time.

(3) INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIODS.—

(A) REDUCTION OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 400 HOURS OF SERVICE.—In the case of an individual who has performed at least 120 hours, but less than 400 hours, of service for the employer, subsection (a) shall be applied by substituting "25 percent" for "40 percent".

(B) DENIAL OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 120 HOURS OF SERVICE.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual has performed at least 120 hours of service for the employer.

(j) ELECTION TO HAVE WORK OPPORTUNITY CREDIT NOT APPLY.—

(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(k) TREATMENT OF SUCCESSOR EMPLOYERS; TREATMENT OF EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—

(1) TREATMENT OF SUCCESSOR EMPLOYERS.—Under regulations prescribed by the Secretary, in the case of a successor employer referred to in section 3306(b)(1), the determination of the amount of the credit under this section with respect to wages paid by such successor employer shall be made in the same manner as if such wages were paid by the predecessor employer referred to in such section.

(2) TREATMENT OF EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services.

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PART VI—ALTERNATIVE MINIMUM TAX

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SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

(a) ADJUSTMENTS APPLICABLE TO ALL TAXPAYERS.—In determining the amount of the alternative minimum taxable income for any taxable year the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) DEPRECIATION.—

(A) IN GENERAL.—

(i) PROPERTY OTHER THAN CERTAIN PERSONAL PROPERTY.—Except as provided in clause (ii), the depreciation deduction allowable under section 167 with respect to any tangible property placed in service after December 31, 1986, shall be determined under the alternative system of section 168(g). In the case of property placed in service after December 31, 1998, the preceding sentence shall not apply but clause (ii) shall continue to apply.

(ii) 150-PERCENT DECLINING BALANCE METHOD FOR CERTAIN PROPERTY.—The method of depreciation used shall be—

(I) the 150 percent declining balance method,

(II) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of the year will yield a higher allowance.

The preceding sentence shall not apply to any section 1250 property (as defined in section 1250(c)) (and the straight line method shall be used for such section 1250 property) or to any other property if the depreciation deduction determined under section 168 with respect to such other property for purposes of the regular tax is determined by using the straight line method.

(B) EXCEPTION FOR CERTAIN PROPERTY.—This paragraph shall not apply to property described in paragraph (1), (2), (3), or (4) of section 168(f), or in section 168(e)(3)(C)(iv).

(C) COORDINATION WITH TRANSITIONAL RULES.—

(i) IN GENERAL.—This paragraph shall not apply to property placed in service after December 31, 1986, to which the amendments made by section 201 of the Tax Reform Act of 1986 do not apply by reason of section 203, 204, or 251(d) of such Act.

(ii) TREATMENT OF CERTAIN PROPERTY PLACED IN SERVICE BEFORE 1987.—This paragraph shall apply to any property to which the amendments made by section 201 of the Tax Reform Act of 1986 apply by reason of an election under section 203(a)(1)(B) of such Act without regard to the requirement of subparagraph (A) that the property be placed in service after December 31, 1986.

(D) NORMALIZATION RULES.—With respect to public utility property described in section 168(i)(10), the Secretary shall prescribe the requirements of a normalization method of accounting for this section.

(2) MINING EXPLORATION AND DEVELOPMENT COSTS.—

(A) IN GENERAL.—With respect to each mine or other natural deposit (other than an oil, gas, or geothermal well) of the taxpayer, the amount allowable as a deduction under section 616(a) or 617(a) (determined without regard to section 291(b)) in computing the regular tax for costs paid or incurred after December 31, 1986, shall be capitalized and amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

(B) LOSS ALLOWED.—If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

(3) TREATMENT OF CERTAIN LONG-TERM CONTRACTS.—In the case of any long-term contract entered into by the taxpayer on or after March 1, 1986, the taxable income from such contract shall be determined under the percentage of completion method of accounting (as modified by section 460(b)). For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(1) by using the simplified procedures for allocation of costs prescribed under section 460(b)(3). The first sentence of this paragraph shall not apply to any home construction contract (as defined in section 460(e)(6)).

(4) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The alternative tax net operating loss deduction shall be allowed in lieu of the net operating loss deduction allowed under section 172.

(5) POLLUTION CONTROL FACILITIES.—In the case of any certified pollution control facility placed in service after December 31, 1986, the deduction allowable under section 169 (without regard to section 291) shall be determined under the alternative system of section 168(g). In the case of such a facility placed in service after December 31, 1998, such deduction shall be determined under section 168 using the straight line method.

(6) ADJUSTED BASIS.—The adjusted basis of any property to which paragraph (1) or (5) applies (or with respect to which there are any expenditures to which paragraph (2) or subsection (b)(2) applies) shall be determined on the basis of the treatment prescribed in paragraph (1), (2), or (5), or subsection (b)(2), whichever applies.

(7) SECTION 87 NOT APPLICABLE.—Section 87 (relating to alcohol fuel credit) shall not apply.

(b) ADJUSTMENTS APPLICABLE TO INDIVIDUALS.—In determining the amount of the alternative minimum taxable income of any taxpayer (other than a corporation), the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) LIMITATION ON DEDUCTIONS.—

(A) IN GENERAL.—No deduction shall be allowed—

(i) for any miscellaneous itemized deduction (as defined in section 67(b)), or

(ii) for any taxes described in paragraph (1), (2), or (3) of section 164(a) or clause (ii) of section 164(b)(5)(A).

Clause (ii) shall not apply to any amount allowable in computing adjusted gross income.

[(B) MEDICAL EXPENSES.—In determining the amount allowable as a deduction under section 213, subsection (a) of section 213 shall be applied without regard to subsection (f) of such section. This subparagraph shall not apply to taxable years beginning after December 31, 2016, and ending before January 1, 2019 **]**

[(C)] *(B)* INTEREST.—In determining the amount allowable as a deduction for interest, subsections (d) and (h) of section 163 shall apply, except that—

(i) in lieu of the exception under section 163(h)(2)(D), the term "personal interest" shall not include any qualified housing interest (as defined in subsection (e)),

(ii) interest on any specified private activity bond (and any amount treated as interest on a specified private activity bond under section 57(a)(5)(B)), and any deduction referred to in section 57(a)(5)(A), shall be treated as includible in gross income (or as deductible) for purposes of applying section 163(d),

(iii) in lieu of the exception under section 163(d)(3)(B)(i), the term "investment interest" shall not include any qualified housing interest (as defined in subsection (e)), and

(iv) the adjustments of this section and sections 57 and 58 shall apply in determining net investment income under section 163(d).

[(D)] *(C)* TREATMENT OF CERTAIN RECOVERIES.—No recovery of any tax to which subparagraph (A)(ii) applied shall be included in gross income for purposes of determining alternative minimum taxable income.

[(E)] *(D)* STANDARD DEDUCTION AND DEDUCTION FOR PERSONAL EXEMPTIONS NOT ALLOWED.—The standard deduction under section 63(c), the deduction for personal exemptions under section 151, and the deduction under section 642(b) shall not be allowed.

[(F)] *(E)* SECTION 68 NOT APPLICABLE.—Section 68 shall not apply.

(2) CIRCULATION AND RESEARCH AND EXPERIMENTAL EXPENDITURES.—

(A) IN GENERAL.—The amount allowable as a deduction under section 173 or 174(a) in computing the regular tax for amounts paid or incurred after December 31, 1986, shall be capitalized and—

(i) in the case of circulation expenditures described in section 173, shall be amortized ratably over the 3-year period beginning with the taxable year in which the expenditures were made, or

(ii) in the case of research and experimental expenditures described in section 174(a), shall be amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

(B) LOSS ALLOWED.—If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

(C) EXCEPTION FOR CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—If the taxpayer materially participates (within the meaning of section 469(h)) in an activity, this paragraph shall not apply to any amount allowable as a deduction under section 174(a) for expenditures paid or incurred in connection with such activity.

(3) TREATMENT OF INCENTIVE STOCK OPTIONS.—Section 421 shall not apply to the transfer of stock acquired pursuant to the exercise of an incentive stock option (as defined in section 422). Section 422(c)(2) shall apply in any case where the disposition and the inclusion for purposes of this part are within the same taxable year and such section shall not apply in any other case. The adjusted basis of any stock so acquired shall be determined on the basis of the treatment prescribed by this paragraph.

(d) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION DEFINED.—

(1) IN GENERAL.—For purposes of subsection (a)(4), the term "alternative tax net operating loss deduction" means the net operating loss deduction allowable for the taxable year under section 172, except that—

(A) the amount of such deduction shall not exceed the sum of—

(i) the lesser of—

(I) the amount of such deduction attributable to net operating losses (other than the deduction described in clause (ii)(I)), or

(II) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under section 199, plus

(ii) the lesser of—

(I) the amount of such deduction attributable to an applicable net operating loss with respect to which an election is made under section 172(b)(1)(H) (as in effect before its repeal by the Tax Increase Prevention Act of 2014), or

(II) alternative minimum taxable income determined without regard to such deduction and the deduction under section 199 reduced by the amount determined under clause (i), and

(B) in determining the amount of such deduction—

(i) the net operating loss (within the meaning of section 172(c)) for any loss year shall be adjusted as provided in paragraph (2), and

(ii) appropriate adjustments in the application of section 172(b)(2) shall be made to take into account the limitation of subparagraph (A).

(2) ADJUSTMENTS TO NET OPERATING LOSS COMPUTATION.—

(A) POST-1986 LOSS YEARS.—In the case of a loss year beginning after December 31, 1986, the net operating loss for such year under section 172(c) shall—

(i) be determined with the adjustments provided in this section and section 58, and

(ii) be reduced by the items of tax preference determined under section 57 for such year.

An item of tax preference shall be taken into account under clause (ii) only to the extent such item increased the amount of the net operating loss for the taxable year under section 172(c).

(B) PRE-1987 YEARS.—In the case of loss years beginning before January 1, 1987, the amount of the net operating loss which may be carried over to taxable years beginning after December 31, 1986, for purposes of paragraph (2), shall be equal to the amount which may be carried from the loss year to the first taxable year of the taxpayer beginning after December 31, 1986.

(e) QUALIFIED HOUSING INTEREST.—For purposes of this part—

(1) IN GENERAL.—The term "qualified housing interest" means interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued during the taxable year on indebtedness which is incurred in acquiring, constructing, or substantially improving any property which—

(A) is the principal residence (within the meaning of section 121) of the taxpayer at the time such interest accrues, or

(B) is a qualified dwelling which is a qualified residence (within the meaning of section 163(h)(4)).

Such term also includes interest on any indebtedness resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence; but only to the extent that the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness immediately before the refinancing.

(2) QUALIFIED DWELLING.—The term "qualified dwelling" means any—

(A) house,

(B) apartment,

(C) condominium, or

(D) mobile home not used on a transient basis (within the meaning of section 7701(a)(19)(C)(v)),

including all structures or other property appurtenant thereto.

(3) SPECIAL RULE FOR INDEBTEDNESS INCURRED BEFORE JULY 1, 1982.—The term "qualified housing interest" includes interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued on indebtedness which—

(A) was incurred by the taxpayer before July 1, 1982, and

(B) is secured by property which, at the time such indebtedness was incurred, was—

(i) the principal residence (within the meaning of section 121) of the taxpayer, or

(ii) a qualified dwelling used by the taxpayer (or any member of his family (within the meaning of section 267(c)(4))).

* * * * * * *

Subchapter B—COMPUTATION OF TAXABLE INCOME

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * * * *

SEC. 108. INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged—

(i) before [January 1, 2018] *January 1, 2021*, or

(ii) subject to an arrangement that is entered into and evidenced in writing before [January 1, 2018] *January 1, 2021*.

(2) COORDINATION OF EXCLUSIONS.—

(A) TITLE 11 EXCLUSION TAKES PRECEDENCE.—Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION AND QUALIFIED REAL PROPERTY BUSINESS EXCLUSION.—Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) PRINCIPAL RESIDENCE EXCLUSION TAKES PRECEDENCE OVER INSOLVENCY EXCLUSION UNLESS ELECTED OTHERWISE.—Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) INSOLVENCY EXCLUSION LIMITED TO AMOUNT OF INSOLVENCY.—In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) REDUCTION OF TAX ATTRIBUTES.—

(1) IN GENERAL.—The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) TAX ATTRIBUTES AFFECTED; ORDER OF REDUCTION.—Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL.—Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) GENERAL BUSINESS CREDIT.—Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) MINIMUM TAX CREDIT.—The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) CAPITAL LOSS CARRYOVERS.—Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) BASIS REDUCTION.—

(i) IN GENERAL.—The basis of the property of the taxpayer.

(ii) CROSS REFERENCE.—For provisions for making the reduction described in clause (i), see section 1017.

(F) PASSIVE ACTIVITY LOSS AND CREDIT CARRYOVERS.—Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) FOREIGN TAX CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) AMOUNT OF REDUCTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) CREDIT CARRYOVER REDUCTION.—The reductions described in subparagraphs (B), (C), and (G) shall be 331/3 cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 331/3 cents for each dollar excluded by subsection (a).

(4) ORDERING RULES.—

(A) REDUCTIONS MADE AFTER DETERMINATION OF TAX FOR YEAR.—The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

(B) REDUCTIONS UNDER SUBPARAGRAPH (A) OR (D) OF PARAGRAPH (2).—The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) REDUCTIONS UNDER SUBPARAGRAPHS (B) AND (G) OF PARAGRAPH (2).—The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

(5) ELECTION TO APPLY REDUCTION FIRST AGAINST DEPRECIABLE PROPERTY.—

(A) IN GENERAL.—The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) LIMITATION.—The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) OTHER TAX ATTRIBUTES NOT REDUCED.—Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) TREATMENT OF DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—

(1) BASIS REDUCTION.—

(A) IN GENERAL.—The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) CROSS REFERENCE.—For provisions making the reduction described in subparagraph (A), see section 1017.

(2) LIMITATIONS.—

(A) INDEBTEDNESS IN EXCESS OF VALUE.—The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) OVERALL LIMITATION.—The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—The term "qualified real property business indebtedness" means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness

resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) QUALIFIED ACQUISITION INDEBTEDNESS.—For purposes of paragraph (3)(B), the term "qualified acquisition indebtedness" means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) MEANING OF TERMS; SPECIAL RULES RELATING TO CERTAIN PROVISIONS.—

(1) INDEBTEDNESS OF TAXPAYER.—For purposes of this section, the term "indebtedness of the taxpayer" means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) TITLE 11 CASE.—For purposes of this section, the term "title 11 case" means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) INSOLVENT.—For purposes of this section, the term "insolvent" means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

(5) DEPRECIABLE PROPERTY.—The term "depreciable property" has the same meaning as when used in section 1017.

(6) CERTAIN PROVISIONS TO BE APPLIED AT PARTNER LEVEL.—In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) SPECIAL RULES FOR S CORPORATION.—

(A) CERTAIN PROVISIONS TO BE APPLIED AT CORPORATE LEVEL.—In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) REDUCTION IN CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) COORDINATION WITH BASIS ADJUSTMENTS UNDER SECTION 1367(B)(2).—For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) REDUCTIONS OF TAX ATTRIBUTES IN TITLE 11 CASES OF INDIVIDUALS TO BE MADE BY ESTATE.—In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) TIME FOR MAKING ELECTION, ETC..—

(A) TIME.—An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) REVOCATION ONLY WITH CONSENT.—An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) MANNER.—An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) CROSS REFERENCE.—For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) GENERAL RULES FOR DISCHARGE OF INDEBTEDNESS (INCLUDING DISCHARGES NOT IN TITLE 11 CASES OR INSOLVENCY).—For purposes of this title—

(1) NO OTHER INSOLVENCY EXCEPTION.—Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) INCOME NOT REALIZED TO EXTENT OF LOST DEDUCTIONS.—No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) ADJUSTMENTS FOR UNAMORTIZED PREMIUM AND DISCOUNT.—The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) ACQUISITION OF INDEBTEDNESS BY PERSON RELATED TO DEBTOR.—

(A) TREATED AS ACQUISITION BY DEBTOR.—For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) MEMBERS OF FAMILY.—For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if

section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) ENTITIES UNDER COMMON CONTROL TREATED AS RELATED.—For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) PURCHASE-MONEY DEBT REDUCTION FOR SOLVENT DEBTOR TREATED AS PRICE REDUCTION.—If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) INDEBTEDNESS CONTRIBUTED TO CAPITAL.—Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) RECAPTURE OF GAIN ON SUBSEQUENT SALE OF STOCK.—

(A) IN GENERAL.—If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) SPECIAL RULE FOR CASH BASIS TAXPAYERS.—In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper

adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) STOCK OF PARENT CORPORATION.—For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) TREATMENT OF SUCCESSOR CORPORATION.—For purposes of this paragraph, the term "debtor corporation" includes a successor corporation.

(E) PARTNERSHIP RULE.—Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) DISCHARGE OF INDEBTEDNESS INCOME NOT TAKEN INTO ACCOUNT IN DETERMINING WHETHER ENTITY MEETS REIT QUALIFICATIONS.—Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) INDEBTEDNESS SATISFIED BY ISSUANCE OF DEBT INSTRUMENT.—

(A) IN GENERAL.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) ISSUE PRICE.—For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) STUDENT LOANS.—

(1) IN GENERAL.—In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was

pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) STUDENT LOAN.—For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term "student loan" includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in under-

served or health professional shortage areas (as determined by such State).

(5) DISCHARGES ON ACCOUNT OF DEATH OR DISABILITY.—

(A) IN GENERAL.—In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income for such taxable year by reasons of the discharge (in whole or in part) of any loan described in subparagraph (B) after December 31, 2017, and before January 1, 2026, if such discharge was—

(i) pursuant to subsection (a) or (d) of section 437 of the Higher Education Act of 1965 or the parallel benefit under part D of title IV of such Act (relating to the repayment of loan liability),

(ii) pursuant to section 464(c)(1)(F) of such Act, or

(iii) otherwise discharged on account of the death or total and permanent disability of the student.

(B) LOANS DESCRIBED.—A loan is described in this subparagraph if such loan is—

(i) a student loan (as defined in paragraph (2)), or

(ii) a private education loan (as defined in section 140(7) of the Consumer Credit Protection Act (15 U.S.C. 1650(7))).

(g) SPECIAL RULES FOR DISCHARGE OF QUALIFIED FARM INDEBTEDNESS.—

(1) DISCHARGE MUST BE BY QUALIFIED PERSON.—

(A) IN GENERAL.—Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) QUALIFIED PERSON.—For purposes of subparagraph (A), the term "qualified person" has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) AMOUNT EXCLUDED CANNOT EXCEED SUM OF TAX ATTRIBUTES AND BUSINESS AND INVESTMENT ASSETS.—

(A) IN GENERAL.—The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) ADJUSTED TAX ATTRIBUTES.—For purposes of subparagraph (A), the term "adjusted tax attributes" means the sum of the tax attributes described in subparagraphs

(A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) QUALIFIED PROPERTY.—For purposes of this paragraph, the term "qualified property" means any property which is used or is held for use in a trade or business or for the production of income.

(D) COORDINATION WITH INSOLVENCY EXCLUSION.—For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) SPECIAL RULES RELATING TO QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.—

(1) BASIS REDUCTION.—The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) QUALIFIED PRINCIPAL RESIDENCE INDEBTEDNESS.—For purposes of this section, the term "qualified principal residence indebtedness" means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting "$2,000,000 ($1,000,000" for "$1,000,000 ($500,000" in clause (ii) thereof *and determined without regard to the substitution described in section 163(h)(3)(F)(i)(II))* with respect to the principal residence of the taxpayer.

(3) EXCEPTION FOR CERTAIN DISCHARGES NOT RELATED TO TAXPAYER'S FINANCIAL CONDITION.—Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) ORDERING RULE.—If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) PRINCIPAL RESIDENCE.—For purposes of this subsection, the term "principal residence" has the same meaning as when used in section 121.

(i) DEFERRAL AND RATABLE INCLUSION OF INCOME ARISING FROM BUSINESS INDEBTEDNESS DISCHARGED BY THE REACQUISITION OF A DEBT INSTRUMENT.—

(1) IN GENERAL.—At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) DEFERRAL OF DEDUCTION FOR ORIGINAL ISSUE DISCOUNT IN DEBT FOR DEBT EXCHANGES.—

(A) IN GENERAL.—If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) DEEMED DEBT FOR DEBT EXCHANGES.—For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) APPLICABLE DEBT INSTRUMENT.—For purposes of this subsection—

(A) APPLICABLE DEBT INSTRUMENT.—The term "applicable debt instrument" means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) DEBT INSTRUMENT.—The term "debt instrument" means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) REACQUISITION.—For purposes of this subsection—

(A) IN GENERAL.—The term "reacquisition" means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

(ii) a related person to such debtor.

(B) ACQUISITION.—The term "acquisition" shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

(A) RELATED PERSON.—The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) ELECTION.—

(i) IN GENERAL.—An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

(I) clearly identifies such instrument, and

(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) ELECTION IRREVOCABLE.—Such election, once made, is irrevocable.

(iii) PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) COORDINATION WITH OTHER EXCLUSIONS.—If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) ACCELERATION OF DEFERRED ITEMS.—

(i) IN GENERAL.—In the case of the death of the taxpayer, the liquidation or sale of substantially all the

assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) SPECIAL RULE FOR PASS-THRU ENTITIES.—The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) SPECIAL RULE FOR PARTNERSHIPS.—In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) SECRETARIAL AUTHORITY.—The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 163. INTEREST.

(a) GENERAL RULE.—There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) INSTALLMENT PURCHASES WHERE INTEREST CHARGE IS NOT SEPARATELY STATED.—

(1) GENERAL RULE.—If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term "educational services" means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) LIMITATION.—In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) REDEEMABLE GROUND RENTS.—For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) LIMITATION ON INVESTMENT INTEREST.—

(1) IN GENERAL.—In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) CARRYFORWARD OF DISALLOWED INTEREST.—The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) INVESTMENT INTEREST.—For purposes of this subsection—

(A) IN GENERAL.—The term "investment interest" means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) EXCEPTIONS.—The term "investment interest" shall not include—

(i) any qualified residence interest (as defined in subsection (h)(3)), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) PERSONAL PROPERTY USED IN SHORT SALE.—For purposes of this paragraph, the term "interest" includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) NET INVESTMENT INCOME.—For purposes of this subsection—

(A) IN GENERAL.—The term "net investment income" means the excess of—

(i) investment income, over

(ii) investment expenses.

(B) INVESTMENT INCOME.—The term "investment income" means the sum of—

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

(ii) the excess (if any) of—

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause.

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

(C) INVESTMENT EXPENSES.—The term "investment expenses" means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

(D) INCOME AND EXPENSES FROM PASSIVE ACTIVITIES.—Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

(5) PROPERTY HELD FOR INVESTMENT.—For purposes of this subsection—

(A) IN GENERAL.—The term "property held for investment" shall include—

(i) any property which produces income of a type described in section 469(e)(1), and

(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business—

(I) which is not a passive activity, and

(II) with respect to which the taxpayer does not materially participate.

(B) INVESTMENT EXPENSES.—In the case of property described in subparagraph (A)(i), expenses shall be allocated to such property in the same manner as under section 469.

(C) TERMS.—For purposes of this paragraph, the terms "activity", "passive activity", and "materially participate" have the meanings given such terms by section 469.

(e) ORIGINAL ISSUE DISCOUNT.—

(1) IN GENERAL.—The portion of the original issue discount with respect to any debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) DEBT INSTRUMENT.—The term "debt instrument" has the meaning given such term by section 1275(a)(1).

(B) DAILY PORTIONS.—The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).

(C) SHORT-TERM OBLIGATIONS.—In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount (and any other interest payable) on such obligation shall be deductible only when paid.

(3) SPECIAL RULE FOR ORIGINAL ISSUE DISCOUNT ON OBLIGATION HELD BY RELATED FOREIGN PERSON.—

(A) IN GENERAL.—If any debt instrument having original issue discount is held by a related foreign person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid. The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.

(C) RELATED FOREIGN PERSON.—For purposes of subparagraph (A), the term "related foreign person" means any person—

(i) who is not a United States person, and

(ii) who is related (within the meaning of section 267(b)) to the issuer.

(4) EXCEPTION.—This subsection shall not apply to any debt instrument described in section 1272(a)(2)(D) (relating to loans between natural persons).

(5) SPECIAL RULES FOR ORIGINAL ISSUE DISCOUNT ON CERTAIN HIGH YIELD OBLIGATIONS.—

(A) IN GENERAL.—In the case of an applicable high yield discount obligation issued by a corporation—

(i) no deduction shall be allowed under this chapter for the disqualified portion of the original issue discount on such obligation, and

(ii) the remainder of such original issue discount shall not be allowable as a deduction until paid.

For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid.

(B) DISQUALIFIED PORTION TREATED AS STOCK DISTRIBUTION FOR PURPOSES OF DIVIDEND RECEIVED DEDUCTION.—

(i) IN GENERAL.—Solely for purposes of sections 243, 245, 246, and 246A, the dividend equivalent portion of any amount includible in gross income of a corporation under section 1272(a) in respect of an applicable high yield discount obligation shall be treated as a dividend received by such corporation from the corporation issuing such obligation.

(ii) DIVIDEND EQUIVALENT PORTION.—For purposes of clause (i), the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation is the portion of the amount so includible—

(I) which is attributable to the disqualified portion of the original issue discount on such obligation, and

(II) which would have been treated as a dividend if it had been a distribution made by the issuing corporation with respect to stock in such corporation.

(C) DISQUALIFIED PORTION.—

(i) IN GENERAL.—For purposes of this paragraph, the disqualified portion of the original issue discount on any applicable high yield discount obligation is the lesser of—

(I) the amount of such original issue discount, or

(II) the portion of the total return on such obligation which bears the same ratio to such total return as the disqualified yield on such obligation bears to the yield to maturity on such obligation.

(ii) DEFINITIONS.—For purposes of clause (i), the term "disqualified yield" means the excess of the yield to maturity on the obligation over the sum referred to in subsection (i)(1)(B) plus 1 percentage point, and the term "total return" is the amount which would have been the original issue discount on the obligation if interest described in the parenthetical in section 1273(a)(2) were included in the stated redemption price at maturity.

(D) EXCEPTION FOR S CORPORATIONS.—This paragraph shall not apply to any obligation issued by any corporation for any period for which such corporation is an S corporation.

(E) EFFECT ON EARNINGS AND PROFITS.—This paragraph shall not apply for purposes of determining earnings and profits; except that, for purposes of determining the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation, no reduction shall be made for any amount attributable to the disqualified portion of any original issue discount on such obligation.

(F) SUSPENSION OF APPLICATION OF PARAGRAPH.—

(i) TEMPORARY SUSPENSION.—This paragraph shall not apply to any applicable high yield discount obligation issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an applicable high yield discount obligation and the issuer (or obligor) of which is the same as the issuer (or obligor) of such applicable high yield discount obligation. The preceding sentence shall not apply to any obligation the interest on which is interest described in section 871(h)(4) (without regard to subparagraph (D) thereof) or to any obligation issued to a related person (within the meaning of section 108(e)(4)).

(ii) SUCCESSIVE APPLICATION.—Any obligation to which clause (i) applies shall not be treated as an applicable high yield discount obligation for purposes of applying this subparagraph to any other obligation issued in exchange for such obligation.

(iii) SECRETARIAL AUTHORITY TO SUSPEND APPLICATION.—The Secretary may apply this paragraph with respect to debt instruments issued in periods following the period described in clause (i) if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.

(G) CROSS REFERENCE.—For definition of applicable high yield discount obligation, see subsection (i).

(6) CROSS REFERENCES.—For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(f) DENIAL OF DEDUCTION FOR INTEREST ON CERTAIN OBLIGATIONS NOT IN REGISTERED FORM.—

(1) IN GENERAL.—Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for interest on any registration-required obligation unless such obligation is in registered form.

(2) REGISTRATION-REQUIRED OBLIGATION.—For purposes of this section—

(A) IN GENERAL.—The term "registration-required obligation" means any obligation (including any obligation issued by a governmental entity) other than an obligation which—

(i) is issued by a natural person,

(ii) is not of a type offered to the public, or

(iii) has a maturity (at issue) of not more than 1 year.

(B) AUTHORITY TO INCLUDE OTHER OBLIGATIONS.—Clauses (ii) and (iii) of subparagraph (A) shall not apply to any obligation if—

(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and

(ii) such obligation is issued after the date on which the regulations referred to in clause (i) take effect.

(3) BOOK ENTRIES PERMITTED, ETC..—For purposes of this subsection, rules similar to the rules of section 149(a)(3) shall apply, except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section.

(g) REDUCTION OF DEDUCTION WHERE SECTION 25 CREDIT TAKEN.—The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(h) DISALLOWANCE OF DEDUCTION FOR PERSONAL INTEREST.—

(1) IN GENERAL.—In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.

(2) PERSONAL INTEREST.—For purposes of this subsection, the term "personal interest" means any interest allowable as a deduction under this chapter other than—

(A) interest paid or accrued on indebtedness properly allocable to a trade or business (other than the trade or business of performing services as an employee),

(B) any investment interest (within the meaning of subsection (d)),

(C) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer,

(D) any qualified residence interest (within the meaning of paragraph (3)),

(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163, and

(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans).

(3) QUALIFIED RESIDENCE INTEREST.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified residence interest" means any interest which is paid or accrued during the taxable year on—

(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

(B) ACQUISITION INDEBTEDNESS.—

(i) IN GENERAL.—The term "acquisition indebtedness" means any indebtedness which—

(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(ii) $1,000,000 LIMITATION.—The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

(C) HOME EQUITY INDEBTEDNESS.—

(i) IN GENERAL.—The term "home equity indebtedness" means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

(I) the fair market value of such qualified residence, reduced by

(II) the amount of acquisition indebtedness with respect to such residence.

(ii) LIMITATION.—The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

(D) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE OCTOBER 13, 1987.—

(i) IN GENERAL.—In the case of any pre-October 13, 1987, indebtedness—

(I) such indebtedness shall be treated as acquisition indebtedness, and

(II) the limitation of subparagraph (B)(ii) shall not apply.

(ii) REDUCTION IN $1,000,000 LIMITATION.—The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

(iii) PRE-OCTOBER 13, 1987, INDEBTEDNESS.—The term "pre-October 13, 1987, indebtedness" means—

(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

(II) any indebtedness which is secured by the qualified residence and was incurred after October

13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

(iv) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (iii) shall not apply to any indebtedness after—

(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(E) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

(i) IN GENERAL.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

(ii) PHASEOUT.—The amount otherwise treated as interest under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

(iii) LIMITATION.—Clause (i) shall not apply with respect to any mortgage insurance contracts issued before January 1, 2007.

(iv) TERMINATION.—Clause (i) shall not apply to amounts—

(I) paid or accrued after [December 31, 2017] *December 31, 2020*, or

(II) properly allocable to any period after such date.

(F) SPECIAL RULES FOR TAXABLE YEARS 2018 THROUGH 2025.—

(i) IN GENERAL.—In the case of taxable years beginning after December 31, 2017, and before January 1, 2026—

(I) DISALLOWANCE OF HOME EQUITY INDEBTEDNESS INTEREST.—Subparagraph (A)(ii) shall not apply.

(II) LIMITATION ON ACQUISITION INDEBTEDNESS.—Subparagraph (B)(ii) shall be applied by

substituting "$750,000 ($375,000" for "$1,000,000 ($500,000".

(III) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE DECEMBER 15, 2017.—Subclause (II) shall not apply to any indebtedness incurred on or before December 15, 2017, and, in applying such subclause to any indebtedness incurred after such date, the limitation under such subclause shall be reduced (but not below zero) by the amount of any indebtedness incurred on or before December 15, 2017, which is treated as acquisition indebtedness for purposes of this subsection for the taxable year.

(IV) BINDING CONTRACT EXCEPTION.—In the case of a taxpayer who enters into a written binding contract before December 15, 2017, to close on the purchase of a principal residence before January 1, 2018, and who purchases such residence before April 1, 2018, subclause (III) shall be applied by substituting "April 1, 2018" for "December 15, 2017".

(ii) TREATMENT OF LIMITATION IN TAXABLE YEARS AFTER DECEMBER 31, 2025.—In the case of taxable years beginning after December 31, 2025, the limitation under subparagraph (B)(ii) shall be applied to the aggregate amount of indebtedness of the taxpayer described in subparagraph (B)(i) without regard to the taxable year in which the indebtedness was incurred.

(iii) TREATMENT OF REFINANCINGS OF INDEBTEDNESS.—

(I) IN GENERAL.—In the case of any indebtedness which is incurred to refinance indebtedness, such refinanced indebtedness shall be treated for purposes of clause (i)(III) as incurred on the date that the original indebtedness was incurred to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(II) LIMITATION ON PERIOD OF REFINANCING.—Subclause (I) shall not apply to any indebtedness after the expiration of the term of the original indebtedness or, if the principal of such original indebtedness is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(iv) COORDINATION WITH EXCLUSION OF INCOME FROM DISCHARGE OF INDEBTEDNESS.—Section 108(h)(2) shall be applied without regard to this subparagraph.

(4) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) QUALIFIED RESIDENCE.—

(i) IN GENERAL.—The term "qualified residence" means—

(I) the principal residence (within the meaning of section 121) of the taxpayer, and

(II) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).

(ii) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If a married couple does not file a joint return for the taxable year—

(I) such couple shall be treated as 1 taxpayer for purposes of clause (i), and

(II) each individual shall be entitled to take into account 1 residence unless both individuals consent in writing to 1 individual taking into account the principal residence and 1 other residence.

(iii) RESIDENCE NOT RENTED.—For purposes of clause (i)(II), notwithstanding section 280A(d)(1), if the taxpayer does not rent a dwelling unit at any time during a taxable year, such unit may be treated as a residence for such taxable year.

(B) SPECIAL RULE FOR COOPERATIVE HOUSING CORPORATIONS.—Any indebtedness secured by stock held by the taxpayer as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by the house or apartment which the taxpayer is entitled to occupy as such a tenant-stockholder. If stock described in the preceding sentence may not be used to secure indebtedness, indebtedness shall be treated as so secured if the taxpayer establishes to the satisfaction of the Secretary that such indebtedness was incurred to acquire such stock.

(C) UNENFORCEABLE SECURITY INTERESTS.—Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(D) SPECIAL RULES FOR ESTATES AND TRUSTS.—For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust.

(E) QUALIFIED MORTGAGE INSURANCE.—The term "qualified mortgage insurance" means—

(i) mortgage insurance provided by the Department of Veterans Affairs, the Federal Housing Administration, or the Rural Housing Service, and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12

U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Department of Veterans Affairs or the Rural Housing Service.

(i) APPLICABLE HIGH YIELD DISCOUNT OBLIGATION.—

(1) IN GENERAL.—For purposes of this section, the term "applicable high yield discount obligation" means any debt instrument if—

(A) the maturity date of such instrument is more than 5 years from the date of issue,

(B) the yield to maturity on such instrument equals or exceeds the sum of—

(i) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued, plus

(ii) 5 percentage points, and

(C) such instrument has significant original issue discount.

For purposes of subparagraph (B)(i), the Secretary may by regulation (i) permit a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such higher rate is based on the same principles as the applicable Federal rate and is appropriate for the term of the instrument, or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets.

(2) SIGNIFICANT ORIGINAL ISSUE DISCOUNT.—For purposes of paragraph (1)(C), a debt instrument shall be treated as having significant original issue discount if—

(A) the aggregate amount which would be includible in gross income with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date 5 years after the date of issue, exceeds—

(B) the sum of—

(i) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and

(ii) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.

(3) SPECIAL RULES.—For purposes of determining whether a debt instrument is an applicable high yield discount obligation—

(A) any payment under the instrument shall be assumed to be made on the last day permitted under the instrument, and

(B) any payment to be made in the form of another obligation of the issuer (or a related person within the meaning of section 453(f)(1)) shall be assumed to be made when such obligation is required to be paid in cash or in property other than such obligation.

Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock.

(4) DEBT INSTRUMENT.—For purposes of this subsection, the term "debt instrument" means any instrument which is a debt instrument as defined in section 1275(a).

(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection and subsection (e)(5), including—

(A) regulations providing for modifications to the provisions of this subsection and subsection (e)(5) in the case of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, conversion rights, or other circumstances where such modifications are appropriate to carry out the purposes of this subsection and subsection (e)(5), and

(B) regulations to prevent avoidance of the purposes of this subsection and subsection (e)(5) through the use of issuers other than C corporations, agreements to borrow amounts due under the debt instrument, or other arrangements.

(j) LIMITATION ON BUSINESS INTEREST.—

(1) IN GENERAL.—The amount allowed as a deduction under this chapter for any taxable year for business interest shall not exceed the sum of—

(A) the business interest income of such taxpayer for such taxable year,

(B) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus

(C) the floor plan financing interest of such taxpayer for such taxable year.

The amount determined under subparagraph (B) shall not be less than zero.

(2) CARRYFORWARD OF DISALLOWED BUSINESS INTEREST.—The amount of any business interest not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as business interest paid or accrued in the succeeding taxable year.

(3) EXEMPTION FOR CERTAIN SMALL BUSINESSES.—In the case of any taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3)) which meets the gross receipts test of section 448(c) for any taxable year, paragraph (1) shall not apply to such taxpayer for such taxable year. In the case of any

taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if such taxpayer were a corporation or partnership.

(4) APPLICATION TO PARTNERSHIPS, ETC..—

(A) IN GENERAL.—In the case of any partnership—

(i) this subsection shall be applied at the partnership level and any deduction for business interest shall be taken into account in determining the nonseparately stated taxable income or loss of the partnership, and

(ii) the adjusted taxable income of each partner of such partnership—

(I) shall be determined without regard to such partner's distributive share of any items of income, gain, deduction, or loss of such partnership, and

(II) shall be increased by such partner's distributive share of such partnership's excess taxable income.

For purposes of clause (ii)(II), a partner's distributive share of partnership excess taxable income shall be determined in the same manner as the partner's distributive share of nonseparately stated taxable income or loss of the partnership.

(B) SPECIAL RULES FOR CARRYFORWARDS.—

(i) IN GENERAL.—The amount of any business interest not allowed as a deduction to a partnership for any taxable year by reason of paragraph (1) for any taxable year—

(I) shall not be treated under paragraph (2) as business interest paid or accrued by the partnership in the succeeding taxable year, and

(II) shall, subject to clause (ii), be treated as excess business interest which is allocated to each partner in the same manner as the non-separately stated taxable income or loss of the partnership.

(ii) TREATMENT OF EXCESS BUSINESS INTEREST ALLOCATED TO PARTNERS.—If a partner is allocated any excess business interest from a partnership under clause (i) for any taxable year—

(I) such excess business interest shall be treated as business interest paid or accrued by the partner in the next succeeding taxable year in which the partner is allocated excess taxable income from such partnership, but only to the extent of such excess taxable income, and

(II) any portion of such excess business interest remaining after the application of subclause (I) shall, subject to the limitations of subclause (I), be treated as business interest paid or accrued in succeeding taxable years.

For purposes of applying this paragraph, excess taxable income allocated to a partner from a partnership for any taxable year shall not be taken into account under paragraph (1)(A) with respect to any business interest other than ex-

cess business interest from the partnership until all such excess business interest for such taxable year and all preceding taxable years has been treated as paid or accrued under clause (ii).

(iii) BASIS ADJUSTMENTS.—

(I) IN GENERAL.—The adjusted basis of a partner in a partnership interest shall be reduced (but not below zero) by the amount of excess business interest allocated to the partner under clause (i)(II).

(II) SPECIAL RULE FOR DISPOSITIONS.—If a partner disposes of a partnership interest, the adjusted basis of the partner in the partnership interest shall be increased immediately before the disposition by the amount of the excess (if any) of the amount of the basis reduction under subclause (I) over the portion of any excess business interest allocated to the partner under clause (i)(II) which has previously been treated under clause (ii) as business interest paid or accrued by the partner. The preceding sentence shall also apply to transfers of the partnership interest (including by reason of death) in a transaction in which gain is not recognized in whole or in part. No deduction shall be allowed to the transferor or transferee under this chapter for any excess business interest resulting in a basis increase under this subclause.

(C) EXCESS TAXABLE INCOME.—The term "excess taxable income" means, with respect to any partnership, the amount which bears the same ratio to the partnership's adjusted taxable income as—

(i) the excess (if any) of—

(I) the amount determined for the partnership under paragraph (1)(B), over

(II) the amount (if any) by which the business interest of the partnership, reduced by the floor plan financing interest, exceeds the business interest income of the partnership, bears to

(ii) the amount determined for the partnership under paragraph (1)(B).

(D) APPLICATION TO S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (C) shall apply with respect to any S corporation and its shareholders.

(5) BUSINESS INTEREST.—For purposes of this subsection, the term "business interest" means any interest paid or accrued on indebtedness properly allocable to a trade or business. Such term shall not include investment interest (within the meaning of subsection (d)).

(6) BUSINESS INTEREST INCOME.—For purposes of this subsection, the term "business interest income" means the amount of interest includible in the gross income of the taxpayer for the taxable year which is properly allocable to a trade or business. Such term shall not include investment income (within the meaning of subsection (d)).

(7) TRADE OR BUSINESS.—For purposes of this subsection—

(A) IN GENERAL.—The term "trade or business" shall not include—

(i) the trade or business of performing services as an employee,

(ii) any electing real property trade or business,

(iii) any electing farming business, or

(iv) the trade or business of the furnishing or sale of—

(I) electrical energy, water, or sewage disposal services,

(II) gas or steam through a local distribution system, or

(III) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.

(B) ELECTING REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term "electing real property trade or business" means any trade or business which is described in section 469(c)(7)(C) and which makes an election under this subparagraph. Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

(C) ELECTING FARMING BUSINESS.—For purposes of this paragraph, the term "electing farming business" means—

(i) a farming business (as defined in section 263A(e)(4)) which makes an election under this subparagraph, or

(ii) any trade or business of a specified agricultural or horticultural cooperative (as defined in section 199A(g)(2)) with respect to which the cooperative makes an election under this subparagraph.

Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

(8) ADJUSTED TAXABLE INCOME.—For purposes of this subsection, the term "adjusted taxable income" means the taxable income of the taxpayer—

(A) computed without regard to—

(i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business,

(ii) any business interest or business interest income,

(iii) the amount of any net operating loss deduction under section 172,

(iv) the amount of any deduction allowed under section 199A, and

(v) in the case of taxable years beginning before January 1, 2022, any deduction allowable for depreciation, amortization, or depletion, and

(B) computed with such other adjustments as provided by the Secretary.

(9) FLOOR PLAN FINANCING INTEREST DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "floor plan financing interest" means interest paid or accrued on floor plan financing indebtedness.

(B) FLOOR PLAN FINANCING INDEBTEDNESS.—The term "floor plan financing indebtedness" means indebtedness—

(i) used to finance the acquisition of motor vehicles held for sale or lease, and

(ii) secured by the inventory so acquired.

(C) MOTOR VEHICLE.—The term "motor vehicle" means a motor vehicle that is any of the following:

(i) Any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road.

(ii) A boat.

(iii) Farm machinery or equipment.

(10) CROSS REFERENCES.—(A) For requirement that an electing real property trade or business use the alternative depreciation system, see section 168(g)(1)(F).

(B) For requirement that an electing farming business use the alternative depreciation system, see section 168(g)(1)(G).

(k) SECTION 6166 INTEREST.—No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

(l) DISALLOWANCE OF DEDUCTION ON CERTAIN DEBT INSTRUMENTS OF CORPORATIONS.—

(1) IN GENERAL.—No deduction shall be allowed under this chapter for any interest paid or accrued on a disqualified debt instrument.

(2) DISQUALIFIED DEBT INSTRUMENT.—For purposes of this subsection, the term "disqualified debt instrument" means any indebtedness of a corporation which is payable in equity of the issuer or a related party or equity held by the issuer (or any related party) in any other person.

(3) SPECIAL RULES FOR AMOUNTS PAYABLE IN EQUITY.—For purposes of paragraph (2), indebtedness shall be treated as payable in equity of the issuer or any other person only if—

(A) a substantial amount of the principal or interest is required to be paid or converted, or at the option of the issuer or a related party is payable in, or convertible into, such equity,

(B) a substantial amount of the principal or interest is required to be determined, or at the option of the issuer or a related party is determined, by reference to the value of such equity, or

(C) the indebtedness is part of an arrangement which is reasonably expected to result in a transaction described in subparagraph (A) or (B).

For purposes of this paragraph, principal or interest shall be treated as required to be so paid, converted, or determined if it may be required at the option of the holder or a related party and there is a substantial certainty the option will be exercised.

(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.

(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term "disqualified debt instrument" does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term "dealer in securities" has the meaning given such term by section 475.

(6) RELATED PARTY.—For purposes of this subsection, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through the use of an issuer other than a corporation.

(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.

(n) CROSS REFERENCES.—

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265(a)(2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

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SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) GENERAL RULE.—Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

(1) the applicable depreciation method,

(2) the applicable recovery period, and

(3) the applicable convention.

(b) APPLICABLE DEPRECIATION METHOD.—For purposes of this section—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the applicable depreciation method is—

(A) the 200 percent declining balance method,

(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

(2) 150 PERCENT DECLINING BALANCE METHOD IN CERTAIN CASES.—Paragraph (1) shall be applied by substituting "150 percent" for "200 percent" in the case of—

(A) any 15-year or 20-year property not referred to in paragraph (3),

(B) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or

(C) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(3) PROPERTY TO WHICH STRAIGHT LINE METHOD APPLIES.—The applicable depreciation method shall be the straight line method in the case of the following property:

(A) Nonresidential real property.

(B) Residential rental property.

(C) Any railroad grading or tunnel bore.

(D) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(E) Property described in subsection (e)(3)(D)(ii).

(F) Water utility property described in subsection (e)(5).

(G) Qualified improvement property described in subsection (e)(6).

(4) SALVAGE VALUE TREATED AS ZERO.—Salvage value shall be treated as zero.

(5) ELECTION.—An election under paragraph (2)(D) or (3)(D) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:

(d) APPLICABLE CONVENTION.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

(2) REAL PROPERTY.—In the case of—

(A) nonresidential real property,

(B) residential rental property, and

(C) any railroad grading or tunnel bore,

the applicable convention is the mid-month convention.

(3) SPECIAL RULE WHERE SUBSTANTIAL PROPERTY PLACED IN SERVICE DURING LAST 3 MONTHS OF TAXABLE YEAR.—

(A) IN GENERAL.—Except as provided in regulations, if during any taxable year—

(i) the aggregate bases of property to which this section applies placed in service during the last 3 months of the taxable year, exceed

(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the mid-quarter convention.

(B) CERTAIN PROPERTY NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), there shall not be taken into account—

(i) any nonresidential real property, residential rental property, and railroad grading or tunnel bore, and

(ii) any other property placed in service and disposed of during the same taxable year.

(4) DEFINITIONS.—

(A) HALF-YEAR CONVENTION.—The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

(B) MID-MONTH CONVENTION.—The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

(C) MID-QUARTER CONVENTION.—The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

(e) CLASSIFICATION OF PROPERTY.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, property shall be classified under the following table:

(2) RESIDENTIAL RENTAL OR NONRESIDENTIAL REAL PROPERTY.—

(A) RESIDENTIAL RENTAL PROPERTY.—

(i) RESIDENTIAL RENTAL PROPERTY.—The term "residential rental property" means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) DEFINITIONS.—For purposes of clause (i)—

(I) the term "dwelling unit" means a house or apartment used to provide living accommodations

in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) NONRESIDENTIAL REAL PROPERTY.—The term "nonresidential real property" means section 1250 property which is not—

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) CLASSIFICATION OF CERTAIN PROPERTY.—

(A) 3-YEAR PROPERTY.—The term "3-year property" includes—

(i) any race horse—

(I) which is placed in service before January 1, 2018, and

(II) which is placed in service after December 31, 2017, and which is more than 2 years old at the time such horse is placed in service by such purchaser,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-YEAR PROPERTY.—The term "5-year property" includes—

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation,

(vi) any property which—

(I) is described in subparagraph (A) of section 48(a)(3) (or would be so described if "solar or wind energy" were substituted for "solar energy" in clause (i) thereof and the last sentence of such section did not apply to such subparagraph),

(II) is described in paragraph (15) of section 48(*l*) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and has a power production capacity of not greater than 80 megawatts, or

(III) is described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), and

(vii) any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in section 263A(e)(4)), the original use of

which commences with the taxpayer after December 31, 2017.

Nothing in any provision of law shall be construed to treat property as not being described in subclause (I) or (II) of clause (vi) by reason of being public utility property.

(C) 7-YEAR PROPERTY.—The term "7-year property" includes—

(i) any railroad track,

(ii) any motorsports entertainment complex,

(iii) any Alaska natural gas pipeline,

(iv) any natural gas gathering line the original use of which commences with the taxpayer after April 11, 2005, and

(v) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) 10-YEAR PROPERTY.—The term "10-year property" includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),

(ii) any tree or vine bearing fruit or nuts,

(iii) any qualified smart electric meter, and

(iv) any qualified smart electric grid system.

(E) 15-YEAR PROPERTY.—The term "15-year property" includes—

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications,

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet),

(iv) initial clearing and grading land improvements with respect to gas utility property,

(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale and the original use of which commences with the taxpayer after April 11, 2005, and

(vi) any natural gas distribution line the original use of which commences with the taxpayer after April 11, 2005, and which is placed in service before January 1, 2011.

(F) 20-YEAR PROPERTY.—The term "20-year property" means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.

(4) RAILROAD GRADING OR TUNNEL BORE.—The term "railroad grading or tunnel bore" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) WATER UTILITY PROPERTY.—The term "water utility property" means property—

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(6) QUALIFIED IMPROVEMENT PROPERTY.—

(A) IN GENERAL.—The term "qualified improvement property" means any improvement to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service.

(B) CERTAIN IMPROVEMENTS NOT INCLUDED.—Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator, or

(iii) the internal structural framework of the building.

(f) PROPERTY TO WHICH SECTION DOES NOT APPLY.—This section shall not apply to—

(1) CERTAIN METHODS OF DEPRECIATION.—Any property if—

(A) the taxpayer elects to exclude such property from the application of this section, and

(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

(2) CERTAIN PUBLIC UTILITY PROPERTY.—Any public utility property (within the meaning of subsection (i)(10)) if the taxpayer does not use a normalization method of accounting.

(3) FILMS AND VIDEO TAPE.—Any motion picture film or video tape.

(4) SOUND RECORDINGS.—Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied.

(5) CERTAIN PROPERTY PLACED IN SERVICE IN CHURNING TRANSACTIONS.—

(A) IN GENERAL.—Property—

(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

(ii) which would be described in such paragraph if such paragraph were applied by substituting "1987" for "1981" and "1986" for "1980" each place such terms appear.

(B) SUBPARAGRAPH (A)(II) NOT TO APPLY.—Clause (ii) of subparagraph (A) shall not apply to—

(i) any residential rental property or nonresidential real property,

(ii) any property if, for the 1st taxable year in which such property is placed in service—

(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than,

(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year, or

(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor.

(C) SPECIAL RULE.—In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986.

(g) ALTERNATIVE DEPRECIATION SYSTEM FOR CERTAIN PROPERTY.—

(1) IN GENERAL.—In the case of—

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under paragraph (6),

(E) any property to which an election under paragraph (7) applies,

(F) any property described in paragraph (8), and

(G) any property with a recovery period of 10 years or more which is held by an electing farming business (as defined in section 163(j)(7)(C)),

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) ALTERNATIVE DEPRECIATION SYSTEM.—For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

(3) SPECIAL RULES FOR DETERMINING CLASS LIFE.—

(A) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall (notwithstanding any other subparagraph of this paragraph) in no event be less than 125 percent of the lease term.

(B) SPECIAL RULE FOR CERTAIN PROPERTY ASSIGNED TO CLASSES.—For purposes of paragraph (2), in the case of property described in any of the following subparagraphs

of subsection (e)(3), the class life shall be determined as follows:

(C) QUALIFIED TECHNOLOGICAL EQUIPMENT.—In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) AUTOMOBILES, ETC..—In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

(E) CERTAIN REAL PROPERTY.—In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) EXCEPTION FOR CERTAIN PROPERTY USED OUTSIDE UNITED STATES.—Subparagraph (A) of paragraph (1) shall not apply to—

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is—

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

(K) any property described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) TAX-EXEMPT BOND FINANCED PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "tax-exempt bond financed property" means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

(B) ALLOCATION OF BOND PROCEEDS.—For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) QUALIFIED RESIDENTIAL RENTAL PROJECTS.—The term "tax-exempt bond financed property" shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) IMPORTED PROPERTY.—

(A) COUNTRIES MAINTAINING TRADE RESTRICTIONS OR ENGAGING IN DISCRIMINATORY ACTS.—If the President determines that a foreign country—

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) IMPORTED PROPERTY.—For purposes of this subsection, the term "imported property" means any property if—

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) ELECTION TO USE ALTERNATIVE DEPRECIATION SYSTEM.—

(A) IN GENERAL.—If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) ELECTION IRREVOCABLE.—An election under subparagraph (A), once made, shall be irrevocable.

(8) ELECTING REAL PROPERTY TRADE OR BUSINESS.—The property described in this paragraph shall consist of any nonresidential real property, residential rental property, and qualified improvement property held by an electing real property trade or business (as defined in 163(j)(7)(B)).

(h) TAX-EXEMPT USE PROPERTY.—

(1) IN GENERAL.—For purposes of this section—

(A) PROPERTY OTHER THAN NONRESIDENTIAL REAL PROPERTY.—Except as otherwise provided in this subsection, the term "tax-exempt use property" means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

(B) NONRESIDENTIAL REAL PROPERTY.—

(i) IN GENERAL.—In the case of nonresidential real property, the term "tax-exempt use property" means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) DISQUALIFIED LEASE.—For purposes of this subparagraph, the term "disqualified lease" means any lease of the property to a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-PERCENT THRESHOLD TEST.—Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

(iv) TREATMENT OF IMPROVEMENTS.—For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) LEASEBACKS DURING 1ST 3 MONTHS OF USE NOT TAKEN INTO ACCOUNT.—Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) EXCEPTION FOR SHORT-TERM LEASES.—

(i) IN GENERAL.—Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) SHORT-TERM LEASE.—For purposes of clause (i), the term "short-term lease" means any lease the term of which is—

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

(D) EXCEPTION WHERE PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—The term "tax-exempt use property" shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

(E) NONRESIDENTIAL REAL PROPERTY DEFINED.—For purposes of this paragraph, the term "nonresidential real property" includes residential rental property.

(2) TAX-EXEMPT ENTITY.—

(A) IN GENERAL.—For purposes of this subsection, the term "tax-exempt entity" means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter,

(iii) any foreign person or entity, and

(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State.

(B) EXCEPTION FOR CERTAIN PROPERTY SUBJECT TO UNITED STATES TAX AND USED BY FOREIGN PERSON OR ENTITY.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

(i) subject to tax under this chapter, or

(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(C) FOREIGN PERSON OR ENTITY.—For purposes of this paragraph, the term "foreign person or entity" means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) TREATMENT OF CERTAIN TAXABLE INSTRUMENTALITIES.—For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) CERTAIN PREVIOUSLY TAX-EXEMPT ORGANIZATIONS.—

(i) IN GENERAL.—For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt

from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) ELECTION NOT TO HAVE CLAUSE (I) APPLY.—

(I) IN GENERAL.—In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) TAX-EXEMPT USE PERIOD.—For purposes of subclause (I), the term "tax-exempt use period" means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

(III) ELECTION.—Any election under subclause (I), once made, shall be irrevocable.

(iii) TREATMENT OF SUCCESSOR ORGANIZATIONS.—Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

(iv) FIRST USED.—For purposes of this subparagraph, property shall be treated as first used by the organization—

(I) when the property is first placed in service under a lease to such organization, or

(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

(3) SPECIAL RULES FOR CERTAIN HIGH TECHNOLOGY EQUIPMENT.—

(A) EXEMPTION WHERE LEASE TERM IS 5 YEARS OR LESS.—For purposes of this section, the term "tax-exempt use property" shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less. Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.

(B) EXCEPTION FOR CERTAIN PROPERTY.—

(i) IN GENERAL.—For purposes of subparagraph (A), the term "qualified technological equipment" shall not include any property leased to a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a),

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(ii) LEASEBACKS DURING 1ST 3 MONTHS OF USE NOT TAKEN INTO ACCOUNT.—Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(4) RELATED ENTITIES.—For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

(5) TAX-EXEMPT USE OF PROPERTY LEASED TO PARTNERSHIPS, ETC., DETERMINED AT PARTNER LEVEL.—For purposes of this subsection—

(A) IN GENERAL.—In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

(B) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) PRESUMPTION WITH RESPECT TO FOREIGN ENTITIES.—Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(6) TREATMENT OF PROPERTY OWNED BY PARTNERSHIPS, ETC..—

(A) IN GENERAL.—For purposes of this subsection, if—

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

(B) QUALIFIED ALLOCATION.—For purposes of subparagraph (A), the term "qualified allocation" means any allocation to a tax-exempt entity which—

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

(C) DETERMINATION OF PROPORTIONATE SHARE.—

(i) IN GENERAL.—For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) DETERMINATION WHERE ALLOCATIONS VARY.—For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) DETERMINATION OF WHETHER PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the deter-

mination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

(E) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(F) TREATMENT OF CERTAIN TAXABLE ENTITIES.—

(i) IN GENERAL.—For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

(ii) ELECTION.—If a tax-exempt controlled entity makes an election under this clause—

(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

(iii) TAX-EXEMPT CONTROLLED ENTITY.—

(I) IN GENERAL.—The term "tax-exempt controlled entity" means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

(II) ONLY 5-PERCENT SHAREHOLDERS TAKEN INTO ACCOUNT IN CASE OF PUBLICLY TRADED STOCK.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

(III) SECTION 318 TO APPLY.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

(G) REGULATIONS.—For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph—

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(7) LEASE.—For purposes of this subsection, the term "lease" includes any grant of a right to use property.

(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) CLASS LIFE.—Except as provided in this section, the term "class life" means the class life (if any) which would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets. The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(2) QUALIFIED TECHNOLOGICAL EQUIPMENT.—

(A) IN GENERAL.—The term "qualified technological equipment" means—

(i) any computer or peripheral equipment,

(ii) any high technology telephone station equipment installed on the customer's premises, and

(iii) any high technology medical equipment.

(B) COMPUTER OR PERIPHERAL EQUIPMENT DEFINED.—For purposes of this paragraph—

(i) IN GENERAL.—The term "computer or peripheral equipment" means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) COMPUTER.—The term "computer" means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) RELATED PERIPHERAL EQUIPMENT.—The term "related peripheral equipment" means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) EXCEPTIONS.—The term "computer or peripheral equipment" shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(C) HIGH TECHNOLOGY MEDICAL EQUIPMENT.—For purposes of this paragraph, the term "high technology medical equipment" means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(3) LEASE TERM.—

(A) IN GENERAL.—In determining a lease term—

(i) there shall be taken into account options to renew,

(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

(II) which is with respect to the property subject to the lease or substantially similar property, and

(iii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(B) SPECIAL RULE FOR FAIR RENTAL OPTIONS ON NONRESIDENTIAL REAL PROPERTY OR RESIDENTIAL RENTAL PROPERTY.—For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(4) GENERAL ASSET ACCOUNTS.—Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

(5) CHANGES IN USE.—The Secretary shall, by regulations, provide for the method of determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(6) TREATMENTS OF ADDITIONS OR IMPROVEMENTS TO PROPERTY.—In the case of any addition to (or improvement of) any property—

(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

(B) the applicable recovery period for such addition or improvement shall begin on the later of—

(i) the date on which such addition (or improvement) is placed in service, or

(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

(7) TREATMENT OF CERTAIN TRANSFEREES.—

(A) IN GENERAL.—In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.

(B) TRANSACTIONS COVERED.—The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, or 731, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

(C) PROPERTY REACQUIRED BY THE TAXPAYER.—Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

(8) TREATMENT OF LEASEHOLD IMPROVEMENTS.—

(A) IN GENERAL.—In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(B) TREATMENT OF LESSOR IMPROVEMENTS WHICH ARE ABANDONED AT TERMINATION OF LEASE.—An improvement—

(i) which is made by the lessor of leased property for the lessee of such property, and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned.

(C) CROSS REFERENCE.—For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).

(9) NORMALIZATION RULES.—

(A) IN GENERAL.—In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2)—

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property (respecting all elections made by the taxpayer under this section) differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC..—

(i) IN GENERAL.—One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.—The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) REGULATORY AUTHORITY.—The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) PUBLIC UTILITY PROPERTY WHICH DOES NOT MEET NORMALIZATION RULES.—In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

(10) PUBLIC UTILITY PROPERTY.—The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(11) RESEARCH AND EXPERIMENTATION.—The term "research and experimentation" has the same meaning as the term research and experimental has under section 174.

(12) SECTION 1245 AND 1250 PROPERTY.—The terms "section 1245 property" and "section 1250 property" have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(13) SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURE.—

(A) IN GENERAL.—The term "single purpose agricultural or horticultural structure" means—

(i) a single purpose livestock structure, and

(ii) a single purpose horticultural structure.

(B) DEFINITIONS.—For purposes of this paragraph—

(i) SINGLE PURPOSE LIVESTOCK STRUCTURE.—The term "single purpose livestock structure" means any enclosure or structure specifically designed, constructed, and used—

(I) for housing, raising, and feeding a particular type of livestock and their produce, and

(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

(ii) SINGLE PURPOSE HORTICULTURAL STRUCTURE.—The term "single purpose horticultural structure" means—

(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

(iii) STRUCTURES WHICH INCLUDE WORK SPACE.—An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(II) the maintenance of the enclosure or structure, and

(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(iv) LIVESTOCK.—The term "livestock" includes poultry.

(14) QUALIFIED RENT-TO-OWN PROPERTY.—

(A) IN GENERAL.—The term "qualified rent-to-own property" means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

(B) RENT-TO-OWN DEALER.—The term "rent-to-own dealer" means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

(C) CONSUMER PROPERTY.—The term "consumer property" means tangible personal property of a type generally used within the home for personal use.

(D) RENT-TO-OWN CONTRACT.—The term "rent-to-own contract" means any lease for the use of consumer property between a rent-to-own dealer and a customer who is an individual which—

(i) is titled "Rent-to-Own Agreement" or "Lease Agreement with Ownership Option," or uses other similar language,

(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at

the end of each payment period the customer may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made under the contract, and

(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.

(15) MOTORSPORTS ENTERTAINMENT COMPLEX.—

(A) IN GENERAL.—The term "motorsports entertainment complex" means a racing track facility which—

(i) is permanently situated on land, and

(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

(B) ANCILLARY AND SUPPORT FACILITIES.—Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

(i) ancillary facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

(C) EXCEPTION.—Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(D) TERMINATION.—Such term shall not include any property placed in service after [December 31, 2017] *December 31, 2020*.

(16) ALASKA NATURAL GAS PIPELINE.—The term "Alaska natural gas pipeline" means the natural gas pipeline system located in the State of Alaska which—

(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

(B) is—

(i) placed in service after December 31, 2013, or

(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.

(17) NATURAL GAS GATHERING LINE.—The term "natural gas gathering line" means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, and

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission pipeline has been issued by the Federal Energy Regulatory Commission,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

(18) QUALIFIED SMART ELECTRIC METERS.—

(A) IN GENERAL.—The term "qualified smart electric meter" means any smart electric meter which—

(i) is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 16 years.

(B) SMART ELECTRIC METER.—For purposes of subparagraph (A), the term "smart electric meter" means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

(ii) provides for the exchange of information between supplier or provider and the customer's electric meter in support of time-based rates or other forms of demand response,

(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically, and

(iv) provides net metering.

(19) QUALIFIED SMART ELECTRIC GRID SYSTEMS.—

(A) IN GENERAL.—The term "qualified smart electric grid system" means any smart grid property which—

(i) is used as part of a system for electric distribution grid communications, monitoring, and management placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 16 years.

(B) SMART GRID PROPERTY.—For the purposes of subparagraph (A), the term "smart grid property" means electronics and related equipment that is capable of—

(i) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid,

(ii) providing real-time, two-way communications to monitor or manage such grid, and

(iii) providing real time analysis of and event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.

(j) PROPERTY ON INDIAN RESERVATIONS.—

(1) IN GENERAL.—For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

(2) APPLICABLE RECOVERY PERIOD FOR INDIAN RESERVATION PROPERTY.—For purposes of paragraph (1)—

(3) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified Indian reservation property shall be determined under this section without regard to any adjustment under section 56.

(4) QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified Indian reservation property" means property which is property described in the table in paragraph (2) and which is—

(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,

(ii) not used or located outside the Indian reservation on a regular basis,

(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

(B) EXCEPTION FOR ALTERNATIVE DEPRECIATION PROPERTY.—The term "qualified Indian reservation property" does not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

(ii) after the application of section 280F(b) (relating to listed property with limited business use).

(C) SPECIAL RULE FOR RESERVATION INFRASTRUCTURE INVESTMENT.—

(i) IN GENERAL.—Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such

property is to connect with qualified infrastructure property located within the Indian reservation.

(ii) QUALIFIED INFRASTRUCTURE PROPERTY.—For purposes of this subparagraph, the term "qualified infrastructure property" means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which—

(I) benefits the tribal infrastructure,

(II) is available to the general public, and

(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

(5) REAL ESTATE RENTALS.—For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

(6) INDIAN RESERVATION DEFINED.—For purposes of this subsection, the term "Indian reservation" means a reservation, as defined in—

(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term "former Indian reservations in Oklahoma" as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).

(7) COORDINATION WITH NONREVENUE LAWS.—Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

(8) ELECTION OUT.—If a taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, paragraph (1) shall not apply to all property in such class placed in service during such taxable year. Such election, once made, shall be irrevocable.

(9) TERMINATION.—This subsection shall not apply to property placed in service after [December 31, 2017] *December 31, 2020*.

(k) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY.—

(1) ADDITIONAL ALLOWANCE.—In the case of any qualified property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to the applicable percentage of the adjusted basis of the qualified property, and

(B) the adjusted basis of the qualified property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) QUALIFIED PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified property" means property—

(i)(I) to which this section applies which has a recovery period of 20 years or less,

(II) which is computer software (as defined in section 167(f)(1)(B)) for which a deduction is allowable under section 167(a) without regard to this subsection,

(III) which is water utility property, or

(IV) which is a qualified film or television production (as defined in subsection (d) of section 181) for which a deduction would have been allowable under section 181 without regard to subsections (a)(2) and (g) of such section or this subsection, or

(V) which is a qualified live theatrical production (as defined in subsection (e) of section 181) for which a deduction would have been allowable under section 181 without regard to subsections (a)(2) and (g) of such section or this subsection,

(ii) the original use of which begins with the taxpayer or the acquisition of which by the taxpayer meets the requirements of clause (ii) of subparagraph (E), and

(iii) which is placed in service by the taxpayer before January 1, 2027.

(B) CERTAIN PROPERTY HAVING LONGER PRODUCTION PERIODS TREATED AS QUALIFIED PROPERTY.—

(i) IN GENERAL.—The term "qualified property" includes any property if such property—

(I) meets the requirements of clauses (i) and (ii) of subparagraph (A),

(II) is placed in service by the taxpayer before January 1, 2028,

(III) is acquired by the taxpayer (or acquired pursuant to a written binding contract entered into) before January 1, 2027,

(IV) has a recovery period of at least 10 years or is transportation property,

(V) is subject to section 263A, and

(VI) meets the requirements of clause (iii) of section 263A(f)(1)(B) (determined as if such clause also applies to property which has a long useful life (within the meaning of section 263A(f))).

(ii) ONLY PRE-JANUARY 1, 2027 BASIS ELIGIBLE FOR ADDITIONAL ALLOWANCE.—In the case of property which is qualified property solely by reason of clause (i), paragraph (1) shall apply only to the extent of the

adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2027.

(iii) TRANSPORTATION PROPERTY.—For purposes of this subparagraph, the term "transportation property" means tangible personal property used in the trade or business of transporting persons or property.

(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply to any property which is described in subparagraph (C).

(C) CERTAIN AIRCRAFT.—The term "qualified property" includes property—

(i) which meets the requirements of subparagraph (A)(ii) and subclauses (II) and (III) of subparagraph (B)(i),

(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

(I) 10 percent of the cost, or

(II) $100,000, and

(iv) which has—

(I) an estimated production period exceeding 4 months, and

(II) a cost exceeding $200,000.

(D) EXCEPTION FOR ALTERNATIVE DEPRECIATION PROPERTY.—The term "qualified property" shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(i) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

(ii) after application of section 280F(b) (relating to listed property with limited business use).

(E) SPECIAL RULES.—

(i) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of subclause (III) of subparagraph (B)(i) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property before January 1, 2027.

(ii) ACQUISITION REQUIREMENTS.—An acquisition of property meets the requirements of this clause if—

(I) such property was not used by the taxpayer at any time prior to such acquisition, and

(II) the acquisition of such property meets the requirements of paragraphs (2)(A), (2)(B), (2)(C), and (3) of section 179(d).

(iii) SYNDICATION.—For purposes of subparagraph (A)(ii), if—

(I) property is used by a lessor of such property and such use is the lessor's first use of such property,

(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

(F) COORDINATION WITH SECTION 280F.—For purposes of section 280F—

(i) AUTOMOBILES.—In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified property, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i) by $8,000.

(ii) LISTED PROPERTY.—The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2).

(iii) PHASE DOWN.—In the case of a passenger automobile acquired by the taxpayer before September 28, 2017, and placed in service by the taxpayer after September 27, 2017, clause (i) shall be applied by substituting for "$8,000"—

(I) in the case of an automobile placed in service during 2018, $6,400, and

(II) in the case of an automobile placed in service during 2019, $4,800.

(G) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under section 167 for qualified property shall be determined without regard to any adjustment under section 56.

(H) PRODUCTION PLACED IN SERVICE.—For purposes of subparagraph (A)—

(i) a qualified film or television production shall be considered to be placed in service at the time of initial release or broadcast, and

(ii) a qualified live theatrical production shall be considered to be placed in service at the time of the initial live staged performance.

(5) SPECIAL RULES FOR CERTAIN PLANTS BEARING FRUITS AND NUTS.—

(A) IN GENERAL.—In the case of any specified plant which is planted before January 1, 2027, or is grafted before such date to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business (as defined in section 263A(e)(4)) during a

taxable year for which the taxpayer has elected the application of this paragraph—

(i) a depreciation deduction equal to the applicable percentage of the adjusted basis of such specified plant shall be allowed under section 167(a) for the taxable year in which such specified plant is so planted or grafted, and

(ii) the adjusted basis of such specified plant shall be reduced by the amount of such deduction.

(B) SPECIFIED PLANT.—For purposes of this paragraph, the term "specified plant" means—

(i) any tree or vine which bears fruits or nuts, and

(ii) any other plant which will have more than one crop or yield of fruits or nuts and which generally has a pre-productive period of more than 2 years from the time of planting or grafting to the time at which such plant begins bearing a marketable crop or yield of fruits or nuts.

Such term shall not include any property which is planted or grafted outside of the United States.

(C) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary.

(D) ADDITIONAL DEPRECIATION MAY BE CLAIMED ONLY ONCE.—If this paragraph applies to any specified plant, such specified plant shall not be treated as qualified property in the taxable year in which placed in service.

(E) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—Rules similar to the rules of paragraph (2)(G) shall apply for purposes of this paragraph.

(6) APPLICABLE PERCENTAGE.—For purposes of this subsection—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "applicable percentage" means—

(i) in the case of property placed in service after September 27, 2017, and before January 1, 2023, 100 percent,

(ii) in the case of property placed in service after December 31, 2022, and before January 1, 2024, 80 percent,

(iii) in the case of property placed in service after December 31, 2023, and before January 1, 2025, 60 percent,

(iv) in the case of property placed in service after December 31, 2024, and before January 1, 2026, 40 percent, and

(v) in the case of property placed in service after December 31, 2025, and before January 1, 2027, 20 percent.

(B) RULE FOR PROPERTY WITH LONGER PRODUCTION PERIODS.—In the case of property described in subparagraph (B) or (C) of paragraph (2), the term "applicable percentage" means—

(i) in the case of property placed in service after September 27, 2017, and before January 1, 2024, 100 percent,

(ii) in the case of property placed in service after December 31, 2023, and before January 1, 2025, 80 percent,

(iii) in the case of property placed in service after December 31, 2024, and before January 1, 2026, 60 percent,

(iv) in the case of property placed in service after December 31, 2025, and before January 1, 2027, 40 percent, and

(v) in the case of property placed in service after December 31, 2026, and before January 1, 2028, 20 percent.

(C) RULE FOR PLANTS BEARING FRUITS AND NUTS.—In the case of a specified plant described in paragraph (5), the term "applicable percentage" means—

(i) in the case of a plant which is planted or grafted after September 27, 2017, and before January 1, 2023, 100 percent,

(ii) in the case of a plant which is planted or grafted after December 31, 2022, and before January 1, 2024, 80 percent,

(iii) in the case of a plant which is planted or grafted after December 31, 2023, and before January 1, 2025, 60 percent,

(iv) in the case of a plant which is planted or grafted after December 31, 2024, and before January 1, 2026, 40 percent, and

(v) in the case of a plant which is planted or grafted after December 31, 2025, and before January 1, 2027, 20 percent.

(7) ELECTION OUT.—If a taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, paragraphs (1) and (2)(F) shall not apply to any qualified property in such class placed in service during such taxable year. An election under this paragraph may be revoked only with the consent of the Secretary.

(8) PHASE DOWN.—In the case of qualified property acquired by the taxpayer before September 28, 2017, and placed in service by the taxpayer after September 27, 2017, paragraph (6) shall be applied by substituting for each percentage therein—

(A) "50 percent" in the case of—

(i) property placed in service before January 1, 2018, and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2018,

(B) "40 percent" in the case of—

(i) property placed in service in 2018 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2019,

(C) "30 percent" in the case of—

(i) property placed in service in 2019 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2020, and

(D) "0 percent" in the case of—

(i) property placed in service after 2019 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service after 2020.

(9) EXCEPTION FOR CERTAIN PROPERTY.—The term "qualified property" shall not include—

(A) any property which is primarily used in a trade or business described in clause (iv) of section 163(j)(7)(A), or

(B) any property used in a trade or business that has had floor plan financing indebtedness (as defined in paragraph (9) of section 163(j)), if the floor plan financing interest related to such indebtedness was taken into account under paragraph (1)(C) of such section.

(10) SPECIAL RULE FOR PROPERTY PLACED IN SERVICE DURING CERTAIN PERIODS.—

(A) IN GENERAL.—In the case of qualified property placed in service by the taxpayer during the first taxable year ending after September 27, 2017, if the taxpayer elects to have this paragraph apply for such taxable year, paragraphs (1)(A) and (5)(A)(i) shall be applied by substituting "50 percent" for "the applicable percentage".

(B) FORM OF ELECTION.—Any election under this paragraph shall be made at such time and in such form and manner as the Secretary may prescribe.

(l) SPECIAL ALLOWANCE FOR SECOND GENERATION BIOFUEL PLANT PROPERTY.—

(1) ADDITIONAL ALLOWANCE.—In the case of any qualified second generation biofuel plant property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) QUALIFIED SECOND GENERATION BIOFUEL PLANT PROPERTY.—The term "qualified second generation biofuel plant property" means property of a character subject to the allowance for depreciation—

(A) which is used in the United States solely to produce second generation biofuel (as defined in section 40(b)(6)(E)),

(B) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

(C) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment

of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

(D) which is placed in service by the taxpayer before [January 1, 2018] *January 1, 2021.*

(3) EXCEPTIONS.—

(A) BONUS DEPRECIATION PROPERTY UNDER SUBSECTION (K).—Such term shall not include any property to which subsection (k) applies.

(B) ALTERNATIVE DEPRECIATION PROPERTY.—Such term shall not include any property described in subsection (k)(2)(D).

(C) TAX-EXEMPT BOND-FINANCED PROPERTY.—Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(D) ELECTION OUT.—If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(4) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of subsection (k)(2)(E) shall apply.

(5) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—For purposes of this subsection, rules similar to the rules of subsection (k)(2)(G) shall apply.

(6) RECAPTURE.—For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified second generation biofuel plant property which ceases to be qualified second generation biofuel plant property.

(7) DENIAL OF DOUBLE BENEFIT.—Paragraph (1) shall not apply to any qualified second generation biofuel plant property with respect to which an election has been made under section 179C (relating to election to expense certain refineries).

(m) SPECIAL ALLOWANCE FOR CERTAIN REUSE AND RECYCLING PROPERTY.—

(1) IN GENERAL.—In the case of any qualified reuse and recycling property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified reuse and recycling property, and

(B) the adjusted basis of the qualified reuse and recycling property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) QUALIFIED REUSE AND RECYCLING PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified reuse and recycling property" means any reuse and recycling property—

(i) to which this section applies,

(ii) which has a useful life of at least 5 years,

(iii) the original use of which commences with the taxpayer after August 31, 2008, and

(iv) which is—

(I) acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after August 31, 2008, but only if no written binding contract for the acquisition was in effect before September 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after August 31, 2008.

(B) EXCEPTIONS.—

(i) BONUS DEPRECIATION PROPERTY UNDER SUBSECTION (K).—The term "qualified reuse and recycling property" shall not include any property to which subsection (k) (determined without regard to paragraph (4) thereof) applies.

(ii) ALTERNATIVE DEPRECIATION PROPERTY.—The term "qualified reuse and recycling property" shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) ELECTION OUT.—If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) SPECIAL RULE FOR SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iv) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after August 31, 2008.

(D) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified reuse and recycling property shall be determined under this section without regard to any adjustment under section 56.

(3) DEFINITIONS.—For purposes of this subsection—

(A) REUSE AND RECYCLING PROPERTY.—

(i) IN GENERAL.—The term "reuse and recycling property" means any machinery and equipment (not including buildings or real estate), along with all appurtenances thereto, including software necessary to operate such equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials.

(ii) EXCLUSION.—Such term does not include rolling stock or other equipment used to transport reuse and recyclable materials.

(B) QUALIFIED REUSE AND RECYCLABLE MATERIALS.—

(i) IN GENERAL.—The term "qualified reuse and recyclable materials" means scrap plastic, scrap glass,

scrap textiles, scrap rubber, scrap packaging, recovered fiber, scrap ferrous and nonferrous metals, or electronic scrap generated by an individual or business.

(ii) ELECTRONIC SCRAP.—For purposes of clause (i), the term "electronic scrap" means—

(I) any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or

(II) any central processing unit.

(C) RECYCLING OR RECYCLE.—The term "recycling" or "recycle" means that process (including sorting) by which worn or superfluous materials are manufactured or processed into specification grade commodities that are suitable for use as a replacement or substitute for virgin materials in manufacturing tangible consumer and commercial products, including packaging.

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SEC. 179D. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) MAXIMUM AMOUNT OF DEDUCTION.—The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of—

(1) the product of—

(A) $1.80, and

(B) the square footage of the building, over

(2) the aggregate amount of the deductions under subsection (a) with respect to the building for all prior taxable years.

(c) DEFINITIONS.—For purposes of this section—

(1) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.—The term "energy efficient commercial building property" means property—

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(B) which is installed on or in any building which is—

(i) located in the United States, and

(ii) within the scope of Standard 90.1–2007,

(C) which is installed as part of—

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2007 using methods of calculation under subsection (d)(2).

(2) STANDARD 90.1–2007.—The term "Standard 90.1–2007" means Standard 90.1–2007 of the American Society of Heating,

Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on the day before the date of the adoption of Standard 90.1–2010 of such Societies).

(d) SPECIAL RULES.—

(1) PARTIAL ALLOWANCE.—

(A) IN GENERAL.—Except as provided in subsection (f), if—

(i) the requirement of subsection (c)(1)(D) is not met, but

(ii) there is a certification in accordance with paragraph (6) that any system referred to in subsection (c)(1)(C) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting "$.60" for "$1.80".

(B) REGULATIONS.—The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(C) such that, if such targets were met for all such systems, the building would meet the requirements of subsection (c)(1)(D).

(2) METHODS OF CALCULATION.—The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

(3) COMPUTER SOFTWARE.—

(A) IN GENERAL.—Any calculation under paragraph (2) shall be prepared by qualified computer software.

(B) QUALIFIED COMPUTER SOFTWARE.—For purposes of this paragraph, the term "qualified computer software" means software—

(i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,

(ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

(iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

(4) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the de-

duction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

(5) NOTICE TO OWNER.—Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (3)(B)(iii).

(6) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall prescribe the manner and method for the making of certifications under this section.

(B) PROCEDURES.—The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

(C) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

(e) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

(f) INTERIM RULES FOR LIGHTING SYSTEMS.—Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

(1) IN GENERAL.—The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.5.1 or Table 9.6.1 (not including additional interior lighting power allowances) of Standard 90.1–2007.

(2) REDUCTION IN DEDUCTION IF REDUCTION LESS THAN 40 PERCENT.—

(A) IN GENERAL.—If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

(i) 50, and

(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

(C) EXCEPTIONS.—This subsection shall not apply to any system—

(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2007 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(g) REGULATIONS.—The Secretary shall promulgate such regulations as necessary—

(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(D) or (d)(1)(A) is not fully implemented.

(h) TERMINATION.—This section shall not apply with respect to property placed in service after [December 31, 2017] *December 31, 2020*.

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SEC. 181. TREATMENT OF CERTAIN QUALIFIED FILM AND TELEVISION AND LIVE THEATRICAL PRODUCTIONS.

(a) ELECTION TO TREAT COSTS AS EXPENSES.—

(1) IN GENERAL.—A taxpayer may elect to treat the cost of any qualified film or television production, and any qualified live theatrical production, as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

(2) DOLLAR LIMITATION.—

(A) IN GENERAL.—Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production or any qualified live theatrical production as exceeds $15,000,000.

(B) HIGHER DOLLAR LIMITATION FOR PRODUCTIONS IN CERTAIN AREAS.—In the case of any qualified film or television production or any qualified live theatrical production the aggregate cost of which is significantly incurred in an area eligible for designation as—

(i) a low-income community under section 45D, or

(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting "$20,000,000" for "$15,000,000".

(b) NO OTHER DEDUCTION OR AMORTIZATION DEDUCTION ALLOWABLE.—With respect to the basis of any qualified film or television production or any qualified live theatrical production to which an election is made under subsection (a), no other depreciation or amortization deduction shall be allowable.

(c) ELECTION.—

(1) IN GENERAL.—An election under this section with respect to any qualified film or television production or any qualified live theatrical production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

(2) REVOCATION OF ELECTION.—Any election made under this section may not be revoked without the consent of the Secretary.

(d) QUALIFIED FILM OR TELEVISION PRODUCTION.—For purposes of this section—

(1) IN GENERAL.—The term "qualified film or television production" means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

(2) PRODUCTION.—

(A) IN GENERAL.—A production is described in this paragraph if such production is property described in section 168(f)(3).

(B) SPECIAL RULES FOR TELEVISION SERIES.—In the case of a television series—

(i) each episode of such series shall be treated as a separate production, and

(ii) only the first 44 episodes of such series shall be taken into account.

(C) EXCEPTION.—A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

(3) QUALIFIED COMPENSATION.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term "qualified compensation" means compensation for services performed in the United States by actors, production personnel, directors, and producers.

(B) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)).

(e) QUALIFIED LIVE THEATRICAL PRODUCTION.—For purposes of this section—

(1) IN GENERAL.—The term "qualified live theatrical production" means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation (as defined in subsection (d)(3)).

(2) PRODUCTION.—

(A) IN GENERAL.—A production is described in this paragraph if such production is a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a taxable entity in any venue which has an audience capacity of not more than 3,000 or a series of venues the majority of which have an audience capacity of not more than 3,000.

(B) TOURING COMPANIES, ETC..—In the case of multiple live staged productions—

(i) for which the election under this section would be allowable to the same taxpayer, and

(ii) which are—

(I) separate phases of a production, or

(II) separate simultaneous stagings of the same production in different geographical locations (not including multiple performance locations of any one touring production),

each such live staged production shall be treated as a separate production.

(C) PHASE.—For purposes of subparagraph (B), the term "phase" with respect to any qualified live theatrical production refers to each of the following, but only if each of the following is treated by the taxpayer as a separate activity for all purposes of this title:

(i) The initial staging of a live theatrical production.

(ii) Subsequent additional stagings or touring of such production which are produced by the same producer as the initial staging.

(D) SEASONAL PRODUCTIONS.—

(i) IN GENERAL.—In the case of a live staged production not described in subparagraph (B) which is produced or presented by a taxable entity for not more than 10 weeks of the taxable year, subparagraph (A) shall be applied by substituting "6,500" for "3,000".

(ii) SHORT TAXABLE YEARS.—For purposes of clause (i), in the case of any taxable year of less than 12 months, the number of weeks for which a production is produced or presented shall be annualized by multiplying the number of weeks the production is produced or presented during such taxable year by 12 and dividing the result by the number of months in such taxable year.

(E) EXCEPTION.—A production is not described in this paragraph if such production includes or consists of any performance of conduct described in section 2257(h)(1) of title 18, United States Code.

(f) APPLICATION OF CERTAIN OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

(g) TERMINATION.—This section shall not apply to qualified film and television productions or qualified live theatrical productions commencing after **[**December 31, 2017**]** *December 31, 2020*.

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PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

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SEC. 213. MEDICAL, DENTAL, ETC., EXPENSES.

(a) ALLOWANCE OF DEDUCTION.—There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the tax-

payer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), to the extent that such expenses exceed 10 percent of adjusted gross income.

(b) LIMITATION WITH RESPECT TO MEDICINE AND DRUGS.—An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) SPECIAL RULE FOR DECEDENTS.—

(1) TREATMENT OF EXPENSES PAID AFTER DEATH.—For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) LIMITATION.—Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) DEFINITIONS.—For purposes of this section—

(1) The term "medical care" means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

(2) AMOUNTS PAID FOR CERTAIN LODGING AWAY FROM HOME TREATED AS PAID FOR MEDICAL CARE.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

(3) PRESCRIBED DRUG.—The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) PHYSICIAN.—The term "physician" has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) SPECIAL RULE IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) COSMETIC SURGERY.—

(A) IN GENERAL.—The term "medical care" does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term "cosmetic surgery" means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) ELIGIBLE LONG-TERM CARE PREMIUMS.—

(A) IN GENERAL.—For purposes of this section, the term "eligible long-term care premiums" means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

(B) INDEXING.—

(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

(ii) MEDICAL CARE COST ADJUSTMENT.—For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

(I) the medical care component of the C-CPI-U (as defined in section 1(f)(6)) for August of the preceding calendar year, exceeds

(II) such component of the CPI (as defined in section 1(f)(4)) for August of 1996, multiplied by the amount determined under section 1(f)(3)(B).

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(11) CERTAIN PAYMENTS TO RELATIVES TREATED AS NOT PAID FOR MEDICAL CARE.—An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term "relative" means an individual bearing a relationship to the individual which is described in any of subparagraphs (A) through (G) of section 152(d)(2). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(e) EXCLUSION OF AMOUNTS ALLOWED FOR CARE OF CERTAIN DEPENDENTS.—Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

[(f) SPECIAL RULES FOR 2013 THROUGH 2018.—In the case of any taxable year—

[(1) beginning after December 31, 2012, and ending before January 1, 2017, in the case of a taxpayer if such taxpayer or such taxpayer's spouse has attained age 65 before the close of such taxable year, and

[(2) beginning after December 31, 2016, and ending before January 1, 2019, in the case of any taxpayer,

subsection (a) shall be applied with respect to a taxpayer by substituting "7.5 percent" for "10 percent".]

(f) TEMPORARY SPECIAL RULE.—In the case of taxable years beginning before January 1, 2021, subsection (a) shall be applied with respect to a taxpayer by substituting "7.5 percent" for "10 percent".

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SEC. 222. QUALIFIED TUITION AND RELATED EXPENSES.

(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified tuition and related expenses paid by the taxpayer during the taxable year.

(b) DOLLAR LIMITATIONS.—

(1) IN GENERAL.—The amount allowed as a deduction under subsection (a) with respect to the taxpayer for any taxable year shall not exceed the applicable dollar limit.

(2) APPLICABLE DOLLAR LIMIT.—

(A) 2002 AND 2003.—In the case of a taxable year beginning in 2002 or 2003, the applicable dollar limit shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $3,000, and—

(ii) in the case of any other taxpayer, zero.

(B) AFTER 2003.—In the case of any taxable year beginning after 2003, the applicable dollar amount shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $4,000,

(ii) in the case of a taxpayer not described in clause (i) whose adjusted gross income for the taxable year does not exceed $80,000 ($160,000 in the case of a joint return), $2,000, and

(iii) in the case of any other taxpayer, zero.

(C) ADJUSTED GROSS INCOME.—For purposes of this paragraph, adjusted gross income shall be determined—

(i) without regard to this section and sections 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, 221, and 469.

(c) NO DOUBLE BENEFIT.—

(1) IN GENERAL.—No deduction shall be allowed under subsection (a) for any expense for which a deduction is allowed to the taxpayer under any other provision of this chapter.

(2) COORDINATION WITH OTHER EDUCATION INCENTIVES.—

(A) DENIAL OF DEDUCTION IF CREDIT ELECTED.—No deduction shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related ex-

penses with respect to an individual if the taxpayer or any other person elects to have section 25A apply with respect to such individual for such year.

(B) COORDINATION WITH EXCLUSIONS.—The total amount of qualified tuition and related expenses shall be reduced by the amount of such expenses taken into account in determining any amount excluded under section 135, 529(c)(1), or 530(d)(2). For purposes of the preceding sentence, the amount taken into account in determining the amount excluded under section 529(c)(1) shall not include that portion of the distribution which represents a return of any contributions to the plan.

(3) DEPENDENTS.—No deduction shall be allowed under subsection (a) to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED TUITION AND RELATED EXPENSES.—The term "qualified tuition and related expenses" has the meaning given such term by section 25A(f). Such expenses shall be reduced in the same manner as under section 25A(g)(2).

(2) IDENTIFICATION REQUIREMENT.—No deduction shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of the individual on the return of tax for the taxable year.

(3) LIMITATION ON TAXABLE YEAR OF DEDUCTION.—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) for qualified tuition and related expenses for any taxable year only to the extent such expenses are in connection with enrollment at an institution of higher education during the taxable year.

(B) CERTAIN PREPAYMENTS ALLOWED.—Subparagraph (A) shall not apply to qualified tuition and related expenses paid during a taxable year if such expenses are in connection with an academic term beginning during such taxable year or during the first 3 months of the next taxable year.

(4) NO DEDUCTION FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(5) NONRESIDENT ALIENS.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(6) PAYEE STATEMENT REQUIREMENT.—

(A) IN GENERAL.—Except as otherwise provided by the Secretary, no deduction shall be allowed under subsection (a) unless the taxpayer receives a statement furnished

under section 6050S(d) which contains all of the information required by paragraph (2) thereof.

(B) STATEMENT RECEIVED BY DEPENDENT.—The receipt of the statement referred to in subparagraph (A) by an individual described in subsection (c)(3) shall be treated for purposes of subparagraph (A) as received by the taxpayer.

(7) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

(e) TERMINATION.—This section shall not apply to taxable years beginning after [December 31, 2017] *December 31, 2020*.

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PART IX—ITEMS NOT DEDUCTIBLE

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SEC. 263A. CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES.

(a) NONDEDUCTIBILITY OF CERTAIN DIRECT AND INDIRECT COSTS.—

(1) IN GENERAL.—In the case of any property to which this section applies, any costs described in paragraph (2)—

(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and

(B) in the case of any other property, shall be capitalized.

(2) ALLOCABLE COSTS.—The costs described in this paragraph with respect to any property are—

(A) the direct costs of such property, and

(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.

(b) PROPERTY TO WHICH SECTION APPLIES.—Except as otherwise provided in this section, this section shall apply to—

(1) PROPERTY PRODUCED BY TAXPAYER.—Real or tangible personal property produced by the taxpayer.

(2) PROPERTY ACQUIRED FOR RESALE.—Real or personal property described in section 1221(a)(1) which is acquired by the taxpayer for resale.

For purposes of paragraph (1), the term "tangible personal property" shall include a film, sound recording, video tape, book, or similar property.

(c) GENERAL EXCEPTIONS.—

(1) PERSONAL USE PROPERTY.—This section shall not apply to any property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit.

(2) RESEARCH AND EXPERIMENTAL EXPENDITURES.—This section shall not apply to any amount allowable as a deduction under section 174.

(3) CERTAIN DEVELOPMENT AND OTHER COSTS OF OIL AND GAS WELLS OR OTHER MINERAL PROPERTY.—This section shall not apply to any cost allowable as a deduction under section 167(h), 179B, 263(c), 263(i), 291(b)(2), 616, or 617.

(4) COORDINATION WITH LONG-TERM CONTRACT RULES.—This section shall not apply to any property produced by the taxpayer pursuant to a long-term contract.

(5) TIMBER AND CERTAIN ORNAMENTAL TREES.—This section shall not apply to—

(A) trees raised, harvested, or grown by the taxpayer other than trees described in clause (ii) of subsection (e)(4)(B) (after application of the last sentence thereof), and

(B) any real property underlying such trees.

(6) COORDINATION WITH SECTION 59(E).—Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof.

(7) COORDINATION WITH SECTION 168(K)(5).—This section shall not apply to any amount allowed as a deduction by reason of section 168(k)(5) (relating to special rules for certain plants bearing fruits and nuts).

(d) EXCEPTION FOR FARMING BUSINESSES.—

(1) SECTION NOT TO APPLY TO CERTAIN PROPERTY.—

(A) IN GENERAL.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

(i) Any animal.

(ii) Any plant which has a preproductive period of 2 years or less.

(B) EXCEPTION FOR TAXPAYERS REQUIRED TO USE ACCRUAL METHOD.—Subparagraph (A) shall not apply to any corporation, partnership, or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3).

(2) TREATMENT OF CERTAIN PLANTS LOST BY REASON OF CASUALTY.—

(A) IN GENERAL.—If plants bearing an edible crop for human consumption were lost or damaged (while in the hands of the taxpayer) by reason of freezing temperatures, disease, drought, pests, or casualty, this section shall not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States).

(B) SPECIAL RULE FOR PERSON WITH MINORITY INTEREST WHO MATERIALLY PARTICIPATES.—Subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(i) the taxpayer described in subparagraph (A) has an equity interest of more than 50 percent in the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred, and

(ii) such other person holds any part of the remaining equity interest and materially participates in the planting, maintenance, cultivation, or development of the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred.

The determination of whether an individual materially participates in any activity shall be made in a manner similar to the manner in which such determination is made under section 2032A(e)(6).

(C) SPECIAL TEMPORARY RULE FOR CITRUS PLANTS LOST BY REASON OF CASUALTY.—

(i) IN GENERAL.—In the case of the replanting of citrus plants, subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(I) the taxpayer described in subparagraph (A) has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which such amounts were paid or incurred and such other person holds any part of the remaining equity interest, or

(II) such other person acquired the entirety of such taxpayer's equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

(ii) TERMINATION.—Clause (i) shall not apply to any cost paid or incurred after the date which is 10 years after the date of the enactment of the Tax Cuts and Jobs Act.

(3) ELECTION TO HAVE THIS SECTION NOT APPLY.—

(A) IN GENERAL.—If a taxpayer makes an election under this paragraph, this section shall not apply to any plant produced in any farming business carried on by such taxpayer.

(B) CERTAIN PERSONS NOT ELIGIBLE.—No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3).

(C) SPECIAL RULE FOR CITRUS AND ALMOND GROWERS.—An election under this paragraph shall not apply with respect to any item which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof) and which is incurred before the close of the 4th taxable year beginning with the taxable year in which the trees were planted. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in 1 taxable year shall be treated separately from the portion of such grove planted in another taxable year.

(D) ELECTION.—Unless the Secretary otherwise consents, an election under this paragraph may be made only for the taxpayer's 1st taxable year which begins after December

31, 1986, and during which the taxpayer engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(e) DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF SUBSECTION (D).—

(1) RECAPTURE OF EXPENSED AMOUNTS ON DISPOSITION.—

(A) IN GENERAL.—In the case of any plant with respect to which amounts would have been capitalized under subsection (a) but for an election under subsection (d)(3)—

(i) such plant (if not otherwise section 1245 property) shall be treated as section 1245 property, and

(ii) for purposes of section 1245, the recapture amount shall be treated as a deduction allowed for depreciation with respect to such property.

(B) RECAPTURE AMOUNT.—For purposes of subparagraph (A), the term "recapture amount" means any amount allowable as a deduction to the taxpayer which, but for an election under subsection (d)(3), would have been capitalized with respect to the plant.

(2) EFFECTS OF ELECTION ON DEPRECIATION.—

(A) IN GENERAL.—If the taxpayer (or any related person) makes an election under subsection (d)(3), the provisions of section 168(g)(2) (relating to alternative depreciation) shall apply to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year during which any such election is in effect.

(B) RELATED PERSON.—For purposes of subparagraph (A), the term "related person" means—

(i) the taxpayer and members of the taxpayer's family,

(ii) any corporation (including an S corporation) if 50 percent or more (in value) of the stock of such corporation is owned (directly or through the application of section 318) by the taxpayer or members of the taxpayer's family,

(iii) a corporation and any other corporation which is a member of the same controlled group described in section 1563(a)(1), and

(iv) any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(C) MEMBERS OF FAMILY.—For purposes of this paragraph, the term "family" means the taxpayer, the spouse of the taxpayer, and any of their children who have not attained age 18 before the close of the taxable year.

(3) PREPRODUCTIVE PERIOD.—

(A) IN GENERAL.—For purposes of this section, the term "preproductive period" means—

(i) in the case of a plant which will have more than 1 crop or yield, the period before the 1st marketable crop or yield from such plant, or

(ii) in the case of any other plant, the period before such plant is reasonably expected to be disposed of.

For purposes of this subparagraph, use by the taxpayer in a farming business of any supply produced in such business shall be treated as a disposition.

(B) RULE FOR DETERMINING PERIOD.—In the case of a plant grown in commercial quantities in the United States, the preproductive period for such plant if grown in the United States shall be based on the nationwide weighted average preproductive period for such plant.

(4) FARMING BUSINESS.—For purposes of this section—

(A) IN GENERAL.—The term "farming business" means the trade or business of farming.

(B) CERTAIN TRADES AND BUSINESSES INCLUDED.—The term "farming business" shall include the trade or business of—

(i) operating a nursery or sod farm, or

(ii) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of clause (ii), an evergreen tree which is more than 6 years old at the time severed from the roots shall not be treated as an ornamental tree.

(5) CERTAIN INVENTORY VALUATION METHODS PERMITTED.—The Secretary shall by regulations permit the taxpayer to use reasonable inventory valuation methods to compute the amount required to be capitalized under subsection (a) in the case of any plant.

(f) SPECIAL RULES FOR ALLOCATION OF INTEREST TO PROPERTY PRODUCED BY THE TAXPAYER.—

(1) INTEREST CAPITALIZED ONLY IN CERTAIN CASES.—Subsection (a) shall only apply to interest costs which are—

(A) paid or incurred during the production period, and

(B) allocable to property which is described in subsection (b)(1) and which has—

(i) a long useful life,

(ii) an estimated production period exceeding 2 years, or

(iii) an estimated production period exceeding 1 year and a cost exceeding $1,000,000.

(2) ALLOCATION RULES.—

(A) IN GENERAL.—In determining the amount of interest required to be capitalized under subsection (a) with respect to any property—

(i) interest on any indebtedness directly attributable to production expenditures with respect to such property shall be assigned to such property, and

(ii) interest on any other indebtedness shall be assigned to such property to the extent that the taxpayer's interest costs could have been reduced if production expenditures (not attributable to indebtedness described in clause (i)) had not been incurred.

(B) EXCEPTION FOR QUALIFIED RESIDENCE INTEREST.—Subparagraph (A) shall not apply to any qualified residence interest (within the meaning of section 163(h)).

(C) SPECIAL RULE FOR FLOW-THROUGH ENTITIES.—Except as provided in regulations, in the case of any flow-through

entity, this paragraph shall be applied first at the entity level and then at the beneficiary level.

(3) INTEREST RELATING TO PROPERTY USED TO PRODUCE PROPERTY.—This subsection shall apply to any interest on indebtedness allocable (as determined under paragraph (2)) to property used to produce property to which this subsection applies to the extent such interest is allocable (as so determined) to the produced property.

(4) EXEMPTION FOR AGING PROCESS OF BEER, WINE, AND DISTILLED SPIRITS.—

(A) IN GENERAL.—For purposes of this subsection, the production period shall not include the aging period for—

(i) beer (as defined in section 5052(a)),

(ii) wine (as described in section 5041(a)), or

(iii) distilled spirits (as defined in section 5002(a)(8)), except such spirits that are unfit for use for beverage purposes.

(B) TERMINATION.—This paragraph shall not apply to interest costs paid or accrued after **[**December 31, 2019**]** *December 31, 2020*.

(5) DEFINITIONS.—For purposes of this subsection—

(A) LONG USEFUL LIFE.—Property has a long useful life if such property is—

(i) real property, or

(ii) property with a class life of 20 years or more (as determined under section 168).

(B) PRODUCTION PERIOD.—The term "production period" means, when used with respect to any property, the period—

(i) beginning on the date on which production of the property begins, and

(ii) except as provided in paragraph (4), ending on the date on which the property is ready to be placed in service or is ready to be held for sale.

(C) PRODUCTION EXPENDITURES.—The term "production expenditures" means the costs (whether or not incurred during the production period) required to be capitalized under subsection (a) with respect to the property.

(g) PRODUCTION.—For purposes of this section—

(1) IN GENERAL.—The term "produce" includes construct, build, install, manufacture, develop, or improve.

(2) TREATMENT OF PROPERTY PRODUCED UNDER CONTRACT FOR THE TAXPAYER.—The taxpayer shall be treated as producing any property produced for the taxpayer under a contract with the taxpayer; except that only costs paid or incurred by the taxpayer (whether under such contract or otherwise) shall be taken into account in applying subsection (a) to the taxpayer.

(h) EXEMPTION FOR FREE LANCE AUTHORS, PHOTOGRAPHERS, AND ARTISTS.—

(1) IN GENERAL.—Nothing in this section shall require the capitalization of any qualified creative expense.

(2) QUALIFIED CREATIVE EXPENSE.—For purposes of this subsection, the term "qualified creative expense" means any expense—

(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

(3) DEFINITIONS.—For purposes of this subsection—

(A) WRITER.—The term "writer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

(B) PHOTOGRAPHER.—The term "photographer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

(C) ARTIST.—

(i) IN GENERAL.—The term "artist" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

(ii) CRITERIA.—In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

(I) The originality and uniqueness of the item created (or to be created).

(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

(D) TREATMENT OF CERTAIN CORPORATIONS.—

(i) IN GENERAL.—If—

(I) substantially all of the stock of a corporation is owned by a qualified employee-owner and members of his family (as defined in section 267(c)(4)), and

(II) the principal activity of such corporation is performance of personal services directly related to the activities of the qualified employee-owner and such services are substantially performed by the qualified employee-owner,

this subsection shall apply to any expense of such corporation which directly relates to the activities of such employee-owner in the same manner as if such expense were incurred by such employee-owner.

(ii) QUALIFIED EMPLOYEE-OWNER.—For purposes of this subparagraph, the term "qualified employee-owner" means any individual who is an employee-owner of the corporation (as defined in section 269A(b)(2)) and who is a writer, photographer, or artist.

(i) EXEMPTION FOR CERTAIN SMALL BUSINESSES.—

(1) IN GENERAL.—In the case of any taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3)) which meets the gross receipts test of section 448(c) for any taxable year, this section shall not apply with respect to such taxpayer for such taxable year.

(2) APPLICATION OF GROSS RECEIPTS TEST TO INDIVIDUALS, ETC..—In the case of any taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if each trade or business of such taxpayer were a corporation or partnership.

(3) COORDINATION WITH SECTION 481.—Any change in method of accounting made pursuant to this subsection shall be treated for purposes of section 481 as initiated by the taxpayer and made with the consent of the Secretary.

(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section, and

(2) regulations providing for simplified procedures for the application of this section in the case of property described in subsection (b)(2).

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Subchapter E—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

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PART II—METHODS OF ACCOUNTING

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Subpart B—TAXABLE YEAR FOR WHICH ITEMS OF GROSS INCOME INCLUDED

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SEC. 451. GENERAL RULE FOR TAXABLE YEAR OF INCLUSION.

(a) GENERAL RULE.—The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

(b) INCLUSION NOT LATER THAN FOR FINANCIAL ACCOUNTING PURPOSES.—

(1) INCOME TAKEN INTO ACCOUNT IN FINANCIAL STATEMENT.—

(A) IN GENERAL.—In the case of a taxpayer the taxable income of which is computed under an accrual method of accounting, the all events test with respect to any item of gross income (or portion thereof) shall not be treated as met any later than when such item (or portion thereof) is taken into account as revenue in—

(i) an applicable financial statement of the taxpayer, or

(ii) such other financial statement as the Secretary may specify for purposes of this subsection.

(B) EXCEPTION.—This paragraph shall not apply to—

(i) a taxpayer which does not have a financial statement described in clause (i) or (ii) of subparagraph (A) for a taxable year, or

(ii) any item of gross income in connection with a mortgage servicing contract.

(C) ALL EVENTS TEST.—For purposes of this section, the all events test is met with respect to any item of gross income if all the events have occurred which fix the right to receive such income and the amount of such income can be determined with reasonable accuracy.

(2) COORDINATION WITH SPECIAL METHODS OF ACCOUNTING.—Paragraph (1) shall not apply with respect to any item of gross income for which the taxpayer uses a special method of accounting provided under any other provision of this chapter, other than any provision of part V of subchapter P (except as provided in clause (ii) of paragraph (1)(B)).

(3) APPLICABLE FINANCIAL STATEMENT.—For purposes of this subsection, the term "applicable financial statement" means—

(A) a financial statement which is certified as being prepared in accordance with generally accepted accounting principles and which is—

(i) a 10–K (or successor form), or annual statement to shareholders, required to be filed by the taxpayer with the United States Securities and Exchange Commission,

(ii) an audited financial statement of the taxpayer which is used for—

(I) credit purposes,

(II) reporting to shareholders, partners, or other proprietors, or to beneficiaries, or

(III) any other substantial nontax purpose,

but only if there is no statement of the taxpayer described in clause (i), or

(iii) filed by the taxpayer with any other Federal agency for purposes other than Federal tax purposes, but only if there is no statement of the taxpayer described in clause (i) or (ii),

(B) a financial statement which is made on the basis of international financial reporting standards and is filed by the taxpayer with an agency of a foreign government which is equivalent to the United States Securities and Exchange Commission and which has reporting standards not less stringent than the standards required by such Commission, but only if there is no statement of the taxpayer described in subparagraph (A), or

(C) a financial statement filed by the taxpayer with any other regulatory or governmental body specified by the Secretary, but only if there is no statement of the taxpayer described in subparagraph (A) or (B).

(4) ALLOCATION OF TRANSACTION PRICE.—For purposes of this subsection, in the case of a contract which contains multiple performance obligations, the allocation of the transaction price to each performance obligation shall be equal to the amount allocated to each performance obligation for purposes of including such item in revenue in the applicable financial statement of the taxpayer.

(5) GROUP OF ENTITIES.—For purposes of paragraph (1), if the financial results of a taxpayer are reported on the applicable financial statement (as defined in paragraph (3)) for a group of entities, such statement shall be treated as the applicable financial statement of the taxpayer.

(c) TREATMENT OF ADVANCE PAYMENTS.—

(1) IN GENERAL.—A taxpayer which computes taxable income under the accrual method of accounting, and receives any advance payment during the taxable year, shall—

(A) except as provided in subparagraph (B), include such advance payment in gross income for such taxable year, or

(B) if the taxpayer elects the application of this subparagraph with respect to the category of advance payments to which such advance payment belongs, the taxpayer shall—

(i) to the extent that any portion of such advance payment is required under subsection (b) to be included in gross income in the taxable year in which such payment is received, so include such portion, and

(ii) include the remaining portion of such advance payment in gross income in the taxable year following the taxable year in which such payment is received.

(2) ELECTION.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the election under paragraph (1)(B) shall be made at such time, in such form and manner, and with respect to such categories of advance payments, as the Secretary may provide.

(B) PERIOD TO WHICH ELECTION APPLIES.—An election under paragraph (1)(B) shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to revoke such election. For purposes of this title, the computation of taxable income under an election made under paragraph (1)(B) shall be treated as a method of accounting.

(3) TAXPAYERS CEASING TO EXIST.—Except as otherwise provided by the Secretary, the election under paragraph (1)(B) shall not apply with respect to advance payments received by the taxpayer during a taxable year if such taxpayer ceases to exist during (or with the close of) such taxable year.

(4) ADVANCE PAYMENT.—For purposes of this subsection—

(A) IN GENERAL.—The term "advance payment" means any payment—

(i) the full inclusion of which in the gross income of the taxpayer for the taxable year of receipt is a permissible method of accounting under this section (determined without regard to this subsection),

(ii) any portion of which is included in revenue by the taxpayer in a financial statement described in clause (i) or (ii) of subsection (b)(1)(A) for a subsequent taxable year, and

(iii) which is for goods, services, or such other items as may be identified by the Secretary for purposes of this clause.

(B) EXCLUSIONS.—Except as otherwise provided by the Secretary, such term shall not include—

(i) rent,

(ii) insurance premiums governed by subchapter L,

(iii) payments with respect to financial instruments,

(iv) payments with respect to warranty or guarantee contracts under which a third party is the primary obligor,

(v) payments subject to section 871(a), 881, 1441, or 1442,

(vi) payments in property to which section 83 applies, and

(vii) any other payment identified by the Secretary for purposes of this subparagraph.

(C) RECEIPT.—For purposes of this subsection, an item of gross income is received by the taxpayer if it is actually or constructively received, or if it is due and payable to the taxpayer.

(D) ALLOCATION OF TRANSACTION PRICE.—For purposes of this subsection, rules similar to subsection (b)(4) shall apply.

(d) SPECIAL RULE IN CASE OF DEATH.—In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued only by reason of the death of the taxpayer shall not be included in computing taxable income for the period in which falls the date of the taxpayer's death.

(e) SPECIAL RULE FOR EMPLOYEE TIPS.—For purposes of subsection (a), tips included in a written statement furnished an employer by an employee pursuant to section 6053(a) shall be deemed to be received at the time the written statement including such tips is furnished to the employer.

(f) SPECIAL RULE FOR CROP INSURANCE PROCEEDS OR DISASTER PAYMENTS.—In the case of insurance proceeds received as a result of destruction or damage to crops, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such proceeds in income for the taxable year following the taxable year of destruction or damage, if he establishes that, under his practice, income from such crops would have been reported in a following taxable year. For purposes of the preceding sentence, payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988, as a result of (1) destruction or damage to crops caused by drought, flood, or any other natural disaster, or (2) the inability to plant crops because of such a natural disaster shall be treated as insurance proceeds received as a result of destruction or damage to crops. An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary prescribes.

(g) SPECIAL RULE FOR PROCEEDS FROM LIVESTOCK SOLD ON ACCOUNT OF DROUGHT, FLOOD, OR OTHER WEATHER-RELATED CONDITIONS.—

(1) IN GENERAL.—In the case of income derived from the sale or exchange of livestock in excess of the number the taxpayer would sell if he followed his usual business practices, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such income for the taxable year following the taxable year in which such sale or exchange occurs if he establishes that, under his usual business practices, the sale or exchange would not have occurred in the taxable year in which it occurred if it were not for drought, flood, or other weather-related conditions, and that such conditions had resulted in the area being designated as eligible for assistance by the Federal Government.

(2) LIMITATION.—Paragraph (1) shall apply only to a taxpayer whose principal trade or business is farming (within the meaning of section 6420(c)(3)).

(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.

(h) SPECIAL RULE FOR UTILITY SERVICES.—

(1) IN GENERAL.—In the case of a taxpayer the taxable income of which is computed under an accrual method of accounting, any income attributable to the sale or furnishing of utility services to customers shall be included in gross income not later than the taxable year in which such services are provided to such customers.

(2) DEFINITION AND SPECIAL RULE.—For purposes of this subsection—

(A) UTILITY SERVICES.—The term "utility services" includes—

(i) the providing of electrical energy, water, or sewage disposal,

(ii) the furnishing of gas or steam through a local distribution system,

(iii) telephone or other communication services, and

(iv) the transporting of gas or steam by pipeline.

(B) YEAR IN WHICH SERVICES PROVIDED.—The taxable year in which services are treated as provided to customers shall not, in any manner, be determined by reference to—

(i) the period in which the customers' meters are read, or

(ii) the period in which the taxpayer bills (or may bill) the customers for such service.

(i) TREATMENT OF INTEREST ON FROZEN DEPOSITS IN CERTAIN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—In the case of interest credited during any calendar year on a frozen deposit in a qualified financial institution, the amount of such interest includible in the gross income of a qualified individual shall not exceed the sum of—

(A) the net amount withdrawn by such individual from such deposit during such calendar year, and

(B) the amount of such deposit which is withdrawable as of the close of the taxable year (determined without regard to any penalty for premature withdrawals of a time deposit).

(2) INTEREST TESTED EACH YEAR.—Any interest not included in gross income by reason of paragraph (1) shall be treated as credited in the next calendar year.

(3) DEFERRAL OF INTEREST DEDUCTION.—No deduction shall be allowed to any qualified financial institution for interest not includible in gross income under paragraph (1) until such interest is includible in gross income.

(4) FROZEN DEPOSIT.—For purposes of this subsection, the term "frozen deposit" means any deposit if, as of the close of the calendar year, any portion of such deposit may not be withdrawn because of—

(A) the bankruptcy or insolvency of the qualified financial institution (or threat thereof), or

(B) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in the State.

(5) OTHER DEFINITIONS.—For purposes of this subsection, the terms "qualified individual", "qualified financial institution", and "deposit" have the same respective meanings as when used in section 165(*l*).

(j) SPECIAL RULE FOR CASH OPTIONS FOR RECEIPT OF QUALIFIED PRIZES.—

(1) IN GENERAL.—For purposes of this title, in the case of an individual on the cash receipts and disbursements method of accounting, a qualified prize option shall be disregarded in determining the taxable year for which any portion of the qualified prize is properly includible in gross income of the taxpayer.

(2) QUALIFIED PRIZE OPTION; QUALIFIED PRIZE.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified prize option" means an option which—

(i) entitles an individual to receive a single cash payment in lieu of receiving a qualified prize (or remaining portion thereof), and

(ii) is exercisable not later than 60 days after such individual becomes entitled to the qualified prize.

(B) QUALIFIED PRIZE.—The term "qualified prize" means any prize or award which—

(i) is awarded as a part of a contest, lottery, jackpot, game, or other similar arrangement,

(ii) does not relate to any past services performed by the recipient and does not require the recipient to perform any substantial future service, and

(iii) is payable over a period of at least 10 years.

(3) PARTNERSHIP, ETC..—The Secretary shall provide for the application of this subsection in the case of a partnership or other pass-through entity consisting entirely of individuals described in paragraph (1).

(k) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

(1) IN GENERAL.—In the case of any qualifying electric transmission transaction for which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

(ii) any portion of such cost previously taken into account under this subsection, and

(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

(2) QUALIFIED GAIN.—For purposes of this subsection, the term "qualified gain" means, with respect to any qualifying electric transmission transaction in any taxable year—

(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term "qualifying electric transmission transaction" means any sale or other disposition before January 1, 2008 (before ⟦January 1, 2018⟧ *January 1, 2021*, in the case of a qualified electric utility), of—

(A) property used in the trade or business of providing electric transmission services, or

(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term "independent transmission company" means—

(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

(B) a person—

(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the date which is 4 years after the close of the taxable year in which the transaction occurs, or

(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection:

(A) IN GENERAL.—The term "exempt utility property" means property used in the trade or business of—

(i) generating, transmitting, distributing, or selling electricity, or

(ii) producing, transmitting, distributing, or selling natural gas.

(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

(C) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The term "exempt utility property" shall not include any property which is located outside the United States.

(6) QUALIFIED ELECTRIC UTILITY.—For purposes of this subsection, the term "qualified electric utility" means a person that, as of the date of the qualifying electric transmission transaction, is vertically integrated, in that it is both—

(A) a transmitting utility (as defined in section 3(23) of the Federal Power Act (16 U.S.C. 796(23))) with respect to the transmission facilities to which the election under this subsection applies, and

(B) an electric utility (as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22))).

(7) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

(8) TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

(9) PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

(10) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

(11) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.

Subchapter N—TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

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PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

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Subpart F—CONTROLLED FOREIGN CORPORATIONS

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SEC. 954. FOREIGN BASE COMPANY INCOME.

(a) FOREIGN BASE COMPANY INCOME.—For purposes of section 952(a)(2), the term "foreign base company income" means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)), and

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)).

(b) EXCLUSION AND SPECIAL RULES.—

(3) DE MINIMIS, ETC., RULES.—For purposes of subsection (a) and section 953—

(A) DE MINIMIS RULE.—If the sum of foreign base company income (determined without regard to paragraph (5))

and the gross insurance income for the taxable year is less than the lesser of—

(i) 5 percent of gross income, or

(ii) $1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) FOREIGN BASE COMPANY INCOME AND INSURANCE INCOME IN EXCESS OF 70 PERCENT OF GROSS INCOME.—If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) GROSS INSURANCE INCOME.—For purposes of subparagraphs (A) and (B), the term "gross insurance income" means any item of gross income taken into account in determining insurance income under section 953.

(4) EXCEPTION FOR CERTAIN INCOME SUBJECT TO HIGH FOREIGN TAXES.—For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11.

(5) DEDUCTIONS TO BE TAKEN INTO ACCOUNT.—For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, and the foreign base company services income shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(c) FOREIGN PERSONAL HOLDING COMPANY INCOME.—

(1) IN GENERAL.—For purposes of subsection (a)(1), the term "foreign personal holding company income" means the portion of the gross income which consists of:

(A) DIVIDENDS, ETC..—Dividends, interest, royalties, rents, and annuities.

(B) CERTAIN PROPERTY TRANSACTIONS.—The excess of gains over losses from the sale or exchange of property—

(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated

as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year,

(ii) which is an interest in a trust, partnership, or REMIC, or

(iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph.

(C) COMMODITIES TRANSACTIONS.—The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

(i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),

(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or

(iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) FOREIGN CURRENCY GAINS.—The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) INCOME EQUIVALENT TO INTEREST.—Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) INCOME FROM NOTIONAL PRINCIPAL CONTRACTS.—

(i) IN GENERAL.—Net income from notional principal contracts.

(ii) COORDINATION WITH OTHER CATEGORIES OF FOREIGN PERSONAL HOLDING COMPANY INCOME.—Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) PAYMENTS IN LIEU OF DIVIDENDS.—Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) PERSONAL SERVICE CONTRACTS.—(i) Amounts received under a contract under which the corporation is to furnish personal services if—

(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(2) EXCEPTION FOR CERTAIN AMOUNTS.—

(A) RENTS AND ROYALTIES DERIVED IN ACTIVE BUSINESS.—Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) CERTAIN EXPORT FINANCING.—Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) EXCEPTION FOR DEALERS.—Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both main-

tains its principal office and conducts substantial business activity).

(3) CERTAIN INCOME RECEIVED FROM RELATED PERSONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "foreign personal holding company income" does not include—

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) EXCEPTION NOT TO APPLY TO ITEMS WHICH REDUCE SUBPART F INCOME.—Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) EXCEPTION FOR CERTAIN DIVIDENDS.—Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i).

(4) LOOK-THRU RULE FOR CERTAIN PARTNERSHIP SALES.—

(A) IN GENERAL.—In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term "25-percent owner" means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be

treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term "commodity hedging transaction" means any transaction with respect to a commodity if such transaction—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting "ordinary property or property described in section 1231(b)" for "ordinary property", and

(III) by substituting "controlled foreign corporation" for "taxpayer" each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7).

(B) TREATMENT OF DEALER ACTIVITIES UNDER PARAGRAPH (1)(C).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.—

(A) IN GENERAL.—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as

may be necessary or appropriate to prevent the abuse of the purposes of this paragraph.

(B) EXCEPTION.—Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) APPLICATION.—Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before [January 1, 2020] *January 1, 2021*, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(d) FOREIGN BASE COMPANY SALES INCOME.—

(1) IN GENERAL.—For purposes of subsection (a)(2), the term "foreign base company sales income" means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

For purposes of this subsection, personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

(2) CERTAIN BRANCH INCOME.—For purposes of determining foreign base company sales income in situations in which the carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corporation has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) RELATED PERSON DEFINED.—For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply.

(4) SPECIAL RULE FOR CERTAIN TIMBER PRODUCTS.—For purposes of subsection (a)(2), the term "foreign base company sales income" includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

(A) the sale of any unprocessed timber referred to in section 865(b), or

(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph.

(e) FOREIGN BASE COMPANY SERVICES INCOME.—

(1) IN GENERAL.—For purposes of subsection (a)(3), the term "foreign base company services income" means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

(2) EXCEPTION.—Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

(B) an offer or effort to sell or exchange such property.

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).

(h) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—

(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified

banking or financing income of an eligible controlled foreign corporation.

(2) ELIGIBLE CONTROLLED FOREIGN CORPORATION.—For purposes of this subsection—

(A) IN GENERAL.—The term "eligible controlled foreign corporation" means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) PREDOMINANTLY ENGAGED.—A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

(3) QUALIFIED BANKING OR FINANCING INCOME.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified banking or financing income" means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation,

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country, and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

(B) LIMITATION ON NONBANKING AND NONSECURITIES BUSINESSES.—No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph

(2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

(C) SUBSTANTIAL ACTIVITY REQUIREMENT FOR CROSS BORDER INCOME.—The term "qualified banking or financing income" shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) DETERMINATIONS MADE SEPARATELY.—For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation, and

(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

(E) DIRECT CONDUCT OF ACTIVITIES.—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

(ii) the activity is performed in the home country of the related person, and

(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.

(4) LENDING OR FINANCE BUSINESS.—For purposes of this subsection, the term "lending or finance business" means the business of—

(A) making loans,

(B) purchasing or discounting accounts receivable, notes, or installment obligations,

(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets),

(D) issuing letters of credit or providing guarantees,

(E) providing charge and credit card services, or

(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

(i) the corporation (or qualified business unit) rendering services or making facilities available, or

(ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) CUSTOMER.—The term "customer" means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) HOME COUNTRY.—Except as provided in regulations—

(i) CONTROLLED FOREIGN CORPORATION.—The term "home country" means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) QUALIFIED BUSINESS UNIT.—The term "home country" means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) LOCATED.—The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) QUALIFIED BUSINESS UNIT.—The term "qualified business unit" has the meaning given such term by section 989(a).

(E) RELATED PERSON.—The term "related person" has the meaning given such term by subsection (d)(3).

(6) COORDINATION WITH EXCEPTION FOR DEALERS.—Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) ANTI-ABUSE RULES.—For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection,

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in reg-

ular and continuous transactions with customers which are not related persons,

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection, and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(i) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF INSURANCE BUSINESS.—

(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) QUALIFIED INSURANCE INCOME.—The term "qualified insurance income" means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) PRINCIPLES FOR DETERMINING INSURANCE INCOME.—Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) METHODS FOR DETERMINING UNEARNED PREMIUMS AND RESERVES.—For purposes of paragraph (2)(A)—

(A) PROPERTY AND CASUALTY CONTRACTS.—The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) LIFE INSURANCE AND ANNUITY CONTRACTS.—

(i) IN GENERAL.—Except as provided in clause (ii), the amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(I) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(II) the reserve determined under paragraph (5).

(ii) RULING REQUEST, ETC..—The amount of the reserve under clause (i) shall be the foreign statement reserve for the contract (less any catastrophe, deficiency, equalization, or similar reserves), if, pursuant to a ruling request submitted by the taxpayer or as provided in published guidance, the Secretary determines that the factors taken into account in determining the foreign statement reserve provide an appropriate means of measuring income.

(C) LIMITATION ON RESERVES.—In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) AMOUNT OF RESERVE.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate,

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall apply, and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

Subchapter U—DESIGNATION AND TREATMENT OF EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RURAL DEVELOPMENT INVESTMENT AREAS

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PART I—DESIGNATION

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SEC. 1391. DESIGNATION PROCEDURE.

(a) IN GENERAL.—From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

(b) NUMBER OF DESIGNATIONS.—

(1) ENTERPRISE COMMUNITIES.—The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

(2) EMPOWERMENT ZONES.—The appropriate Secretaries may designate in the aggregate 11 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 8 may be designated in urban areas and not more than 3 may be designated in rural areas. If 8 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban

areas in such a manner that the aggregate population of all such zones does not exceed 1,000,000.

(c) PERIOD DESIGNATIONS MAY BE MADE.—A designation may be made under subsection (a) only after 1993 and before 1996.

(d) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

(1) IN GENERAL.—Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A)(i) in the case of an empowerment zone, [December 31, 2017] *December 31, 2020*, or

(ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,

(B) the termination date designated by the State and local governments as provided for in their nomination, or

(C) the date the appropriate Secretary revokes the designation.

(2) REVOCATION OF DESIGNATION.—The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

(e) LIMITATIONS ON DESIGNATIONS.—No area may be designated under this section unless—

(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

(2) such State or States and the local governments have the authority—

(A) to nominate the area for designation under this section, and

(B) to provide the assurances described in paragraph (3),

(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

(f) APPLICATION.—No area may be designated under this section unless the application for such designation—

(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

(3) includes such other information as may be required by the appropriate Secretary.

(g) ADDITIONAL DESIGNATIONS PERMITTED.—

(1) IN GENERAL.—In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

(2) PERIOD DESIGNATIONS MAY BE MADE AND TAKE EFFECT.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC..—

(A) POVERTY RATE REQUIREMENT.—

(i) IN GENERAL.—A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the

poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

(ii) TREATMENT OF CENSUS TRACTS WITH SMALL POPULATIONS.—A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

(iii) EXCEPTION FOR DEVELOPABLE SITES.—Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

(iv) CERTAIN PROVISIONS NOT TO APPLY.—Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

(v) SPECIAL RULE FOR RURAL EMPOWERMENT ZONE.—The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

(B) SIZE LIMITATION.—

(i) IN GENERAL.—The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

(ii) SPECIAL RULE FOR RURAL AREAS.—If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

(C) AGGREGATE POPULATION LIMITATION.—The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1).

(D) PREVIOUSLY DESIGNATED ENTERPRISE COMMUNITIES MAY BE INCLUDED.—Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

(E) INDIAN RESERVATIONS MAY BE NOMINATED.—

(i) IN GENERAL.—Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

(ii) SPECIAL RULE.—An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of the Interior).

(h) ADDITIONAL DESIGNATIONS PERMITTED.—

(1) IN GENERAL.—In addition to the areas designated under subsections (a) and (g), the appropriate Secretaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

(2) PERIOD DESIGNATIONS MAY BE MADE AND TAKE EFFECT.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002.

(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC..—The rules of subsection (g)(3) shall apply to designations under this subsection.

(4) EMPOWERMENT ZONES WHICH BECOME RENEWAL COMMUNITIES.—The number of areas which may be designated as empowerment zones under this subsection shall be increased by 1 for each area which ceases to be an empowerment zone by reason of section 1400E(e). Each additional area designated by reason of the preceding sentence shall have the same urban or rural character as the area it is replacing.

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PART I—DESIGNATION

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SEC. 1391. DESIGNATION PROCEDURE.

(a) IN GENERAL.—From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

(b) NUMBER OF DESIGNATIONS.—

(1) ENTERPRISE COMMUNITIES.—The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

(2) EMPOWERMENT ZONES.—The appropriate Secretaries may designate in the aggregate 11 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 8 may be designated in urban areas and not more than 3 may be designated in rural areas. If 8 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area

which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 1,000,000.

(c) PERIOD DESIGNATIONS MAY BE MADE.—A designation may be made under subsection (a) only after 1993 and before 1996.

(d) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

(1) IN GENERAL.—Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A)(i) in the case of an empowerment zone, ⟦December 31, 2017⟧ *December 31, 2020*, or

(ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,

(B) the termination date designated by the State and local governments as provided for in their nomination, or

(C) the date the appropriate Secretary revokes the designation.

(2) REVOCATION OF DESIGNATION.—The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

(e) LIMITATIONS ON DESIGNATIONS.—No area may be designated under this section unless—

(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

(2) such State or States and the local governments have the authority—

(A) to nominate the area for designation under this section, and

(B) to provide the assurances described in paragraph (3),

(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

(f) APPLICATION.—No area may be designated under this section unless the application for such designation—

(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

(3) includes such other information as may be required by the appropriate Secretary.

(g) ADDITIONAL DESIGNATIONS PERMITTED.—

(1) IN GENERAL.—In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

(2) PERIOD DESIGNATIONS MAY BE MADE AND TAKE EFFECT.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC..—

(A) POVERTY RATE REQUIREMENT.—

(i) IN GENERAL.—A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

(ii) TREATMENT OF CENSUS TRACTS WITH SMALL POPULATIONS.—A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

(iii) EXCEPTION FOR DEVELOPABLE SITES.—Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

(iv) CERTAIN PROVISIONS NOT TO APPLY.—Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

(v) SPECIAL RULE FOR RURAL EMPOWERMENT ZONE.—The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

(B) SIZE LIMITATION.—

(i) IN GENERAL.—The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

(ii) SPECIAL RULE FOR RURAL AREAS.—If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

(C) AGGREGATE POPULATION LIMITATION.—The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1).

(D) PREVIOUSLY DESIGNATED ENTERPRISE COMMUNITIES MAY BE INCLUDED.—Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a)

that is also nominated for designation under this subsection.

(E) INDIAN RESERVATIONS MAY BE NOMINATED.—

(i) IN GENERAL.—Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

(ii) SPECIAL RULE.—An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of the Interior).

(h) ADDITIONAL DESIGNATIONS PERMITTED.—

(1) IN GENERAL.—In addition to the areas designated under subsections (a) and (g), the appropriate Secretaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

(2) PERIOD DESIGNATIONS MAY BE MADE AND TAKE EFFECT.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002.

(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC..—The rules of subsection (g)(3) shall apply to designations under this subsection.

(4) EMPOWERMENT ZONES WHICH BECOME RENEWAL COMMUNITIES.—The number of areas which may be designated as empowerment zones under this subsection shall be increased by 1 for each area which ceases to be an empowerment zone by reason of section 1400E(e). Each additional area designated by reason of the preceding sentence shall have the same urban or rural character as the area it is replacing.

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Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAX

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Subchapter A—ESTATES OF CITIZENS OR RESIDENTS

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PART II—CREDITS AGAINST TAX

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SEC. 2010. UNIFIED CREDIT AGAINST ESTATE TAX.

(a) GENERAL RULE.—A credit of the applicable credit amount shall be allowed to the estate of every decedent against the tax imposed by section 2001.

(b) ADJUSTMENT TO CREDIT FOR CERTAIN GIFTS MADE BEFORE 1977.—The amount of the credit allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976.

(c) APPLICABLE CREDIT AMOUNT.—

(1) IN GENERAL.—For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

(2) APPLICABLE EXCLUSION AMOUNT.—For purposes of this subsection, the applicable exclusion amount is the sum of—

(A) the basic exclusion amount, and

(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

(3) BASIC EXCLUSION AMOUNT.—

(A) IN GENERAL.—For purposes of this subsection, the basic exclusion amount is $5,000,000.

(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall 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 such calendar year by substituting "calendar year 2010" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

(C) INCREASE IN BASIC EXCLUSION AMOUNT.—In the case of estates of decedents dying or gifts made after December 31, 2017, and before [January 1, 2026] *January 1, 2023*, subparagraph (A) shall be applied by substituting "$10,000,000" for "$5,000,000".

(4) DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying after December 31, 2010, the term "deceased spousal unused exclusion amount" means the lesser of—

(A) the basic exclusion amount, or

(B) the excess of—

(i) the applicable exclusion amount of the last such deceased spouse of such surviving spouse, over

(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

(5) SPECIAL RULES.—

(A) ELECTION REQUIRED.—A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

(B) EXAMINATION OF PRIOR RETURNS AFTER EXPIRATION OF PERIOD OF LIMITATIONS WITH RESPECT TO DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.

(d) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 2001.

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter B—COAL

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SEC. 4121. IMPOSITION OF TAX.

(a) TAX IMPOSED.—

(1) IN GENERAL.—There is hereby imposed on coal from mines located in the United States sold by the producer, a tax equal to the rate per ton determined under subsection (b).

(2) LIMITATION ON TAX.—The amount of the tax imposed by paragraph (1) with respect to a ton of coal shall not exceed the applicable percentage (determined under subsection (b)) of the price at which such ton of coal is sold by the producer.

(b) DETERMINATION OF RATES AND LIMITATION ON TAX.—For purposes of subsection (a)—

(1) the rate of tax on coal from underground mines shall be $1.10,

(2) the rate of tax on coal from surface mines shall be $.55, and

(3) the applicable percentage shall be 4.4 percent.

(c) TAX NOT TO APPLY TO LIGNITE.—The tax imposed by subsection (a) shall not apply in the case of lignite.

(d) DEFINITIONS.—For purposes of this subchapter—

(1) COAL FROM SURFACE MINES.—Coal shall be treated as produced from a surface mine if all of the geological matter above the coal being mined is removed before the coal is extracted from the earth. Coal extracted by auger shall be treated as coal from a surface mine.

(2) COAL FROM UNDERGROUND MINES.—Coal shall be treated as produced from an underground mine if it is not produced from a surface mine.

(3) UNITED STATES.—The term "United States" has the meaning given to it by paragraph (1) of section 638.

(4) TON.—The term "ton" means 2,000 pounds.

(e) REDUCTION IN AMOUNT OF TAX.—

(1) IN GENERAL.—Effective with respect to sales after the temporary increase termination date, subsection (b) shall be applied—

(A) by substituting "$.50" for "$1.10",

(B) by substituting "$.25" for "$.55", and

(C) by substituting "2 percent" for "4.4 percent".

(2) TEMPORARY INCREASE TERMINATION DATE.—For purposes of paragraph (1), the temporary increase termination date is the earlier of—

(A) ⟦December 31, 2018⟧ *December 31, 2020*, or

(B) the first December 31 after 2007 as of which there is—

(i) no balance of repayable advances made to the Black Lung Disability Trust Fund, and

(ii) no unpaid interest on such advances.

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CHAPTER 38—ENVIRONMENTAL TAXES

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Subchapter A—TAX ON PETROLEUM

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SEC. 4611. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax at the rate specified in subsection (c) on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) TAX ON CERTAIN USES AND EXPORTATION.—

(1) IN GENERAL.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax at the rate specified in subsection (c) is hereby imposed on such crude oil.

(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) RATE OF TAX.—

(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

(A) the Hazardous Substance Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

(2) RATES.—For purposes of paragraph (1)—

(A) the Hazardous Substance Superfund financing rate is 9.7 cents a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is—

(i) in the case of crude oil received or petroleum products entered before January 1, 2017, 8 cents a barrel, and

(ii) in the case of crude oil received or petroleum products entered after December 31, 2016, 9 cents a barrel.

(d) PERSONS LIABLE FOR TAX.—

(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996.

(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $3,500,000,000.—If on December 31, 1993, or December 31, 1994—

(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1994 or 1995, respectively, if no tax is imposed under this section and sections 4661 and 4671,

then no tax shall be imposed under this section (to the extent attributable to the Hazardous Substance Superfund financing rate) during 1994 or 1995, as the case may be.

(3) NO TAX IF AMOUNTS COLLECTED EXCEED $11,970,000,000.—

(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as

the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under this section (to the extent attributable to the Hazardous Substance Superfund financing rate) and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1995.

(B) TERMINATION IF $11,970,000,000 CREDITED BEFORE JANUARY 1, 1996.—If the Secretary estimates under subparagraph (A) that more than $11,970,000,000 will be credited to the Fund before January 1, 1996, the Hazardous Substance Superfund financing rate under this section shall not apply after the date on which (as estimated by the Secretary) $11,970,000,000 will be so credited to the Fund.

(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after April 1, 2006, or if later, the date which is 30 days after the last day of any calendar quarter for which the Secretary estimates that, as of the close of that quarter, the unobligated balance in the Oil Spill Liability Trust Fund is less than $2,000,000,000.

(2) TERMINATION.—The Oil Spill Liability Trust Fund financing rate shall not apply after [December 31, 2018] *December 31, 2020*.

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CHAPTER 42—PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

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Subchapter A—PRIVATE FOUNDATIONS

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SEC. 4940. EXCISE TAX BASED ON INVESTMENT INCOME.

(a) TAX-EXEMPT FOUNDATIONS.—There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to [2 percent] *1.39 percent* of the net investment income of such foundation for the taxable year.

(b) TAXABLE FOUNDATIONS.—There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

(c) NET INVESTMENT INCOME DEFINED.—

(1) IN GENERAL.—For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

(2) GROSS INVESTMENT INCOME.—For purposes of paragraph (1), the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

(3) DEDUCTIONS.—

(A) IN GENERAL.—For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

(B) MODIFICATIONS.—For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

(4) CAPITAL GAINS AND LOSSES.—For purposes of paragraph (1) in determining capital gain net income—

(A) There shall not be taken into account any gain or loss from the sale or other disposition of property to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers or carrybacks.

(D) Except to the extent provided by regulation, under rules similar to the rules of section 1031 (including the exception under subsection (a)(2) thereof), no gain or loss shall be taken into account with respect to any portion of property used for a period of not less than 1 year for a pur-

pose or function constituting the basis of the private foundation's exemption if the entire property is exchanged immediately following such period solely for property of like kind which is to be used primarily for a purpose or function constituting the basis for such foundation's exemption.

(5) TAX-EXEMPT INCOME.—For purposes of this section, net investment income shall be determined by applying section 103 (relating to State and local bonds) and section 265 (relating to expenses and interest relating to tax-exempt income).

(d) EXEMPTION FOR CERTAIN OPERATING FOUNDATIONS.—

(1) IN GENERAL.—No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

(2) EXEMPT OPERATING FOUNDATION.—For purposes of this subsection, the term "exempt operating foundation" means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

(3) DEFINITIONS.—For purposes of this subsection—

(A) PUBLICLY SUPPORTED.—A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

(B) DISQUALIFIED INDIVIDUAL.—The term "disqualified individual" means, with respect to any private foundation, an individual who is—

(i) a substantial contributor to the foundation,

(ii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

(iii) a member of the family of any individual described in clause (i) or (ii).

(C) SUBSTANTIAL CONTRIBUTOR.—The term "substantial contributor" means a person who is described in section 507(d)(2).

(D) FAMILY.—The term "family" has the meaning given to such term by section 4946(d).

(E) CONSTRUCTIVE OWNERSHIP.—The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (B)(ii).

[(e) REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—

[(1) IN GENERAL.—In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent".

[(2) REQUIREMENTS.—A private foundation meets the requirements of this paragraph for any taxable year if—

[(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

[(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

[(ii) 1 percent of the net investment income of such foundation for such taxable year, and

[(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

[(3) AVERAGE PERCENTAGE PAYOUT FOR BASE PERIOD.—For purposes of this subsection—

[(A) IN GENERAL.—The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

[(B) PERCENTAGE PAYOUT.—The term "percentage payout" means, with respect to any taxable year, the percentage determined by dividing—

[(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

[(ii) the assets of the private foundation for the taxable year.

[(C) SPECIAL RULE WHERE TAX REDUCED UNDER THIS SUBSECTION.—For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

[(4) BASE PERIOD.—For purposes of this subsection—

[(A) IN GENERAL.—The term "base period" means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

[(B) NEW PRIVATE FOUNDATIONS, ETC..—If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

[(5) OTHER DEFINITIONS.—For purposes of this subsection—

[(A) QUALIFYING DISTRIBUTION.—The term "qualifying distribution" has the meaning given such term by section 4942(g).

[(B) ASSETS.—The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

[(6) TREATMENT OF SUCCESSOR ORGANIZATIONS, ETC..—In the case of—

[(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

[(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.]

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Subchapter A—GALLONAGE AND OCCUPATIONAL TAXES

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PART I—GALLONAGE TAXES

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Subpart A—DISTILLED SPIRITS

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SEC. 5001. IMPOSITION, RATE, AND ATTACHMENT OF TAX.

(a) RATE OF TAX.—

(1) GENERAL.—There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of $13.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

(2) PRODUCTS CONTAINING DISTILLED SPIRITS.—All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, shall be considered and taxed as distilled spirits.

(3) WINES CONTAINING MORE THAN 24 PERCENT ALCOHOL BY VOLUME.—Wines containing more than 24 percent of alcohol by volume shall be taxed as distilled spirits.

(4) DISTILLED SPIRITS WITHDRAWN FREE OF TAX.—Any person who removes, sells, transports, or uses distilled spirits, withdrawn free of tax under section 5214(a) or section 7510, in violation of laws or regulations now or hereafter in force pertaining thereto, and all such distilled spirits shall be subject to all provisions of law relating to distilled spirits subject to tax, including those requiring payment of the tax thereon; and the person so removing, selling, transporting, or using the distilled spirits shall be required to pay such tax.

(5) DENATURED DISTILLED SPIRITS OR ARTICLES.—Any person who produces, withdraws, sells, transports, or uses denatured distilled spirits or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured distilled spirits or articles shall be subject to all provisions of law pertaining to distilled spirits that are not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured distilled spirits or articles shall be required to pay such tax.

(6) FRUIT-FLAVOR CONCENTRATES.—If any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 percent or more of alcohol by volume, which is manufactured free from tax under section 5511, is sold, transported, or used by any person in violation of the provisions of this chapter or regulations promulgated thereunder, such person and such concentrate, mash, or juice shall be subject to all provisions of this chapter pertaining to distilled spirits and wines, including those requiring the payment of tax thereon; and the person so selling, transporting, or using such concentrate, mash, or juice shall be required to pay such tax.

(7) IMPORTED LIQUEURS AND CORDIALS.—Imported liqueurs and cordials, or similar compounds, containing distilled spirits, shall be taxed as distilled spirits.

(8) IMPORTED DISTILLED SPIRITS WITHDRAWN FOR BEVERAGE PURPOSES.—There is hereby imposed on all imported distilled spirits withdrawn from customs custody under section 5232 without payment of the internal revenue tax, and thereafter withdrawn from bonded premises for beverage purposes, an additional tax equal to the duty which would have been paid had such spirits been imported for beverage purposes, less the duty previously paid thereon.

(9) ALCOHOLIC COMPOUNDS FROM PUERTO RICO.—Except as provided in section 5314, upon bay rum, or any article containing distilled spirits, brought from Puerto Rico into the United States for consumption or sale there is hereby imposed a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States.

(b) TIME OF ATTACHMENT ON DISTILLED SPIRITS.—The tax shall attach to distilled spirits as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(c) ⟦REDUCED RATE FOR 2018 AND 2019⟧ *TEMPORARY REDUCED RATE*.—

(1) IN GENERAL.—In the case of a distilled spirits operation, the otherwise applicable tax rate under subsection (a)(1) shall be—

(A) $2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits, and

(B) $13.34 per proof gallon on the first 22,130,000 of proof gallons of distilled spirits to which subparagraph (A) does not apply,

which have been distilled or processed by such operation and removed during the calendar year for consumption or sale, or which have been imported by the importer into the United States during the calendar year but only if the importer is an electing importer under paragraph (3) and the proof gallons of distilled spirits have been assigned to the importer pursuant to such paragraph.

(2) CONTROLLED GROUPS.—

(A) IN GENERAL.—In the case of a controlled group, the proof gallon quantities specified under subparagraphs (A)

and (B) of paragraph (1) shall be applied to such group and apportioned among the members of such group in such manner as the Secretary or their delegate shall by regulations prescribe.

(B) DEFINITION.—For purposes of subparagraph (A), the term "controlled group" shall have the meaning given such term by subsection (a) of section 1563, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in such subsection.

(C) RULES FOR NON-CORPORATIONS.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraphs (A) and (B) shall be applied to a group under common control where one or more of the persons is not a corporation.

(D) SINGLE TAXPAYER.—Pursuant to rules issued by the Secretary, two or more entities (whether or not under common control) that produce distilled spirits marketed under a similar brand, license, franchise, or other arrangement shall be treated as a single taxpayer for purposes of the application of this subsection.

(3) REDUCED TAX RATE FOR FOREIGN MANUFACTURERS AND IMPORTERS.—

(A) IN GENERAL.—In the case of any proof gallons of distilled spirits which have been produced outside of the United States and imported into the United States, the rate of tax applicable under paragraph (1) (referred to in this paragraph as the "reduced tax rate") may be assigned by the distilled spirits operation (provided that such operation makes an election described in subparagraph (B)(ii)) to any electing importer of such proof gallons pursuant to the requirements established by the Secretary under subparagraph (B).

(B) ASSIGNMENT.—The Secretary shall, through such rules, regulations, and procedures as are determined appropriate, establish procedures for assignment of the reduced tax rate provided under this paragraph, which shall include—

(i) a limitation to ensure that the number of proof gallons of distilled spirits for which the reduced tax rate has been assigned by a distilled spirits operation—

(I) to any importer does not exceed the number of proof gallons produced by such operation during the calendar year which were imported into the United States by such importer, and

(II) to all importers does not exceed the 22,230,000 proof gallons of distilled spirits to which the reduced tax rate applies,

(ii) procedures that allow the election of a distilled spirits operation to assign and an importer to receive the reduced tax rate provided under this paragraph,

(iii) requirements that the distilled spirits operation provide any information as the Secretary determines necessary and appropriate for purposes of carrying out this paragraph, and

(iv) procedures that allow for revocation of eligibility of the distilled spirits operation and the importer for the reduced tax rate provided under this paragraph in the case of any erroneous or fraudulent information provided under clause (iii) which the Secretary deems to be material to qualifying for such reduced rate.

(C) CONTROLLED GROUP.—

(i) IN GENERAL.—For purposes of this section, any importer making an election described in subparagraph (B)(ii) shall be deemed to be a member of the controlled group of the distilled spirits operation, as described under paragraph (2).

(ii) APPORTIONMENT.—For purposes of this paragraph, in the case of a controlled group, rules similar to section 5051(a)(5)(B) shall apply.

(4) TERMINATION.—This subsection shall not apply to distilled spirits removed after [December 31, 2019] *December 31, 2020*.

(d) CROSS REFERENCE.—For provisions relating to the tax on shipments to the United States of taxable articles from Puerto Rico and the Virgin Islands, see section 7652.

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Subpart C—WINES

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SEC. 5041. IMPOSITION AND RATE OF TAX.

(a) IMPOSITION.—There is hereby imposed on all wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 percent of alcohol by volume, in bond in, produced in, or imported into, the United States, taxes at the rates shown in subsection (b), such taxes to be determined as of the time of removal for consumption or sale. All wines containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and taxed accordingly. Subject to subsection (h), still wines shall include those wines containing not more than 0.392 gram of carbon dioxide per hundred milliliters of wine; except that the Secretary may by regulations prescribe such tolerances to this maximum limitation as may be reasonably necessary in good commercial practice.

(b) RATES OF TAX.—(1) On still wines containing not more than 14 percent (16 percent in the case of wine removed after December 31, 2017, and before [January 1, 2020] *January 1, 2021* of alcohol by volume, $1.07 per wine gallon;

(2) On still wines containing more than 14 percent (16 percent in the case of wine removed after December 31, 2017, and before [January 1, 2020] *January 1, 2021* and not exceeding 21 percent of alcohol by volume, $1.57 per wine gallon;

(3) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, $3.15 per wine gallon;

(4) On champagne and other sparkling wines, $3.40 per wine gallon;

(5) On artificially carbonated wines, $3.30 per wine gallon; and

(6) On hard cider, 22.6 cents per wine gallon.

(c) CREDIT FOR SMALL DOMESTIC PRODUCERS.—

(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (2), in the case of a person who produces not more than 250,000 wine gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) of 90 cents per wine gallon on the 1st 100,000 wine gallons of wine (other than wine described in subsection (b)(4)) which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. In the case of wine described in subsection (b)(6), the preceding sentence shall be applied by substituting "5.6 cents" for "90 cents".

(2) REDUCTION IN CREDIT.—The credit allowable by paragraph (1) shall be reduced (but not below zero) by 1 percent for each 1,000 wine gallons of wine produced in excess of 150,000 wine gallons of wine during the calendar year.

(3) TIME FOR DETERMINING AND ALLOWING CREDIT.—The credit allowable by paragraph (1)—

(A) shall be determined at the same time the tax is determined under subsection (a) of this section, and

(B) shall be allowable at the time any tax described in paragraph (1) is payable as if the credit allowable by this subsection constituted a reduction in the rate of such tax.

(4) CONTROLLED GROUPS.—Rules similar to rules of section 5051(a)(5) shall apply for purposes of this subsection.

(5) DENIAL OF DEDUCTION.—Any deduction under subtitle A with respect to any tax against which a credit is allowed under this subsection shall only be for the amount of such tax as reduced by such credit.

(6) CREDIT FOR TRANSFEREE IN BOND.—If—

(A) wine produced by any person would be eligible for any credit under paragraph (1) if removed by such person during the calendar year,

(B) wine produced by such person is removed during such calendar year by any other person (hereafter in this paragraph referred to as the "transferee") to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

(C) such producer holds title to such wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph,

then, the transferee (and not the producer) shall be allowed the credit under paragraph (1) which would be allowed to the producer if the wine removed by the transferee had been removed by the producer on that date.

(7) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year, and

(B) to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year.

(8) [SPECIAL RULE FOR 2018 AND 2019] *TEMPORARY SPECIAL RULE.*—

(A) IN GENERAL.—In the case of wine removed after December 31, 2017, and before [January 1, 2020] *January 1, 2021*, paragraphs (1) and (2) shall not apply and there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) an amount equal to the sum of—

(i) $1 per wine gallon on the first 30,000 wine gallons of wine, plus

(ii) 90 cents per wine gallon on the first 100,000 wine gallons of wine to which clause (i) does not apply, plus

(iii) 53.5 cents per wine gallon on the first 620,000 wine gallons of wine to which clauses (i) and (ii) do not apply,

which are produced by the producer and removed during the calendar year for consumption or sale, or which are imported by the importer into the United States during the calendar year but only if the importer is an electing importer under paragraph (9) and the wine gallons of wine have been assigned to the importer pursuant to such paragraph.

(B) ADJUSTMENT OF CREDIT FOR HARD CIDER.—In the case of wine described in subsection (b)(6), subparagraph (A) of this paragraph shall be applied—

(i) in clause (i) of such subparagraph, by substituting "6.2 cents" for "$1",

(ii) in clause (ii) of such subparagraph, by substituting "5.6 cents" for "90 cents", and

(iii) in clause (iii) of such subparagraph, by substituting "3.3 cents" for "53.5 cents".

(9) ALLOWANCE OF CREDIT FOR FOREIGN MANUFACTURERS AND IMPORTERS.—

(A) IN GENERAL.—In the case of any wine gallons of wine which have been produced outside of the United States and imported into the United States, the credit allowable under paragraph (8) (referred to in this paragraph as the "tax credit") may be assigned by the person who produced such wine (referred to in this paragraph as the "foreign producer"), provided that such person makes an election described in subparagraph (B)(ii), to any electing importer of such wine gallons pursuant to the requirements established by the Secretary under subparagraph (B).

(B) ASSIGNMENT.—The Secretary shall, through such rules, regulations, and procedures as are determined appropriate, establish procedures for assignment of the tax credit provided under this paragraph, which shall include—

(i) a limitation to ensure that the number of wine gallons of wine for which the tax credit has been assigned by a foreign producer—

(I) to any importer does not exceed the number of wine gallons of wine produced by such foreign producer during the calendar year which were imported into the United States by such importer, and

(II) to all importers does not exceed the 750,000 wine gallons of wine to which the tax credit applies,

(ii) procedures that allow the election of a foreign producer to assign and an importer to receive the tax credit provided under this paragraph,

(iii) requirements that the foreign producer provide any information as the Secretary determines necessary and appropriate for purposes of carrying out this paragraph, and

(iv) procedures that allow for revocation of eligibility of the foreign producer and the importer for the tax credit provided under this paragraph in the case of any erroneous or fraudulent information provided under clause (iii) which the Secretary deems to be material to qualifying for such credit.

(C) CONTROLLED GROUP.—For purposes of this section, any importer making an election described in subparagraph (B)(ii) shall be deemed to be a member of the controlled group of the foreign producer, as described under paragraph (4).

(d) WINE GALLON.—For the purpose of this chapter, the term "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon).

(e) TOLERANCES.—Where the Secretary finds that the revenue will not be endangered thereby, he may by regulation prescribe tolerances (but not greater than 1/2 of 1 percent) for bottles and other containers, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a bottle or other container are within the limit of the applicable tolerance prescribed.

(f) ILLEGALLY PRODUCED WINE.—Notwithstanding subsection (a), any wine produced in the United States at any place other than the bonded premises provided for in this chapter shall (except as provided in section 5042 in the case of tax-free production) be subject to tax at the rate prescribed in subsection (b) at the time of production and whether or not removed for consumption or sale.

(g) HARD CIDER.—For purposes of subsection (b)(6), the term "hard cider" means a wine—

(1) containing not more than 0.64 gram of carbon dioxide per hundred milliliters of wine, except that the Secretary may by regulations prescribe such tolerances to this limitation as may be reasonably necessary in good commercial practice,

(2) which is derived primarily—

(A) from apples or pears, or

(B) from—

(i) apple juice concentrate or pear juice concentrate, and

(ii) water,

(3) which contains no fruit product or fruit flavoring other than apple or pear, and

(4) which contains at least one-half of 1 percent and less than 8.5 percent alcohol by volume.

(h) MEAD AND LOW ALCOHOL BY VOLUME WINE.—

(1) IN GENERAL.—For purposes of subsections (a) and (b)(1), mead and low alcohol by volume wine shall be deemed to be still wines containing not more than 16 percent of alcohol by volume.

(2) DEFINITIONS.—

(A) MEAD.—For purposes of this section, the term "mead" means a wine—

(i) containing not more than 0.64 gram of carbon dioxide per hundred milliliters of wine, except that the Secretary shall by regulations prescribe such tolerances to this limitation as may be reasonably necessary in good commercial practice,

(ii) which is derived solely from honey and water,

(iii) which contains no fruit product or fruit flavoring, and

(iv) which contains less than 8.5 percent alcohol by volume.

(B) LOW ALCOHOL BY VOLUME WINE.—For purposes of this section, the term "low alcohol by volume wine" means a wine—

(i) containing not more than 0.64 gram of carbon dioxide per hundred milliliters of wine, except that the Secretary shall by regulations prescribe such tolerances to this limitation as may be reasonably necessary in good commercial practice,

(ii) which is derived—

(I) primarily from grapes, or

(II) from grape juice concentrate and water,

(iii) which contains no fruit product or fruit flavoring other than grape, and

(iv) which contains less than 8.5 percent alcohol by volume.

(3) TERMINATION.—This subsection shall not apply to wine removed after [December 31, 2019] *December 31, 2020*.

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Subpart D—BEER

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SEC. 5051. IMPOSITION AND RATE OF TAX.

(a) RATE OF TAX.—

(1) IN GENERAL.—

(A) IMPOSITION OF TAX.—A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of

such tax shall be the amount determined under this paragraph.

(B) RATE.—Except as provided in subparagraph (C), the rate of tax shall be $18 for per barrel.

(C) SPECIAL RULE.—In the case of beer removed after December 31, 2017, and before [January 1, 2020] *January 1, 2021*, the rate of tax shall be—

(i) $16 on the first 6,000,000 barrels of beer—

(I) brewed by the brewer and removed during the calendar year for consumption or sale, or

(II) imported by the importer into the United States during the calendar year but only if the importer is an electing importer under paragraph (4) and the barrels have been assigned to the importer pursuant to such paragraph, and

(ii) $18 on any barrels of beer to which clause (i) does not apply.

(D) BARREL.—For purposes of this section, a barrel shall contain not more than 31 gallons of beer, and any tax imposed under this section shall be applied at a like rate for any other quantity or for fractional parts of a barrel.

(2) REDUCED RATE FOR CERTAIN DOMESTIC PRODUCTION.—

(A) RATE.—In the case of a brewer who produces not more than 2,000,000 barrels of beer during the calendar year, the per barrel rate of the tax imposed by this section shall be $7 ($3.50 in the case of beer removed after December 31, 2017, and before [January 1, 2020] *January 1, 2021*) on the first 60,000 barrels of beer which are removed in such year for consumption or sale and which have been brewed or produced by such brewer at qualified breweries in the United States.

(B) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year.

(3) TOLERANCES.—Where the Secretary or his delegate finds that the revenue will not be endangered thereby, he may by regulations prescribe tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

(4) REDUCED TAX RATE FOR FOREIGN MANUFACTURERS AND IMPORTERS.—

(A) IN GENERAL.—In the case of any barrels of beer which have been brewed or produced outside of the United States and imported into the United States, the rate of tax applicable under clause (i) of paragraph (1)(C) (referred to in this paragraph as the "reduced tax rate") may be assigned by the brewer (provided that the brewer makes an election described in subparagraph (B)(ii)) to any electing importer of such barrels pursuant to the requirements established by the Secretary under subparagraph (B).

(B) ASSIGNMENT.—The Secretary shall, through such rules, regulations, and procedures as are determined appropriate, establish procedures for assignment of the reduced tax rate provided under this paragraph, which shall include—

(i) a limitation to ensure that the number of barrels of beer for which the reduced tax rate has been assigned by a brewer—

(I) to any importer does not exceed the number of barrels of beer brewed or produced by such brewer during the calendar year which were imported into the United States by such importer, and

(II) to all importers does not exceed the 6,000,000 barrels to which the reduced tax rate applies,

(ii) procedures that allow the election of a brewer to assign and an importer to receive the reduced tax rate provided under this paragraph,

(iii) requirements that the brewer provide any information as the Secretary determines necessary and appropriate for purposes of carrying out this paragraph, and

(iv) procedures that allow for revocation of eligibility of the brewer and the importer for the reduced tax rate provided under this paragraph in the case of any erroneous or fraudulent information provided under clause (iii) which the Secretary deems to be material to qualifying for such reduced rate.

(C) CONTROLLED GROUP.—For purposes of this section, any importer making an election described in subparagraph (B)(ii) shall be deemed to be a member of the controlled group of the brewer, as described under paragraph (5).

(5) CONTROLLED GROUP AND SINGLE TAXPAYER RULES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of a controlled group, the 6,000,000 barrel quantity specified in paragraph (1)(C)(i) and the 2,000,000 barrel quantity specified in paragraph (2)(A) shall be applied to the controlled group, and the 6,000,000 barrel quantity specified in paragraph (1)(C)(i) and the 60,000 barrel quantity specified in paragraph (2)(A) shall be apportioned among the brewers who are members of such group in such manner as the Secretary or their delegate shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to it by subsection (a) of section 1563, except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" in each place it appears in such subsection. Under regulations prescribed by the Secretary, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(B) FOREIGN MANUFACTURERS AND IMPORTERS.—For purposes of paragraph (4), in the case of a controlled group, the 6,000,000 barrel quantity specified in paragraph (1)(C)(i) shall be applied to the controlled group and apportioned among the members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given such term under subparagraph (A). Under regulations prescribed by the Secretary, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(C) SINGLE TAXPAYER.—Pursuant to rules issued by the Secretary, two or more entities (whether or not under common control) that produce beer marketed under a similar brand, license, franchise, or other arrangement shall be treated as a single taxpayer for purposes of the application of this subsection.

(b) ASSESSMENT ON MATERIALS USED IN PRODUCTION IN CASE OF FRAUD.—Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(c) ILLEGALLY PRODUCED BEER.—The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

Subchapter C—OPERATION OF DISTILLED SPIRITS PLANTS

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PART II—OPERATIONS ON BONDED PREMISES

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Subpart A—GENERAL

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SEC. 5212. TRANSFER OF DISTILLED SPIRITS BETWEEN BONDED PREMISES.

Bulk distilled spirits on which the internal revenue tax has not been paid or determined as authorized by law may, under such regulations as the Secretary shall prescribe, be transferred in bond be-

tween bonded premises in any approved container. For the purposes of this chapter, the removal of bulk distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises. The provisions of this section restricting transfers to bulk distilled spirits shall not apply to alcohol bottled under the provisions of section 5235 which is to be withdrawn for industrial purposes. In the case of distilled spirits transferred in bond after December 31, 2017, and before [January 1, 2020] *January 1, 2021*, this section shall be applied without regard to whether distilled spirits are bulk distilled spirits.

Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

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CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

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Subchapter G—BREWERIES

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PART II—OPERATIONS

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SEC. 5414. REMOVALS FROM ONE BREWERY TO ANOTHER BELONGING TO THE SAME BREWER.

(a) IN GENERAL.—Beer may be removed from one brewery to another brewery belonging to the same brewer, without payment of tax, and may be mingled with beer at the receiving brewery, subject to such conditions, including payment of the tax, and in such containers, as the Secretary by regulations shall prescribe. The removal from one brewery to another brewery belonging to the same brewer shall be deemed to include any removal from a brewery owned by one corporation to a brewery owned by another corporation when (1) one such corporation owns the controlling interest in the other such corporation, or (2) the controlling interest in each such corporation is owned by the same person or persons.

(b) TRANSFER OF BEER BETWEEN BONDED FACILITIES.—

(1) IN GENERAL.—Beer may be removed from one bonded brewery to another bonded brewery, without payment of tax, and may be mingled with beer at the receiving brewery, subject to such conditions, including payment of the tax, and in such containers, as the Secretary by regulations shall prescribe, which shall include—

(A) any removal from one brewery to another brewery belonging to the same brewer,

(B) any removal from a brewery owned by one corporation to a brewery owned by another corporation when—

(i) one such corporation owns the controlling interest in the other such corporation, or

(ii) the controlling interest in each such corporation is owned by the same person or persons, and

(C) any removal from one brewery to another brewery when—

(i) the proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and

(ii) the transferor has divested itself of all interest in the beer so transferred and the transferee has accepted responsibility for payment of the tax.

(2) TRANSFER OF LIABILITY FOR TAX.—For purposes of paragraph (1)(C), such relief from liability shall be effective from the time of removal from the transferor's bonded premises, or from the time of divestment of interest, whichever is later.

(3) TERMINATION.—This subsection shall not apply to any calendar quarter beginning after [December 31, 2019] *December 31, 2020*.

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Subchapter I—MISCELLANEOUS GENERAL PROVISIONS

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SEC. 5555. RECORDS, STATEMENTS, AND RETURNS.

(a) GENERAL.—Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may prescribe. For calendar quarters beginning after the date of the enactment of this sentence, and before [January 1, 2020] *January 1, 2021*, the Secretary shall permit a person to employ a unified system for any records, statements, and returns required to be kept, rendered, or made under this section for any beer produced in the brewery for which the tax imposed by section 5051 has been determined, including any beer which has been removed for consumption on the premises of the brewery.

(b) AUTHORITY TO WAIVE.—Whenever in this chapter any record is required to be made or kept, or statement or return is required to be made by any person, the Secretary may by regulation waive, in whole or in part, such requirement when he deems such requirement to no longer serve a necessary purpose. This subsection shall not be construed as authorizing the waiver of the payment of any tax.

(c) PHOTOGRAPHIC COPIES.—Whenever in this chapter any record is required to be made and preserved by any person, the Secretary may by regulations authorize such person to record, copy, or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process, which accurately reproduces or forms a durable medium for so reproducing the original of such record and to retain such reproduction in lieu of the original. Every person who is authorized to retain such reproduction in lieu of the original shall, under such regulations as the Secretary may prescribe, preserve such reproduction in conveniently accessible files

and make provision for examining, viewing, and using such reproduction the same as if it were the original. Such reproduction shall be treated and considered for all purposes as though it were the original record and all provisions of law applicable to the original shall be applicable to such reproduction. Such reproduction, or enlargement or facsimile thereof, shall be admissible in evidence in the same manner and under the same conditions as provided for the admission of reproductions, enlargements, or facsimiles of records made in the regular course of business under section 1732(b) of title 28 of the United States Code.

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Subtitle F—Procedure and Administration

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—RULES OF SPECIAL APPLICATION

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SEC. 6426. CREDIT FOR ALCOHOL FUEL, BIODIESEL, AND ALTERNATIVE FUEL MIXTURES.

(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit—

(1) against the tax imposed by section 4081 an amount equal to the sum of the credits described in subsections (b), (c), and (e), and

(2) against the tax imposed by section 4041 an amount equal to the sum of the credits described in subsection (d).

No credit shall be allowed in the case of the credits described in subsections (d) and (e) unless the taxpayer is registered under section 4101.

(b) ALCOHOL FUEL MIXTURE CREDIT.—

(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

(2) APPLICABLE AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the applicable amount is—

(i) in the case of calendar years beginning before 2009, 51 cents, and

(ii) in the case of calendar years beginning after 2008, 45 cents.

(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

(C) REDUCTION DELAYED UNTIL ANNUAL PRODUCTION OR IMPORTATION OF 7,500,000,000 GALLONS.—In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in section 40(h)(3)(B) with respect to all preceding calendar years beginning after 2007, subparagraph (A)(ii) shall be applied by substituting "51 cents" for "45 cents".

(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term "alcohol fuel mixture" means a mixture of alcohol and a taxable fuel which—

(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

For purposes of subparagraph (A), a mixture produced by any person at a refinery prior to a taxable event which includes ethyl tertiary butyl ether or other ethers produced from alcohol shall be treated as sold at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

(4) OTHER DEFINITIONS.—For purposes of this subsection—

(A) ALCOHOL.—The term "alcohol" includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

(B) TAXABLE FUEL.—The term "taxable fuel" has the meaning given such term by section 4083(a)(1).

(5) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2011.

(c) BIODIESEL MIXTURE CREDIT.—

(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

(2) APPLICABLE AMOUNT.—For purposes of this subsection, the applicable amount is $1.00.

(3) BIODIESEL MIXTURE.—For purposes of this section, the term "biodiesel mixture" means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this subsection unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after [December 31, 2017] *December 31, 2020*.

(d) ALTERNATIVE FUEL CREDIT.—

(1) IN GENERAL.—For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle or motorboat, sold by the taxpayer for use as a fuel in aviation, or so used by the taxpayer.

(2) ALTERNATIVE FUEL.—For purposes of this section, the term "alternative fuel" means—

(A) liquefied petroleum gas,

(B) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code),

(C) compressed or liquefied natural gas,

(D) liquefied hydrogen,

(E) any liquid fuel which meets the requirements of paragraph (4) and which is derived from coal (including peat) through the Fischer-Tropsch process,

(F) compressed or liquefied gas derived from biomass (as defined in section 45K(c)(3)), and

(G) liquid fuel derived from biomass (as defined in section 45K(c)(3)).

Such term does not include ethanol, methanol, biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp.

(3) GASOLINE GALLON EQUIVALENT.—For purposes of this subsection, the term "gasoline gallon equivalent" means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

(4) CARBON CAPTURE REQUIREMENT.—

(A) IN GENERAL.—The requirements of this paragraph are met if the fuel is certified, under such procedures as required by the Secretary, as having been derived from coal produced at a gasification facility which separates and sequesters not less than the applicable percentage of such facility's total carbon dioxide emissions.

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is—

(i) 50 percent in the case of fuel produced after September 30, 2009, and on or before December 30, 2009, and

(ii) 75 percent in the case of fuel produced after December 30, 2009.

(5) TERMINATION.—This subsection shall not apply to any sale or use for any period after [December 31, 2017] *December 31, 2020*.

(e) ALTERNATIVE FUEL MIXTURE CREDIT.—

(1) IN GENERAL.—For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

(2) ALTERNATIVE FUEL MIXTURE.—For purposes of this section, the term "alternative fuel mixture" means a [mixture of alternative fuel] *mixture of alternative fuel (other than a fuel described in subparagraph (A), (C), or (F) of subsection (d)(2))* and taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

(A) is sold by the taxpayer producing such mixture to any person for use as fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

(3) TERMINATION.—This subsection shall not apply to any sale or use for any period after [December 31, 2017] *December 31, 2020*.

(f) MIXTURE NOT USED AS A FUEL, ETC..—

(1) IMPOSITION OF TAX.—If—

(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

(B) any person—

(i) separates the alcohol or biodiesel from the mixture, or

(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

(g) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.

(h) DENIAL OF DOUBLE BENEFIT.—No credit shall be determined under subsection (d) or (e) with respect to any fuel with respect to which credit may be determined under subsection (b) or (c) or under section 40 or 40A.

(i) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—

(1) ALCOHOL.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States.

(2) BIODIESEL AND ALTERNATIVE FUELS.—No credit shall be determined under this section with respect to any biodiesel or alternative fuel which is produced outside the United States for use as a fuel outside the United States.

For purposes of this subsection, the term "United States" includes any possession of the United States.

(j) ENERGY EQUIVALENCY DETERMINATIONS FOR LIQUEFIED PETROLEUM GAS AND LIQUEFIED NATURAL GAS.—For purposes of determining any credit under this section, any reference to the number of gallons of an alternative fuel or the gasoline gallon equivalent of such a fuel shall be treated as a reference to—

(1) in the case of liquefied petroleum gas, the energy equivalent of a gallon of gasoline, as defined in section 4041(a)(2)(C), and

(2) in the case of liquefied natural gas, the energy equivalent of a gallon of diesel, as defined in section 4041(a)(2)(D).

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) NONTAXABLE USES.—Except as provided in subsection (k), if tax has been imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) on the sale of any fuel and the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary shall pay (without interest) to him an amount equal to—

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

(b) INTERCITY, LOCAL, OR SCHOOL BUSES.—

(1) ALLOWANCE.—Except as otherwise provided in this subsection and subsection (k), if any fuel other than gasoline (as defined in section 4083(a)) on the sale of which tax was imposed by section 4041(a) or 4081 is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the product of the number of gallons of such fuel so used multiplied by the rate at which tax was imposed on such fuel by section 4041(a) or 4081, as the case may be.

(2) REDUCTION IN REFUND IN CERTAIN CASES.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the rate of tax taken into account under paragraph (1) shall be 7.4 cents per gallon less than the aggregate rate at which tax was imposed on such fuel by section 4041(a) or 4081, as the case may be.

(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in an auto-

mobile bus while engaged in the transportation described in paragraph (1)(B).

(C) EXCEPTION FOR CERTAIN INTRACITY TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

(i) which is available to the general public, and

(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

(D) QUALIFIED LOCAL BUS.—For purposes of this paragraph, the term "qualified local bus" means any local bus—

(i) which has a seating capacity of at least 20 adults (not including the driver), and

(ii) which is under contract (or is receiving more than a nominal subsidy) from any State or local government (as defined in section 4221(d)) to furnish such transportation.

(3) LIMITATION IN CASE OF NONSCHEDULED INTERCITY OR LOCAL BUSES.—Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(4) REFUNDS FOR USE OF DIESEL FUEL IN CERTAIN INTERCITY BUSES.—With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

(A) is registered under section 4101, and

(B) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(c) USE FOR FARMING PURPOSES.—Except as provided in subsection (k), if any fuel on the sale of which tax was imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) is used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary shall pay (without interest) to the purchaser an amount equal to the amount of the tax imposed on the sale of the fuel. For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that "liquid taxable under section 4041" shall be substituted for "gasoline" each place it appears in such paragraph (4)).

(d) USE BY CERTAIN AIRCRAFT MUSEUMS OR IN CERTAIN OTHER AIRCRAFT USES.—Except as provided in subsection (k), if—

(1) any gasoline on which tax was imposed by section 4081, or

(2) any fuel on the sale of which tax was imposed under section 4041,

is used by an aircraft museum (as defined in section 4041(h)(2)) in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in section 4041(h)(2)(C), or is used in a heli-

copter or a fixed-wing aircraft for a purpose described in section 4041(*l*), the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.

(e) ALCOHOL, BIODIESEL, OR ALTERNATIVE FUEL.—Except as provided in subsection (k)—

(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit or the alternative fuel mixture credit with respect to such mixture.

(2) ALTERNATIVE FUEL.—If any person sells or uses an alternative fuel (as defined in section 6426(d)(2)) for a purpose described in section 6426(d)(1) in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alternative fuel credit with respect to such fuel.

(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) or (2) with respect to any mixture or alternative fuel with respect to which an amount is allowed as a credit under section 6426.

(4) REGISTRATION REQUIREMENT FOR ALTERNATIVE FUELS.—The Secretary shall not make any payment under this subsection to any person with respect to any alternative fuel credit or alternative fuel mixture credit unless the person is registered under section 4101.

(5) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—No amount shall be payable under paragraph (1) or (2) with respect to any mixture or alternative fuel if credit is not allowed with respect to such mixture or alternative fuel by reason of section 6426(i).

(6) TERMINATION.—This subsection shall not apply with respect to—

(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) sold or used after December 31, 2011,

(B) any biodiesel mixture (as defined in section 6426(c)(3)) sold or used after ⟦December 31, 2017⟧ *December 31, 2020*,

(C) any alternative fuel (as defined in section 6426(d)(2)) sold or used after ⟦December 31, 2017⟧ *December 31, 2020*, and

(D) any alternative fuel mixture (as defined in section 6426(e)(2)) sold or used after December 31, 2011.

(h) BLEND STOCKS NOT USED FOR PRODUCING TAXABLE FUEL.—

(1) GASOLINE BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING GASOLINE.—Except as provided in subsection (k), if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive.

(2) DIESEL FUEL BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING DIESEL.—Except as provided in subsection (k), if any diesel fuel blend stock is not used by any person to produce diesel fuel and such person establishes that the ultimate use of such diesel fuel blend stock is not to produce diesel fuel, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such diesel fuel blend stock.

(i) TIME FOR FILING CLAIMS; PERIOD COVERED.—

(1) GENERAL RULE.—Except as otherwise provided in this subsection, not more than one claim may be filed under subsection (a), (b), (c), (d), (h), (*l*), (m), or (*o*) by any person with respect to fuel used during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) EXCEPTIONS.—

(A) IN GENERAL.—If, at the close of any quarter of the taxable year of any person, at least $750 is payable in the aggregate under subsections (a), (b), (d), (h), (*l*), (m), and (*o*) of this section and section 6421 to such person with respect to fuel used during—

(i) such quarter, or

(ii) any prior quarter (for which no other claim has been filed) during such taxable year,

a claim may be filed under this section with respect to such fuel.

(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the first quarter following the last quarter included in the claim.

(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).

(3) SPECIAL RULE FOR MIXTURE CREDITS AND THE ALTERNATIVE FUEL CREDIT.—

(A) IN GENERAL.—A claim may be filed under subsection (e)(1) by any person with respect to a mixture described in section 6426 or under subsection (e)(2) by any person with respect to an alternative fuel (as defined in section 6426(d)(2)) for any period—

(i) for which $200 or more is payable under such subsection (e)(1) or (e)(2), and

(ii) which is not less than 1 week.

In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).

(B) PAYMENT OF CLAIM.—Notwithstanding subsection (e)(1) or (e)(2), if the Secretary has not paid pursuant to a claim filed under this section within 45 days of the date of the filing of such claim (20 days in the case of an electronic claim), the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

(C) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.

(4) SPECIAL RULE FOR VENDOR REFUNDS.—

(A) IN GENERAL.—A claim may be filed under paragraph (4)(C) or (5) of subsection (*l*) by any person with respect to fuel sold by such person for any period—

(i) for which $200 or more ($100 or more in the case of kerosene) is payable under paragraph (4)(C) or (5) of subsection (*l*), and

(ii) which is not less than 1 week.

Notwithstanding subsection (*l*)(1), paragraph (3)(B) shall apply to claims filed under subsections (b)(4), (*l*)(4)(C)(ii), and (*l*)(5).

(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.

(j) APPLICABLE LAWS.—

(1) IN GENERAL.—All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4041 and 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) EXAMINATION OF BOOKS AND WITNESSES.—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(k) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

(1) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) EXCEPTION.—Paragraph (1) shall not apply to a payment of a claim filed under paragraph (2), (3), or (4) of subsection (i).

(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—For allowances of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section 34.

(l) NONTAXABLE USES OF DIESEL FUEL AND KEROSENE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay

(without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(C)(i).

(2) NONTAXABLE USE.—For purposes of this subsection, the term "nontaxable use" means any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax.

(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term "nontaxable use" includes fuel used in a diesel-powered train. The preceding sentence shall not apply with respect to—

(A) the Leaking Underground Storage Tank Trust Fund financing rate under sections 4041 and 4081, and

(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).

The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

(4) REFUNDS FOR KEROSENE USED IN AVIATION.—

(A) KEROSENE USED IN COMMERCIAL AVIATION.—In the case of kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4041 or 4081, as the case may be, as is attributable to—

(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

(ii) so much of the rate of tax specified in section 4041(c) or 4081(a)(2)(A)(iii), as the case may be, as does not exceed 4.3 cents per gallon.

(B) KEROSENE USED IN NONCOMMERCIAL AVIATION.—In the case of kerosene used in aviation that is not commercial aviation (as so defined) (other than any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax), paragraph (1) shall not apply to—

(i) any tax imposed by subsection (c) or (d)(2) of section 4041, and

(ii) so much of the tax imposed by section 4081 as is attributable to—

(I) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

(II) so much of the rate of tax specified in section 4081(a)(2)(A)(iii) as does not exceed the rate specified in section 4081(a)(2)(C)(ii).

(C) PAYMENTS TO ULTIMATE, REGISTERED VENDOR.—

(i) IN GENERAL.—With respect to any kerosene used in aviation (other than kerosene described in clause (ii) or kerosene to which paragraph (5) applies), if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph

(1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

(I) is registered under section 4101, and

(II) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(ii) PAYMENTS FOR KEROSENE USED IN NONCOMMERCIAL AVIATION.—The amount which would be paid under paragraph (1) with respect to any kerosene to which subparagraph (B) applies shall be paid only to the ultimate vendor of such kerosene. A payment shall be made to such vendor if such vendor—

(I) is registered under section 4101, and

(II) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(5) REGISTERED VENDORS TO ADMINISTER CLAIMS FOR REFUND OF DIESEL FUEL OR KEROSENE SOLD TO STATE AND LOCAL GOVERNMENTS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.

(B) SALES OF KEROSENE NOT FOR USE IN MOTOR FUEL.—Paragraph (1) shall not apply to kerosene (other than kerosene used in aviation) sold by a vendor—

(i) for any use if such sale is from a pump which (as determined under regulations prescribed by the Secretary) is not suitable for use in fueling any diesel-powered highway vehicle or train, or

(ii) to the extent provided by the Secretary, for blending with heating oil to be used during periods of extreme or unseasonable cold.

(C) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—Except as provided in subparagraph (D), the amount which would (but for subparagraph (A) or (B)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

(i) is registered under section 4101, and

(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(D) CREDIT CARD ISSUER.—For purposes of this paragraph, if the purchase of any fuel described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, the Secretary shall pay to the person extending the credit to the ultimate purchaser the amount which would have been paid under paragraph (1) (but for subparagraph (A)), but only if such person meets the requirements of clauses (i), (ii), and (iii) of section 6416(a)(4)(B). If such clause (i), (ii), or (iii) is not met by such person extending the credit to the ultimate purchaser, then such person shall collect an amount equal to the tax from the ultimate purchaser and only such ultimate purchaser may claim such amount.

(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(D) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) REGULAR TAX RATE.—The term "regular tax rate" means the aggregate rate of tax imposed by section 4081 determined without regard to section 4081(a)(2)(D).

(B) INCENTIVE TAX RATE.—The term "incentive tax rate" means the aggregate rate of tax imposed by section 4081 determined with regard to section 4081(a)(2)(D).

(n) REGULATIONS.—The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(o) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(D).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a).

(p) CROSS REFERENCES.—

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

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CHAPTER 77—MISCELLANEOUS PROVISIONS

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SEC. 7508A. AUTHORITY TO POSTPONE CERTAIN DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.

(a) IN GENERAL.—In the case of a taxpayer determined by the Secretary to be affected by a federally declared disaster (as defined by section 165(i)(5)(A)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to 1 year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer—

(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extension under any other provision of this subtitle for periods after the date (determined by the Secretary) of such disaster or action),

(2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and

(3) the amount of any credit or refund.

(b) SPECIAL RULES REGARDING PENSIONS, ETC..—In the case of a pension or other employee benefit plan, or any sponsor, adminis-

trator, participant, beneficiary, or other person with respect to such plan, affected by a disaster or action described in subsection (a), the Secretary may specify a period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be completed under this title. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

(c) SPECIAL RULES FOR OVERPAYMENTS.—The rules of section 7508(b) shall apply for purposes of this section.

(d) MANDATORY 60-DAY EXTENSION.—

(1) IN GENERAL.—In the case of any qualified taxpayer, the period—

(A) beginning on the earliest incident date specified in the declaration to which the disaster area referred to in paragraph (2) relates, and

(B) ending on the date which is 60 days after the latest incident date so specified,

shall be disregarded in the same manner as a period specified under subsection (a).

(2) QUALIFIED TAXPAYER.—For purposes of this subsection, the term "qualified taxpayer" means—

(A) any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a disaster area,

(B) any taxpayer if the taxpayer's principal place of business (other than the business of performing services as an employee) is located in a disaster area,

(C) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a disaster area,

(D) any taxpayer whose records necessary to meet a deadline for an act described in section 7508(a)(1) are maintained in a disaster area,

(E) any individual visiting a disaster area who was killed or injured as a result of the disaster, and

(F) solely with respect to a joint return, any spouse of an individual described in any preceding subparagraph of this paragraph.

(3) DISASTER AREA.—For purposes of this subsection, the term "disaster area" has the meaning given such term under subparagraph (B) of section 165(i)(5) with respect to a Federally declared disaster (as defined in subparagraph (A) of such section).

(4) APPLICATION TO RULES REGARDING PENSIONS.—In the case of any person described in subsection (b), a rule similar to the rule of paragraph (1) shall apply for purposes of subsection (b) with respect to—

(A) making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2),

(B) making distributions under section 408(d)(4),

(C) recharacterizing contributions under section 408A(d)(6), and

(D) making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3).

(5) COORDINATION WITH PERIODS SPECIFIED BY THE SECRETARY.—Any period described in paragraph (1) with respect to any person (including by reason of the application of paragraph (4)) shall be in addition to (or concurrent with, as the case may be) any period specified under subsection (a) or (b) with respect to such person.

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TAX RELIEF AND HEALTH CARE ACT OF 2006

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DIVISION A—EXTENSION AND EXPANSION OF CERTAIN TAX RELIEF PROVISIONS, AND OTHER TAX PROVISIONS

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TITLE I—EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS

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SEC. 119. AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.

(a) IN GENERAL.—For purposes of section 30A of the Internal Revenue Code of 1986, a domestic corporation shall be treated as a qualified domestic corporation to which such section applies if—

(1) in the case of a taxable year beginning before January 1, 2012, such corporation—

(A) is an existing credit claimant with respect to American Samoa, and

(B) elected the application of section 936 of the Internal Revenue Code of 1986 for its last taxable year beginning before January 1, 2006, and

(2) in the case of a taxable year beginning after December 31, 2011, such corporation meets the requirements of subsection (e).

(b) SPECIAL RULES FOR APPLICATION OF SECTION.—The following rules shall apply in applying section 30A of the Internal Revenue Code of 1986 for purposes of this section:

(1) AMOUNT OF CREDIT.—Notwithstanding section 30A(a)(1) of such Code, the amount of the credit determined under section 30A(a)(1) of such Code for any taxable year shall be the amount determined under section 30A(d) of such Code, except that section 30A(d) shall be applied without regard to paragraph (3) thereof.

(2) SEPARATE APPLICATION.—In applying section 30A(a)(3) of such Code in the case of a corporation treated as a qualified domestic corporation by reason of this section, section 30A of such Code (and so much of section 936 of such Code as relates to such section 30A) shall be applied separately with respect to American Samoa.

(3) FOREIGN TAX CREDIT ALLOWED.—Notwithstanding section 30A(e) of such Code, the provisions of section 936(c) of such Code shall not apply with respect to the credit allowed by reason of this section.

(c) DEFINITIONS.—For purposes of this section, any term which is used in this section which is also used in section 30A or 936 of such Code shall have the same meaning given such term by such section 30A or 936.

(d) APPLICATION OF SECTION.—Notwithstanding section 30A(h) or section 936(j) of such Code, this section (and so much of section 30A and section 936 of such Code as relates to this section) shall apply—

(1) in the case of a corporation that meets the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the **[**first 12 taxable years**]** *first 15 taxable years* of such corporation which begin after December 31, 2006, and before **[**January 1, 2018**]** *January 1, 2021*, and

(2) in the case of a corporation that does not meet the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the **[**first 6 taxable years**]** *first 9 taxable years* of such corporation which begin after December 31, 2011, and before **[**January 1, 2018**]** *January 1, 2021.*

In the case of a corporation described in subsection (a)(2), the Internal Revenue Code of 1986 shall be applied and administered without regard to the amendments made by section 401(d)(1) of the Tax Technical Corrections Act of 2018.

(e) QUALIFIED PRODUCTION ACTIVITIES INCOME REQUIREMENT.—A corporation meets the requirement of this subsection if such corporation has qualified production activities income, as defined in subsection (c) of section 199 of the Internal Revenue Code of 1986 *(as in effect before its repeal)*, determined by substituting "American Samoa" for "the United States" each place it appears in paragraphs (3), (4), and (6) of such subsection (c), for the taxable year.

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VII. DISSENTING VIEWS

It is ironic that legislation with "taxpayer certainty" in its title does so little to promote certainty for taxpayers. Instead of a serious evaluation of the dozens of temporary provisions—known as "extenders"—to determine which of the provisions should be made permanent, allowed to expire, or be phased down, the bill continues the dysfunctional practice of extending expired or expiring provisions on a temporary basis, which does not provide true certainty. In addition, while the process of dealing with these extenders has traditionally been bipartisan, the bill omits a few select provisions in a manner that seems politically motivated rather than based on a serious evaluation of the merits or discussions with stakeholders. In addition, the bill undoes certainty previously achieved in the 2015 PATH Act compromise, which phased out the wind production and investment tax credits, a bipartisan compromise that was and continues to be strongly supported by the wind industry itself. The bill would create additional uncertainty by attempting to "pay for" these temporary extensions on the backs of family farms and other family-owned businesses through an increase in death taxes. This is an approach that the Committee Majority knew or should have known would be objectionable to Republicans, thereby delaying a resolution of extenders as well as the tax relief disaster victims have been waiting for. It is also worth noting that the Majority's refusal to deal with technical corrections is creating crushing uncertainty for many taxpayers. We Committee Republicans stand ready to work with stakeholders and our Democratic colleagues to develop long-term solutions for all these issues—as we attempted to do with the railroad maintenance and biodiesel tax credits after a constructive dialogue with stakeholders. For the sake of taxpayer certainty, we hope our Democratic colleagues will work with us to resolve disaster tax relief as well as both extenders and technical corrections. American taxpayers deserve it.

KEVIN BRADY,
Republican Leader, Committee on Ways and Means.

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