110TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
110–658

RENEWABLE ENERGY AND JOB CREATION ACT OF 2008

R E P O R T

TOGETHER WITH

ADDITIONAL AND DISSENTING VIEWS

TO ACCOMPANY

H.R. 6049

MAY 20, 2008.—Committed to the Committee of the Whole House of the State of the Union and ordered to be printed

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MAY 20, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 6049]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6049) to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax 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 "Renewable Energy and Job Creation Act of 2008".

(b) REFERENCE.—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.

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

TITLE I—ENERGY TAX INCENTIVES

Subtitle A—Energy Production Incentives

PART I—RENEWABLE ENERGY INCENTIVES

SEC. 101. RENEWABLE ENERGY CREDIT.

(a) EXTENSION OF CREDIT.—

(1) 1-YEAR EXTENSION FOR WIND FACILITIES.—Paragraph (1) of section 45(d) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

(2) 3-YEAR EXTENSION FOR CERTAIN OTHER FACILITIES.—Each of the following provisions of section 45(d) is amended by striking "January 1, 2009" and inserting "January 1, 2012":

(A) Clauses (i) and (ii) of paragraph (2)(A).

(B) Clauses (i)(I) and (ii) of paragraph (3)(A).

(C) Paragraph (4).

(D) Paragraph (5).

(E) Paragraph (6).

(F) Paragraph (7).

(G) Subparagraphs (A) and (B) of paragraph (9).

(b) MODIFICATION OF CREDIT PHASEOUT.—

(1) REPEAL OF PHASEOUT.—Subsection (b) of section 45 is amended—

(A) by striking paragraph (1), and

(B) by striking "the 8 cent amount in paragraph (1)," in paragraph (2) thereof.

(2) LIMITATION BASED ON INVESTMENT IN FACILITY.—Subsection (b) of section 45 is amended by inserting before paragraph (2) the following new paragraph:

"(1) LIMITATION BASED ON INVESTMENT IN FACILITY.—

"(A) IN GENERAL.—In the case of any qualified facility originally placed in service after December 31, 2009, the amount of the credit determined under subsection (a) for any taxable year with respect to electricity produced at such facility shall not exceed the product of—

"(i) the applicable percentage with respect to such facility, multiplied by

"(ii) the eligible basis of such facility.

"(B) CARRYFORWARD OF UNUSED LIMITATION AND EXCESS CREDIT.—

"(i) UNUSED LIMITATION.—If the limitation imposed under subparagraph (A) with respect to any facility for any taxable year exceeds the prelimitation credit for such facility for such taxable year, the limitation imposed under subparagraph (A) with respect to such facility for the succeeding taxable year shall be increased by the amount of such excess.

"(ii) EXCESS CREDIT.—If the prelimitation credit with respect to any facility for any taxable year exceeds the limitation imposed under subparagraph (A) with respect to such facility for such taxable year, the credit determined under subsection (a) with respect to such facility for the succeeding taxable year (determined before the application of subparagraph (A) for such succeeding taxable year) shall be increased by the amount of such excess. With respect to any facility, no amount may be carried forward under this clause to any taxable year beginning after the 10-year period described in subsection (a)(2)(A)(ii) with respect to such facility.

"(iii) PRELIMITATION CREDIT.—The term 'prelimitation credit' with respect to any facility for a taxable year means the credit determined under subsection (a) with respect to such facility for such taxable year, determined without regard to subparagraph (A) and after taking into account any increase for such taxable year under clause (ii).

"(C) APPLICABLE PERCENTAGE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable percentage' means, with respect to any facility, the appropriate percentage prescribed by the Secretary for the month in which such facility is originally placed in service.

"(ii) METHOD OF PRESCRIBING APPLICABLE PERCENTAGES.—The applicable percentages prescribed by the Secretary for any month under clause (i) shall be percentages which yield over a 10-year period amounts of limitation under subparagraph (A) which have a present value equal to 35 percent of the eligible basis of the facility.

"(iii) METHOD OF DISCOUNTING.—The present value under clause (ii) shall be determined—

"(I) as of the last day of the 1st year of the 10-year period referred to in clause (ii),

"(II) by using a discount rate equal to the greater of 110 percent of the Federal long-term rate as in effect under section 1274(d) for the month preceding the month for which the applicable percentage is being prescribed, or 4.5 percent, and

"(III) by taking into account the limitation under subparagraph (A) for any year on the last day of such year.

"(D) ELIGIBLE BASIS.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'eligible basis' means, with respect to any facility, the sum of—

"(I) the basis of such facility determined as of the time that such facility is originally placed in service, and

"(II) the portion of the basis of any shared qualified property which is properly allocable to such facility under clause (ii).

"(ii) RULES FOR ALLOCATION.—For purposes of subclause (II) of clause (i), the basis of shared qualified property shall be allocated among all qualified facilities which are projected to be placed in service and which require utilization of such property in proportion to projected generation from such facilities.

"(iii) SHARED QUALIFIED PROPERTY.—For purposes of this paragraph, the term 'shared qualified property' means, with respect to any facility, any property described in section 168(e)(3)(B)(vi)—

"(I) which a qualified facility will require for utilization of such facility, and

"(II) which is not a qualified facility.

"(iv) SPECIAL RULE RELATING TO GEOTHERMAL FACILITIES.—In the case of any qualified facility using geothermal energy to produce electricity, the basis of such facility for purposes of this paragraph shall be determined as though intangible drilling and development costs described in section 263(c) were capitalized rather than expensed.

"(E) SPECIAL RULE FOR FIRST AND LAST YEAR OF CREDIT PERIOD.—In the case of any taxable year any portion of which is not within the 10-year period described in subsection (a)(2)(A)(ii) with respect to any facility, the amount of the limitation under subparagraph (A) with respect to such facility shall be reduced by an amount which bears the same ratio to the amount of such limitation (determined without regard to this subparagraph) as such portion of the taxable year which is not within such period bears to the entire taxable year.

"(F) ELECTION TO TREAT ALL FACILITIES PLACED IN SERVICE IN A YEAR AS 1 FACILITY.—At the election of the taxpayer, all qualified facilities which are part of the same project and which are placed in service during the same calendar year shall be treated for purposes of this section as 1 facility which is placed in service at the mid-point of such year or the first day of the following calendar year.".

(c) TRASH FACILITY CLARIFICATION.—Paragraph (7) of section 45(d) is amended—

(1) by striking "facility which burns" and inserting "facility (other than a facility described in paragraph (6)) which uses", and

(2) by striking "COMBUSTION".

(d) EXPANSION OF BIOMASS FACILITIES.—

(1) OPEN-LOOP BIOMASS FACILITIES.—Paragraph (3) of section 45(d) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(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.".

(2) CLOSED-LOOP BIOMASS FACILITIES.—Paragraph (2) of section 45(d) is amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph:

"(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.".

(e) SALES OF NET ELECTRICITY TO REGULATED PUBLIC UTILITIES TREATED AS SALES TO UNRELATED PERSONS.—Paragraph (4) of section 45(e) is amended by adding at the end the following new sentence: "The net amount of electricity sold by any taxpayer to a regulated public utility (as defined in section 7701(a)(33)) shall be treated as sold to an unrelated person.".

(f) MODIFICATION OF RULES FOR HYDROPOWER PRODUCTION.—Subparagraph (C) of section 45(c)(8) is amended to read as follows:

"(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.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to property originally placed in service after December 31, 2008.

(2) REPEAL OF CREDIT PHASEOUT.—The amendments made by subsection (b)(1) shall apply to taxable years ending after December 31, 2008.

(3) LIMITATION BASED ON INVESTMENT IN FACILITY.—The amendment made by subsection (b)(2) shall apply to property originally placed in service after December 31, 2009.

(4) TRASH FACILITY CLARIFICATION; SALES TO RELATED REGULATED PUBLIC UTILITIES.—The amendments made by subsections (c) and (e) shall apply to electricity produced and sold after the date of the enactment of this Act.

(5) EXPANSION OF BIOMASS FACILITIES.—The amendments made by subsection (d) shall apply to property placed in service after the date of the enactment of this Act.

SEC. 102. PRODUCTION CREDIT FOR ELECTRICITY PRODUCED FROM MARINE RENEWABLES.

(a) IN GENERAL.—Paragraph (1) of section 45(c) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", and", and by adding at the end the following new subparagraph:

"(I) marine and hydrokinetic renewable energy.".

(b) MARINE RENEWABLES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraph:

"(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 manmade 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.".

(c) DEFINITION OF FACILITY.—Subsection (d) of section 45 is amended by adding at the end the following new paragraph:

"(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 before January 1, 2012.".

(d) CREDIT RATE.—Subparagraph (A) of section 45(b)(4) is amended by striking "or (9)" and inserting "(9), or (11)".

(e) COORDINATION WITH SMALL IRRIGATION POWER.—Paragraph (5) of section 45(d), as amended by section 101, is amended by striking "January 1, 2012" and inserting "the date of the enactment of paragraph (11)".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 103. ENERGY CREDIT.

(a) EXTENSION OF CREDIT.—

(1) SOLAR ENERGY PROPERTY.—Paragraphs (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) are each amended by striking "January 1, 2009" and inserting "January 1, 2015".

(2) FUEL CELL PROPERTY.—Subparagraph (E) of section 48(c)(1) is amended by striking "December 31, 2008" and inserting "December 31, 2014".

(3) MICROTURBINE PROPERTY.—Subparagraph (E) of section 48(c)(2) is amended by striking "December 31, 2008" and inserting "December 31, 2014".

(b) ALLOWANCE OF ENERGY CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) is amended by striking "and" at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

"(iv) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48, and".

(c) ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.—

(1) IN GENERAL.—Section 48(a)(3)(A) (defining energy property) is amended by striking "or" at the end of clause (iii), by inserting "or" at the end of clause (iv), and by adding at the end the following new clause:

"(v) combined heat and power system property,".

(2) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Section 48 is amended by adding at the end the following new subsection:

"(d) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of subsection (a)(3)(A)(v)—

"(1) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

"(A) 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),

"(B) 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),

"(C) the energy efficiency percentage of which exceeds 60 percent, and

"(D) which is placed in service before January 1, 2015.

"(2) LIMITATION.—

"(A) 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.

"(B) APPLICABLE CAPACITY.—For purposes of subparagraph (A), 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.

"(C) 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.

"(3) SPECIAL RULES.—

"(A) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this subsection, 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.

"(B) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under paragraph (1)(B) shall be determined on a Btu basis.

"(C) 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.

"(4) 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—

"(A) paragraph (1)(C) shall not apply, but

"(B) 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 paragraph) as the energy efficiency percentage of such system bears to 60 percent.".

(d) INCREASE OF CREDIT LIMITATION FOR FUEL CELL PROPERTY.—Subparagraph (B) of section 48(c)(1) is amended by striking "$500" and inserting "$1,500".

(e) PUBLIC UTILITY PROPERTY TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 48(a) is amended by striking the second sentence thereof.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(B) Paragraph (2) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

(3) COMBINED HEAT AND POWER AND FUEL CELL PROPERTY.—The amendments made by subsections (c) and (d) shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(4) PUBLIC UTILITY PROPERTY.—The amendments made by subsection (e) shall apply to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 104. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) EXTENSION.—Section 25D(g) is amended by striking "December 31, 2008" and inserting "December 31, 2014".

(b) MAXIMUM CREDIT FOR SOLAR ELECTRIC PROPERTY.—

(1) IN GENERAL.—Section 25D(b)(1)(A) is amended by striking "$2,000" and inserting "$4,000".

(2) CONFORMING AMENDMENT.—Section 25D(e)(4)(A)(i) is amended by striking "$6,667" and inserting "$13,333".

(c) CREDIT FOR RESIDENTIAL WIND PROPERTY.—

(1) IN GENERAL.—Section 25D(a) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end the following new paragraph:

"(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year.".

(2) LIMITATION.—Section 25D(b)(1) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) $500 with respect to each half kilowatt of capacity (not to exceed $4,000) of wind turbines for which qualified small wind energy property expenditures are made.".

(3) QUALIFIED SMALL WIND ENERGY PROPERTY EXPENDITURES.—

(A) IN GENERAL.—Section 25D(d) is amended by adding at the end the following new paragraph:

"(4) QUALIFIED SMALL WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified small wind energy property expenditure' means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.".

(B) NO DOUBLE BENEFIT.—Section 45(d)(1) is amended by adding at the end the following new sentence: "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.".

(4) MAXIMUM EXPENDITURES IN CASE OF JOINT OCCUPANCY.—Section 25D(e)(4)(A) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) $1,667 in the case of each half kilowatt of capacity (not to exceed $13,333) of wind turbines for which qualified small wind energy property expenditures are made.".

(d) CREDIT FOR GEOTHERMAL HEAT PUMP SYSTEMS.—

(1) IN GENERAL.—Section 25D(a), as amended by subsection (c), is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end the following new paragraph:

"(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.".

(2) LIMITATION.—Section 25D(b)(1), as amended by subsection (c), is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) $2,000 with respect to any qualified geothermal heat pump property expenditures.".

(3) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY EXPENDITURE.—Section 25D(d), as amended by subsection (c), is amended by adding at the end the following new paragraph:

"(5) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY EXPENDITURE.—

"(A) IN GENERAL.—The term 'qualified geothermal heat pump property expenditure' means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

"(B) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY.—The term 'qualified geothermal heat pump property' means any equipment which—

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

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

(4) MAXIMUM EXPENDITURES IN CASE OF JOINT OCCUPANCY.—Section 25D(e)(4)(A), as amended by subsection (c), is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause:

"(v) $6,667 in the case of any qualified geothermal heat pump property expenditures.".

(e) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 25D is amended to read as follows:

"(c) LIMITATION BASED ON AMOUNT OF TAX; CARRYFORWARD OF UNUSED CREDIT.—

"(1) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

"(2) CARRYFORWARD OF UNUSED CREDIT.—

"(A) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

"(B) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.".

(2) CONFORMING AMENDMENTS.—

(A) Section 23(b)(4)(B) is amended by inserting "and section 25D" after "this section".

(B) Section 24(b)(3)(B) is amended by striking "and 25B" and inserting ", 25B, and 25D".

(C) Section 25B(g)(2) is amended by striking "section 23" and inserting "sections 23 and 25D".

(D) Section 26(a)(1) is amended by striking "and 25B" and inserting "25B, and 25D".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (e)(2) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provisions of such Act to which such amendments relate.

SEC. 105. SPECIAL RULE TO IMPLEMENT FERC AND STATE ELECTRIC RESTRUCTURING POLICY.

(a) EXTENSION FOR QUALIFIED ELECTRIC UTILITIES.—

(1) IN GENERAL.—Paragraph (3) of section 451(i) is amended by inserting "(before January 1, 2010, in the case of a qualified electric utility)" after "January 1, 2008".

(2) QUALIFIED ELECTRIC UTILITY.—Subsection (i) of section 451 is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and by inserting after paragraph (5) the following new paragraph:

"(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)))."

(b) EXTENSION OF PERIOD FOR TRANSFER OF OPERATIONAL CONTROL AUTHORIZED BY FERC.—Clause (ii) of section 451(i)(4)(B) is amended by striking "December 31, 2007" and inserting "the date which is 4 years after the close of the taxable year in which the transaction occurs".

(c) PROPERTY LOCATED OUTSIDE THE UNITED STATES NOT TREATED AS EXEMPT UTILITY PROPERTY.—Paragraph (5) of section 451(i) is amended by adding at the end the following new subparagraph:

"(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.".

(d) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to transactions after December 31, 2007.

(2) TRANSFERS OF OPERATIONAL CONTROL.—The amendment made by subsection (b) shall take effect as if included in section 909 of the American Jobs Creation Act of 2004.

(3) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The amendment made by subsection (c) shall apply to transactions after the date of the enactment of this Act.

SEC. 106. NEW CLEAN RENEWABLE ENERGY BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by adding at the end the following new subpart:

"Subpart I—Qualified Tax Credit Bonds

"SEC. 54A. CREDIT TO HOLDERS OF QUALIFIED TAX CREDIT BONDS.

"(a) ALLOWANCE OF CREDIT.—If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, 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 credits determined under subsection (b) with respect to such dates.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified tax credit bond is the product of—

"(A) the applicable credit rate, multiplied by

"(B) the outstanding face amount of the bond.

"(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

"(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

"(d) QUALIFIED TAX CREDIT BOND.—For purposes of this section—

"(1) QUALIFIED TAX CREDIT BOND.—The term 'qualified tax credit bond' means a new clean renewable energy bond which is part of an issue that meets the requirements of paragraphs (2), (3), (4), (5), and (6).

"(2) SPECIAL RULES RELATING TO EXPENDITURES.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

"(i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and "(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

"(B) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 3 YEARS.—

"(i) IN GENERAL.—To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(ii) EXPENDITURE PERIOD.—For purposes of this subpart, the term 'expenditure period' means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

"(iii) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

"(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term 'qualified purpose' means a purpose specified in section 54B(a)(1).

"(D) REIMBURSEMENT.—For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if—

"(i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

"(ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

"(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

"(3) REPORTING.—An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

"(4) SPECIAL RULES RELATING TO ARBITRAGE.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

"(B) SPECIAL RULE FOR INVESTMENTS DURING EXPENDITURE PERIOD.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

"(C) SPECIAL RULE FOR RESERVE FUNDS.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if—

"(i) such fund is funded at a rate not more rapid than equal annual installments,

"(ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and

"(iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

"(5) MATURITY LIMITATION.—

"(A) IN GENERAL.—An issue shall not be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue exceeds the maximum term determined by the Secretary under subparagraph (B).

"(B) MAXIMUM TERM.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

"(6) PROHIBITION ON FINANCIAL CONFLICTS OF INTEREST.—An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that—

"(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

"(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

"(e) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term includes the last day on which the bond is outstanding.

"(2) BOND.—The term 'bond' includes any obligation.

"(3) STATE.—The term 'State' includes the District of Columbia and any possession of the United States.

"(4) AVAILABLE PROJECT PROCEEDS.—The term 'available project proceeds' means—

"(A) the excess of—

"(i) the proceeds from the sale of an issue, over

"(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

"(B) the proceeds from any investment of the excess described in subparagraph (A).

"(f) CREDIT TREATED AS INTEREST.—For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

"(g) S CORPORATIONS AND PARTNERSHIPS.—In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

"(h) BONDS HELD BY REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary.

"(i) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

"(2) CERTAIN RULES TO APPLY.—In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

"SEC. 54B. NEW CLEAN RENEWABLE ENERGY BONDS.

"(a) NEW CLEAN RENEWABLE ENERGY BOND.—For purposes of this subpart, the term 'new clean renewable energy bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by public power providers or cooperative electric companies for one or more qualified renewable energy facilities,

"(2) the bond is issued by a qualified issuer, and

"(3) the issuer designates such bond for purposes of this section.

"(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

"(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

"(1) IN GENERAL.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

"(2) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national new clean renewable energy bond limitation of $2,000,000,000 which shall be allocated by the Secretary as provided in paragraph (3), except that—

"(A) not more than 33 ⅓ percent thereof may be allocated to qualified projects of public power providers,

"(B) not more than 33 ⅓ percent thereof may be allocated to qualified projects of governmental bodies, and

"(C) not more than 33 ⅓ percent thereof may be allocated to qualified projects of cooperative electric companies.

"(3) METHOD OF ALLOCATION.—

"(A) ALLOCATION AMONG PUBLIC POWER PROVIDERS.—After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under paragraph (2)(A) bears to the cost of all such projects.

"(B) ALLOCATION AMONG GOVERNMENTAL BODIES AND COOPERATIVE ELECTRIC COMPANIES.—The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraphs (2)(B) and (2)(C) among qualified projects of governmental bodies and cooperative electric companies, respectively, in such manner as the Secretary determines appropriate.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED RENEWABLE ENERGY FACILITY.—The term 'qualified renewable energy facility' means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company.

"(2) PUBLIC POWER PROVIDER.—The term 'public power provider' means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

"(3) GOVERNMENTAL BODY.—The term 'governmental body' means any State or Indian tribal government, or any political subdivision thereof.

"(4) COOPERATIVE ELECTRIC COMPANY.—The term 'cooperative electric company' means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

"(5) CLEAN RENEWABLE ENERGY BOND LENDER.—The term 'clean renewable energy bond lender' means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

"(6) QUALIFIED ISSUER.—The term 'qualified issuer' means a public power provider, a cooperative electric company, a governmental body, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.".

(b) REPORTING.—Subsection (d) of section 6049 is amended by adding at the end the following new paragraph:

"(9) REPORTING OF CREDIT ON QUALIFIED TAX CREDIT BONDS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54A and such amounts shall be treated as paid on the credit allowance date (as defined in section 54A(e)(1)).

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

"(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.”.

(c) CONFORMING AMENDMENTS.—

(1) Sections 54(c)(2) and 1400N(l)(3)(B) are each amended by striking “subpart C” and inserting “subparts C and I”.

(2) Section 1397E(c)(2) is amended by striking “subpart H” and inserting “subparts H and I”.

(3) Section 6401(b)(1) is amended by striking “and H” and inserting “H, and I”.

(4) The heading of subpart H of part IV of subchapter A of chapter 1 is amended by striking “**Certain Bonds**” and inserting “**Clean Renewable Energy Bonds**”.

(5) The table of subparts for part IV of subchapter A of chapter 1 is amended by striking the item relating to subpart H and inserting the following new items:

“SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS.

“SUBPART I. QUALIFIED TAX CREDIT BONDS.”.

(d) APPLICATION OF CERTAIN LABOR STANDARDS ON PROJECTS FINANCED UNDER TAX CREDIT BONDS.—Subchapter IV of chapter 31 of title 40, United States Code, shall apply to projects financed with the proceeds of any tax credit bond (as defined in section 54A of the Internal Revenue Code of 1986).

(e) EFFECTIVE DATES.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

PART II—CARBON MITIGATION PROVISIONS

SEC. 111. EXPANSION AND MODIFICATION OF ADVANCED COAL PROJECT INVESTMENT CREDIT.

(a) MODIFICATION OF CREDIT AMOUNT.—Section 48A(a) is amended by striking “and” at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting “, and”, and by adding at the end the following new paragraph:

“(3) 30 percent of the qualified investment for such taxable year in the case of projects described in clause (iii) of subsection (d)(3)(B).”.

(b) EXPANSION OF AGGREGATE CREDITS.—Section 48A(d)(3)(A) is amended by striking “$1,300,000,000” and inserting “$2,550,000,000”.

(c) AUTHORIZATION OF ADDITIONAL PROJECTS.—

(1) IN GENERAL.—Subparagraph (B) of section 48A(d)(3) is amended to read as follows:

“(B) PARTICULAR PROJECTS.—Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

“(i) $800,000,000 for integrated gasification combined cycle projects the application for which is submitted during the period described in paragraph (2)(A)(i),

“(ii) $500,000,000 for projects which use other advanced coal-based generation technologies the application for which is submitted during the period described in paragraph (2)(A)(i), and

“(iii) $1,250,000,000 for advanced coal-based generation technology projects the application for which is submitted during the period described in paragraph (2)(A)(ii).”.

(2) APPLICATION PERIOD FOR ADDITIONAL PROJECTS.—Subparagraph (A) of section 48A(d)(2) is amended to read as follows:

“(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application—

“(i) for an allocation from the dollar amount specified in clause (i) or (ii) of paragraph (3)(B) during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1), and

“(ii) for an allocation from the dollar amount specified in paragraph (3)(B)(iii) during the 3-year period beginning at the earlier of the termination of the period described in clause (i) or the date prescribed by the Secretary.”.

(3) CAPTURE AND SEQUESTRATION OF CARBON DIOXIDE EMISSIONS REQUIREMENT.—

(A) IN GENERAL.—Section 48A(e)(1) is amended by striking “and” at the end of subparagraph (E), by striking the period at the end of subparagraph (F) and inserting “; and”, and by adding at the end the following new subparagraph:

"(G) in the case of any project the application for which is submitted during the period described in subsection (d)(2)(A)(ii), the project includes equipment which separates and sequesters at least 65 percent (70 percent in the case of an application for reallocated credits under subsection (d)(4)) of such project's total carbon dioxide emissions.".

(B) HIGHEST PRIORITY FOR PROJECTS WHICH SEQUESTER CARBON DIOXIDE EMISSIONS.—Section 48A(e)(3) is amended by striking "and" at the end of subparagraph (A)(iii), by striking the period at the end of subparagraph (B)(iii) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions.".

(C) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—Section 48A is amended by adding at the end the following new subsection:

"(h) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements of subsection (e)(1)(G).".

(4) ADDITIONAL PRIORITY FOR RESEARCH PARTNERSHIPS.—Section 48A(e)(3)(B), as amended by paragraph (3)(B), is amended—

(A) by striking "and" at the end of clause (ii),

(B) by redesignating clause (iii) as clause (iv), and

(C) by inserting after clause (ii) the following new clause:

"(iii) applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)), and".

(5) CLERICAL AMENDMENT.—Section 48A(e)(3) is amended by striking "INTEGRATED GASIFICATION COMBINED CYCLE" in the heading and inserting "CERTAIN".

(d) COMPETITIVE CERTIFICATION AWARDS MODIFICATION AUTHORITY.—Section 48A, as amended by subsection (c)(3), is amended by adding at the end the following new subsection:

"(i) COMPETITIVE CERTIFICATION AWARDS MODIFICATION AUTHORITY.—In implementing this section or section 48B, the Secretary is directed to modify the terms of any competitive certification award and any associated closing agreement where such modification—

"(1) is consistent with the objectives of such section,

"(2) is requested by the recipient of the competitive certification award, and

"(3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base,

unless the Secretary determines that the dollar amount of tax credits available to the taxpayer under such section would increase as a result of the modification or such modification would result in such project not being originally certified. In considering any such modification, the Secretary shall consult with other relevant Federal agencies, including the Department of Energy.".

(e) DISCLOSURE OF ALLOCATIONS.—Section 48A(d) is amended by adding at the end the following new paragraph:

"(5) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection or section 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to credits the application for which is submitted during the period described in section 48A(d)(2)(A)(ii) of the Internal Revenue Code of 1986 and which are allocated or reallocated after the date of the enactment of this Act.

(2) COMPETITIVE CERTIFICATION AWARDS MODIFICATION AUTHORITY.—The amendment made by subsection (d) shall take effect on the date of the enactment of this Act and is applicable to all competitive certification awards entered into under section 48A or 48B of the Internal Revenue Code of 1986, whether such awards were issued before, on, or after such date of enactment.

(3) DISCLOSURE OF ALLOCATIONS.—The amendment made by subsection (e) shall apply to certifications made after the date of the enactment of this Act.

(4) CLERICAL AMENDMENT.—The amendment made by subsection (c)(5) shall take effect as if included in the amendment made by section 1307(b) of the Energy Tax Incentives Act of 2005.

SEC. 112. EXPANSION AND MODIFICATION OF COAL GASIFICATION INVESTMENT CREDIT.

(a) MODIFICATION OF CREDIT AMOUNT.—Section 48B(a) is amended by inserting "(30 percent in the case of credits allocated under subsection (d)(1)(B))" after "20 percent".

(b) EXPANSION OF AGGREGATE CREDITS.—Section 48B(d)(1) is amended by striking "shall not exceed $350,000,000" and all that follows and inserting "shall not exceed—

"(A) $350,000,000, plus

"(B) $250,000,000 for qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide emissions.".

(c) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—Section 48B is amended by adding at the end the following new subsection:

"(f) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements for such project under subsection (d)(1).".

(d) SELECTION PRIORITIES.—Section 48B(d) is amended by adding at the end the following new paragraph:

"(4) SELECTION PRIORITIES.—In determining which qualifying gasification projects to certify under this section, the Secretary shall—

"(A) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions, and

"(B) give high priority to applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)).".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to credits described in section 48B(d)(1)(B) of the Internal Revenue Code of 1986 which are allocated or reallocated after the date of the enactment of this Act.

SEC. 113. TEMPORARY INCREASE IN COAL EXCISE TAX.

Paragraph (2) of section 4121(e) is amended—

(1) by striking "January 1, 2014" in subparagraph (A) and inserting "December 31, 2018", and

(2) by striking "January 1 after 1981" in subparagraph (B) and inserting "December 31 after 2007".

SEC. 114. SPECIAL RULES FOR REFUND OF THE COAL EXCISE TAX TO CERTAIN COAL PRODUCERS AND EXPORTERS.

(a) REFUND.—

(1) COAL PRODUCERS.—

(A) IN GENERAL.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, if—

(i) a coal producer establishes that such coal producer, or a party related to such coal producer, exported coal produced by such coal producer to a foreign country or shipped coal produced by such coal producer to a possession of the United States, or caused such coal to be exported or shipped, the export or shipment of which was other than through an exporter who meets the requirements of paragraph (2),

(ii) such coal producer filed an excise tax return on or after October 1, 1990, and on or before the date of the enactment of this Act, and

(iii) such coal producer files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such coal producer an amount equal to the tax paid under section 4121 of such Code on such coal exported or shipped by the coal producer or a party related to such coal producer, or caused by the coal producer or a party related to such coal producer to be exported or shipped.

(B) SPECIAL RULES FOR CERTAIN TAXPAYERS.—For purposes of this section—

(i) IN GENERAL.—If a coal producer or a party related to a coal producer has received a judgment described in clause (iii), such coal producer shall be deemed to have established the export of coal to a foreign country or shipment of coal to a possession of the United States under subparagraph (A)(i).

(ii) AMOUNT OF PAYMENT.—If a taxpayer described in clause (i) is entitled to a payment under subparagraph (A), the amount of such payment shall be reduced by any amount paid pursuant to the judgment described in clause (iii).

(iii) JUDGMENT DESCRIBED.—A judgment is described in this subparagraph if such judgment—

(I) is made by a court of competent jurisdiction within the United States,

(II) relates to the constitutionality of any tax paid on exported coal under section 4121 of the Internal Revenue Code of 1986, and

(III) is in favor of the coal producer or the party related to the coal producer.

(2) EXPORTERS.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, and a judgment described in paragraph (1)(B)(iii) of this subsection, if—

(A) an exporter establishes that such exporter exported coal to a foreign country or shipped coal to a possession of the United States, or caused such coal to be so exported or shipped,

(B) such exporter filed a tax return on or after October 1, 1990, and on or before the date of the enactment of this Act, and

(C) such exporter files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such exporter an amount equal to $0.825 per ton of such coal exported by the exporter or caused to be exported or shipped, or caused to be exported or shipped, by the exporter.

(b) LIMITATIONS.—Subsection (a) shall not apply with respect to exported coal if a settlement with the Federal Government has been made with and accepted by, the coal producer, a party related to such coal producer, or the exporter, of such coal, as of the date that the claim is filed under this section with respect to such exported coal. For purposes of this subsection, the term "settlement with the Federal Government" shall not include any settlement or stipulation entered into as of the date of the enactment of this Act, the terms of which contemplate a judgment concerning which any party has reserved the right to file an appeal, or has filed an appeal.

(c) SUBSEQUENT REFUND PROHIBITED.—No refund shall be made under this section to the extent that a credit or refund of such tax on such exported or shipped coal has been paid to any person.

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

(1) COAL PRODUCER.—The term "coal producer" means the person in whom is vested ownership of the coal immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who extracts coal from coal waste refuse piles or from the silt waste product which results from the wet washing (or similar processing) of coal.

(2) EXPORTER.—The term "exporter" means a person, other than a coal producer, who does not have a contract, fee arrangement, or any other agreement with a producer or seller of such coal to export or ship such coal to a third party on behalf of the producer or seller of such coal and—

(A) is indicated in the shipper's export declaration or other documentation as the exporter of record, or

(B) actually exported such coal to a foreign country or shipped such coal to a possession of the United States, or caused such coal to be so exported or shipped.

(3) RELATED PARTY.—The term "a party related to such coal producer" means a person who—

(A) is related to such coal producer through any degree of common management, stock ownership, or voting control,

(B) is related (within the meaning of section 144(a)(3) of the Internal Revenue Code of 1986) to such coal producer, or

(C) has a contract, fee arrangement, or any other agreement with such coal producer to sell such coal to a third party on behalf of such coal producer.

(4) SECRETARY.—The term "Secretary" means the Secretary of Treasury or the Secretary's designee.

(e) TIMING OF REFUND.—With respect to any claim for refund filed pursuant to this section, the Secretary shall determine whether the requirements of this section are met not later than 180 days after such claim is filed. If the Secretary determines that the requirements of this section are met, the claim for refund shall be paid not later than 180 days after the Secretary makes such determination.

(f) INTEREST.—Any refund paid pursuant to this section shall be paid by the Secretary with interest from the date of overpayment determined by using the overpayment rate and method under section 6621 of the Internal Revenue Code of 1986.

(g) DENIAL OF DOUBLE BENEFIT.—The payment under subsection (a) with respect to any coal shall not exceed—

(1) in the case of a payment to a coal producer, the amount of tax paid under section 4121 of the Internal Revenue Code of 1986 with respect to such coal by such coal producer or a party related to such coal producer, and

(2) in the case of a payment to an exporter, an amount equal to $0.825 per ton with respect to such coal exported by the exporter or caused to be exported by the exporter.

(h) APPLICATION OF SECTION.—This section applies only to claims on coal exported or shipped on or after October 1, 1990, through the date of the enactment of this Act.

(i) STANDING NOT CONFERRED.—

(1) EXPORTERS.—With respect to exporters, this section shall not confer standing upon an exporter to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by a coal producer of any Federal or State tax, fee, or royalty paid by the coal producer.

(2) COAL PRODUCERS.—With respect to coal producers, this section shall not confer standing upon a coal producer to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by an exporter of any Federal or State tax, fee, or royalty paid by the producer and alleged to have been passed on to an exporter.

SEC. 115. CARBON AUDIT OF THE TAX CODE.

(a) STUDY.—The Secretary of the Treasury shall enter into an agreement with the National Academy of Sciences to undertake a comprehensive review of the Internal Revenue Code of 1986 to identify the types of and specific tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to estimate the magnitude of those effects.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the National Academy of Sciences shall submit to Congress a report containing the results of study authorized under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,500,000 for the period of fiscal years 2008 and 2009.

Subtitle B—Transportation and Domestic Fuel Security Provisions

SEC. 121. INCLUSION OF CELLULOSIC BIOFUEL IN BONUS DEPRECIATION FOR BIOMASS ETHANOL PLANT PROPERTY.

(a) IN GENERAL.—Paragraph (3) of section 168(l) is amended to read as follows:

"(3) CELLULOSIC BIOFUEL.—The term 'cellulosic biofuel' means any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.".

(b) CONFORMING AMENDMENTS.—Subsection (l) of section 168 is amended—

(1) by striking "cellulosic biomass ethanol" each place it appears and inserting "cellulosic biofuel",

(2) by striking "CELLULOSIC BIOMASS ETHANOL" in the heading of such subsection and inserting "CELLULOSIC BIOFUEL", and

(3) by striking "CELLULOSIC BIOMASS ETHANOL" in the heading of paragraph (2) thereof and inserting "CELLULOSIC BIOFUEL".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 122. CREDITS FOR BIODIESEL AND RENEWABLE DIESEL.

(a) IN GENERAL.—Sections 40A(g), 6426(c)(6), and 6427(e)(5)(B) are each amended by striking "December 31, 2008" and inserting "December 31, 2009".

(b) INCREASE IN RATE OF CREDIT.—

(1) INCOME TAX CREDIT.—Paragraphs (1)(A) and (2)(A) of section 40A(b) are each amended by striking "50 cents" and inserting "$1.00".

(2) EXCISE TAX CREDIT.—Paragraph (2) of section 6426(c) is amended to read as follows:

"(2) APPLICABLE AMOUNT.—For purposes of this subsection, the applicable amount is $1.00.".

(3) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 40A is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(B) Paragraph (2) of section 40A(f) is amended to read as follows:

"(2) EXCEPTION.—Subsection (b)(4) shall not apply with respect to renewable diesel.".

(C) Paragraphs (2) and (3) of section 40A(e) are each amended by striking "subsection (b)(5)(C)" and inserting "subsection (b)(4)(C)".

(D) Clause (ii) of section 40A(d)(3)(C) is amended by striking "subsection (b)(5)(B)" and inserting "subsection (b)(4)(B)".

(c) UNIFORM TREATMENT OF DIESEL PRODUCED FROM BIOMASS.—Paragraph (3) of section 40A(f) is amended—

(1) by striking "diesel fuel" and inserting "liquid fuel",

(2) by striking "using a thermal depolymerization process", and

(3) by striking "or D396" in subparagraph (B) and inserting ", D396, or other equivalent standard approved by the Secretary".

(d) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—

(1) IN GENERAL.—Paragraph (3) of section 40A(f) (defining renewable diesel) is amended by adding at the end the following flush sentence:

"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).".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 40A(f) is amended by striking "(as defined in section 45K(c)(3))".

(e) ELIGIBILITY OF CERTAIN AVIATION FUEL.—Paragraph (3) of section 40A(f) (defining renewable diesel) is amended by adding at the end the following: "The term 'renewable diesel' also means 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."

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to fuel produced, and sold or used, after December 31, 2008.

(2) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—The amendments made by subsection (c) shall apply to fuel produced, and sold or used, after February 13, 2008.

SEC. 123. CLARIFICATION THAT CREDITS FOR FUEL ARE DESIGNED TO PROVIDE AN INCENTIVE FOR UNITED STATES PRODUCTION.

(a) ALCOHOL FUELS CREDIT.—Subsection (d) of section 40 is amended by adding at the end the following new paragraph:

"(6) 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.".

(b) BIODIESEL FUELS CREDIT.—Subsection (d) of section 40A is amended by adding at the end the following new paragraph:

"(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.".

(c) EXCISE TAX CREDIT.—

(1) IN GENERAL.—Section 6426 is amended by adding at the end the following new subsection:

"(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.".

(2) CONFORMING AMENDMENT.—Subsection (e) of section 6427 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(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).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to claims for credit or payment made on or after May 15, 2008.

SEC. 124. CREDIT FOR NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new section:

''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 $3,000.

''(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 $200, plus $200 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $2,000.

''(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.—

''(A) IN GENERAL.—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.

''(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

''(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(ii) the sum of the credits allowable under subpart A (other than this section and sections 23 and 25D) and section 27 for the 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 (as defined in section 30(c)(2))—

''(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 has a gross vehicle weight rating of less than 14,000 pounds,

''(E) which has received a certificate of conformity under the Clean Air Act and meets or exceeds 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

''(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) EXCEPTION.—The term 'new qualified plug-in electric drive motor vehicle' 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.

''(3) OTHER TERMS.—The terms 'passenger automobile', '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) 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 the date of the enactment of this section, 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.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

"(f) SPECIAL RULES.—

"(1) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (c)).

"(2) 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.

"(3) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed 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 vehicle if the taxpayer elects to not have this section apply to such vehicle.

"(5) PROPERTY USED BY TAX-EXEMPT ENTITY; INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Rules similar to the rules of paragraphs (6) and (10) of section 30B(h) shall apply for purposes of this section.".

(b) COORDINATION WITH ALTERNATIVE MOTOR VEHICLE CREDIT.—Section 30B(d)(3) is amended by adding at the end the following new subparagraph:

"(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.".

(c) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended—

(1) by striking "and" each place it appears at the end of any paragraph,

(2) by striking "plus" each place it appears at the end of any paragraph,

(3) by striking the period at the end of paragraph (31) and inserting ", plus", and

(4) by adding at the end the following new paragraph:

"(32) the portion of the new qualified plug-in electric drive motor vehicle credit to which section 30D(c)(1) applies.".

(d) CONFORMING AMENDMENTS.—

(1)(A) Section 24(b)(3)(B), as amended by section 104, is amended by striking "and 25D" and inserting "25D, and 30D".

(B) Section 25(e)(1)(C)(ii) is amended by inserting "30D," after "25D,".

(C) Section 25B(g)(2), as amended by section 104, is amended by striking "and 25D" and inserting ", 25D, and 30D".

(D) Section 26(a)(1), as amended by section 104, is amended by striking "and 25D" and inserting "25D, and 30D".

(E) Section 1400C(d)(2) is amended by striking "and 25D" and inserting "25D, and 30D".

(2) Section 1016(a) is amended by striking "and" at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting ", and", and by adding at the end the following new paragraph:

"(37) to the extent provided in section 30D(f)(1).".

(3) Section 6501(m) is amended by inserting "30D(f)(4)," after "30C(e)(5),".

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 30D. New qualified plug-in electric drive motor vehicles.".

(e) TREATMENT OF ALTERNATIVE MOTOR VEHICLE CREDIT AS A PERSONAL CREDIT.—

(1) IN GENERAL.—Paragraph (2) of section 30B(g) is amended to read as follows:

"(2) PERSONAL CREDIT.—The credit allowed under subsection (a) for any taxable year (after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 30C(d)(2) is amended by striking "sections 27, 30, and 30B" and inserting "sections 27 and 30".

(B) Paragraph (3) of section 55(c) is amended by striking "30B(g)(2),".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 2008.

(2) TREATMENT OF ALTERNATIVE MOTOR VEHICLE CREDIT AS PERSONAL CREDIT.—The amendments made by subsection (e) shall apply to taxable years beginning after December 31, 2007.

(g) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (d)(1)(A) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

SEC. 125. EXCLUSION FROM HEAVY TRUCK TAX FOR IDLING REDUCTION UNITS AND ADVANCED INSULATION.

(a) IN GENERAL.—Section 4053 is amended by adding at the end the following new paragraphs:

"(9) IDLING REDUCTION DEVICE.—Any device or system of devices which—

"(A) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity) that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary using one or more devices affixed to a tractor, and

"(B) is certified by the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

"(10) ADVANCED INSULATION.—Any insulation that has an R value of not less than R35 per inch.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or installations after the date of the enactment of this Act.

SEC. 126. RESTRUCTURING OF NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—Part I of subchapter Y of chapter 1 is amended by redesignating section 1400L as section 1400K and by adding at the end the following new section:

"SEC. 1400L. NEW YORK LIBERTY ZONE TAX CREDITS.

"(a) IN GENERAL.—In the case of a New York Liberty Zone governmental unit, there shall be allowed as a credit against any taxes imposed for any payroll period by section 3402 for which such governmental unit is liable under section 3403 an amount equal to so much of the portion of the qualifying project expenditure amount allocated under subsection (b)(3) to such governmental unit for the calendar year as is allocated by such governmental unit to such period under subsection (b)(4).

"(b) QUALIFYING PROJECT EXPENDITURE AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying project expenditure amount' means, with respect to any calendar year, the sum of—

"(A) the total expenditures paid or incurred during such calendar year by all New York Liberty Zone governmental units and the Port Authority of New York and New Jersey for any portion of qualifying projects located wholly within the City of New York, New York, and

"(B) any such expenditures—

"(i) paid or incurred in any preceding calendar year which begins after the date of enactment of this section, and

"(ii) not previously allocated under paragraph (3).

"(2) QUALIFYING PROJECT.—The term 'qualifying project' means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400K(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

"(3) GENERAL ALLOCATION.—

"(A) IN GENERAL.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to each New York Liberty Zone governmental unit the portion of the qualifying project expenditure amount which may be taken into account by such governmental unit under subsection (a) for any calendar year in the credit period.

"(B) AGGREGATE LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

"(C) ANNUAL LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

"(i) $115,000,000 ($425,000,000 in the case of the last 2 years in the credit period), plus

"(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

"(D) UNALLOCATED AMOUNTS AT END OF CREDIT PERIOD.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate to New York Liberty Zone governmental units for any calendar year in the 5-year period following the credit period an amount equal to—

"(i) the lesser of—

"(I) such excess, or

"(II) the qualifying project expenditure amount for such calendar year, reduced by

"(ii) the aggregate amount allocated under this subparagraph for all preceding calendar years.

"(4) ALLOCATION TO PAYROLL PERIODS.—Each New York Liberty Zone governmental unit which has been allocated a portion of the qualifying project expenditure amount under paragraph (3) for a calendar year may allocate such portion to payroll periods beginning in such calendar year as such governmental unit determines appropriate.

"(c) CARRYOVER OF UNUSED ALLOCATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if the amount allocated under subsection (b)(3) to a New York Liberty Zone governmental unit for any calendar year exceeds the aggregate taxes imposed by section 3402 for which such governmental unit is liable under section 3403 for periods beginning in such year, such excess shall be carried to the succeeding calendar year and added to the allocation of such governmental unit for such succeeding calendar year.

"(2) REALLOCATION.—If a New York Liberty Zone governmental unit does not use an amount allocated to it under subsection (b)(3) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(3) in the same manner as if it had never been allocated.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CREDIT PERIOD.—The term 'credit period' means the 12-year period beginning on January 1, 2009.

"(2) NEW YORK LIBERTY ZONE GOVERNMENTAL UNIT.—The term 'New York Liberty Zone governmental unit' means—

"(A) the State of New York,

"(B) the City of New York, New York, and

"(C) any agency or instrumentality of such State or City.

"(3) TREATMENT OF FUNDS.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

"(4) TREATMENT OF CREDIT AMOUNTS FOR PURPOSES OF WITHHOLDING TAXES.—For purposes of this title, a New York Liberty Zone governmental unit shall be treated as having paid to the Secretary, on the day on which wages are paid to employees, an amount equal to the amount of the credit allowed to such entity under subsection (a) with respect to such wages, but only if such governmental unit deducts and withholds wages for such payroll period under section 3401 (relating to wage withholding).

"(e) REPORTING.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly submit to the Secretary an annual report—

"(1) which certifies—

"(A) the qualifying project expenditure amount for the calendar year, and

"(B) the amount allocated to each New York Liberty Zone governmental unit under subsection (b)(3) for the calendar year, and

"(2) includes such other information as the Secretary may require to carry out this section.

"(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to ensure compliance with the purposes of this section.".

(b) TERMINATION OF SPECIAL ALLOWANCE AND EXPENSING.—Subparagraph (A) of section 1400K(b)(2), as redesignated by subsection (a), is amended by striking the parenthetical therein and inserting "(in the case of nonresidential real property and residential rental property, the date of the enactment of the Renewable Energy and Job Creation Act of 2008 or, if acquired pursuant to a binding contract in effect on such enactment date, December 31, 2009)".

(c) CONFORMING AMENDMENTS.—

(1) Section 38(c)(3)(B) is amended by striking "section 1400L(a)" and inserting "section 1400K(a)".

(2) Section 168(k)(2)(D)(ii) is amended by striking "section 1400L(c)(2)" and inserting "section 1400K(c)(2)".

(3) The table of sections for part I of subchapter Y of chapter 1 is amended by redesignating the item relating to section 1400L as an item relating to section 1400K and by inserting after such item the following new item:

"Sec. 1400L. New York Liberty Zone tax credits.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 127. TRANSPORTATION FRINGE BENEFIT TO BICYCLE COMMUTERS.

(a) IN GENERAL.—Paragraph (1) of section 132(f) is amended by adding at the end the following:

"(D) Any qualified bicycle commuting reimbursement.".

(b) LIMITATION ON EXCLUSION.—Paragraph (2) of section 132(f) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.".

(c) DEFINITIONS.—Paragraph (5) of section 132(f) is amended by adding at the end the following:

"(F) DEFINITIONS RELATED TO BICYCLE COMMUTING REIMBURSEMENT.—

"(i) QUALIFIED BICYCLE COMMUTING REIMBURSEMENT.—The term 'qualified bicycle commuting reimbursement' means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

"(ii) APPLICABLE ANNUAL LIMITATION.—The term 'applicable annual limitation' means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

"(iii) QUALIFIED BICYCLE COMMUTING MONTH.—The term 'qualified bicycle commuting month' means, with respect to any employee, any month during which such employee—

"(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

"(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).".

(d) CONSTRUCTIVE RECEIPT OF BENEFIT.—Paragraph (4) of section 132(f) is amended by inserting "(other than a qualified bicycle commuting reimbursement)" after "qualified transportation fringe".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 128. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

(a) INCREASE IN CREDIT AMOUNT.—Section 30C is amended—

(1) by striking "30 percent" in subsection (a) and inserting "50 percent", and

(2) by striking "$30,000" in subsection (b)(1) and inserting "$50,000".

(b) EXTENSION OF CREDIT.—Paragraph (2) of section 30C(g) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle C—Energy Conservation and Efficiency Provisions

SEC. 141. QUALIFIED ENERGY CONSERVATION BONDS.

(a) IN GENERAL.—Subpart I of part IV of subchapter A of chapter 1, as added by section 106, is amended by adding at the end the following new section:

"SEC. 54C. QUALIFIED ENERGY CONSERVATION BONDS.

"(a) QUALIFIED ENERGY CONSERVATION BOND.—For purposes of this subchapter, the term 'qualified energy conservation bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

"(2) the bond is issued by a State or local government, and

"(3) the issuer designates such bond for purposes of this section.

"(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any qualified energy conservation bond shall be 70 percent of the amount so determined without regard to this subsection.

"(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (e).

"(d) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified energy conservation bond limitation of $3,000,000,000.

"(e) ALLOCATIONS.—

"(1) IN GENERAL.—The limitation applicable under subsection (d) shall be allocated by the Secretary among the States in proportion to the population of the States.

"(2) ALLOCATIONS TO LARGEST LOCAL GOVERNMENTS.—

"(A) IN GENERAL.—In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

"(B) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

"(C) LARGE LOCAL GOVERNMENT.—For purposes of this section, the term 'large local government' means any municipality or county if such municipality or county has a population of 100,000 or more.

"(3) ALLOCATION TO ISSUERS; RESTRICTION ON PRIVATE ACTIVITY BONDS.—Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

"(f) QUALIFIED CONSERVATION PURPOSE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified conservation purpose' means any of the following:

"(A) Capital expenditures incurred for purposes of—

"(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

"(ii) implementing green community programs,

"(iii) rural development involving the production of electricity from renewable energy resources, or "(iv) any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).

"(B) Expenditures with respect to research facilities, and research grants, to support research in—

"(i) development of cellulosic ethanol or other nonfossil fuels,

"(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

"(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,

"(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

"(v) technologies to reduce energy use in buildings.

"(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

"(D) Demonstration projects designed to promote the commercialization of—

"(i) green building technology,

"(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

"(iii) advanced battery manufacturing technologies,

"(iv) technologies to reduce peak use of electricity, or

"(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

"(E) Public education campaigns to promote energy efficiency.

"(2) SPECIAL RULES FOR PRIVATE ACTIVITY BONDS.—For purposes of this section, in the case of any private activity bond, the term 'qualified conservation purposes' shall not include any expenditure which is not a capital expenditure.

"(g) POPULATION.—

"(1) IN GENERAL.—The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

"(2) SPECIAL RULE FOR COUNTIES.—In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

"(h) APPLICATION TO INDIAN TRIBAL GOVERNMENTS.—An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that—

"(1) an Indian tribal government shall be treated for purposes of subsection (e) as located within a State to the extent of so much of the population of such government as resides within such State, and

"(2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d), as added by section 106, is amended to read as follows:

"(1) QUALIFIED TAX CREDIT BOND.—The term 'qualified tax credit bond' means—

"(A) a new clean renewable energy bond, or

"(B) a qualified energy conservation bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).".

(2) Subparagraph (C) of section 54A(d)(2), as added by section 106, is amended to read as follows:

"(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term 'qualified purpose' means—

"(i) in the case of a new clean renewable energy bond, a purpose specified in section 54B(a)(1), and

"(ii) in the case of a qualified energy conservation bond, a purpose specified in section 54C(a)(1).".

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54C. Qualified energy conservation bonds.".

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

SEC. 142. CREDIT FOR NONBUSINESS ENERGY PROPERTY.

(a) EXTENSION OF CREDIT.—Section 25C(g) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) QUALIFIED BIOMASS FUEL PROPERTY.—

(1) IN GENERAL.—Section 25C(d)(3) is amended—

(A) by striking "and" at the end of subparagraph (D),

(B) by striking the period at the end of subparagraph (E) and inserting ", and", and

(C) by adding at the end the following new subparagraph:

"(F) 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.".

(2) BIOMASS FUEL.—Section 25C(d) is amended by adding at the end the following new paragraph:

"(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.".

(c) COORDINATION WITH CREDIT FOR QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY EXPENDITURES.—

(1) IN GENERAL.—Paragraph (3) of section 25C(d), as amended by subsection (b), is amended by striking subparagraph (C) and by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively.

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 25C(d)(2) is amended to read as follows:

"(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.".

(d) EFFECTIVE DATE.—The amendments made this section shall apply to expenditures made after December 31, 2007.

SEC. 143. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

Subsection (h) of section 179D is amended by striking "December 31, 2008" and inserting "December 31, 2013".

SEC. 144. MODIFICATIONS OF ENERGY EFFICIENT APPLIANCE CREDIT FOR APPLIANCES PRODUCED AFTER 2007.

(a) IN GENERAL.—Subsection (b) of section 45M is amended to read as follows:

"(b) APPLICABLE AMOUNT.—For purposes of subsection (a)—

"(1) DISHWASHERS.—The applicable amount is—

"(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and

"(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

"(2) CLOTHES WASHERS.—The applicable amount is—

"(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

"(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

"(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and

“(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

“(3) REFRIGERATORS.—The applicable amount is—

“(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

“(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

“(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and

“(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards.”.

(b) ELIGIBLE PRODUCTION.—

(1) SIMILAR TREATMENT FOR ALL APPLIANCES.—Subsection (c) of section 45M is amended—

(A) by striking paragraph (2),

(B) by striking “(1) IN GENERAL” and all that follows through “the eligible” and inserting “The eligible”,

(C) by moving the text of such subsection in line with the subsection heading, and

(D) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and by moving such paragraphs 2 ems to the left.

(2) MODIFICATION OF BASE PERIOD.—Paragraph (2) of section 45M(c), as amended by paragraph (1), is amended by striking “3-calendar year” and inserting “2-calendar year”.

(c) TYPES OF ENERGY EFFICIENT APPLIANCES.—Subsection (d) of section 45M (defining types of energy efficient appliances) is amended to read as follows:

“(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

“(1) dishwashers described in subsection (b)(1),

“(2) clothes washers described in subsection (b)(2), and

“(3) refrigerators described in subsection (b)(3).”.

(d) AGGREGATE CREDIT AMOUNT ALLOWED.—

(1) INCREASE IN LIMIT.—Paragraph (1) of section 45M(e) is amended to read as follows:

“(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2007.”.

(2) EXCEPTION FOR CERTAIN REFRIGERATOR AND CLOTHES WASHERS.—Paragraph (2) of section 45M(e) is amended to read as follows:

“(2) AMOUNT ALLOWED FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Refrigerators described in subsection (b)(3)(D) and clothes washers described in subsection (b)(2)(D) shall not be taken into account under paragraph (1).”.

(e) QUALIFIED ENERGY EFFICIENT APPLIANCES.—

(1) IN GENERAL.—Paragraph (1) of section 45M(f) (defining qualified energy efficient appliance) is amended to read as follows:

“(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term ‘qualified energy efficient appliance’ means—

“(A) any dishwasher described in subsection (b)(1),

“(B) any clothes washer described in subsection (b)(2), and

“(C) any refrigerator described in subsection (b)(3).”.

(2) CLOTHES WASHER.—Section 45M(f)(3) is amended by inserting “commercial” before “residential” the second place it appears.

(3) TOP-LOADING CLOTHES WASHER.—Subsection (f) of section 45M is amended by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively, and by inserting after paragraph (3) the following new paragraph:

“(4) TOP-LOADING CLOTHES WASHER.—The term ‘top-loading clothes washer’ means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.”.

(4) REPLACEMENT OF ENERGY FACTOR.—Section 45M(f)(6), as redesignated by paragraph (3), is amended to read as follows:

"(6) MODIFIED ENERGY FACTOR.—The term 'modified energy factor' means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.".

(5) GALLONS PER CYCLE; WATER CONSUMPTION FACTOR.—Section 45M(f), as amended by paragraph (3), is amended by adding at the end the following:

"(9) GALLONS PER CYCLE.—The term 'gallons per cycle' means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

"(10) WATER CONSUMPTION FACTOR.—The term 'water consumption factor' means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2007.

SEC. 145. ACCELERATED RECOVERY PERIOD FOR DEPRECIATION OF SMART METERS AND SMART GRID SYSTEMS.

(a) IN GENERAL.—Section 168(e)(3)(D) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting a comma, and by inserting after clause (ii) the following new clauses:

"(iii) any qualified smart electric meter, and

"(iv) any qualified smart electric grid system.".

(b) DEFINITIONS.—Section 168(i) is amended by inserting at the end the following new paragraph:

"(18) QUALIFIED SMART ELECTRIC METERS.—

"(A) IN GENERAL.—The term 'qualified smart electric meter' means any smart electric meter which is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

"(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 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.

"(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.".

(c) CONTINUED APPLICATION OF 150 PERCENT DECLINING BALANCE METHOD.—Paragraph (2) of section 168(b) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

"(C) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 146. QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) IN GENERAL.—Paragraph (8) of section 142(l) is amended by striking "September 30, 2009" and inserting "September 30, 2012".

(b) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraph (9) of section 142(l) is amended by striking "October 1, 2009" and inserting "October 1, 2012".

(c) ACCOUNTABILITY.—The second sentence of section 701(d) of the American Jobs Creation Act of 2004 is amended by striking "issuance," and inserting "issuance of the last issue with respect to such project,".

TITLE II—ONE-YEAR EXTENSION OF TEMPORARY PROVISIONS

Subtitle A—Extensions Primarily Affecting Individuals

SEC. 201. DEDUCTION FOR STATE AND LOCAL SALES TAXES.

(a) IN GENERAL.—Subparagraph (I) of section 164(b)(5) is amended by striking "January 1, 2008" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 202. DEDUCTION OF QUALIFIED TUITION AND RELATED EXPENSES.

(a) IN GENERAL.—Subsection (e) of section 222 is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 203. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) INTEREST-RELATED DIVIDENDS.—Subparagraph (C) of section 871(k)(1) (defining interest-related dividend) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) SHORT-TERM CAPITAL GAIN DIVIDENDS.—Subparagraph (C) of section 871(k)(2) (defining short-term capital gain dividend) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2007.

SEC. 204. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subparagraph (F) of section 408(d)(8) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2007.

SEC. 205. DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking "or 2007" and inserting "2007, or 2008".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2007.

SEC. 206. ELECTION TO INCLUDE COMBAT PAY AS EARNED INCOME FOR PURPOSES OF EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Subclause (II) of section 32(c)(2)(B)(vi) (defining earned income) is amended by striking "January 1, 2008" and inserting "January 1, 2009".

(b) CONFORMING AMENDMENT.—Paragraph (4) of section 6428(e) is amended by striking "except that" and all that follows through "such term" and inserting "except that such term".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2007.

SEC. 207. MODIFICATION OF MORTGAGE REVENUE BONDS FOR VETERANS.

(a) QUALIFIED MORTGAGE BONDS USED TO FINANCE RESIDENCES FOR VETERANS WITHOUT REGARD TO FIRST-TIME HOMEBUYER REQUIREMENT.—Subparagraph (D) of section 143(d)(2) is amended by striking "January 1, 2008" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after December 31, 2007.

SEC. 208. DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.

(a) IN GENERAL.—Clause (iv) of section 72(t)(2)(G) is amended by striking "December 31, 2007" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals ordered or called to active duty on or after December 31, 2007.

SEC. 209. STOCK IN RIC FOR PURPOSES OF DETERMINING ESTATES OF NONRESIDENTS NOT CITIZENS.

(a) IN GENERAL.—Paragraph (3) of section 2105(d) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to decedents dying after December 31, 2007.

SEC. 210. QUALIFIED INVESTMENT ENTITIES.

(a) IN GENERAL.—Clause (ii) of section 897(h)(4)(A) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2008, except that such amendment shall not apply to the application of withholding requirements with respect to any payment made on or before the date of the enactment of this Act.

SEC. 211. EXCLUSION OF AMOUNTS RECEIVED UNDER QUALIFIED GROUP LEGAL SERVICES PLANS.

(a) IN GENERAL.—Subsection (e) of section 120 is amended by striking "shall not apply to taxable years beginning after June 30, 1992" and inserting "shall apply to taxable years beginning after December 31, 2007, and before January 1, 2009".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

Subtitle B—Extensions Primarily Affecting Businesses

SEC. 221. RESEARCH CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 41(h)(1) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) COMPUTATION OF CREDIT FOR TAXABLE YEAR IN WHICH CREDIT TERMINATES.—Paragraph (2) of section 41(h) is amended to read as follows:

"(2) COMPUTATION OF CREDIT FOR TAXABLE YEAR IN WHICH CREDIT TERMINATES.—

"(A) IN GENERAL.—In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year, the applicable base amount with respect to such taxable year shall be the amount which bears the same ratio to such applicable amount (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.

"(B) APPLICABLE BASE AMOUNT.—For purposes of subparagraph (A), the term 'applicable base amount' means, with respect to any taxable year—

"(i) except as otherwise provided in this subparagraph, the base amount for the taxable year,

"(ii) in the case of a taxable year with respect to which an election under subsection (c)(4) (relating to election of alternative incremental credit) is in effect, the average described in subsection (c)(1)(B) for the taxable year, and

"(iii) in the case of a taxable year with respect to which an election under subsection (c)(5) (relating to election of alternative simplified credit) is in effect, the average qualified research expenses for the 3 taxable years preceding the taxable year.".

(c) CONFORMING AMENDMENT.—Subparagraph (D) of section 45C(b)(1) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2007.

SEC. 222. INDIAN EMPLOYMENT CREDIT.

(a) IN GENERAL.—Subsection (f) of section 45A is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 223. NEW MARKETS TAX CREDIT.

Subparagraph (D) of section 45D(f)(1) is amended by striking "and 2008" and inserting "2008, and 2009".

SEC. 224. RAILROAD TRACK MAINTENANCE.

(a) IN GENERAL.—Subsection (f) of section 45G is amended by striking "January 1, 2008" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2007.

SEC. 225. FIFTEEN-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS AND QUALIFIED RESTAURANT PROPERTY.

(a) IN GENERAL.—Clauses (iv) and (v) of section 168(e)(3)(E) are each amended by striking "January 1, 2008" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2007.

SEC. 226. SEVEN-YEAR COST RECOVERY PERIOD FOR MOTORSPORTS RACING TRACK FACILITY.

(a) IN GENERAL.—Subparagraph (D) of section 168(i)(15) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2007.

SEC. 227. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.

(a) IN GENERAL.—Paragraph (8) of section 168(j) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2007.

SEC. 228. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL.—Subsection (h) of section 198 is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred after December 31, 2007.

SEC. 229. DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.

(a) IN GENERAL.—Subparagraph (C) of section 199(d)(8) is amended—

(1) by striking "first 2 taxable years" and inserting "first 3 taxable years", and

(2) by striking "January 1, 2008" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 230. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Clause (iv) of section 512(b)(13)(E) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments received or accrued after December 31, 2007.

SEC. 231. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Subpart I of part IV of subchapter A of chapter 1, as amended by sections 106 and 141, is amended by adding at the end the following new section:

"SEC. 54D. QUALIFIED ZONE ACADEMY BONDS.

"(a) QUALIFIED ZONE ACADEMY BONDS.—For purposes of this subchapter, the term 'qualified zone academy bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

"(2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and

"(3) the issuer—

"(A) designates such bond for purposes of this section, "(B) certifies that it has written assurances that the private business contribution requirement of subsection (b) will be met with respect to such academy, and

"(C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

"(b) PRIVATE BUSINESS CONTRIBUTION REQUIREMENT.—For purposes of subsection (a), the private business contribution requirement of this subsection is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

"(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

"(1) NATIONAL LIMITATION.—There is a national zone academy bond limitation for each calendar year. Such limitation is $400,000,000 for 2008, and, except as provided in paragraph (4), zero thereafter.

"(2) ALLOCATION OF LIMITATION.—The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

"(3) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

"(4) CARRYOVER OF UNUSED LIMITATION.—

"(A) IN GENERAL.—If for any calendar year—

"(i) the limitation amount for any State, exceeds

"(ii) the amount of bonds issued during such year which are designated under subsection (a) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

"(B) LIMITATION ON CARRYOVER.—Any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

"(C) COORDINATION WITH SECTION 1397E.—Any carryover determined under section 1397E(e)(4) (relating to carryover of unused limitation) with respect to any State to calendar year 2008 shall be treated for purposes of this section as a carryover with respect to such State for such calendar year under subparagraph (A), and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED ZONE ACADEMY.—The term 'qualified zone academy' means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

"(A) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

"(B) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

"(C) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

"(D)(i) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

"(ii) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

"(2) ELIGIBLE LOCAL EDUCATION AGENCY.— For purposes of this section, the term 'eligible local education agency' means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

"(3) QUALIFIED PURPOSE.—The term 'qualified purpose' means, with respect to any qualified zone academy—

"(A) rehabilitating or repairing the public school facility in which the academy is established,

"(B) providing equipment for use at such academy,

"(C) developing course materials for education to be provided at such academy, and

"(D) training teachers and other school personnel in such academy.

"(4) QUALIFIED CONTRIBUTIONS.—The term 'qualified contribution' means any contribution (of a type and quality acceptable to the eligible local education agency) of—

"(A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

"(B) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

"(C) services of employees as volunteer mentors,

"(D) internships, field trips, or other educational opportunities outside the academy for students, or

"(E) any other property or service specified by the eligible local education agency.".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d), as amended by sections 106 and 141, is amended by striking "or" at the end of subparagraph (A), by inserting "or" at the end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

"(C) a qualified zone academy bond,".

(2) Subparagraph (C) of section 54A(d)(2), as amended by sections 106 and 141, is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end the following new clause:

"(iii) in the case of a qualified zone academy bond, a purpose specified in section 54D(a)(1).".

(3) Section 1397E is amended by adding at the end the following new subsection:

"(m) TERMINATION.—This section shall not apply to any obligation issued after the date of the enactment of this Act.".

(4) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54D. Qualified zone academy bonds.".

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

SEC. 232. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) DESIGNATION OF ZONE.—

(1) IN GENERAL.—Subsection (f) of section 1400 is amended by striking "2007" both places it appears and inserting "2008".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to periods beginning after December 31, 2007.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—

(1) IN GENERAL.—Subsection (b) of section 1400A is amended by striking "2007" and inserting "2008".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to bonds issued after December 31, 2007.

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) IN GENERAL.—Subsection (b) of section 1400B is amended by striking "2008" each place it appears and inserting "2009".

(2) CONFORMING AMENDMENTS.—

(A) Section 1400B(e)(2) is amended—

(i) by striking "2012" and inserting "2013", and

(ii) by striking "2012" in the heading thereof and inserting "2013".

(B) Section 1400B(g)(2) is amended by striking "2012" and inserting "2013".

(C) Section 1400F(d) is amended by striking "2012" and inserting "2013".

(3) EFFECTIVE DATES.—

(A) EXTENSION.—The amendments made by paragraph (1) shall apply to acquisitions after December 31, 2007.

(B) CONFORMING AMENDMENTS.—The amendments made by paragraph (2) shall take effect on the date of the enactment of this Act.

(d) FIRST-TIME HOMEBUYER CREDIT.—

(1) IN GENERAL.—Subsection (i) of section 1400C is amended by striking "2008" and inserting "2009".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to property purchased after December 31, 2007.

SEC. 233. ECONOMIC DEVELOPMENT CREDIT FOR AMERICAN SAMOA.

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

(1) by striking "first two taxable years" and inserting "first 3 taxable years", and

(2) by striking "January 1, 2008" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 234. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(C) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2007.

SEC. 235. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORY TO PUBLIC SCHOOLS.

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(D) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2007.

SEC. 236. ENHANCED DEDUCTION FOR QUALIFIED COMPUTER CONTRIBUTIONS.

(a) IN GENERAL.—Subparagraph (G) of section 170(e)(6) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made during taxable years beginning after December 31, 2007.

SEC. 237. BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

(a) IN GENERAL.—The last sentence of section 1367(a)(2) is amended by striking "December 31, 2007" and inserting "December 31, 2008".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2007.

SEC. 238. WORK OPPORTUNITY TAX CREDIT FOR HURRICANE KATRINA EMPLOYEES.

(a) IN GENERAL.—Paragraph (1) of section 201(b) of the Katrina Emergency Tax Relief Act of 2005 is amended by striking "2-year" and inserting "3-year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals hired after August 27, 2007.

SEC. 239. SUBPART F EXCEPTION FOR ACTIVE FINANCING INCOME.

(a) EXEMPT INSURANCE INCOME.—Paragraph (10) of section 953(e) (relating to application) is amended—

(1) by striking "January 1, 2009" and inserting "January 1, 2010", and

(2) by striking "December 31, 2008" and inserting "December 31, 2009".

(b) EXCEPTION TO TREATMENT AS FOREIGN PERSONAL HOLDING COMPANY INCOME.—Paragraph (9) of section 954(h) (relating to application) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

SEC. 240. LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.

(a) IN GENERAL.—Subparagraph (C) of section 954(c)(6) (relating to application) is amended by striking "January 1, 2009" and inserting "January 1, 2010".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2008, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 241. EXPENSING FOR CERTAIN QUALIFIED FILM AND TELEVISION PRODUCTIONS.

(a) IN GENERAL.—Subsection (f) of section 181 is amended by striking "December 31, 2008" and inserting "December 31, 2009".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to productions commencing after December 31, 2008.

Subtitle C—Other Extensions

SEC. 251. AUTHORITY TO DISCLOSE INFORMATION RELATED TO TERRORIST ACTIVITIES MADE PERMANENT.

(a) IN GENERAL.—Subparagraph (C) of section 6103(i)(3) is amended by striking clause (iv).

(b) DISCLOSURE ON REQUEST.—Paragraph (7) of section 6103(i) is amended by striking subparagraph (E).

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

SEC. 252. AUTHORITY FOR UNDERCOVER OPERATIONS MADE PERMANENT.

(a) IN GENERAL.—Subsection (c) of section 7608 is amended by striking paragraph (6).

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2008.

SEC. 253. AUTHORITY TO DISCLOSE RETURN INFORMATION FOR CERTAIN VETERANS PROGRAMS MADE PERMANENT.

(a) IN GENERAL.—Paragraph (7) of section 6103(l) is amended by striking the last sentence thereof.

(b) CONFORMING AMENDMENT.—Section 6103(l)(7)(D)(viii)(III) is amended by striking "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)" and inserting "sections 1710(a)(2)(G), 1710(a)(3), and 1710(b)".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests made after September 30, 2008.

SEC. 254. INCREASE IN LIMIT ON COVER OVER OF RUM EXCISE TAX TO PUERTO RICO AND THE VIRGIN ISLANDS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking "January 1, 2008" and inserting "January 1, 2009".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2007.

SEC. 255. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

Subsection (f) of section 9812 is amended—

(1) by striking "and" at the end of paragraph (2), and

(2) by striking paragraph (3) and inserting the following new paragraphs:

"(3) on or after January 1, 2008, and before the date of the enactment of the Renewable Energy and Job Creation Act of 2008, and

"(4) after December 31, 2008.".

TITLE III—ADDITIONAL TAX RELIEF

Subtitle A—Individual Tax Relief

SEC. 301. ADDITIONAL STANDARD DEDUCTION FOR REAL PROPERTY TAXES FOR NONITEMIZERS.

(a) IN GENERAL.—Section 63(c)(1) (defining standard deduction) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) in the case of any taxable year beginning in 2008, the real property tax deduction.".

(b) DEFINITION.—Section 63(c) is amended by adding at the end the following new paragraph:

"(7) REAL PROPERTY TAX DEDUCTION.—For purposes of paragraph (1), the real property tax deduction is the lesser of—

"(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

"(B) $350 ($700 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 302. REFUNDABLE CHILD CREDIT.

(a) MODIFICATION OF THRESHOLD AMOUNT.—Clause (i) of section 24(d)(1)(B) is amended by inserting "($8,500 in the case of taxable years beginning in 2008)" after "$10,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2007.

SEC. 303. INCREASE OF AMT REFUNDABLE CREDIT AMOUNT FOR INDIVIDUALS WITH LONG-TERM UNUSED CREDITS FOR PRIOR YEAR MINIMUM TAX LIABILITY, ETC.

(a) IN GENERAL.—Paragraph (2) of section 53(e) is amended to read as follows:

"(2) AMT REFUNDABLE CREDIT AMOUNT.—For purposes of paragraph (1), the term 'AMT refundable credit amount' means, with respect to any taxable year, the amount (not in excess of the long-term unused minimum tax credit for such taxable year) equal to the greater of—

"(A) 50 percent of the long-term unused minimum tax credit for such taxable year, or

"(B) the amount (if any) of the AMT refundable credit amount for the taxpayer's preceding taxable year (determined without regard to subsection (f)(2)).".

(b) TREATMENT OF CERTAIN UNDERPAYMENTS, INTEREST, AND PENALTIES ATTRIBUTABLE TO THE TREATMENT OF INCENTIVE STOCK OPTIONS.—Section 53 is amended by adding at the end the following new subsection:

"(f) TREATMENT OF CERTAIN UNDERPAYMENTS, INTEREST, AND PENALTIES ATTRIBUTABLE TO THE TREATMENT OF INCENTIVE STOCK OPTIONS.—

"(1) ABATEMENT.—Any underpayment of tax outstanding on the date of the enactment of this subsection which is attributable to the application of section 56(b)(3) for any taxable year ending before January 1, 2008 (and any interest or penalty with respect to such underpayment which is outstanding on such date of enactment), is hereby abated. The amount determined under subsection (b)(1) shall not include any tax abated under the preceding sentence.

"(2) INCREASE IN CREDIT FOR CERTAIN INTEREST AND PENALTIES ALREADY PAID.—The AMT refundable credit amount, and the minimum tax credit determined under subsection (b), for the taxpayer's first 2 taxable years beginning after December 31, 2007, shall each be increased by 50 percent of the aggregate amount of the interest and penalties which were paid by the taxpayer before the date of the enactment of this subsection and which would (but for such payment) have been abated under paragraph (1).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply to taxable years beginning after December 31, 2007.

(2) ABATEMENT.—Section 53(f)(1) of the Internal Revenue Code of 1986, as added by subsection (b), shall take effect on the date of the enactment of this Act.

Subtitle B—Business Related Provisions

SEC. 311. UNIFORM TREATMENT OF ATTORNEY-ADVANCED EXPENSES AND COURT COSTS IN CONTINGENCY FEE CASES.

(a) IN GENERAL.—Section 162 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

"(q) ATTORNEY-ADVANCED EXPENSES AND COURT COSTS IN CONTINGENCY FEE CASES.—In the case of any expense or court cost which is paid or incurred in the course of the trade or business of practicing law and the repayment of which is contingent on a recovery by judgment or settlement in the action to which such expense or cost relates, the deduction under subsection (a) shall be determined as if such expense or cost was not subject to repayment.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses and costs paid or incurred in taxable years beginning after the date of the enactment of this Act.

SEC. 312. PROVISIONS RELATED TO FILM AND TELEVISION PRODUCTIONS.

(a) MODIFICATION OF LIMITATION ON EXPENSING.—Subparagraph (A) of section 181(a)(2) is amended to read as follows:

"(A) IN GENERAL.—Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production as exceeds $15,000,000.".

(b) MODIFICATIONS TO DEDUCTION FOR DOMESTIC ACTIVITIES.—

(1) DETERMINATION OF W-2 WAGES.—Paragraph (2) of section 199(b) is amended by adding at the end the following new subparagraph:

"(D) SPECIAL RULE FOR QUALIFIED FILM.—In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.".

(2) DEFINITION OF QUALIFIED FILM.—Paragraph (6) of section 199(c) is amended by adding at the end the following: "A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.".

(3) PARTNERSHIPS.—Subparagraph (A) of section 199(d)(1) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation—

"(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

"(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) EXPENSING.—The amendments made by subsection (a) shall apply to qualified film and television productions commencing after December 31, 2007.

Subtitle C—Modification of Penalty on Understatement of Taxpayer's Liability by Tax Return Preparer

SEC. 321. MODIFICATION OF PENALTY ON UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY TAX RETURN PREPARER.

(a) IN GENERAL.—Subsection (a) of section 6694 (relating to understatement due to unreasonable positions) is amended to read as follows:

"(a) UNDERSTATEMENT DUE TO UNREASONABLE POSITIONS.—

"(1) IN GENERAL.—If a tax return preparer—

"(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

"(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

"(2) UNREASONABLE POSITION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

"(B) DISCLOSED POSITIONS.—If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

"(C) TAX SHELTERS AND REPORTABLE TRANSACTIONS.—If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.".

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

(1) in the case of a position other than a position described in subparagraph (C) of section 6694(a)(2) of the Internal Revenue Code of 1986 (as amended by this section), to returns prepared after May 25, 2007, and

(2) in the case of a position described in such subparagraph (C), to returns prepared for taxable years ending after the date of the enactment of this Act.

Subtitle D—Extension and Expansion of Certain GO Zone Incentives

SEC. 331. CERTAIN GO ZONE INCENTIVES.

(a) USE OF AMENDED INCOME TAX RETURNS TO TAKE INTO ACCOUNT RECEIPT OF CERTAIN HURRICANE-RELATED CASUALTY LOSS GRANTS BY DISALLOWING PREVIOUSLY TAKEN CASUALTY LOSS DEDUCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of the Internal Revenue Code of 1986, if a taxpayer claims a deduction for any taxable year with respect to a casualty loss to a principal residence (within the meaning of section 121 of such Code) resulting from Hurricane Katrina, Hurricane Rita, or Hurricane Wilma and in a subsequent taxable year receives a grant under Public Law 109–148, 109–234, or 110–116 as reimbursement for such loss, such taxpayer may elect to file an amended income tax return for the taxable year in which such deduction was allowed (and for any taxable year to which such deduction is carried) and reduce (but not below zero) the amount of such deduction by the amount of such reimbursement.

(2) TIME OF FILING AMENDED RETURN.—Paragraph (1) shall apply with respect to any grant only if any amended income tax returns with respect to such grant are filed not later than the later of—

(A) the due date for filing the tax return for the taxable year in which the taxpayer receives such grant, or

(B) the date which is 1 year after the date of the enactment of this Act.

(3) WAIVER OF PENALTIES AND INTEREST.—Any underpayment of tax resulting from the reduction under paragraph (1) of the amount otherwise allowable as a deduction shall not be subject to any penalty or interest under such Code if such tax is paid not later than 1 year after the filing of the amended return to which such reduction relates.

(b) WAIVER OF DEADLINE ON CONSTRUCTION OF GO ZONE PROPERTY ELIGIBLE FOR BONUS DEPRECIATION.—

(1) IN GENERAL.—Subparagraph (B) of section 1400N(d)(3) is amended to read as follows:

"(B) without regard to 'and before January 1, 2009' in clause (i) thereof, and".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to property placed in service after December 31, 2007.

(c) INCLUSION OF CERTAIN COUNTIES IN GULF OPPORTUNITY ZONE FOR PURPOSES OF TAX-EXEMPT BOND FINANCING.—

(1) IN GENERAL.—Subsection (a) of section 1400N is amended by adding at the end the following new paragraph:

"(8) INCLUSION OF CERTAIN COUNTIES.—For purposes of this subsection, the Gulf Opportunity Zone includes Colbert County, Alabama and Dallas County, Alabama.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 to which it relates.

TITLE IV—REVENUE PROVISIONS

SEC. 401. NONQUALIFIED DEFERRED COMPENSATION FROM CERTAIN TAX INDIFFERENT PARTIES.

(a) IN GENERAL.—Subpart B of part II of subchapter E of chapter 1 is amended by inserting after section 457 the following new section:

"SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION FROM CERTAIN TAX INDIFFERENT PARTIES.

"(a) IN GENERAL.—Any compensation which is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

"(b) NONQUALIFIED ENTITY.—For purposes of this section, the term 'nonqualified entity' means—

"(1) any foreign corporation unless substantially all of its income is—

"(A) effectively connected with the conduct of a trade or business in the United States, or

"(B) subject to a comprehensive foreign income tax, and

"(2) any partnership unless substantially all of its income is allocated to persons other than—

"(A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and

"(B) organizations which are exempt from tax under this title.

"(c) DETERMINABILITY OF AMOUNTS OF COMPENSATION.—

"(1) IN GENERAL.—If the amount of any compensation is not determinable at the time that such compensation is otherwise includible in gross income under subsection (a)—

"(A) such amount shall be so includible in gross income when determinable, and

"(B) the tax imposed under this chapter for the taxable year in which such compensation is includible in gross income shall be increased by the sum of—

"(i) the amount of interest determined under paragraph (2), and

"(ii) an amount equal to 20 percent of the amount of such compensation.

"(2) INTEREST.—For purposes of paragraph (1)(B)(i), the interest determined under this paragraph for any taxable year is the amount of interest at the underpayment rate under section 6621 plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

"(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) SUBSTANTIAL RISK OF FORFEITURE.—

"(A) IN GENERAL.—The rights of a person to compensation shall be treated as subject to a substantial risk of forfeiture only if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

"(B) EXCEPTION FOR COMPENSATION BASED ON GAIN RECOGNIZED ON AN INVESTMENT ASSET.—

"(i) IN GENERAL.—To the extent provided in regulations prescribed by the Secretary, if compensation is determined solely by reference to the amount of gain recognized on the disposition of an investment asset, such compensation shall be treated as subject to a substantial risk of forfeiture until the date of such disposition.

"(ii) INVESTMENT ASSET.—For purposes of clause (i), the term 'investment asset' means any single asset (other than an investment fund or similar entity)—

"(I) acquired directly by an investment fund or similar entity,

"(II) with respect to which such entity does not (nor does any person related to such entity) participate in the active management of such asset (or if such asset is an interest in an entity, in the active management of the activities of such entity), and

"(III) substantially all of any gain on the disposition of which (other than such deferred compensation) is allocated to investors in such entity.

"(iii) COORDINATION WITH SPECIAL RULE.—Paragraph (3)(B) shall not apply to any compensation to which clause (i) applies.

"(2) COMPREHENSIVE FOREIGN INCOME TAX.—The term 'comprehensive foreign income tax' means, with respect to any foreign person, the income tax of a foreign country if—

"(A) such person is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

"(B) such person demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

"(3) NONQUALIFIED DEFERRED COMPENSATION PLAN.—

"(A) IN GENERAL.—The term 'nonqualified deferred compensation plan' has the meaning given such term under section 409A(d), except that such term shall include any plan that provides a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.

"(B) EXCEPTION.—Compensation shall not be treated as deferred for purposes of this section if the service provider receives payment of such compensation not later than 12 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

"(4) EXCEPTION FOR CERTAIN COMPENSATION WITH RESPECT TO EFFECTIVELY CONNECTED INCOME.—In the case a foreign corporation with income which is taxable under section 882, this section shall not apply to compensation which, had such compensation had been paid in cash on the date that such compensation ceased to be subject to a substantial risk of forfeiture, would have been deductible by such foreign corporation against such income.

"(5) APPLICATION OF RULES.—Rules similar to the rules of paragraphs (5) and (6) of section 409A(d) shall apply.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.".

(b) CONFORMING AMENDMENT.—Section 26(b)(2) is amended by striking "and" at the end of subparagraph (U), by striking the period at the end of subparagraph (V) and inserting ", and", and by adding at the end the following new subparagraph:

"(W) section 457A(c)(1)(B) (relating to determinability of amounts of compensation).".

(c) CLERICAL AMENDMENT.—The table of sections of subpart B of part II of subchapter E of chapter 1 is amended by inserting after the item relating to section 457 the following new item:

"Sec. 457A. Nonqualified deferred compensation from certain tax indifferent parties.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to amounts deferred which are attributable to services performed after December 31, 2008.

(2) APPLICATION TO EXISTING DEFERRALS.—In the case of any amount deferred to which the amendments made by this section do not apply solely by reason of the fact that the amount is attributable to services performed before January 1, 2009, to the extent such amount is not includible in gross income in a taxable year beginning before 2018, such amounts shall be includible in gross income in the later of—

(A) the last taxable year beginning before 2018, or

(B) the taxable year in which there is no substantial risk of forfeiture of the rights to such compensation (determined in the same manner as determined for purposes of section 457A of the Internal Revenue Code of 1986, as added by this section).

(3) CHARITABLE CONTRIBUTIONS OF EXISTING DEFERRALS PERMITTED.—

(A) IN GENERAL.—Subsection (b) of section 170 of the Internal Revenue Code of 1986 shall not apply to (and subsections (b) and (d) of such section shall be applied without regard to) so much of the taxpayer's qualified contributions made during the taxpayer's last taxable year beginning before 2018 as does not exceed the taxpayer's qualified inclusion amount. For purposes of subsection (b) of section 170 of such Code, the taxpayer's contribution base for such last taxable year shall be reduced by the amount of the taxpayer's qualified contributions to which such subsection does not apply by reason the preceding sentence.

(B) QUALIFIED CONTRIBUTIONS.—For purposes of this paragraph, the term "qualified contributions" means the aggregate charitable contributions (as defined in section 170(c) of such Code) paid in cash by the taxpayer to organizations described in section 170(b)(1)(A) of such Code (other than any organization described in section 509(a)(3) of such Code or any fund or account described in section 4966(d)(2) of such Code).

(C) QUALIFIED INCLUSION AMOUNT.—For purposes of this paragraph, the term "qualified inclusion amount" means the amount includible in the taxpayer's gross income for the last taxable year beginning before 2018 by reason of paragraph (2).

(4) ACCELERATED PAYMENTS.—No later than 120 days after the date of the enactment of this Act, the Secretary shall issue guidance providing a limited period of time during which a nonqualified deferred compensation arrangement attributable to services performed on or before December 31, 2008, may, without violating the requirements of section 409A(a) of the Internal Revenue Code of 1986, be amended to conform the date of distribution to the date the amounts are required to be included in income.

(5) CERTAIN BACK-TO-BACK ARRANGEMENTS.—If the taxpayer is also a service recipient and maintains one or more nonqualified deferred compensation arrangements for its service providers under which any amount is attributable to services performed on or before December 31, 2008, the guidance issued under

paragraph (4) shall permit such arrangements to be amended to conform the dates of distribution under such arrangement to the date amounts are required to be included in the income of such taxpayer under this subsection.

(6) ACCELERATED PAYMENT NOT TREATED AS MATERIAL MODIFICATION.—Any amendment to a nonqualified deferred compensation arrangement made pursuant to paragraph (4) or (5) shall not be treated as a material modification of the arrangement for purposes of section 409A of the Internal Revenue Code of 1986.

SEC. 402. DELAY IN APPLICATION OF WORLDWIDE ALLOCATION OF INTEREST.

(a) IN GENERAL.—Paragraphs (5)(D) and (6) of section 864(f) are each amended by striking "December 31, 2008" and inserting "December 31, 2018".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 403. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

(a) REPEAL OF ADJUSTMENT FOR 2012.—Subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking the percentage contained therein and inserting "100 percent".

(b) MODIFICATION OF ADJUSTMENT FOR 2013.—The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 37.75 percentage points.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 6049, as amended, includes energy tax incentives, extends a number of expiring provisions, and provides additional tax relief. The provisions approved by the Committee provide incentives for taxpayers to enhance energy infrastructure properties in the United States and to encourage taxpayers to use certain energy technologies. The provisions also extend a number of expiring Internal Revenue Code provisions, including the deduction for State and local sales taxes, the research and experimentation tax credit, and certain education tax benefits. They also provide additional tax relief, including an additional standard deduction for real property taxes for nonitemizers and an expansion of the refundable child credit.

B. BACKGROUND AND NEED FOR LEGISLATION

The energy tax incentives approved by the Committee are intended to reduce America's greenhouse gas emissions and overall dependence on fossil fuels. The other provisions extend needed tax relief to individuals and businesses.

C. LEGISLATIVE HISTORY

Background

H.R. 6049 was introduced in the House of Representatives on May 14, 2008, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up the bill on May 15, 2008, and ordered the bill, as amended, favorably reported.

TITLE I—ENERGY TAX INCENTIVES

A. CLEAN RENEWABLE ENERGY PRODUCTION INCENTIVES

1. Extension and modification of the credit for the production of electricity from renewable resources (Secs. 101 and 102 of the bill and sec. 45 of the Code)

PRESENT LAW

In general

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities.[1] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production. 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.

Credit amounts and credit period

In general

The base amount of the electricity production credit is 1.5 cents per kilowatt-hour (indexed annually for inflation) of electricity produced. The amount of the credit was 2 cents per kilowatt-hour for 2007.[2] A taxpayer may generally claim a credit during the 10-year period commencing with the date the qualified facility is placed in service. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

Credit phaseout

The amount of credit a taxpayer may claim is phased out as the market price of electricity exceeds certain threshold levels. The electricity production credit is reduced over a 3 cent phaseout range to the extent the annual average contract price per kilowatt-hour of electricity sold in the prior year from the same qualified energy resource exceeds 8 cents (adjusted for inflation; 10.7 cents for 2007).

Reduced credit periods and credit amounts

Generally, in the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), geothermal energy facilities, solar energy facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities placed in service before August 8, 2005, the 10-year credit period is reduced to five years commencing on the date the facility was originally placed in service. However, for qualified open-loop biomass facilities (other than a facility described in sec. 45(d)(3)(A)(i) that uses agricultural livestock waste nutrients) placed in service before October 22, 2004, the five-year period commences on January 1, 2005. In the

[1] Sec. 45. In addition to the electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities. Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[2] The Internal Revenue Service ("IRS") is expected to announce the 2008 inflation adjustment factor in the spring of 2008.

case of a closed-loop biomass facility modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the credit period begins no earlier than October 22, 2004.

In the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities the otherwise allowable credit amount is 0.75 cent per kilowatt-hour, indexed for inflation measured after 1992 (1 cent per kilowatt-hour for 2007).

Other limitations on credit claimants and credit amounts

In general, in order to claim the credit, a taxpayer must own the qualified facility and sell the electricity produced by the facility to an unrelated party. A lessee or operator may claim the credit in lieu of the owner of the qualifying facility in the case of qualifying open-loop biomass facilities and in the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee or operator of a facility owned by a governmental unit.

For all qualifying facilities, other than closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the amount of credit a taxpayer may claim is reduced by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits, but the reduction cannot exceed 50 percent of the otherwise allowable credit. In the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, there is no reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit for electricity produced from renewable sources is a component of the general business credit.[3] Generally, the general business credit for any taxable year may not exceed the amount by which the taxpayer's net income tax exceeds the greater of the tentative minimum tax or so much of the net regular tax liability as exceeds $25,000. Excess credits may be carried back one year and forward up to 20 years.

A taxpayer's tentative minimum tax is treated as being zero for purposes of determining the tax liability limitation with respect to the section 45 credit for electricity produced from a facility (placed in service after October 22, 2004) during the first four years of production beginning on the date the facility is placed in service.

Qualified facilities

Wind energy facility

A wind energy facility is a facility that uses wind to produce electricity. To be a qualified facility, a wind energy facility must be placed in service after December 31, 1993, and before January 1, 2009.

Closed-loop biomass facility

A closed-loop biomass facility is a facility that uses any organic material from a plant which is planted exclusively for the purpose

[3] Sec. 38(b)(8).

of being used at a qualifying facility to produce electricity. In addition, a facility can be a closed-loop biomass facility if it is a facility that is modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both coal and other biomass, 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.

To be a qualified facility, a closed-loop biomass facility must be placed in service after December 31, 1992, and before January 1, 2009. In the case of a facility using closed-loop biomass but also co-firing the closed-loop biomass with coal, other biomass, or coal and other biomass, a qualified facility must be originally placed in service and modified to co-fire the closed-loop biomass at any time before January 1, 2009.

Open-loop biomass (including agricultural livestock waste nutrients) facility

An open-loop biomass facility is a facility that uses open-loop biomass to produce electricity. For purposes of the credit, open-loop biomass is defined as (1) any agricultural livestock waste nutrients or (2) any solid, nonhazardous, cellulosic waste material or any lignin material that is segregated from other waste materials and which is derived from:

- forest-related resources, including mill and harvesting residues, precommercial thinnings, slash, and brush;
- solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes, and landscape or right-of-way tree trimmings; or
- agricultural sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Agricultural livestock waste nutrients are defined as agricultural livestock manure and litter, including bedding material for the disposition of manure. Wood waste materials do not qualify as open-loop biomass to the extent they are pressure treated, chemically treated, or painted. In addition, municipal solid waste, gas derived from the biodegradation of solid waste, and paper which is commonly recycled do not qualify as open-loop biomass. Open-loop biomass does not include closed-loop biomass or any biomass burned in conjunction with fossil fuel (co-firing) beyond such fossil fuel required for start up and flame stabilization.

In the case of an open-loop biomass facility that uses agricultural livestock waste nutrients, a qualified facility is one that was originally placed in service after October 22, 2004, and before January 1, 2009, and has a nameplate capacity rating which is not less than 150 kilowatts. In the case of any other open-loop biomass facility, a qualified facility is one that was originally placed in service before January 1, 2009.

Geothermal facility

A geothermal facility is a facility that uses geothermal energy to produce electricity. Geothermal energy is energy derived from a geothermal deposit that is a geothermal reservoir consisting of natural heat that is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). To be a qualified facility, a geothermal facility must be placed in service after October 22, 2004, and before January 1, 2009.

Solar facility

A solar facility is a facility that uses solar energy to produce electricity. To be a qualified facility, a solar facility must be placed in service after October 22, 2004, and before January 1, 2006.

Small irrigation facility

A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility must be at least 150 kilowatts but less than five megawatts. To be a qualified facility, a small irrigation facility must be originally placed in service after October 22, 2004, and before January 1, 2009.

Landfill gas facility

A landfill gas facility is a facility that uses landfill gas to produce electricity. Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. To be a qualified facility, a landfill gas facility must be placed in service after October 22, 2004, and before January 1, 2009.

Trash combustion facility

Trash combustion facilities are facilities that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. To be a qualified facility, a trash combustion facility must be placed in service after October 22, 2004, and before January 1, 2009. A qualified trash combustion facility includes a new unit, placed in service after October 22, 2004, that increases electricity production capacity at an existing trash combustion facility. A new unit generally would include a new burner/boiler and turbine. The new unit may share certain common equipment, such as trash handling equipment, with other pre-existing units at the same facility. Electricity produced at a new unit of an existing facility qualifies for the production credit only to the extent of the increased amount of electricity produced at the entire facility.

Hydropower facility

A qualifying hydropower facility is (1) a facility that produced hydroelectric power (a hydroelectric dam) prior to August 8, 2005, at which efficiency improvements or additions to capacity have been made after such date and before January 1, 2009, that enable the taxpayer to produce incremental hydropower or (2) a facility placed in service before August 8, 2005, that did not produce hydroelectric power (a nonhydroelectric dam) on such date, and to which turbines or other electricity generating equipment have been added after such date and before January 1, 2009.

At an existing hydroelectric facility, the taxpayer may claim credit only for the production of incremental hydroelectric power. Incremental hydroelectric power for any taxable year is equal to the percentage of average annual hydroelectric power produced at the facility attributable to the efficiency improvement or additions of capacity determined by using the same water flow information used to determine an historic average annual hydroelectric power production baseline for that facility. The Federal Energy Regulatory Commission will certify the baseline power production of the facility and the percentage increase due to the efficiency and capacity improvements.

At a nonhydroelectric dam, the facility must be licensed by the Federal Energy Regulatory Commission and meet all other applicable environmental, licensing, and regulatory requirements and the turbines or other generating devices must be added to the facility after August 8, 2005 and before January 1, 2009. In addition, there must not be any enlargement of the diversion structure, construction or enlargement of a bypass channel, or the impoundment or any withholding of additional water from the natural stream channel.

Summary of credit rate and credit period by facility type

TABLE 1.—SUMMARY OF SECTION 45 CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

Eligible electricity production activity	Credit amount for 2007 (cents per kilowatt-hour)	Credit period for facilities placed in service on or before August 8, 2005 (years from placed-in-service date)	Credit period for facilities placed in service after August 8, 2005 (years from placed-in-service date)
Wind	2	10	10
Closed-loop biomass	2	[1] 10	10
Open-loop biomass (including agricultural livestock waste nutrient facilities)	1	[2] 5	10
Geothermal	2	5	10
Solar (pre-2006 facilities only)	2	5	10
Small irrigation power	1	5	10
Municipal solid waste (including landfill gas facilities and trash combustion facilities)	1	5	10
Qualified hydropower	1	N/A	10

[1] In the case of certain co-firing closed-loop facilities, the credit period begins no earlier than October 22, 2004.
[2] For certain facilities placed in service before October 22, 2004, the five-year credit period commences on January 1, 2005.

Taxation of cooperatives and their patrons

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception: the cooperative may exclude from its taxable income distributions of patronage dividends. Generally, a cooperative that is subject to the cooperative tax rules of subchapter T of the Code[4] is permitted a deduction for patronage dividends paid only to the extent of net income that is derived from transactions with patrons who are members of the cooperative.[5] The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Eligible cooperatives may elect to pass any portion of the credit through to their patrons. An eligible cooperative is defined as a cooperative organization that is owned more than 50 percent by agricultural producers or entities owned by agricultural producers. The credit may be apportioned among patrons eligible to share in pa-

[4] Secs. 1381–1383.
[5] Sec. 1382.

tronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year. The election must be made on a timely filed return for the taxable year and, once made, is irrevocable for such taxable year.

REASONS FOR CHANGE

The Committee believes that additional incentives for the production of electricity from renewable resources will help limit the environmental consequences of continued reliance on power generated using fossil fuels. The Committee also believes that it is important to modify the existing incentives to make them operate more effectively and to take advantage of new renewable energy technologies. Finally, the Committee believes that the phase-out limitation under present law has not worked effectively to limit the availability of the electricity production credit where increased efficiencies and improved technologies have reduced the need for continued tax subsidies. The Committee believes that a limitation based on the amount of investment in each particular renewable energy project would better serve this goal.

EXPLANATION OF PROVISION

The provision extends and modifies the electricity production credit.

Extension of placed-in-service date for qualifying facilities

The provision extends for three years (through 2011) the period during which qualified facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, small irrigation power, municipal solid waste, and qualified hydropower may be placed in service for purposes of the electricity production credit. The provision extends for one year (through 2009) the placed-in-service period for qualified wind facilities.

Addition of marine and hydrokinetic renewable energy as a qualified resource

The provision adds marine and hydrokinetic renewable energy as a qualified energy resource and marine and hydrokinetic renewable energy facilities as qualified facilities. Marine and hydrokinetic renewable energy is defined as energy derived from (1) waves, tides, and currents in oceans, estuaries, and tidal areas; (2) free flowing water in rivers, lakes, and streams; (3) 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 (4) differentials in ocean temperature (ocean thermal energy conversion). The term does not include energy derived from any source that uses a dam, diversionary structure (except for irrigation systems, canals, and other man-made channels), or impoundment for electric power production. A qualified marine and hydrokinetic renewable energy facility is any facility owned by the taxpayer and placed in service after the date of enactment and before 2012 that produces electric power from marine and hydrokinetic renewable energy and that has a nameplate capacity rating of at least 150 kilowatts.

Under the provision, marine and hydrokinetic renewable energy facilities subsume small irrigation power facilities. The provision, therefore, terminates as a separate category of qualified facility small irrigation power facilities placed in service on or after the date of enactment. Such facilities qualify for the electricity production credit as marine and hydrokinetic renewable energy facilities.

Phaseout replaced by limitation based on investment in facility

The provision replaces the electricity production credit phaseout with an annual limit on the total credits that may be claimed with respect to any qualified facility placed in service after 2009 based on the investment in the facility. Under the limitation, the electricity production credit determined for any taxable year may not exceed the eligible basis of the facility multiplied by a limitation percentage (the "applicable percentage") determined by the Secretary for the month during which the facility is originally placed in service. The applicable percentage for any month is the percentage that yields over a 10-year period amounts of limitation that have a present value equal to 35 percent of the eligible basis of the facility. The discount rate for purposes of this calculation is the greater of 4.5 percent or 110 percent of the long-term Federal rate.

Generally, the eligible basis of a facility is the basis of such facility at the time it is originally placed in service. However, certain special rules apply. Since each wind turbine generally qualifies as a separate facility under section 45, the basis of shared qualified property at a wind project composed of multiple separate wind facilities may be allocated in proportion to the projected generation from such facilities. For this purpose, shared qualified property is property that is eligible for five-year depreciation under section 168(e)(3)(B)(vi) but which is not part of a qualified facility. In the case of a qualified geothermal facility, the eligible basis for purposes of the limitation includes intangible drilling and development costs described in section 263(c).

At the election of the taxpayer, all qualified facilities which are part of the same project and which are placed in service during the same calendar year may be treated for as a single facility placed in service at either the mid-point of such year or the first day of the following calendar year.

Special rules apply for the first and last year of a facility's 10-year credit period to allocate the limitation across a taxpayer's taxable years. In addition, if a facility's production is less than the limitation amount for any taxable year, the limitation with respect to such facility for the next taxable year is increased by the amount of the unused limitation. Similarly, if the electricity production credit exceeds the limitation amount for any taxable year, but falls under the limit the following year, the credit for the following taxable year is increased, up to that year's limitation amount, by the amount of such excess, but not beyond the facility's 10-year credit eligibility period.

Clarification of the definition of trash combustion facility

The provision modifies the definition of qualified trash combustion facilities to permit facilities that gasify municipal solid waste and then burn such gas as part of an electricity generation process to qualify for the electricity production credit.

Modification of the definitions of open-loop biomass facility and closed-loop biomass facility to include new units added to existing qualified facilities

The definitions of qualified open-loop biomass facility and qualified closed-loop biomass facility are modified to include new power generation units placed in service at existing qualified facilities, but only to the extent of the increased amount of electricity produced at such facilities by reason of such new units.

Modification of the third party sale rule for sales to regulated public utilities

The provision modifies the requirement that qualified electricity be sold to a third party. Under the provision, net sales of electricity to a regulated public utility are treated as sold to an unrelated person. Thus, under the provision, a partnership controlled by a regulated public utility may sell power otherwise eligible for the electricity production credit to its controlling partner without failing the third party sale rule.

Modification to definition of nonhydroelectric dam for purposes of qualified hydropower production

The provision modifies the definition of nonhydroelectric dam for purposes of qualified hydropower production. Under the new definition, the nonhydroelectric dam must have been operated for flood control, navigation, or water supply purposes.

The provision replaces the requirement that the project not enlarge the diversion structure or bypass channel, or impound additional water from the natural stream channel, with a requirement that the project be operated so that the water surface elevation at any given location and time be the same as would occur in absence of the project, subject to any license requirements aimed at improving the environmental quality of the affected waterway.

The hydroelectric project installed on the nonhydroelectric dam must still be licensed by the Federal Energy Regulatory Commission and meet all other applicable environmental, licensing, and regulatory requirements, including applicable fish passage requirements.

EFFECTIVE DATE

The extension of the electricity production credit is effective for facilities originally placed in service after 2008. The addition of marine and hydrokinetic renewable energy as a qualified energy resource is effective for electricity produced at qualified facilities and sold after the date of enactment in taxable years ending after such date. The repeal of the credit phaseout adjustment is effective for taxable years ending after 2008. The limitation based on investment is effective for facilities originally placed in service after 2009. The clarification of the definition of trash combustion facility and the modification to the third party sale rule are effective for electricity produced and sold after the date of enactment. The modifications to the definitions of open-loop biomass facility, closed-loop biomass facility, and nonhydroelectric dam are effective for property placed in service after the date of enactment.

2. Extension and modification of energy credit (Sec. 103 of the bill and sec. 48 of the Code)

PRESENT LAW

In general

A nonrefundable, 10-percent business energy credit[6] is allowed for the cost of new property that is equipment that either (1) uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage. Property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property.

The energy credit is a component of the general business credit[7] and as such is subject to the alternative minimum tax. An unused general business credit generally may be carried back one year and carried forward 20 years.[8] The taxpayer's basis in the property is reduced by one-half of the amount of the credit claimed. For projects whose construction time is expected to equal or exceed two years, the credit may be claimed as progress expenditures are made on the project, rather than during the year the property is placed in service. Similarly, the credit only applies to expenditures made after the effective date of the provision.

In general, property that is public utility property is not eligible for the credit. Public utility property is property that is used predominantly in the trade or business of the furnishing or sale of (1) electrical energy, water, or sewage disposal services, (2) gas through a local distribution system, or (3) telephone service, domestic telegraph services, or other communication services (other than international telegraph services), if the rates for such furnishing or sale have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission. This rule is waived in the case of telecommunication companies' purchases of fuel cell and microturbine property.

Special rules for solar energy property

The credit for solar energy property is increased to 30 percent in the case of periods after December 31, 2005 and prior to January 1, 2009. Additionally, equipment that uses fiber-optic distributed sunlight to illuminate the inside of a structure is solar energy property eligible for the 30-percent credit.

Fuel cells and microturbines

The business energy credit also applies for the purchase of qualified fuel cell power plants, but only for periods after December 31, 2005 and prior to January 1, 2009. The credit rate is 30 percent.

A qualified fuel cell power plant is an integrated system composed of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electro-

[6] Sec. 48.
[7] Sec. 38(b)(1).
[8] Sec. 39.

chemical means, and (2) has an electricity-only generation efficiency of greater than 30 percent and a capacity of at least one-half kilowatt. The credit may not exceed $500 for each 0.5 kilowatt of capacity.

The business energy credit also applies for the purchase of qualifying stationary microturbine power plants, but only for periods after December 31, 2005 and prior to January 1, 2009. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

A qualified stationary microturbine power plant is 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 that converts a fuel into electricity and thermal energy. Such system 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. Such system must have an electricity-only generation efficiency of not less that 26 percent at International Standard Organization conditions and a capacity of less than 2,000 kilowatts.

Additionally, for purposes of the fuel cell and microturbine credits, and only in the case of telecommunications companies, the general present-law section 48 restriction that would otherwise prohibit telecommunication companies from claiming the new credit due to their status as public utilities is waived.

REASONS FOR CHANGE

The Committee believes that alternative sources of energy are necessary to meet growing energy needs, reduce reliance on imports, and reduce green-house gas emissions. Toward that end, the Committee believes a long-term extension of the business credit for solar and fuel cell property is warranted to ensure the continued development of alternative energy resources. The Committee further believes that provision of the credit for combined heat and power property will help to stimulate more efficient use of fossil fuels used to generate electrical or mechanical power.

The Committee believes that all sectors of the economy should be encouraged to invest in alternative energy technologies, and therefore removes the rule that prohibits public utilities from claiming the energy credit and also allows the credit against the alternative minimum tax for all taxpayers. The Committee also believes that increasing the cap on the fuel cell credit is necessary to promote further development of fuel cell technology.

EXPLANATION OF PROVISION

The provision extends the otherwise expiring credits and credit rates for six years, through December 31, 2014. The provision raises the $500 per half kilowatt of capacity credit cap with respect to fuel cells to $1500 per half kilowatt of capacity. Also, the restrictions on public utility property being eligible for the credit are repealed. The provision makes the energy credit allowable against the alternative minimum tax.

The provision makes combined heat and power ("CHP") property eligible for the 10-percent energy credit through December 31, 2014.

CHP property is property: (1) that 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); (2) that has an electrical capacity of not more than 50 megawatts or a mechanical energy capacity of no more than 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) that produces at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power, and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent. CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

The otherwise allowable credit with respect to CHP property is reduced to the extent the property has an electrical capacity or mechanical capacity in excess of any applicable limits. Property in excess of the applicable limit (15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities) is permitted to claim a fraction of the otherwise allowable credit. The fraction is equal to the applicable limit divided by the capacity of the property. For example, a 45 megawatt property would be eligible to claim 15/45ths, or one third, of the otherwise allowable credit. Again, no credit is allowed if the property exceeds the 50 megawatt or 67,000 horsepower limitations described above.

Additionally, the provision provides that systems whose fuel source is at least 90 percent open-loop biomass and that would qualify for the credit but for the failure to meet the efficiency standard are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

EFFECTIVE DATE

The provision is generally effective on the date of enactment.

The provision relating to combined heat and power property applies to periods after the date of enactment, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990).

The provision relating to the restrictions on public utility property applies to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990).

The allowance of the credit against the alternative minimum tax is effective for credits determined in taxable years beginning after the date of enactment.

3. Credit for residential energy efficient property (Sec. 104 of the bill and sec. 25D of the Code)

PRESENT LAW

Code section 25D provides a personal tax credit for the purchase of qualified solar electric property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 30 percent of qualifying expenditures, with a maximum credit for each of these systems of property of $2,000. Section 25D also provides a 30-percent credit for the purchase of qualified fuel cell power plants. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

Qualifying solar water heating property means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified solar electric property is property that uses solar energy to generate electricity for use in a dwelling unit. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, (2) has an electricity-only generation efficiency of greater than 30 percent. The qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

The credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures.

Certain equipment safety requirements need to be met to qualify for 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.

The credit applies to property placed in service prior to January 1, 2009.

REASONS FOR CHANGE

The Committee believes the cap on the amount of the available credit for solar electric and fuel cell property should be raised in order to provide additional incentive to invest in such property for those who would otherwise have been restricted by the tighter caps. The Committee also believes that it is proper to provide an incentive for residential wind and geothermal property to encourage investments in such property to reduce fossil fuel consumption. Finally, the Committee believes that it is appropriate to allow the credit against the minimum tax in order to make sure the incentive is available to all taxpayers.

EXPLANATION OF PROVISION

The provision extends the credit for six years (through December 31, 2014) and allows the credit to be claimed against the alternative minimum tax. Additionally, the credit cap for solar electric property is raised to $4,000.

The provision provides a new 30-percent credit for qualified small wind energy property expenses made by the taxpayer during the taxable year. The credit is limited to $500 with respect to each half kilowatt of capacity, not to exceed $4,000. The credit for qualified small wind energy property is allowed for expenditures after December 31, 2007, for property placed in service prior to January 1, 2015.

Qualified small wind energy property expenditures are expenditures for property that uses a wind turbine to generate electricity for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer.

The provision also provides a 30-percent credit for qualified geothermal heat pump property expenditures, not to exceed $2,000. The term "qualified geothermal heat pump property expenditure" means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer. Qualified geothermal heat pump property means any equipment which (1) uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool such dwelling unit, and (2) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made. The credit for qualified geothermal heat pump property is allowed for expenditures after December 31, 2007, for property placed in service prior to January 1, 2015.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007, for property placed in service prior to January 1, 2015.

4. Extension and modification of special rule to implement FERC and State electric restructuring policy (Sec. 105 of the bill and sec. 451(i) of the Code)

PRESENT LAW

Generally, a taxpayer selling property recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

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[9] (the "reinvestment prop-

[9] 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.

erty"). 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 the taxpayer in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to an independent transmission company prior to January 1, 2008. In general, an independent transmission company is defined as: (1) an independent transmission provider [10] approved by the FERC; (2) a person (i) who the FERC determines under section 203 of the Federal Power Act (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 before the close of the period specified in such authorization, but not later than December 31, 2007; 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).

Exempt utility property is defined as: (1) property used in the trade or business of generating, transmitting, distributing, or selling electricity or 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).

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).

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 facilitate the implementation of this policy, the Committee believes it is appropriate to assist taxpayers in moving forward with industry restructuring by providing a tax deferral for gain associated with certain dispositions of electric transmission assets.

The Committee believes that the exempt utility property purchased by the taxpayer with the proceeds from the qualifying electric transmission transaction should be located in the United States in order to qualify for tax-deferral treatment.

EXPLANATION OF PROVISION

The provision extends the treatment under the present-law deferral provision to sales or dispositions by a qualified electric utility prior to January 1, 2010. A qualified electric utility is defined as an electric utility, which as of the date of the qualifying electric

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

transmission transaction, is vertically integrated in that it is both (1) a transmitting utility (as defined in the Federal Power Act)[11] with respect to the transmission facilities to which the election applies, and (2) an electric utility (as defined in the Federal Power Act).[12]

The definition of an independent transmission company is modified for taxpayers whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider, which under the provision must take place no later than four years after the close of the taxable year in which the transaction occurs.

The provision also changes the definition of exempt utility property to exclude property that is located outside the United States.

EFFECTIVE DATE

The extension provision applies transactions after December 31, 2007. The change in the definition of an independent transmission company is effective as if included in section 909 of the American Jobs Creation Act of 2004. The exclusion for property located outside the United States applies to transactions after the date of enactment.

5. New clean renewable energy bonds (Sec. 106 of the bill and new secs. 54A and 54B of the Code)

PRESENT LAW

Tax-exempt bonds

Subject to certain Code restrictions, interest paid on bonds issued by State and local government generally is excluded from gross income for Federal income tax purposes. Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For this purpose, the term "nongovernmental person" generally includes the Federal Government and all other individuals and entities other than States or local governments. The exclusion from income for interest on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

In most cases, the aggregate volume of tax-exempt qualified private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2008, the State volume limit, which is indexed for inflation, equals $85 per resident of the State, or $262.09 million, if greater.

[11] Sec. 3(23), 16 U.S.C. 796, defines "transmitting utility" as any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.

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

The exclusion from income for interest on State and local bonds also does not apply to any arbitrage bond.[13] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[14] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

An issuer must file with the IRS certain information about the bonds issued by them in order for that bond issue to be tax-exempt.[15] Generally, this information return is required to be filed no later the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

Clean renewable energy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue clean renewable energy bonds ("CREBs"). CREBs are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for qualified projects. "Qualified projects" are facilities that qualify for the tax credit under section 45 (other than Indian coal production facilities), without regard to the placed-in-service date requirements of that section.[16] The term "qualified issuers" includes (1) governmental bodies (including Indian tribal governments); (2) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (3) clean renewable energy bond lenders. The term "qualified borrower" includes a governmental body (including an Indian tribal government) and a mutual or cooperative electric company. A clean renewable energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

Unlike tax-exempt bonds, CREBs are not interest-bearing obligations. Rather, the taxpayer holding CREBs on a credit allowance date is entitled to a tax credit. The amount of the credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of CREBs without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

[13] Sec. 103(a) and (b)(2).
[14] Sec. 148.
[15] Sec. 149(e).
[16] In addition, Notice 2006–7 provides that qualified projects include any facility owned by a qualified borrower that is functionally related and subordinate to any facility described in sections 45(d)(1) through (d)(9) and owned by such qualified borrower.

CREBs are subject to a maximum maturity limitation. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a CREBs being equal to 50 percent of the face amount of such bond. The discount rate used to determine the present value amount is the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month the CREBs are issued. In addition, the Code requires level amortization of CREBs during the period such bonds are outstanding.

CREBs also are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to CREBs.

In addition to the above requirements, at least 95 percent of the proceeds of CREBs must be spent on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as CREBs if unspent proceeds are used within 90 days from the end of such five-year period to redeem bonds. The five-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the five-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Issuers of CREBs are required to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. There is a national CREB limitation of $1.2 billion. The maximum amount of CREBs that may be allocated to qualified projects of governmental bodies is $750 million. CREBs must be issued before January 1, 2009.

REASONS FOR CHANGE

The Committee believes that incentives for the development of facilities that produce electricity from renewable resources will help limit the environmental consequences of continued reliance on power generated using fossil fuels. Because certain taxpayers are unable to benefit from tax credits, tax-credit bonds provide an alternative means of assisting such taxpayers with the costs of installing facilities that produce electricity from renewable resources. As a result, the Committee feels that it is appropriate to authorize the issuance of new clean renewable energy bonds.

The Committee also believes that the general rules for tax-credit bonds should be consistent. The Committee believes that a uniform set of general rules would benefit the CREBs program and other tax-credit bond programs. The Committee recognizes that the rules that apply to present-law CREBs should be modified in order to enhance the benefits provided by these tax credit bonds.

EXPLANATION OF PROVISION

The provision creates a new category of clean renewable energy bonds ("New CREBs") that may be issued by qualified issuers to finance qualified renewable energy facilities. Qualified renewable energy facilities are facilities: (1) that qualify for the tax credit under section 45 (other than Indian coal and refined coal production facilities), without regard to the placed-in-service date requirements of that section; and (2) that are owned by a public power provider, governmental bodies, or cooperative electric company.

The term "qualified issuers" includes: (1) public power providers; (2) a governmental body; (3) cooperative electric companies; (4) a not-for-profit electric utility that has received a loan or guarantee under the Rural Electrification Act; and (5) clean renewable energy bond lenders. The term "public power provider" means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph). A "governmental body" means any State or Indian tribal government, or any political subdivision thereof. The term "cooperative electric company" means a mutual or cooperative electric company (described in section 501(c)(12) or section 1381(a)(2)(C)). A clean renewable energy bond lender means a cooperative that is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

There is a national limitation for New CREBs of $2 billion. Under the provision, no more than one-third of the national limit may be allocated to projects of public power providers, governmental bodies, or cooperative electric companies. Allocations to governmental bodies and cooperative electric companies may be made in the manner the Secretary determines appropriate. Allocations to projects of public power providers shall be made, to the extent practicable, in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the maximum allocation limitation to projects of public power providers bears to the cost of all such projects.

Under the provision, 100 percent of the available project proceeds of New CREBs must be used within the three-year period that begins on the date of issuance. The provision defines available project proceeds as proceeds from the sale of the bond issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified projects during the three-year spending period, bonds will continue to qualify as New CREBs if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

New CREBs generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the New CREBs are issued.

The maturity of New CREBs is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month the qualified energy conservation bonds are issued.

As with present-law CREBs, the taxpayer holding New CREBs on a credit allowance date is entitled to a tax credit. Unlike present-law CREBs, however, the credit rate on New CREBs is set by the Secretary at a rate that is 70 percent of the rate that would permit issuance of such bonds without discount and interest cost to the issuer. The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

Issuers of New CREBs are required to certify that the financial disclosure requirements that apply to State and local bonds offered for sale to the general public are satisfied with respect to any Federal, State, or local government official directly involved with the issuance of New CREBs. The provision authorizes the Secretary to impose additional financial reporting requirements by regulation.

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment.

6. Expansion and modification of the advanced coal investment project credit (Sec. 111 of the bill and sec. 48A of the Code)

PRESENT LAW

An investment tax credit is available for power generation projects that use integrated gasification combined cycle ("IGCC") or other advanced coal-based electricity generation technologies. The credit amount is 20 percent for investments in qualifying IGCC projects and 15 percent for investments in qualifying projects that use other advanced coal-based electricity generation technologies.

To qualify, an advanced coal project must be located in the United States and use an advanced coal-based generation technology to power a new electric generation unit or to retrofit or repower an existing unit. Generally, an electric generation unit using an advanced coal-based technology must be designed to achieve a 99 percent reduction in sulfur dioxide and a 90 percent reduction in mercury, as well as to limit emissions of nitrous oxide and particulate matter.[17]

[17] For advanced coal project certification applications submitted after October 2, 2006, an electric generation unit using advanced coal-based generation technology designed to use subbitu-

Continued

The fuel input for a qualifying project, when completed, must use at least 75 percent coal. The project, consisting of one or more electric generation units at one site, must have a nameplate generating capacity of at least 400 megawatts, and the taxpayer must provide evidence that a majority of the output of the project is reasonably expected to be acquired or utilized.

Credits are available only for projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy. Certifications are issued using a competitive bidding process. The Secretary of Treasury must establish a certification program no later than 180 days after August 8, 2005,[18] and each project application must be submitted during the three-year period beginning on the date such certification program is established. An applicant for certification has two years from the date the Secretary accepts the application to provide the Secretary with evidence that the requirements for certification have been met. Upon certification, the applicant has five years from the date of issuance of the certification to place the project in service.

The Secretary of Treasury may allocate $800 million of credits to IGCC projects and $500 million to projects using other advanced coal-based electricity generation technologies. Qualified projects must be economically feasible and use the appropriate clean coal technologies. With respect to IGCC projects, credit-eligible investments include only investments in property associated with the gasification of coal, including any coal handling and gas separation equipment. Thus, investments in equipment that could operate by drawing fuel directly from a natural gas pipeline do not qualify for the credit.

In determining which projects to certify that use IGCC technology, the Secretary must allocate power generation capacity in relatively equal amounts to projects that use bituminous coal, subbituminous coal, and lignite as primary feedstock. In addition, the Secretary must give high priority to projects which include greenhouse gas capture capability, increased by-product utilization, and other benefits.

REASONS FOR CHANGE

The Committee believes that to the extent electricity will continue to be produced from coal, it must be done in as clean and efficient a manner as possible. To this end, the Committee believes that additional investment incentives will encourage the construction of advanced coal facilities that both capture and sequester carbon dioxide and reduce the emissions of other pollutants.

EXPLANATION OF PROVISION

The provision increases to 30 percent the credit rate for IGCC and other advanced coal projects. In addition, the provision permits the Secretary to allocate an additional $1.25 billion of credits to qualifying projects.

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minous coal can meet the performance requirement relating to the removal of sulfur dioxide if it is designed either to remove 99 percent of the sulfur dioxide or to achieve an emission limit of 0.04 pounds of sulfur dioxide per million British thermal units on a 30-day average.

[18] The Secretary issued guidance establishing the certification program on February 21, 2006 (IRS Notice 2006–24).

The provision modifies the definition of qualifying projects to require that projects include equipment which separates and sequesters at least 65 percent of the project's total carbon dioxide emissions. This percentage increases to 70 percent if the credits are later reallocated by the Secretary. The Secretary is required to recapture the benefit of any allocated credit if a project fails to attain or maintain these carbon dioxide separation and sequestration requirements.

In selecting projects, the provision requires the Secretary to give high priority to applicants who have a research partnership with an eligible educational institution. In addition, the Secretary must give the highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions. The provision also requires that the Secretary disclose which projects receive credit allocations, including the identity of the taxpayer and the amount of the credit awarded.

In implementing either section 48A (relating to the credit described above) or section 48B (relating to the coal gasification credit), the provision directs the Secretary to modify the terms of any competitive certification award and any associated closing agreements in certain cases. Specifically, modification is required when it (1) is consistent with the objectives of such section, (2) is requested by the recipient of the award, and (3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base. However, no modification is required if the Secretary determines that the dollar amount of tax credits available to the taxpayer under the applicable section would increase as a result of the modification or such modification would result in such project not being originally certified. In considering any such modification, the Secretary must consult with other relevant Federal agencies, including the Department of Energy.

EFFECTIVE DATE

The provision authorizing the Secretary to allocate additional credits is effective on the date of enactment. The increased credit rate along with the carbon dioxide sequestration and other rules (other than the term modification provision) are effective with respect to these additional credit allocations. The provision directing the Secretary to modify the terms of certain competitive certification awards and associated closing agreements is effective for awards issued before, on, or after the date of enactment.

7. Expansion and modification of the coal gasification investment credit (Sec. 112 of the bill and sec. 48B of the Code)

PRESENT LAW

A 20 percent investment tax credit is available for investments in certain qualifying coal gasification projects. Only property which is part of a qualifying gasification project and necessary for the gasification technology of such project is eligible for the gasification credit.

Qualified gasification projects convert coal, petroleum residue, biomass, or other materials recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion. Qualified projects must be carried out by an eligible entity, defined as any person whose application for certification is principally intended for use in a domestic project which employs domestic gasification applications related to (1) chemicals, (2) fertilizers, (3) glass, (4) steel, (5) petroleum residues, (6) forest products, and (7) agriculture, including feedlots and dairy operations.

Credits are available only for projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy. Certifications are issued using a competitive bidding process. The Secretary of Treasury must establish a certification program no later than 180 days after August 8, 2005,[19] and each project application must be submitted during the 3-year period beginning on the date such certification program is established. The Secretary of Treasury may not allocate more than $350 million in credits. In addition, the Secretary may certify a maximum of $650 million in qualified investment as eligible for credit with respect to any single project.

REASONS FOR CHANGE

The Committee believes that facilities that gasify coal and other resources for use in industrial applications should be operated in an environmentally responsible manner. To this end, the Committee believes these incentives will reduce pollution and encourage the capture and sequestration of carbon dioxide emissions.

EXPLANATION OF PROVISION

The provision expands and modifies the coal gasification investment credit. The provision increases the gasification project credit rate to 30 percent and permits the Secretary to allocate an additional $250 million of credits to qualified projects.

The provision modifies the definition of qualified projects to require that such projects include equipment which separates and sequesters at least 75 percent of total carbon dioxide emissions. The Secretary is required to recapture the benefit of any allocated credit if a project fails to attain or maintain these carbon dioxide separation and sequestration requirements.

In selecting projects, the provision requires the Secretary to give high priority to applicants who have a research partnership with an eligible educational institution. In addition, the Secretary must give the highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions. The provision also requires that the Secretary disclose which projects receive credit allocations, including the identity of the taxpayer and the amount of the credit awarded.

EFFECTIVE DATE

The provision authorizing the Secretary to allocate additional credits is effective on the date of enactment. The increased credit rate along with the carbon dioxide sequestration and other rules are effective with respect to these additional credit allocations.

[19] The Secretary issued guidance establishing the certification program on February 21, 2006 (IRS Notice 2006–25).

8. Extend excise tax on coal at current rates (Sec. 113 of the bill and sec. 4121 of the Code)

PRESENT LAW

A $1.10 per ton excise tax is imposed on coal sold by the producer from underground mines in the United States. The rate is 55 cents per ton on coal sold by the producer from surface mining operations. In either case, the tax cannot exceed 4.4 percent of the coal producer's selling price. No tax is imposed on lignite.

Gross receipts from the excise tax are dedicated to the Black Lung Disability Trust Fund to finance benefits under the Federal Black Lung Benefits Act. Currently, the Black Lung Disability Trust Fund is in a deficit position because previous spending was financed with interest-bearing advances from the General Fund.

The coal excise tax rates are scheduled to decline to 50 cents per ton for underground-mined coal and 25 cents per ton for surface-mined coal (and the cap is scheduled to decline to two percent of the selling price) for sales after January 1, 2014, or after any earlier January 1 on which there is no balance of repayable advances from the Black Lung Disability Trust Fund to the General Fund and no unpaid interest on such advances.

REASONS FOR CHANGE

Trust fund financing of benefits under the Federal Black Lung Benefits Act was established in 1977 to reduce reliance on the Treasury and to recover costs from the mining industry. The expenses of the program covered by the Trust Fund (benefits, administration, and interest) have exceeded revenues, with advances from the General Fund making up the difference. It appears that the Trust Fund will not be able to pay off its debt to the Treasury Department by December 31, 2013. Therefore, the Committee believes that it is appropriate to continue the tax on coal at the increased rates beyond the expiration date.

EXPLANATION OF PROVISION

The provision retains the excise tax on coal at the current rates until the earlier of the following dates: (1) January 1, 2019, and (2) the day after the first December 31 after 2007 on which the Black Lung Disability Trust Fund has repaid, with interest, all amounts borrowed from the General Fund. On and after that date, the reduced rates of $.50 per ton for coal from underground mines and $.25 per ton for coal from surface mines will apply and the tax per ton of coal will be capped at two percent of the amount for which it is sold by the producer.

EFFECTIVE DATE

The provision is effective on the date of enactment.

9. Temporary procedures for excise tax refunds on exported coal (Sec. 114 of the bill)

PRESENT LAW

In general

Excise tax is imposed on coal, except lignite, produced from mines located in the United States.[20] The producer of the coal is liable for paying the tax to the IRS. Producers generally recover the tax from their purchasers.

The Export Clause of the U.S. Constitution provides that "no Tax or Duty shall be laid on Articles exported from any State."[21] Courts have determined that the Export Clause applies to excise tax on exported coal, and therefore such taxes are subject to a claim for refund.[22] The Supreme Court has ruled that taxpayers seeking a refund of such taxes must proceed under the rules of the Internal Revenue Code.[23]

Claims under the Code

In order to obtain a refund of taxes on exported coal, a claimant must satisfy the following requirements of the Code and case law:

1. A claim for refund must be filed within three years from the time the return was filed, or within two years from the time the tax was paid, whichever period expires later;[24]
2. The person must establish that the goods were in the stream of export when the excise tax was imposed;[25]
3. The claimant must establish that it has home the tax. More specifically, the claimant must establish that the tax was neither included in the price of the article nor collected from the purchaser (or if so, that the claimant has repaid the amount of tax to the ultimate purchaser), that the claimant has repaid or agreed to repay the tax to the ultimate vendor or has obtained the written consent of such ultimate vendor to the allowance of the claim, or that the claimant has filed the written consent of the ultimate purchaser to the allowance of the claim;[26]
4. In the case of an exporter or shipper of an article exported to a foreign country or shipped to a possession, the amount of

[20] Sec. 4121(a). Throughout the relevant period, the rate of tax on coal from underground mines has been $1.10 per ton and the rate of tax on coal from surface mines has been $0.55 per ton. These rates are subject to a limitation of 4.4 percent of the producer's sale price. Sec. 4121(b).

[21] U.S. Const., art. 1, sec. 9, cl. 5.

[22] See *Ranger Fuel Corp.* v. *United States,* 33 F. Supp. 2d 466 (E.D. Va. 1998). The IRS subsequently provided guidance regarding how taxpayers may assure that exported coal would not be subject to excise tax. Notice 2000–28, 2000–1 C.B. 1116.

[23] *United States* v. *Clintwood Elkhorn Mining Co.,* 76 U.S.L.W. 4189 (U.S. April 15, 2008). Prior to the Supreme Court's decision, some courts had allowed taxpayers to bring claims under the Tucker Act, 28 U.S.C. sec. 1491(a), which confers jurisdiction upon the Court of Federal Claims "to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department . . . ." Lower courts had held that such a Tucker Act claim was subject to the Tucker Act's six-year statute of limitations and was not subject to the requirements of the Code. *Venture Coal Sales Co.* v. *U.S.,* 93 AFTR 2d 2004–2495 (Fed. Cir. 2004); *Cyprus Amax Coal Co.* v. *U.S.,* 205 F.3d 1369 (Fed. Cir. 2000). The Supreme Court held that the stricter Code rules apply to these refund claims.

[24] Sec. 6511(a).

[25] See *Ranger Fuel Corp.* v. *United States,* 33 F. Supp. 2d 466 (E.D. Va. 1998). See also *United States* v. *International Business Machines Corp.,* 517 U.S. 843 (1996); *Joy Oil, Ltd.* v. *State Tax Commission,* 337 U.S. 286 (1949).

[26] Sec. 6416(a)(1).

tax may be refunded to the exporter or shipper if the person who paid the tax waives its claim to such amount;[27] and

5. A civil action for refund must not be begun before the expiration of six months from the date of filing the claim (unless the claim has been disallowed during that time), nor after the expiration of two years from the date of mailing the notice of claim disallowance.[28]

In 2000, the Internal Revenue Service ("IRS") issued Notice 2000–28,[29] which summarizes the IRS position regarding claims for credits or refunds of excise taxes on exported coal and sets forth procedural rules relating to such claims. Under Notice 2000–28, a coal producer or exporter must provide the following information as part of its claim:

1. A statement by the person that paid the tax to the government that provides the quarter and the year for which the tax was reported on Form 720, the line number on such Form, the amount of tax paid on the coal, and the date of payment;
2. In the case of an exporter, a statement by the person that paid the tax to the government that such person has waived the right to claim a refund;
3. A statement that the claimant has evidence that the coal was in the stream of export when sold by the producer;
4. In the case of an exporter, proof of exportation;
5. In the case of a coal producer, a statement that the coal actually was exported; and
6. A statement that the claimant:
   a. has neither included the tax in the price of the coal nor collected the amount of the tax from its buyer,
   b. has repaid the amount of the tax to the ultimate purchaser of the coal, or
   c. has obtained the written consent of the ultimate purchaser of the coal to the allowance of the claim.

If the IRS disallows the claim, the claimant may proceed in a Federal district court or the Court of Federal Claims under 28 U.S.C. sec. 1346(a)(1), which grants these courts concurrent jurisdiction over "[a]ny civil action against the United States for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected . . . or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws."

With respect to claims under the Code allowed by the IRS or by a court, prejudgment interest is generally allowed.[30]

REASONS FOR CHANGE

Courts have determined, and the IRS has agreed, that the Federal excise taxes imposed on exported coal was unconstitutionally collected. However, present law does not offer a complete remedy to the affected coal producers and exporters, to whom the producers generally passed on the excise tax (in those transactions in which exporters were involved). The recent Supreme Court case of United States v. Clintwood Elkhorn Mining Co. further limits the available

[27] Sec. 6416(c).
[28] Sec. 6532(a).
[29] Notice 2000–28, 2001–1 C.B. 1116.
[30] See sec. 6611; 28 U.S.C. sec. 2411.

remedies by clarifying that the claims of the coal producers and exporters are subject to the three-year statute of limitations of the Code. The Committee believes that it is appropriate to provide a fair, equitable, and more complete remedy to both the affected coal producers and exporters that permits refunds for these unconstitutionally collected taxes that would otherwise be barred by the applicable statute of limitations.

EXPLANATION OF PROVISION

The provision creates a new procedure under which certain coal producers and exporters may claim a refund of excise taxes imposed on coal exported from the United States. Coal producers or exporters that exported coal during the period beginning on or after October 1, 1990 and ending on or before the date of enactment of the provision, with respect to which a return was filed on or after October 1, 1990, and on or before the date of enactment, and that file a claim for refund not later than the close of the 30-day period beginning on the day of enactment, may obtain a refund from the Secretary of the Treasury of excise taxes paid on such exported coal and any interest accrued from the date of overpayment. Interest on such claims is computed under the Code.[31] The Secretary of the Treasury is required to determine whether to approve the claim within 180 days after such claim is filed, and to pay such claim not later than 180 days after making such determination.

In order to qualify for a refund under the provision, a coal producer must establish that it, or a party related to such coal producer, exported coal produced by such coal producer to a foreign country or shipped coal produced by such coal producer to a U.S. possession, the export or shipment of which was other than through an exporter that has filed a valid and timely claim for refund under the provision. An exporter must establish that it exported coal to a foreign country, shipped coal to a U.S. possession, or caused such coal to be so exported or shipped. Refunds to producers are to be made in an amount equal to the tax paid on exported coal. Exporters are to receive a payment equal to $0.825 per ton of exported coal.

Special rules apply if a court has rendered a judgment. If a coal producer or a party related to a coal producer has received, from a court of competent jurisdiction in the United States, a judgment in favor of such coal producer (or party related to such coal producer) that relates to the constitutionality of Federal excise tax paid on exported coal, then such coal producer is deemed to have established the export of coal to a foreign country or shipment of coal to a possession of the United States. If such coal producer is entitled to a payment under this provision, the amount of such payment is reduced by any amount awarded under such court judgment. In the event such judgment is later overturned, the coal producer must pay to the Secretary the amount of any payment received under the provision unless the coal producer establishes the export of the coal to a foreign country or shipment of coal to a possession of the United States. Subject to the rules below, a coal exporter may file a claim notwithstanding that a coal producer or a

[31] See sec. 6621.

party related to a coal producer has received a court judgment relating to the same coal.

Under the provision, the term "coal producer" means the person that owns the coal immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term also includes any person who extracts coal from coal waste refuse piles or from the silt waste product which results from the wet washing or similar processing of coal. The term "exporter" means a person, other than a coal producer, that does not have an agreement with a producer or seller of such coal to sell or export such coal to a third party on behalf of such producer or seller, and that is indicated as the exporter of record in the shipper's export declaration or other documentation, or actually exported such coal to a foreign country, shipped such coal to a U.S. possession, or caused such coal to be so exported or shipped. The term "a party related to such coal producer" means a person that is related to such coal producer through any degree of common management, stock ownership, or voting control, is related, within the meaning of section 144(a)(3), to such coal producer, or has a contract, fee arrangement, or any other agreement with such coal producer to sell such coal to a third party on behalf of such coal producer.

The provision does not apply with respect to excise tax on exported coal if a credit or refund of such tax has been allowed or made, or if a "settlement with the Federal Government" has been made with and accepted by the coal producer, a party related to such coal producer, or the exporter of such coal, as of the date that the claim is filed under the provision. The term "settlement with the Federal Government" does not include a settlement or stipulation entered into as of the date of enactment, if such settlement or stipulation contemplates ajudgment with respect to which any party has filed an appeal or has reserved the right to file an appeal. In addition, the provision does not apply to the extent that a credit or refund of tax on exported coal has been paid to any person, regardless of whether such credit or refund occurs prior to, or after, the date of enactment.

The provision does not confer standing upon an exporter to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by a coal producer of any Federal or State tax, fee, or royalty paid by the coal producer. The provision does not confer standing upon a coal producer to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by an exporter of any Federal or State tax, fee, or royalty paid by the producer and alleged to have been passed on to an exporter.

EFFECTIVE DATE

The provision applies to claims on coal exported on or after October 1, 1990 through the date of enactment, with respect to amounts of tax for which a return was filed on or after October 1, 1990, and on or before the date of enactment, and for which a claim for refund is filed not later than the close of the 30-day period beginning on the date of enactment.

10. Carbon audit of provisions of the Internal Revenue Code of 1986 (Sec. 115 of the bill)

PRESENT LAW

Present law does not require a review of the Code for provisions that affect carbon emissions and climate. The National Research Council is part of the National Academies. The National Academy of Sciences serves to investigate, examine, experiment and report upon any subject of science whenever called upon to do so by any department of the government. The National Research Council was organized by the National Academy of Sciences in 1916 and is its principal operating agency for conducting science policy and technical work.

REASONS FOR CHANGE

The Committee believes it is important to identify provisions in the Code which affect carbon- and -other greenhouse emissions. This study will provide scientifically-based information to aid decision makers in the formulation of tax policies aimed at reducing emissions and mitigating climate change.

EXPLANATION OF PROVISION

The provision directs the Secretary to request that the National Academy of Sciences undertake a comprehensive review of the Code to identify the types of and specific tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to generally estimate the magnitude of those effects.[32] The report should identify the provisions of the Code that are most likely to have significant effects on carbon emissions and discuss the importance of controlling carbon and greenhouse gas emissions as part of a comprehensive national strategy for reducing U.S. contributions to global climate change.[33] The report will describe the processes by which the tax provisions affect emissions (both directly and indirectly), assess the relative influence of the identified provisions, and evaluate the potential for changes in the Code to reduce carbon emissions. The report also will identify other provisions of the Code that may have significant influence on other factors affecting climate change.

The Secretary is to submit to Congress a report containing the results of the National Academy of Sciences review within two years of the date of enactment. The provision authorizes the appropriation of $1,500,000 to carry out the review.

EFFECTIVE DATE

The provision is effective on the date of enactment.

[32] A detailed quantitative analysis is not required. It is envisioned that the review will catalogue and provide a general analysis of the effect of each identified provision.

[33] "Greenhouse gas emissions" include, but are not limited to, methane, nitrous oxide, ozone, and fluorinated hydrocarbons.

B. Transportation and Domestic Fuel Security Provisions

1. Inclusion of cellulosic biofuel in bonus depreciation for biomass ethanol plant property (Sec. 121 of the bill and sec. 168 of the Code)

PRESENT LAW

Section 168(l) allows an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified cellulosic biomass ethanol plant property. In order to qualify, the property generally must be placed in service before January 1, 2013.

Qualified cellulosic biomass ethanol plant property means property used in the U.S. solely to produce cellulosic biomass ethanol. For this purpose, cellulosic biomass ethanol means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. For example, lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis includes bagasse (from sugar cane), corn stalks, and switchgrass.

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or subject to capitalization under section 263 or 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. In addition, there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction, it must meet the following requirements. The original use of the property must commence with the taxpayer on or after December 20, 2006. The property must be acquired by purchase (as defined under section 179(d)) by the taxpayer after December 20, 2006, and placed in service before January 1, 2013. Property does not qualify if a binding written contract for the acquisition of such property was in effect on or before December 20, 2006.

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 after December 20, 2006, and the property is placed in service before January 1, 2013 (and all other requirements are met). 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.

Property, any portion of which is financed with the proceeds of a tax-exempt obligation under section 103, is not eligible for the additional first-year depreciation deduction. Recapture rules apply if the property ceases to be qualified cellulosic biomass ethanol plant property.

Property with respect to which the taxpayer has elected 50 percent expensing under section 179C is not eligible for the additional first-year depreciation deduction.

REASONS FOR CHANGE

The committee believes that the expensing provision should include any cellulosic biofuel and not be limited to ethanol. Additionally, the committee believes that the provision should not be limited to certain processes.

EXPLANATION OF PROVISION

The provision changes the definition of qualified property. Under the provision, qualified property includes cellulosic biofuel, which is defined as any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment, in taxable years ending after such date.

2. Credits for biodiesel and renewable diesel (Sec. 122 of the bill and secs. 40A, 6426, and 6427 of the Code)

PRESENT LAW

Income tax credit

Overview

The Code provides an income tax credit for biodiesel fuels (the "biodiesel fuels credit").[34] 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 includable 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, 2008.

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

[34] Sec. 40A.

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 50 cents for each gallon of biodiesel (other than agri-biodiesel) used by the taxpayer in the production of a qualified biodiesel mixture. For agri-biodiesel, the credit is $1.00 per gallon. 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) is 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. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

Biodiesel credit

The biodiesel credit is 50 cents 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. For agri-biodiesel, the credit is $1.00 per gallon.

Small agri-biodiesel producer credit

The Code provides a small agri-biodiesel producer income tax credit, in addition to the biodiesel and biodiesel fuel mixture credits. The credit is a 10-cents-per-gallon credit 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.[35] The credit is 50 cents 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. In the case of agri-biodiesel, the credit is $1.00 per gallon. 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 bio-

[35] Sec. 6426(c).

diesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.[36]

The credit is not available for any sale or use for any period after December 31, 2008. 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.[37] To the extent the biodiesel fuel mixture credit exceeds the section 4081 liability of a person, the Secretary is to pay such person an amount equal to the biodiesel fuel mixture credit with respect to such mixture.[38] Thus, if the person has no section 4081 liability, the credit is refundable. The Secretary is not required to make payments with respect to biodiesel fuel mixtures sold or used after December 31, 2008.

Renewable diesel

"Renewable diesel" is diesel fuel that (1) is derived from biomass (as defined in section 45K(c)(3)) using a thermal depolymerization process; (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 (42 U.S.C. sec. 7545); and (3) meets the requirements of the ASTM D975 or D396. 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.

For purposes of the Code, renewable diesel is generally treated the same as biodiesel. Like biodiesel, the incentive may be taken as an income tax credit, an excise tax credit, or as a payment from the Secretary.[39] The incentive for renewable diesel is $1.00 per gallon. There is no small producer credit for renewable diesel. The incentives for renewable diesel expire after December 31, 2008.

Pursuant to IRS Notice 2007–37, the Secretary provided that fuel produced as a result of co-processing biomass and petroleum feedstock ("co-produced fuel") qualifies for the renewable diesel incentives to the extent of the fuel attributable to the biomass in the mixture. In co-produced fuel, the fuel attributable to the biomass does not exist as a distinct separate quantity prior to mixing.

REASONS FOR CHANGE

The Committee believes it is appropriate to extend the biodiesel and renewable diesel incentives for an additional year to further encourage the development and use of these fuels. With respect to renewable diesel, the Committee believes that the incentive should be technology neutral, and therefore, the Committee deletes the requirement that the fuel be made through a thermal depolymerization process. While the Committee is unaware of an appropriate standard in addition to ASTM D975 and ASTM D396 for renewable diesel, the Committee recognizes that as technology

[36] Sec. 6426(c)(4).
[37] Sec. 6427(e).
[38] Sec. 6427(e)(1) and (e)(3).
[39] Secs. 40A(f), 6426(c), and 6427(e).

evolves other appropriate standards may arise for such fuel and therefore, the provision permits the Secretary to identify other equivalent or improved standards for renewable diesel.

EXPLANATION OF PROVISION

The provision extends an additional year (through December 31, 2009) the income tax credit, excise tax credit, and payment provisions for biodiesel (including agri-biodiesel) and renewable diesel. The provision provides that both biodiesel and agri-biodiesel are entitled to a credit of $1.00 per gallon.

The provision modifies the definition of renewable diesel. The provision eliminates the requirement that the fuel be made using a thermal depolymerization process. The provision also permits the Secretary to identify standards equivalent to ASTM D975 and ASTM D396 for renewable diesel. Thus, under the provision, renewable diesel is liquid fuel derived from biomass which meets (a) the registration requirements for fuels and fuel additives established by the EPA under section 211 of the Clean Air Act, and (b) the requirements of the ASTM D975, ASTM D396, or other equivalent standard approved by the Secretary. The provision also provides that renewable diesel includes biomass fuel that meets a Department of Defense military specification for jet fuel or an ASTM for aviation turbine fuel.

The provision also overrides IRS Notice 2007–37 with respect to co-produced fuel, providing that renewable diesel does not include any fuel derived from co-processing biomass with a feedstock that is not biomass. The de minimis use of catalysts, such as hydrogen, is permitted under the provision.

EFFECTIVE DATE

The provision is generally effective for fuel produced, and sold or used, after December 31, 2008. The provision making co-produced fuel ineligible for the renewable diesel incentives is effective for fuel produced, and sold or used, after February 13, 2008.

3. Clarification that credits for fuel are designed to provide an incentive for United States production (Sec. 123 of the bill and secs. 40, 40A, 6426 and 6427 of the Code)

PRESENT LAW

The Code provides per-gallon incentives relating to the following qualified fuels: alcohol (including ethanol), biodiesel (including agri-biodiesel), renewable diesel, and certain alternative fuels.[40] The incentives may be taken as an income tax credit, excise tax credit or payment. The provisions are coordinated so that a gallon of qualified fuel is only taken into account once. If the qualified fuel is part of a qualified fuel mixture, the incentives apply only to the amount of qualified fuel in the mixture.

For alcohol, other than ethanol, the amount of the credit is 60 cents per gallon. For ethanol, the credit is generally 51 cents per gallon, an extra 10 cents per gallon available for small ethanol producers. The alcohol incentives expire after December 31, 2010. The amount of the credit for biodiesel is 50 cents. For agri-biodiesel and

[40] See secs. 40, 40A, 6426, and 6427(e).

renewable diesel, the credit amount is $1.00 per gallon. An extra 10 cents per gallon is available for small producers of agri-biodiesel. The biodiesel, agri-biodiesel and renewable diesel incentives expire after December 31, 2008. The credit amount for alternative fuels is 50 cents per gallon. The incentives for alternative fuels expire after September 30, 2009 (after September 30, 2014, in the case of liquefied hydrogen).

The Code is silent as to the geographic limitations on where the fuel must be produced, used, or sold. For imported ethanol, there is an offsetting tariff of 54 cents per gallon. This tariff expires January 1, 2009.

REASONS FOR CHANGE

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.

EXPLANATION OF PROVISION

The provision provides that fuel that is produced outside the United States for use as a fuel outside the United States is ineligible for the per-gallon tax incentives relating to alcohol, biodiesel, renewable diesel, and alternative fuel. For example, fuel in the following situations is ineligible for incentives: (1) biodiesel, which is not in a mixture, that is both produced and used outside the United States, (2) foreign-produced biodiesel that is used to make a qualified mixture outside of the United States for foreign use, and (3) foreign-produced biodiesel that is used to make a qualified mixture in the United States that is then exported for foreign use.

EFFECTIVE DATE

The provision is effective for claims for credit or payment made on or after May 15, 2008.

4. Alternative motor vehicle credit and plug-in electric vehicle credit (Sec. 124 of the bill and sec. 30B and new sec. 30D of the Code)

PRESENT LAW

In general

A credit is available for each new qualified fuel cell vehicle, hybrid vehicle, advanced lean burn technology vehicle, and alternative fuel vehicle placed in service by the taxpayer during the taxable year.[41] In general, the credit amount varies depending upon the type of technology used, the weight class of the vehicle, the amount by which the vehicle exceeds certain fuel economy standards, and, for some vehicles, the estimated lifetime fuel savings.

[41] Sec. 30B.

The credit generally is available for vehicles purchased after 2005. The credit terminates after 2009, 2010, or 2014, depending on the type of vehicle.

In general, the credit is allowed to the vehicle owner, including the lessor of a vehicle subject to a lease. If the use of the vehicle is described in paragraphs (3) or (4) of section 50(b) (relating to use by tax-exempt organizations, governments, and foreign persons) and is not subject to a lease, the seller of the vehicle may claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

Fuel cell vehicles

A qualified fuel cell vehicle is a motor vehicle that is propelled by power derived from one or more cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle and may or may not require reformation prior to use. A qualified fuel cell vehicle must be purchased before January 1, 2015. The amount of credit for the purchase of a fuel cell vehicle is determined by a base credit amount that depends upon the weight class of the vehicle and, in the case of automobiles or light trucks, an additional credit amount that depends upon the rated fuel economy of the vehicle compared to a base fuel economy. For these purposes the base fuel economy is the 2002 model year city fuel economy rating for vehicles of various weight classes.[42] Table 2, below, shows the base credit amounts.

TABLE 2.—BASE CREDIT AMOUNT FOR FUEL CELL VEHICLES

Vehicle gross weight rating (pounds)	Credit amount
Vehicle ≤ 8,500	$8,000
8,500 < vehicle ≤ 14,000	10,000
14,000 < vehicle ≤ 26,000	20,000
26,000 < vehicle	40,000

In the case of a fuel cell vehicle weighing less than 8,500 pounds and placed in service after December 31, 2009, the $8,000 amount in Table 2, above is reduced to $4,000.

Table 3, below, shows the additional credits for passenger automobiles or light trucks.

TABLE 3.—CREDIT FOR QUALIFIED FUEL CELL VEHICLES

[Percent of base fuel economy]

Credit	If fuel economy of the fuel cell vehicle is:	
	At least	But less than
$1,000	150	175
$1,500	175	200
$2,000	200	225
$2,500	225	250
$3,000	250	275
$3,500	275	300
$4,000	300	

[42] See discussion surrounding Table 7, below.

Hybrid vehicles and advanced lean burn technology vehicles

Qualified hybrid vehicle

A qualified hybrid vehicle is a motor vehicle that draws propulsion energy from on-board sources of stored energy that include both an internal combustion engine or heat engine using combustible fuel and a rechargeable energy storage system (e.g., batteries). A qualified hybrid vehicle must be placed in service before January 1, 2011 (January 1, 2010 in the case of a hybrid vehicle weighing more than 8,500 pounds).

Hybrid vehicles that are automobiles and light trucks

In the case of an automobile or light truck (vehicles weighing 8,500 pounds or less), the amount of credit for the purchase of a hybrid vehicle is the sum of two components: (1) a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard and (2) a conservation credit based on the estimated lifetime fuel savings of the qualified vehicle compared to a comparable 2002 model year vehicle that is powered solely by a gasoline or diesel internal combustion engine. A qualified hybrid automobile or light truck must have a maximum available power[43] from the rechargeable energy storage system of at least four percent. In addition, the vehicle must meet or exceed certain Environmental Protection Agency ("EPA") emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier II emissions standards.

Table 4, below, shows the fuel economy credit available to a hybrid passenger automobile or light truck whose fuel economy (on a gasoline gallon equivalent basis) exceeds that of a base fuel economy.

TABLE 4.—FUEL ECONOMY CREDIT

[Percent of base fuel economy]

Credit	If fuel economy of the hybrid vehicle is:	
	At least	But less than
$400	125	150
$800	150	175
$1,200	175	200
$1,600	200	225
$2,000	225	250
$2,400	250	

Table 5, below, shows the conservation credit.

[43] For hybrid passenger vehicles and light trucks, 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. Sec. 30B(d)(3)(C)(i).

TABLE 5.—CONSERVATION CREDIT

Estimated lifetime fuel savings (gallons of gasoline)	Conservation amount
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	500
At least 2,400 but less than 3,000	750
At least 3,000	1,000

Advanced lean burn technology vehicles

The amount of credit for the purchase of an advanced lean burn technology vehicle is the sum of two components: (1) a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard as described in Table 4, above, and (2) a conservation credit based on the estimated lifetime fuel savings of a qualified vehicle compared to a comparable 2002 model year vehicle as described in Table 5, above. The amounts of the credits are determined after an adjustment is made to account for the different BTU content of gasoline and the fuel utilized by the lean burn technology vehicle.

A qualified advanced lean burn technology vehicle is a passenger automobile or a light truck that incorporates direct injection, achieves at least 125 percent of the 2002 model year city fuel economy, and for 2004 and later model vehicles meets or exceeds certain Environmental Protection Agency emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier 11 emissions standards. A qualified advanced lean burn technology vehicle must be placed in service before January 1, 2011. Limitation on number of qualified hybrid and advanced lean burn technology vehicles eligible for the credit.

There is a limitation on the number of qualified hybrid vehicles and advanced lean burn technology vehicles sold by each manufacturer of such vehicles that are eligible for the credit. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records the 60,000th hybrid and advanced lean burn technology vehicle sale occurring after December 31, 2005. Taxpayers may claim one half of the otherwise allowable credit during the two calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale. In the third and fourth calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale, the taxpayer may claim one quarter of the otherwise allowable credit.

Thus, for example, summing the sales of qualified hybrid vehicles of all weight classes and all sales of qualified advanced lean burn technology vehicles, if a manufacturer records the sale of its 60,000th qualified vehicle in February of 2007, taxpayers purchasing such vehicles from the manufacturer may claim the full amount of the credit on their purchases of qualified vehicles through June 30, 2007. For the period July 1, 2007, through December 31, 2007, taxpayers may claim one half of the otherwise allowable credit on purchases of qualified vehicles of the manufacturer. For the period January 1, 2008, through June 30, 2008, taxpayers may claim one quarter of the otherwise allowable credit on the purchases of qualified vehicles of the manufacturer. After June 30, 2008, no credit may be claimed for purchases of hybrid vehicles or advanced lean burn technology vehicles sold by the manufacturer.

Hybrid vehicles that are medium and heavy trucks

In the case of a qualified hybrid vehicle weighing more than 8,500 pounds, the amount of credit is determined by the estimated increase in fuel economy and the incremental cost of the hybrid vehicle compared to a comparable vehicle powered solely by a gasoline or diesel internal combustion engine and that is comparable in weight, size, and use of the vehicle. For a vehicle that achieves a fuel economy increase of at least 30 percent but less than 40 percent, the credit is equal to 20 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of at least 40 percent but less than 50 percent, the credit is equal to 30 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of 50 percent or more, the credit is equal to 40 percent of the incremental cost of the hybrid vehicle.

The credit is subject to certain maximum applicable incremental cost amounts. For a qualified hybrid vehicle weighing more than 8,500 pounds but not more than 14,000 pounds, the maximum allowable incremental cost amount is $7,500. For a qualified hybrid vehicle weighing more than 14,000 pounds but not more than 26,000 pounds, the maximum allowable incremental cost amount is $15,000. For a qualified hybrid vehicle weighing more than 26,000 pounds, the maximum allowable incremental cost amount is $30,000.

A qualified hybrid vehicle weighing more than 8,500 pounds but not more than 14,000 pounds must have a maximum available power from the rechargeable energy storage system of at least 10 percent. A qualified hybrid vehicle weighing more than 14,000 pounds must have a maximum available power from the rechargeable energy storage system of at least 15 percent.[44]

Alternative fuel vehicle

The credit for the purchase of a new alternative fuel vehicle is 50 percent of the incremental cost of such vehicle, plus an additional 30 percent if the vehicle meets certain emissions standards. The incremental cost of any new qualified alternative fuel vehicle is the excess of the manufacturer's suggested retail price for such vehicle over the price for a gasoline or diesel fuel vehicle of the same model. To be eligible for the credit, a qualified alternative fuel vehicle must be purchased before January 1, 2011.

The amount of the credit varies depending on the weight of the qualified vehicle. The credit is subject to certain maximum applica-

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[44] In the case of such heavy-duty hybrid motor vehicles, the percentage of maximum available power is computed by dividing the maximum power available from the rechargeable energy storage system during a standard 10-second pulse power test, divided by the vehicle's total traction power. A vehicle's total traction power is the sum of the peak power from the rechargeable energy storage system and the heat (e.g., internal combustion or diesel) engine's peak power. If the rechargeable energy storage system is the sole means by which the vehicle can be driven, then the total traction power is the peak power of the rechargeable energy storage system.

ble incremental cost amounts. Table 6, below, shows the maximum permitted incremental cost for the purpose of calculating the credit for alternative fuel vehicles by vehicle weight class as well as the maximum credit amount for such vehicles.

TABLE 6.—MAXIMUM ALLOWABLE INCREMENTAL COST FOR CALCULATION OF ALTERNATIVE FUEL VEHICLE CREDIT

Vehicle gross weight rating (pounds)	Maximum allowable incremental cost	Maximum allowable credit
Vehicle ≤ 8,500	$5,000	$4,000
8,500 < vehicle ≤ 14,000	10,000	8,000
14,000 < vehicle ≤ 26,000	25,000	20,000
26,000 < vehicle	40,000	32,000

Alternative fuels comprise compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid fuel that is at least 85 percent methanol. Qualified alternative fuel vehicles are vehicles that operate only on qualified alternative fuels and are incapable of operating on gasoline or diesel (except to the extent gasoline or diesel fuel is part of a qualified mixed fuel, described below).

Certain mixed fuel vehicles, that is vehicles that use a combination of an alternative fuel and a petroleum-based fuel, are eligible for a reduced credit. If the vehicle operates on a mixed fuel that is at least 75 percent alternative fuel, the vehicle is eligible for 70 percent of the otherwise allowable alternative fuel vehicle credit. If the vehicle operates on a mixed fuel that is at least 90 percent alternative fuel, the vehicle is eligible for 90 percent of the otherwise allowable alternative fuel vehicle credit.

Base fuel economy

The base fuel economy is the 2002 model year city fuel economy by vehicle type and vehicle inertia weight class. For this purpose, "vehicle inertia weight class" has the same meaning as when defined in regulations prescribed by the EPA for purposes of Title II of the Clean Air Act. Table 7, below, shows the 2002 model year city fuel economy for vehicles by type and by inertia weight class.

TABLE 7.—2002 MODEL YEAR CITY FUEL ECONOMY

Vehicle inertia weight class (pounds)	Passenger automobile (miles per gallon)	Light truck (miles per gallon)
1,500	45.2	39.4
1,750	45.2	39.4
2,000	39.6	35.2
2,250	35.2	31.8
2,500	31.7	29.0
2,750	28.8	26.8
3,000	26.4	24.9
3,500	22.6	21.8
4,000	19.8	19.4
4,500	17.6	17.6
5,000	15.9	16.1
5,500	14.4	14.8
6,000	13.2	13.7
6,500	12.2	12.8
7,000	11.3	12.1
8,500	11.3	12.1

Other rules

The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as a portion of the general business credit; the remainder of the credit is allowable to the extent of the excess of the regular tax (reduced by certain other credits) over the alternative minimum tax for the taxable year.

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. Tax benefits provided directly to the consumer to lower the cost of new technology and alternative-fuel vehicles can help lower consumer resistance to these technologies by making the vehicles more price competitive with purely petroleum-based fuel vehicles and creating increased demand for manufacturers to produce the technologies. The eventual goal is mass production and mass-market acceptance of new technology vehicles. To this end, the Committee believes the present-law incentives for alternative fuel vehicles should be expanded to include benefits for plug-in electric drive vehicles, which the Committee believes are the next generation of alternative-fuel vehicles. The Committee also believes that this and existing incentives for alternative fuel vehicles should be treated as personal credits, making them eligible for possible future alternative minimum tax relief and thereby expanding their application to a larger number of potential buyers.

EXPLANATION OF PROVISION

Treatment of alternative motor vehicle credit as a personal credit

The provision modifies the alternative motor vehicle credit by treating the nonbusiness portion of that credit as a personal credit. As a result, in the event Congress extends the provision allowing personal credits to offset the alternative minimum tax, the alternative motor vehicle credit will be allowable against the alternative minimum tax.

Plus-in electric drive motor vehicle credit

The provision allows a credit for each qualified plug-in electric drive motor vehicle placed in service. A qualified plug-in electric drive motor vehicle is a motor vehicle that meets certain emissions standard's and is propelled to a significant extent by an electric motor that draws electricity from a battery that (1) has a capacity of at least four kilowatt-hours and (2) is capable of being recharged from an external source of electricity. Qualified vehicles must have a gross weight of less than 14,000 pounds. In addition, qualified vehicles weighing less than 8,500 pounds must be passenger automobiles or light trucks.

The base amount of the plug-in electric drive motor vehicle credit is $3,000. If the qualified vehicle draws propulsion from a battery with at least five kilowatt-hours of capacity, the credit amount is increased by $200, plus another $200 for each kilowatt-hour of battery capacity in excess of five kilowatt-hours, up to a maximum additional credit of $2,000.

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. If the qualified vehicle is used by certain tax-exempt organizations, governments, or foreign persons and is not subject to a lease, the seller of the vehicle may claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

There is a limitation on the number of qualified plug-in electric drive motor vehicles sold by each manufacturer of such vehicles that are eligible for the credit. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records the 60,000th plug-in electric drive motor vehicle sale. Taxpayers may claim one half of the otherwise allowable credit during the two calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale. In the third and fourth calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale, the taxpayer may claim one quarter of the otherwise allowable credit.

The basis of any qualified vehicle is reduced by the amount of the credit. To the extent a vehicle is eligible for credit as a qualified plug-in electric drive motor vehicle, it is not eligible for credit as a qualified hybrid vehicle under section 30B. The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax and the alternative minimum tax (reduced by certain other credits) for the taxable year.

EFFECTIVE DATE

The plug-in electric drive motor vehicle credit provision is effective for taxable years beginning after December 31, 2008. The provision treating the nonbusiness portion of the alternative motor vehicle credit as a personal credit is effective for taxable years beginning after December 31, 2007.

5. Exclusion from heavy vehicle excise tax for idling reduction units and advanced insulation (Sec. 125 of the bill and sec. 4053 of the Code)

PRESENT LAW

A 12 percent excise tax (the "heavy vehicle excise tax") is imposed on the first retail sale of automobile truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.[45] The heavy vehicle excise tax does not apply to automobile truck chassis and bodies suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less. The tax also does not apply to truck trailer and semitrailer chassis and bodies suitable for use with a trailer or semitrailer

[45] Sec. 4051.

which has a gross vehicle weight of 26,000 pounds or less, or to tractors having a gross vehicle weight of 19,500 pounds or less if such tractor in combination with a trailer or semitrailer has a gross combined weight of 33,000 pounds or less.

If the owner, lessee, or operator of a taxable article installs any part or accessory within six months after the date such vehicle was first placed in service, a 12 percent tax applies on the price of such part or accessory and its installation.

REASONS FOR CHANGE

Idling of the main drive engine of heavy trucks consumes significant amounts of fuel. For example, truckers may continue to engage the main drive engines during rest periods to continue running air conditioning, heat, or electric appliances during rest stops. The Committee believes it is appropriate to provide an exemption from the heavy vehicle excise tax for qualified idling reduction devices, as such devices could lower fuel consumption, as well as reduce emissions.

EXPLANATION OF PROVISION

The provision provides an exemption from the heavy vehicle excise tax for the cost of qualifying idling reduction devices. A qualifying idling reduction device means any device or system of devices that (1) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity), which would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary, by using one or more devices affixed to a tractor, and (2) is certified by the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

The provision also provides an exemption for the installation of "advanced insulation" in a commercial refrigerated truck or trailer that is subject to the heavy vehicle excise tax. Advanced insulation means insulation that has an R value of not less than R35 per inch.

Both exemptions apply regardless of whether the device or insulation is factory installed or later added as an accessory.

EFFECTIVE DATE

The provision is effective for retail sales or installations made after the date of enactment.

6. Restructure New York Liberty Zone tax incentives (Sec. 126 of the bill and secs. 1400K and 1400L of the Code)

PRESENT LAW

In general

Present law includes a number of incentives to invest in property located in the New York Liberty Zone ("NYLZ"), which is the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the

City of New York, New York. These incentives were enacted following the terrorist attack in New York City on September 11, 2001.[46]

Special depreciation allowance for qualified New York Liberty Zone property

Section 1400L(b) allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified NYLZ property.[47] In order to qualify, property generally must be placed in service on or before December 31, 2006 (December 31, 2009 in the case of nonresidential real property and residential rental property).

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be property to which the general rules of the Modified Accelerated Cost Recovery System ("MACRS")[48] apply with (1) an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) certain nonresidential real property and residential rental property, or (4) computer software other than computer software covered by section 197. A special rule precludes the additional first-year depreciation under this provision for (1) qualified NYLZ leasehold improvement property[49] and (2) property eligible for the additional first-year depreciation deduction under section 168(k) (i.e., property is eligible for only one 30 percent additional first-year depreciation). Second, substantially all of the use of such property must be in the NYLZ. Third, the original use of the property in the NYLZ must commence with the taxpayer on or after September 11, 2001. Finally, the property must be acquired by purchase[50] by the taxpayer after September 10, 2001 and placed in service on or before December 31, 2006. For qualifying nonresidential real property and residential rental property the property must be placed in service on or before December 31, 2009 in lieu of December 31, 2006. Property will not qualify if a binding written con-

[46] In addition to the NYLZ provisions described above, other NYLZ incentives are provided: (1) $8 billion of tax-exempt private activity bond financing for certain nonresidential real property, residential rental property and public utility property is authorized to be issued after March 9, 2002, and before January 1, 2010; and (2) $9 billion of additional tax-exempt advance refunding bonds is available after March 9, 2002, and before January 1, 2006, with respect to certain State or local bonds outstanding on September 11, 2001.

[47] The amount of the additional first-year depreciation deduction is not affected by a short taxable year.

[48] A special rule precludes the additional first-year depreciation deduction for property that is required to be depreciated under the alternative depreciation system of MACRS.

[49] Qualified NYLZ leasehold improvement property is defined in another provision. Leasehold improvements that do no satisfy the requirements to be treated as "qualified NYLZ leasehold improvement property" may be eligible for the 30 percent additional first-year depreciation deduction (assuming all other conditions are met).

[50] For purposes of this provision, purchase is defined as under section 179(d).

tract for the acquisition of such property was in effect before September 11, 2001.[51]

Nonresidential real property and residential rental property are eligible for the additional first-year depreciation only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned as a result of the terrorist attacks of September 11, 2001.

Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies for the additional first-year depreciation deduction if the taxpayer begins the manufacture, construction, or production of the property after September 10, 2001, and the property is placed in service on or before December 31, 2006[52] (and all other requirements are met). 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.

REASONS FOR CHANGE

The Committee believes it is appropriate to restructure certain of the tax benefits that were provided to stimulate the redevelopment of the portions of the City of New York that were directly affected by the terrorist attacks of September 11, 2001. The restructuring will assist in the development of transit connections necessary for the ongoing redevelopment of the New York Liberty Zone area.

EXPLANATION OF PROVISION

Repeal of certain NYLZ incentives

The provision repeals the NYLZ incentive for the additional first-year depreciation allowance of 30 percent for nonresidential real property and residential rental property as of the date of enactment of this provision.[53]

Creation of New York Liberty Zone Tax Credits

The provision provides a credit against tax imposed for any payroll period by section 3402 (related to withholding for wages paid) for which a New York Liberty Zone governmental unit is liable under section 3403. The credit is equal to such portion of the qualifying project expenditure amounts allocated to the governmental unit for the calendar year that such governmental unit allocates to such period. The amount of the credit allowed for any payroll period shall be treated as a payment to the Secretary on the day on which the wages were paid to the employee, but only to the extent the governmental unit actually deducted and withheld such wages for the applicable period. A New York Liberty Zone governmental

[51] Property is not precluded from qualifying for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to September 11, 2001.

[52] December 31, 2009 with respect to qualified nonresidential real property and residential rental property.

[53] In the case of nonresidential real property and residential rental property acquired pursuant to a binding contract in effect on such enactment date, provision terminates on December 31, 2009.

unit is the State of New York, the City of New York, or any agency or instrumentality of such State or city.

Qualifying project expenditure amount means, with respect to any calendar year, the sum of (1) the total expenditures paid or incurred during such calendar year by all New York Liberty Zone governmental units and the Port Authority of New York and New Jersey for any portion of qualifying projects located wholly within the City of New York, and (2) any such expenditures paid or incurred in any preceding calendar year beginning after the date of enactment of this provision and not previously allocated.

A qualifying project is any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone, which is designated as a qualifying project by the Governor of the State of New York and the Mayor of the City of New York.

The Governor of the State of New York and the Mayor of the City of New York are to jointly allocate to each New York Liberty Zone governmental unit the portion of the qualifying expenditure amount that may be taken into account by such governmental unit to determine the credit for any calendar year in the credit period. The credit period is the 12-year period beginning on January 1, 2009. Aggregate amounts allocated may not exceed $2 billion during the credit period. There is also an annual limit on allocations equal to (1) $115 million for each year in the first ten years of the credit period, plus (2) any amounts in (1) that were authorized to be allocated for prior calendar years in the credit period but not so allocated. The annual limit for each of the last two years of the credit period is $425 million, plus any amounts that were authorized to be allocated for prior calendar years in the credit period but not so allocated.

If amounts allocated to a New York Liberty Zone governmental unit exceed the aggregate taxes for which such unit is liable under section 3403, the excess may be carried to the succeeding calendar year and added to the allocation for that calendar year. If a New York Liberty Zone governmental unit does not use an amount allocated to it within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, such amounts will be treated as if never allocated, and thus they may be reallocated by the Governor and Mayor.

Under the provision, any expenditure for a qualifying project taken into account for purposes of the credit shall be considered State and local funds for the purpose of any Federal program.

The Governor of the State of New York and the Mayor of the City of New York must jointly submit to the Secretary an annual report that certifies the qualifying project expenditure amounts for the calendar year, the amount allocated to each New York Liberty Zone governmental unit, and any other such information as the Secretary may require.

EFFECTIVE DATE

The provision is effective on the date of enactment.

7. Extension of transportation fringe benefit to bicycle commuters (Sec. 127 of the bill and sec. 132(f) of the Code)

PRESENT LAW

Qualified transportation fringe benefits provided by an employer are excluded from an employee's gross income.[54] Qualified transportation fringe benefits include parking, transit passes, and vanpool benefits. In addition, no amount is includible in income of an employee merely because the employer offers the employee a choice between cash and qualified transportation fringe benefits. Up to $220 (for 2008) per month of employer-provided parking is excludable from income. Up to $115 (for 2008) per month of employer-provided transit and vanpool benefits are excludable from gross income. These amounts are indexed annually for inflation, rounded to the nearest multiple of $5.

Under present law, qualified transportation fringe benefits include a cash reimbursement by an employer to an employee. However, in the case of transit passes, a cash reimbursement is considered a qualified transportation fringe benefit only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

REASONS FOR CHANGE

As part of a package of alternatives to reduce the nation's reliance on fossil fuels and to encourage conservation of energy resources, the Committee believes that the exclusion from gross income for qualified transportation fringe benefits should be extended to cover expenses incurred by an employee in commuting to work by bicycle. Bicycle commuting achieves both goals of reducing fossil fuel reliance and encouraging conservation. Such commuting involves recurring expenses and the Committee believes that incentives should be provided to encourage this nonmotorized form of commuting.

EXPLANATION OF PROVISION

The provision adds a qualified bicycle commuting reimbursement fringe benefit as a qualified transportation fringe benefit. A qualified bicycle commuting reimbursement fringe benefit means, with respect to a calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year of an employee for reasonable expenses incurred by the employee during the calendar year for the purchase and repair of a bicycle, bicycle improvements, and bicycle storage, provided that the bicycle is regularly used for travel between the employee's residence and place of employment.

The maximum amount that can be excluded from an employee's gross income for a calendar year on account of a bicycle commuting reimbursement fringe benefit is the applicable annual limitation for the employee for that calendar year. The applicable annual limitation for an employee for a calendar year is equal to the product of $20 multiplied by the number of the employee's qualified bicycle commuting months for the year. The $20 amount is not indexed for

[54] Code sec. 132Z(f).

inflation. A qualified bicycle commuting month means with respect to an employee any month for which the employee does not receive any other qualified transportation fringe benefit and during which the employee regularly uses a bicycle for a substantial portion of travel between the employee's residence and place of employment. Thus, no amount is credited towards an employee's applicable annual limitation for any month in which an employee's usage of a bicycle is infrequent or constitutes an insubstantial portion of the employee's commute.

A bicycle commuting reimbursement fringe benefit cannot be funded by an elective salary contribution on the part of an employee.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2008.

8. Extension and modification of alternative fuel vehicle refueling property credit (Sec. 128 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.[55] 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.

Qualified refueling property is property (not including a building or its structural components) for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle. The 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

[55] Sec. 30C.

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 after December 31, 2005, and (except in the case of hydrogen refueling property) before January 1, 2010. In the case of hydrogen refueling property, the property must be placed in service before January 1, 2015.

REASONS FOR CHANGE

The Committee believes that widespread adoption of advanced technology and alternative-fuel vehicles is necessary to transform automotive transportation in the United States to be cleaner, more fuel efficient, and less reliant on petroleum fuels. The Committee further believes that one important method to encourage this trend is to provide additional tax incentives for the development and installation of the infrastructure necessary to deliver clean fuels to drivers of clean-fuel vehicles.

EXPLANATION OF PROVISION

The provision extends and modifies the credit for installing alternative fuel refueling property. The provision extends for one year (through 2010) the credit for installing non-hydrogen alternative fuel refueling property. The provision also increases the credit amount to 50 percent of the cost of the qualified property and raises to $50,000 per taxable year, per location, the limit with respect to depreciable qualified property.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment, in taxable years ending after such date.

C. Energy Conservation and Efficiency Provisions

1. Qualified energy conservation bonds (Sec. 141 of the bill and new sec. 54C of the Code)

PRESENT LAW

Tax-exempt bonds

In general

Subject to certain Code restrictions, interest paid on bonds issued by State and local government generally is excluded from gross income for Federal income tax purposes. Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For this purpose, the term "nongovernmental person" generally includes the Federal Government and all other individuals and entities other than States or local governments. The exclusion from income for interest on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

Private activity bond tests

Present law provides two tests for determining whether a State or local bond is in substance a private activity bond, the private business test and the private loan test.[56]

Private business tests

Private business use and private payments result in State and local bonds being private activity bonds if both parts of the two-part private business test are satisfied—

- More than 10 percent of the bond proceeds is to be used (directly or indirectly) by a private business (the "private business use test"); and
- More than 10 percent of the debt service on the bonds is secured by an interest in property to be used in a private business use or to be derived from payments in respect of such property (the "private payment test").[57]

Private business use generally includes any use by a business entity (including the Federal government), which occurs pursuant to terms not generally available to the general public. For example, if bond-financed property is leased to a private business (other than pursuant to certain short-term leases for which safe harbors are provided under Treasury regulations), bond proceeds used to finance the property are treated as used in a private business use, and rental payments are treated as securing the payment of the bonds. Private business use also can arise when a governmental entity contracts for the operation of a governmental facility by a private business under a management contract that does not satisfy Treasury regulatory safe harbors regarding the types of payments made to the private operator and the length of the contract.[58]

Private loan test

The second standard for determining whether a State or local bond is a private activity bond is whether an amount exceeding the lesser of (1) five percent of the bond proceeds or (2) $5 million is used (directly or indirectly) to finance loans to private persons. Private loans include both business and other (e.g., personal) uses and payments by private persons; however, in the case of business uses and payments, all private loans also constitute private business uses and payments subject to the private business test. Present law provides that the substance of a transaction governs in determining whether the transaction gives rise to a private loan. In general, any transaction which transfers tax ownership of property to a private person is treated as a loan.

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[56] Sec. 141(b) and (c).

[57] The 10-percent private business use and payment threshold is reduced to five percent for private business uses that are unrelated to a governmental purpose also being financed with proceeds of the bond issue. In addition, as described more fully below, the 10-percent private business use and private payment thresholds are phased-down for larger bond issues for the financing of certain "output" facilities. The term output facility includes electric generation, transmission, and distribution facilities.

[58] See Treas. Reg. sec. 1.141–3(b)(4) and Rev. Proc. 97–13, 197–1 C.B. 632.

Qualified private activity bonds

As stated, interest on private activity bonds is taxable unless the bonds meet the requirements for qualified private activity bonds. Qualified private activity bonds permit States or local governments to act as conduits providing tax-exempt financing for certain private activities. The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond (sec. 141(e)). The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities (sec. 142(a)).

In most cases, the aggregate volume of tax-exempt qualified private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2008, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $262.09 million, if greater.

Arbitrage restrictions

The exclusion from income for interest on State and local bonds also does not apply to any arbitrage bond.[59] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[60] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Indian tribal governments

Indian tribal governments are provided with a tax status similar to State and local governments for specified purposes under the Code.[61] Among the purposes for which a tribal government is treated as a State is the issuance of tax-exempt bonds. However, bonds issued by tribal governments are subject to limitations not imposed on State and local government issuers. Tribal governments are authorized to issue tax-exempt bonds only if substantially all of the proceeds are used for essential governmental functions or certain manufacturing facilities.[62]

[59] Sec. 103(a) and (b)(2).
[60] Sec. 148.
[61] Sec. 7871.
[62] See. 7871(c).

Clean renewable energy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue clean renewable energy bonds ("CREBs"). CREBs are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for qualified projects. "Qualified projects" are facilities that qualify for the tax credit under section 45 (other than Indian coal production facilities), without regard to the placed-in-service date requirements of that section.[63] The term "qualified issuers" includes (1) governmental bodies (including Indian tribal governments); (2) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (3) clean renewable energy bond lenders. The term "qualified borrower" includes a governmental body (including an Indian tribal government) and a mutual or cooperative electric company. A clean renewable energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

Unlike tax-exempt bonds, CREBs are not interest-bearing obligations. Rather, the taxpayer holding CREBs on a credit allowance date is entitled to a tax credit. The amount of the credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of CREBs without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

CREBs are subject to a maximum maturity limitation. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a CREB being equal to 50 percent of the face amount of such bond. In addition, the Code requires level amortization of CREBs during the period such bonds are outstanding.

CREBs also are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to CREBs.

In addition to the above requirements, at least 95 percent of the proceeds of CREBs must be spent on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as CREBs if unspent proceeds are used within 90 days from the end of such five-year period to redeem any "nonqualified bonds." The five-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the

[63] In addition, Notice 2006–7 provides that qualified projects include any facility owned by a qualified borrower that is functionally related and subordinate to any facility described in section 45(d)(1) through (d)(9) and owned by such qualified borrower.

failure to satisfy the five-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Issuers of CREBs are required to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. There is a national CREB limitation of $1.2 billion. The maximum amount of CREBs that may be allocated to qualified projects of governmental bodies is $750 million. CREBs must be issued before January 1, 2009.

REASONS FOR CHANGE

The Committee believes that it is important to encourage energy conservation. The Committee believes that State and local governments often are in the best position to assess community needs and recognizes there are a number of approaches to energy conservation that State and local governments may wish to encourage. For example, the Committee recognizes that State and local governments may wish to encourage the development of combined heat and power systems, facilities that use thermal energy produced from renewable resources, smart electrical grids, the use of solar panels, mass transit, bicycle paths, or residential property that reduces peak-use of energy. In addition to these approaches, the Committee believes that State and local governments will develop numerous other approaches to energy conservation. Furthermore, the Committee recognizes that there is great potential for energy conservation in urban areas and the Committee believes that local officials should have the flexibility to develop their own approaches to energy conservation. Therefore, the Committee believes that it is appropriate to empower State and local governments by providing them with access to subsidized financing to help promote energy-efficient policies tailored to the needs of local communities.

EXPLANATION OF PROVISION

The provision creates a new category of tax-credit bonds, qualified energy conservation bonds. Qualified energy conservation bonds may be used to finance qualified conservation purposes.

The term "qualified conservation purpose" means:

1. Capital expenditures incurred for purposes of reducing energy consumption in publicly owned buildings by at least 20 percent; implementing green community programs; rural development involving the production of electricity from renewable energy resources; or any facility eligible for the production tax credit under section 45 (other than Indian coal and refined coal production facilities);
2. Expenditures with respect to facilities or grants that support research in: (A) development of cellulosic ethanol or other nonfossil fuels; (B) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels; (C) increasing the efficiency of existing technologies for producing nonfossil fuels; (D) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; and (E) technologies to reduce energy use in buildings;
3. Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting;

4. Demonstration projects designed to promote the commercialization of. (A) green building technology; (B) conversion of agricultural waste for use in the production of fuel or otherwise; (C) advanced battery manufacturing technologies; (D) technologies to reduce peak-use of electricity; and (D) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity; and

5. Public education campaigns to promote energy efficiency (other than movies, concerts, and other events held primarily for entertainment purposes).

There is a national limitation on qualified energy conservation bonds of $3 billion. Allocations of qualified energy conservation bonds are made to the States with sub-allocations to large local governments. Allocations are made to the States according to their respective populations, reduced by any sub-allocations to large local governments (defined below) within the States. Sub-allocations to large local governments shall be an amount of the national qualified energy conservation bond limitation that bears the same ratio to the amount of such limitation that otherwise would be allocated to the State in which such large local government is located as the population of such large local government bears to the population of such State. The term large local government means: any municipality or county if such municipality or county has a population of 100,000 or more. Indian tribal governments also are treated as large local governments for these purposes (without regard to population).

Each State or large local government receiving an allocation of qualified energy conservation bonds may further allocate issuance authority to issuers within such State or large local government. However, any allocations to issuers within the State or large local government shall be made in a manner that results in not less than 70 percent of the allocation of qualified energy conservation bonds to such State or large local government being used to designate bonds that are not private activity bonds (i.e., the bond cannot meet the private business tests or the private loan test of section 141).

Under the provision, 100 percent of the available project proceeds of qualified energy conservation bonds must be used for qualified conservation purposes. In the case of qualified conservation bonds issued as private activity bonds, 100 percent of the available project proceeds must be used for capital expenditures. In addition, qualified energy conservation bonds only may be issued by Indian tribal governments to the extent such bonds are issued for purposes that satisfy the present law requirements for tax-exempt bonds issued by Indian tribal governments (i.e., essential governmental functions and certain manufacturing purposes).

The provision requires 100 percent of the available project proceeds of qualified energy conservation bonds to be used within the three-year period that begins on the date of issuance. The provision defines available project proceeds as proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified conservation purposes during the three-year spending period, bonds will continue to qualify as qualified energy conservation bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified energy conservation bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

The maturity of qualified energy conservation bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

As with present-law tax credit bonds, the taxpayer holding qualified energy conservation bonds on a credit allowance date is entitled to a tax credit. The credit rate on the bonds is set by the Secretary at a rate that is 70 percent of the rate that would permit issuance of such bonds without discount and interest cost to the issuer. The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

Issuers of qualified energy conservation bonds are required to certify that the financial disclosure requirements that apply to State and local bonds offered for sale to the general public are satisfied with respect to any Federal, State, or local government official directly involved with the issuance of such bonds. The provision authorizes the Secretary to impose additional financial reporting requirements by regulation.

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment.

2. Extension and modification of energy efficient existing homes credit (Sec. 142 of the bill and sec. 25C of the Code)

PRESENT LAW

Code section 25C provides a 10-percent credit for the purchase of qualified energy efficiency improvements to existing homes. A qualified energy efficiency improvement is any energy efficiency building envelope component that meets or exceeds the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code as supplemented and as in effect on August 8, 2005 (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements), and (1) that is installed in or on a dwelling located in the United States; (2) owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) such component reasonably can be expected to remain in use for at least five years. The credit is nonrefundable.

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; (2) exterior windows (including skylights) and doors; and (3) metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat loss or gain for a dwelling.

Additionally, code section 25C provides specified credits for the purchase of specific energy efficient property. 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 qualified energy efficient property.

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace originally placed in service by the taxpayer during the taxable year, and which has an annual electricity use of no more than two percent of the total annual energy use of the 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.

Qualified energy-efficient 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 has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13, (3) a geothermal heat pump which (i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3, (ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and (iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5, (4) a central air conditioner with energy efficiency of at least the highest efficiency tier established by the Consortium for Energy Efficiency as in effect on Jan.

1, 2006, and (5) a natural gas, propane, or oil water heater which has an energy factor of at least 0.80.

Under section 25C, the maximum credit for a taxpayer with respect to the same dwelling 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 rules apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

The credit applies to property placed in service prior to January 1, 2008.

REASONS FOR CHANGE

Because residential energy consumption represents a large fraction of national energy use, the Committee believes that energy savings in this sector of the economy have the potential to significantly reduce national energy consumption, which in turn will decrease reliance on foreign suppliers of oil and reduce pollution in general. The Committee believes that tax credits for certain energy efficiency improvements will help to spur savings in this sector of the economy. Because of the new credit for geothermal heat pumps included in section 25D, the credit for geothermal heat pumps in section 25C is eliminated.

EXPLANATION OF PROVISION

The provision extends the credit for one year, through December 31, 2008. The provision adds biomass fuel property to the list of qualified energy efficient building property eligible for a $300 credit. Biomass fuel property is a stove that burns biomass fuel to heat a dwelling unit located in the United States and used as a principal residence by the taxpayer, or to heat water for such dwelling unit, and that 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.

The credit for geothermal heat pumps is eliminated.

EFFECTIVE DATE

The provision is effective for expenditures after December 31, 2007, for property placed in service prior to January 1, 2009.

3. Energy efficient commercial buildings deduction (Sec. 143 of the bill and sec. 179D of the Code)

PRESENT LAW

In general

Code section 179D provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures 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 90.1–2001 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 90.1–2001 (as in effect on April 2, 2003). 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 or, in the case of residential property, the 2005 California Residential Alternative Calculation Method Approval Manual.

The Secretary shall 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. Individuals qualified to determine compliance shall only be those recognized 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 Secretary shall promulgate regulations that allow the deduction to 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 shall be reduced by the amount of the deduction.

The deduction is effective for property placed in service after December 31, 2005 and prior to January 1, 2009.

Partial allowance of deduction

In the case of a building that does not meet the overall building requirement of a 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 of the Treasury. 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.

Interim rules for lighting systems

In the case of system-specific partial deductions, in general no deduction is allowed until the Secretary establishes system-specific targets.[64] 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 90.1–2001. 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.

REASONS FOR CHANGE

The Committee recognizes that a substantial portion of U.S. energy consumption is attributable to commercial buildings, and that the design and construction of commercial buildings is a multi-year process. Hence, the Committee believes that a long-term extension of the present-law deduction for energy efficient commercial buildings is necessary to ensure that buildings currently in the design phase will be able to claim the deduction.

EXPLANATION OF PROVISION

The provision extends the energy efficient commercial buildings deduction for five years, through December 31, 2013.

EFFECTIVE DATE

The provision is effective on the date of enactment.

4. Extension and modification of energy efficient appliance credit (Sec. 144 of the bill and sec. 45M of the Code)

PRESENT LAW

A credit is allowed for the eligible production of certain energy-efficient dishwashers, clothes washers, and refrigerators.

The credit for dishwashers applies to dishwashers produced in 2006 and 2007 that meet the Energy Star standards for 2007, and equals $32.31 per eligible dishwasher.[65]

The credit for clothes washers equals $100 for clothes washers manufactured in 2006–2007 that meet the requirements of the Energy Star program that are in effect for clothes washers in 2007.

The credit for refrigerators is based on energy savings and year of manufacture. The energy savings are determined relative to the

[64] IRS Notice 2008–40 has 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.

[65] The credit amount equals $3 multiplied by 100 times the "energy savings percentage," but may not exceed $100 per dishwasher. The energy saving percentage is defined as the change in the energy factor (EF) required by the Energy Star program between 2007 and 2005 divided by the EF requirement for 2007. The EF required for the Energy Star program was 0.58 in 2005 and 0.65 in 2007, for a change of 0.07. The energy saving percentage is thus 0.07 / 0.65, which when multiplied by 100 times $3 equals $32.31 per refrigerator.

energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. Refrigerators that achieve a 15 to 20 percent energy saving and that are manufactured in 2006 receive a $75 credit. Refrigerators that achieve a 20 to 25 percent energy saving receive a (i) $125 credit if manufactured in 2006–2007. Refrigerators that achieve at least a 25 percent energy saving receive a (i) $175 credit if manufactured in 2006–2007.

Appliances eligible for the credit include only those produced in the United States and that exceed the average amount of U.S. production from the three prior calendar years for each category of appliance. In the case of refrigerators, eligible production is U.S. production that exceeds 110 percent of the average amount of U.S. production from the three prior calendar years.

A dishwasher is any a residential dishwasher subject to the energy conservation standards established by the Department of Energy. A refrigerator must be an automatic defrost refrigerator-freezer with an internal volume of at least 16.5 cubic feet to qualify for the credit. A clothes washer is any residential clothes washer, including a residential style coin operated washer, that satisfies the relevant efficiency standard.

The taxpayer may not claim credits in excess of $75 million for all taxable years, and may not claim credits in excess of $20 million with respect to clothes washers eligible for the $50 credit and refrigerators eligible for the $75 credit. A taxpayer may elect to increase the $20 million limitation described above to $25 million provided that the aggregate amount of credits with respect to such appliances, plus refrigerators eligible for the $100 and $125 credits, is limited to $50 million for all taxable years.

Additionally, the credit allowed in a taxable year for all appliances may not exceed two percent of the average annual gross receipts of the taxpayer for the three taxable years preceding the taxable year in which the credit is determined.

The credit is part of the general business credit.

REASONS FOR CHANGE

The Committee believes that incentives provided for the manufacture of energy-efficient household appliances are desirable to promote the development of energy efficient appliance technologies and to help reduce energy consumption in the household sector. Hence the Committee extends the credit and strengthens the standards that must be met in order to be eligible for the credits.

EXPLANATION OF PROVISION

The provision extends and modifies the energy efficient appliance credit. The provision provides modified credits for eligible production as follows:

Dishwashers

1. $45 in the case of a dishwasher that is manufactured in calendar year 2008 or 2009 that uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and
2. $75 in the case of a dishwasher that is manufactured in calendar year 2008, 2009, or 2010 and that uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gal-

lons per cycle for dishwashers designed for greater than 12 place settings).

Clothes washers

1. $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 that meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor, and
2. $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 that meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,
3. $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009 or 2010 that meets or exceeds a 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and
4. $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 that meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

Refrigerators

1. $50 in the case of a refrigerator manufactured in calendar year 2008 that consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,
2. $75 in the case of a refrigerator that is manufactured in calendar year 2008 or 2009 that consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,
3. $100 in the case of a refrigerator that is manufactured in calendar year 2008, 2009 or 2010 that consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and
4. $200 in the case of a refrigerator manufactured in calendar year 2008, 2009 or 2010 that consumes at least 30 percent less energy than the 2001 energy conservation standards.

Appliances eligible for the credit include only those that exceed the average amount of production from the two prior calendar years for each category of appliance, rather than the present law three prior calendar years. Additionally, the special rule with respect to refrigerators is eliminated.

The aggregate credit amount allowed with respect to a taxpayer for all taxable years beginning after December 31, 2007 may not exceed $75 million, with the exception that the $200 refrigerator credit and the $250 clothes washer credit are not limited.

The term "modified energy factor" means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.

The term "gallons per cycle" means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

The term "water consumption factor" means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

EFFECTIVE DATE

The provision applies to appliances produced after December 31, 2007.

5. Accelerated recovery period for depreciation of smart meters and smart grid systems (Sec. 145 of the bill and sec. 168 of the Code)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[66] The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[67] Assets included in class 49.14, describing assets used in the transmission and distribution of electricity for sale and related land improvements, are assigned a class life of 30 years and a recovery period of 20 years.

REASONS FOR CHANGE

The Committee believes that smart electric meters and smart electric grid systems are integral to the development and use of technology to conserve energy resources. Therefore, the Committee believes that investment in smart electric meters and smart electric grid systems should be encouraged through a shorter recovery period for depreciation. The Committee also believes that smart electric meters should be capable of net metering, which allows customers a credit for providing electricity to the supplier of electric energy or provider of electric energy services.

EXPLANATION OF PROVISION

The provision provides a 10-year recovery period and 150 percent declining balance method for any qualified smart electric meter and any qualified smart electric grid system. For purposes of the provision, a qualified smart electric meter means any time-based meter and related communication equipment which is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services and which is capable of being used by the taxpayer as part of a system that (1) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day; (2) provides for the exchange of information between the supplier or provider and the customer's smart electric meter in support of time-based rates or other forms of demand response; and (3) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically; and (4) provides all commercial and resi-

[66] Sec. 168.
[67] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

dential customers of such supplier or provider with net metering. The term "net metering" means allowing a customer a credit, if any, as complies with applicable Federal and State laws and regulations, for providing electricity to the supplier or provider.

For purposes of the provision, a qualified smart electric grid system means any smart grid property 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. Smart grid property includes electronics and related equipment that is capable of (1) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid; (2) providing real-time, two-way communications to monitor to manage such grid; and (3) providing real-time analysis of an event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment.

6. Extension of issuance authority for qualified green building and sustainable design project bonds (Sec. 146 of the bill and sec. 142 of the Code)

PRESENT LAW

In general

Private activity bonds are bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for interest paid on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes exempt facility bonds.

In most cases, the aggregate volume of tax-exempt qualified private activity bonds, including most exempt facility bonds, is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2008, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $262.09 million, if greater.

Qualified green building and sustainable design project bonds

The definition of exempt facility bond includes qualified green building and sustainable design project bonds ("qualified green bond"). A qualified green bond is defined as any bond issued as part of an issue that finances a project designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency (the "Administrator") as a green building and sustainable design project that meets the following eligibility requirements: (1) at least 75 percent of the square footage of the commercial buildings that are part of the project is registered for the

U.S. Green Building Council's LEED[68] certification and is reasonably expected (at the time of designation) to meet such certification; (2) the project includes a brownfield site;[69] (3) the project receives at least $5 million dollars in specific State or local resources; and (4) the project includes at least one million square feet of building or at least 20 acres of land.

Qualified green bonds are not subject to the State bond volume limitations. Rather, there is a national limitation of $2 billion of qualified green bonds that the Secretary may allocate, in the aggregate, to qualified green building and sustainable design projects. Qualified green bonds may be currently refunded if certain conditions are met, but cannot be advance refunded. The authority to issue qualified green bonds terminates after September 30, 2009.

Under present law, each green building and sustainable design project must certify to the Secretary, no later than 30 days after the completion of the project, that the net benefit of the tax- exempt financing was used for the purposes described in the project application. Issuers are required to maintain, on behalf of each project, an interest bearing reserve account equal to one percent of the net proceeds of any qualified green bond issued for such project. Not later than five years after the date of issuance of bonds with respect to the project, the Secretary, after consultation with the Administrator, shall determine whether the project financed with the proceeds of qualified green bonds has substantially complied with the requirements and goals of the project. If the Secretary, after such consultation, certifies that the project has substantially complied with the requirements and goals, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such requirements and goals, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

REASONS FOR CHANGE

The Committee believes that tax-exempt financing provides State and local governments with an effective tool for encouraging private investment in projects that promote energy conservation. The Committee believes that qualified green bonds provide such a tool and, thus, it is appropriate to extend this provision.

EXPLANATION OF PROVISION

The provision extends the authority to issue qualified green bonds through September 30, 2012.

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[68] The LEED ("Leadership in Energy and Environmental Design) Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance sustainable buildings. Registration is the first step toward LEED certification. Actual certification requires that the applicant project satisfy a number of requirements. Commercial buildings, as defined by standard building codes are eligible for certification. Commercial occupancies include, but are not limited to, offices, retail and service establishments, institutional buildings (e.g. libraries, schools, museums, churches, etc.), hotels, and residential buildings of four or more habitable stories.

[69] For this purpose, a brownfield site is defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. sec. 9601), including a site described in subparagraph (D)(ii)(1I)(aa) thereof (relating to a site that is contaminated by petroleum or a petroleum product excluded from the definition of 'hazardous substance' under section 101).

The provision also clarifies that the date for determining whether amounts in a reserve account may be released to a green building and sustainable design project is the date that is five years after the date of issuance of the last bond issue issued with respect to such project.

EFFECTIVE DATE

The provision applies on the date of enactment.

II. ONE-YEAR EXTENSION OF TEMPORARY PROVISIONS

A. EXTENSIONS PRIMARILY AFFECTING INDIVIDUALS

1. Deduction of State and local general sales taxes (Sec. 201 of the bill and sec. 164 of the Code)

PRESENT LAW

For purposes of determining regular tax liability, an itemized deduction is permitted for certain State and local taxes paid, including individual income taxes, real property taxes, and personal property taxes. The itemized deduction is not permitted for purposes of determining a taxpayer's alternative minimum taxable income. For taxable years beginning in 2004 and 2005, at the election of the taxpayer, an itemized deduction may be taken for State and local general sales taxes in lieu of the itemized deduction provided under present law for State and local income taxes. As is the case for State and local income taxes, the itemized deduction for State and local general sales taxes is not permitted for purposes of determining a taxpayers alternative minimum taxable income. Taxpayers have two options with respect to the determination of the sales tax deduction amount. Taxpayers may deduct the total amount of general State and local sales taxes paid by accumulating receipts showing general sales taxes paid. Alternatively, taxpayers may use tables created by the Secretary of the Treasury that show the allowable deduction. The tables are based on average consumption by taxpayers on a State-by-State basis taking into account number of dependents, modified adjusted gross income and rates of State and local general sales taxation. Taxpayers who live in more than one jurisdiction during the tax year are required to pro-rate the table amounts based on the time they live in each jurisdiction. Taxpayers who use the tables created by the Secretary may, in addition to the table amounts, deduct eligible general sales taxes paid with respect to the purchase of motor vehicles, boats and other items specified by the Secretary. Sales taxes for items that may be added to the tables are not reflected in the tables themselves.

The term "general sales tax" means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items. However, in the case of items of food, clothing, medical supplies, and motor vehicles, the fact that the tax does not apply with respect to some or all of such items is not taken into account in determining whether the tax applies with respect to a broad range of classes of items, and the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax is not taken into account in determining whether the tax is imposed at one rate. Except in the case of a lower rate of tax applicable with respect to food, clothing, medical supplies, or motor vehicles, no deduction is allowed for any general sales tax imposed with respect to an item at a rate other than the general rate of tax. However, in the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate is treated as the rate of tax.

A compensating use tax with respect to an item is treated as a general sales tax, provided such tax is complementary to a general sales tax and a deduction for sales taxes is allowable with respect to items sold at retail in the taxing jurisdiction that are similar to such item.

REASONS FOR CHANGE

The Committee believes an extension of the option to deduct State and local sales taxes in lieu of deducting State and local income taxes is appropriate to continue to provide similar Federal tax treatment to residents of States that rely on sales taxes, rather than income taxes, to fund State and local governmental functions.

EXPLANATION OF PROVISION

The present-law provision allowing taxpayers to elect to deduct State and local sales taxes in lieu of State and local income taxes is extended for one year (through December 31, 2008).

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2007.

2. Above-the-line deduction for higher education expenses (Sec. 202 of the bill and sec. 222 of the Code)

PRESENT LAW

An individual is allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year.[70] Qualified tuition and related expenses are defined in the same manner as for the Hope 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 may claim a personal exemption, at an eligible institution of higher education for courses of instruction of such individual at such institution.[71] 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 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 other individ-

[70] Sec. 222.

[71] 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.

uals 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 may be claimed by another taxpayer for the taxable year. The deduction is not available for taxable years beginning after December 31, 2007.

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,[72] and 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.[73] 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 a Hope credit or Lifetime Learning credit is elected for such taxable year.

REASONS FOR CHANGE

The Committee observes that the cost of a college education continues to rise, and thus believes that the extension of the qualified tuition deduction is appropriate to mitigate the impact of rising tuition costs on students and their families. The Committee further believes that the tuition deduction provides an important financial incentive for individuals to pursue higher education.

EXPLANATION OF PROVISION

The provision extends the qualified tuition deduction for one year so that it is available for taxable years beginning before January 1, 2009.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

3. Extension of special withholding tax rule for interest-related and short-term capital gain dividends paid by regulated investment companies (Sec. 203 of the bill and sec. 871 of the Code)

PRESENT LAW

In general

Under present law, a regulated investment company ("RIC") that earns certain interest income that would not be subject to U.S. tax if earned by a foreign person directly may, to the extent of such income, designate a dividend it pays as derived from such interest in-

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

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

come. A similar provision applies to short-term capital gain.[74] A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, as if the foreign person had earned the interest or short-term capital gain directly.

Under present law, a RIC may, under certain circumstances, designate all or a portion of a dividend as an "interest-related dividend," or as a "short-term capital gain dividend" by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend or short-term capital gain dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442.

Interest-related dividends

The withholding exemption does not apply to an interest-related dividend on shares of RIC stock if the withholding agent does not receive a statement, similar to that required under the portfolio interest rules, that the beneficial owner of the shares is not a U.S. person. The exemption does not apply to a dividend paid to any person within a foreign country (or dividends addressed to, or for the account of, persons within such foreign country) with respect to which the Treasury Secretary has determined, under the portfolio interest rules, that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons.

In addition, the exemption generally does not apply to dividends paid to a controlled foreign corporation to the extent such dividends are attributable to income received by the RIC on a debt obligation of a person with respect to which the recipient of the dividend (i.e., the controlled foreign corporation) is a related person. Nor does the exemption generally apply to dividends to the extent such dividends are attributable to income (other than short-term original issue discount or bank deposit interest) received by the RIC on indebtedness issued by the RIC-dividend recipient or by any corporation or partnership with respect to which the recipient of the RIC dividend is a 10-percent shareholder. However, in these two circumstances the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient is such a controlled foreign corporation or 10-percent shareholder. To the extent that an interest-related dividend received by a controlled foreign corporation is attributable to interest income of the RIC that would be portfolio interest if received by a foreign corporation, the dividend is treated as portfolio interest for purposes of the de minimis rules, the high-tax exception, and the same country exceptions of subpart F (see sec. 881(c)(5)(A)).

The aggregate amount designated as interest-related dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in section 855) generally is limited to the qualified net interest income of the RIC for the taxable year. The qualified net interest income of the RIC equals the excess of: (1) The amount of qualified interest income of the RIC; over (2) the

[74] Certain distributions to which section 897 does not apply by reason of the second sentence of section 897(h)(1) continue to be treated as a dividend from a RIC that is not a short-term capital gain dividend.

amount of expenses of the RIC properly allocable to such interest income.

Qualified interest income of the RIC is equal to the sum of its U.S.-source income with respect to: (1) Bank deposit interest; (2) short term original issue discount that is currently exempt from the gross-basis tax under section 871; (3) any interest (including amounts recognized as ordinary income in respect of original issue discount, market discount, or acquisition discount under the provisions of sections 1271–1288, and such other amounts as regulations may provide) on an obligation which is in registered form, unless it is earned on an obligation issued by a corporation or partnership in which the RIC is a 10-percent shareholder or is contingent interest not treated as portfolio interest under section 871(h)(4); and (4) any interest-related dividend from another RIC.

If the amount designated as an interest-related dividend is greater than the qualified net interest income described above, the portion of the distribution so designated which constitutes an interest-related dividend will be only that proportion of the amount so designated as the amount of the qualified net interest income bears to the amount so designated.

Expiration

The special rules for interest-related dividends and for short-term capital gain dividends received from a RIC do not apply to any taxable year of a RIC beginning after December 31, 2007.

REASONS FOR CHANGE

The committee believes that, to the extent a RIC distributes to a foreign person a dividend attributable to amounts that would have been exempt from U.S. withholding tax had the foreign person received it directly (such as portfolio interest and capital gains, including short-term capital gains), such dividend similarly should be exempt from the U.S. gross-basis withholding tax. Therefore, the committee believes that it is desirable to extend the present law provision for an additional year.

EXPLANATION OF PROVISION

The provision extends the exemption from withholding tax of interest-related dividends and of short-term capital gain dividends received from a RIC to taxable years of a RIC beginning before January 1, 2009.

EFFECTIVE DATE

The provision applies to dividends with respect to taxable years of RICs beginning after December 31, 2007 and before January 1, 2009.

4. Tax-free distributions from individual retirement plans for charitable purposes (Sec. 204 of the bill and sec. 408 of the Code)

PRESENT LAW

In general

If an amount withdrawn from a traditional individual retirement arrangement ("IRA") or a Roth IRA is donated to a charitable organization, the rules relating to the tax treatment of withdrawals from IRAs apply to the amount withdrawn and the charitable contribution is subject to the normally applicable limitations on deductibility of such contributions. An exception applies in the case of a qualified charitable distribution.

Charitable contributions

In computing taxable income, an individual taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and up to the fair market value of property contributed to a charity described in section 501(c)(3), to certain veterans' organizations, fraternal societies, and cemetery companies,[75] or to a Federal, State, or local governmental entity for exclusively public purposes.[76] The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[77]

A taxpayer who takes the standard deduction (i.e., who does not itemize deductions) may not take a separate deduction for charitable contributions.[78]

A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the donor receives an economic benefit is not deductible, except to the extent that the donor can demonstrate, among other things, that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[79] In addition, present law requires that any charity that receives a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services may be deductible as a charitable contribution.[80]

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50-percent limitation, (1) contributions of capital gain property

[75] Secs. 170(c)(3)–(5).
[76] Sec. 170(c)(1).
[77] Secs. 170(b) and (e).
[78] Sec. 170(a).
[79] Sec. 170(f)(8).
[80] Sec. 6115.

to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions by individuals in excess of the 50-percent, 30-percent, and 20-percent limits may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2008 is $159,950 ($79,975 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by three percent of adjusted gross income over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. A phase-out of the overall limitation on itemized deductions for all taxpayers began in 2006. The overall limitation is reduced by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation is eliminated for taxable years beginning after December 31, 2009; however, this elimination of the limitation sunsets on December 31, 2010.

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity (e.g., a remainder) while also either retaining an interest in that property (e.g., an income interest) or transferring an interest in that property to a noncharity for less than full and adequate consideration.[81] Exceptions to this general rule are provided for, among other interests, remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds, and present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property.[82] For such interests, a charitable deduction is allowed to the extent of the present value of the interest designated for a charitable organization.

IRA rules

Within limits, individuals may make deductible and nondeductible contributions to a traditional IRA. Amounts in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal represents a return of nondeductible contributions). Individuals also may make nondeductible contributions to a Roth IRA. Qualified withdrawals from a Roth IRA are excludable from gross income. Withdrawals from a Roth IRA that are not qualified withdrawals are includible in gross income to the extent attributable to earnings. Includible amounts withdrawn from a traditional IRA or a Roth IRA before attainment of age 59½ are subject

[81] Secs. 170(f), 2055(e)(2), and 2522(c)(2).
[82] Sec. 170(f)(2).

to an additional 10-percent early withdrawal tax, unless an exception applies. Under present law, minimum distributions are required to be made from tax-favored retirement arrangements, including IRAs. Minimum required distributions from a traditional IRA must generally begin by the April 1 of the calendar year following the year in which the IRA owner attains age 70½.[83]

If an individual has made nondeductible contributions to a traditional IRA, a portion of each distribution from an IRA is nontaxable until the total amount of nondeductible contributions has been received. In general, the amount of a distribution that is nontaxable is determined by multiplying the amount of the distribution by the ratio of the remaining nondeductible contributions to the account balance. In making the calculation, all traditional IRAs of an individual are treated as a single IRA, all distributions during any taxable year are treated as a single distribution, and the value of the contract, income on the contract, and investment in the contract are computed as of the close of the calendar year.

In the case of a distribution from a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings, contributions and distributions are deemed to be distributed in the following order: (1) Regular Roth IRA contributions; (2) taxable conversion contributions;[84] (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution, all regular Roth IRA contributions for a year are treated as a single contribution, and all conversion contributions during the year are treated as a single contribution.

Distributions from an IRA (other than a Roth IRA) are generally subject to withholding unless the individual elects not to have withholding apply.[85] Elections not to have withholding apply are to be made in the time and manner prescribed by the Secretary.

Qualified charitable distributions

Present law provides an exclusion from gross income for otherwise taxable IRA distributions from a traditional or a Roth IRA in the case of qualified charitable distributions.[86] The exclusion may not exceed $100,000 per taxpayer per taxable year. Special rules apply in determining the amount of an IRA distribution that is otherwise taxable. The otherwise applicable rules regarding taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable distributions. Qualified charitable distributions are taken into account for purposes of the minimum distribution rules applicable to traditional IRAs to the same extent the distribution would have been taken into account under such rules had the distribution not been directly distributed under the qualified charitable distribution provision. An IRA does not fail to qualify as an

[83] Minimum distribution rules also apply in the case of distributions after the death of a traditional or Roth IRA owner.

[84] Conversion contributions refer to conversions of amounts in a traditional IRA to a Roth IRA.

[85] Sec. 3405.

[86] The exclusion does not apply to distributions from employer-sponsored retirements plans, including SIMPLE IRAs and simplified employee pensions ("SEPs").

IRA merely because qualified charitable distributions have been made from the IRA.

A qualified charitable distribution is any distribution from an IRA directly by the IRA trustee to an organization described in section 170(b)(1)(A) (other than an organization described in section 509(a)(3) or a donor advised fund (as defined in section 4966(d)(2)). Distributions are eligible for the exclusion only if made on or after the date the individual for whose benefit the IRA is maintained attains age 70½.

The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution.

If the IRA owner has any IRA that includes nondeductible contributions, a special rule applies in determining the portion of a distribution that is includible in gross income (but for the qualified charitable distribution provision) and thus is eligible for qualified charitable distribution treatment. Under the special rule, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income (but for the qualified charitable distribution provision) if the aggregate balance of all IRAs having the same owner were distributed during the same year. In determining the amount of subsequent IRA distributions includible in income, proper adjustments are to be made to reflect the amount treated as a qualified charitable distribution under the special rule.

Distributions that are excluded from gross income by reason of the qualified charitable distribution provision are not taken into account in determining the deduction for charitable contributions under section 170.

The exclusion for qualified charitable distributions applies to distributions made in taxable years beginning after December 31, 2005. Under present law, the exclusion does not apply to distributions made in taxable years beginning after December 31, 2007.

REASONS FOR CHANCE

The Committee believes that facilitating charitable contributions from IRAs will help increase giving to charitable organizations. Therefore, the Committee believes that the exclusion for qualified charitable distributions should be extended for one year.

EXPLANATION OF PROVISION

The provision would extend the exclusion for qualified charitable distributions to distributions made in taxable years beginning after December 31, 2007, and before January 1, 2009.

EFFECTIVE DATE

The provision is effective for distributions made in taxable years beginning after December 31, 2007.

5. Educator expense deduction (Sec. 205 of the bill and sec. 62 of the Code)

PRESENT LAW

In general, ordinary and necessary business expenses are deductible. However, unreimbursed employee business expenses generally are deductible only as an itemized deduction and only to the extent that the individual's total miscellaneous deductions (including employee business expenses) exceed two percent of adjusted gross income. An individual's otherwise allowable itemized deductions may be further limited by the overall limitation on itemized deductions, which reduces itemized deductions for taxpayers with adjusted gross income in excess of $159,950 (for 2008).[87] In addition, miscellaneous itemized deductions are not allowable under the alternative minimum tax.

Eligible educators are allowed an above-the-line deduction for certain expenses.[88] Specifically, for taxable years beginning after December 31, 2001, and prior to January 1, 2008, an above-the-line deduction is allowed for up to $250 annually of expenses paid or incurred by an eligible educator for books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom. To be eligible for this deduction, the expenses must be otherwise deductible under section 162 as a trade or business expense. A deduction is allowed only to the extent the amount of expenses exceeds the amount excludable from income under section 135 (relating to education savings bonds), 529(c)(1) (relating to qualified tuition programs), and section 530(d)(2) (relating to Coverdell education savings accounts).

An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year. A school means any school that provides elementary education or secondary education, as determined under State law.

The above-the-line deduction for eligible educators is not allowed for taxable years beginning after December 31, 2007.

REASONS FOR CHANCE

The Committee recognizes that many elementary and secondary school teachers provide substantial classroom resources at their own expense, and believe that it is appropriate to extend the present law deduction for such expenses in order to continue to partially offset the substantial costs such educators incur for the benefit of their students.

EXPLANATION OF PROVISION

The provision extends the deduction for eligible educator expenses for one year so that it is available for taxable years beginning before January 1, 2009.

[87] The adjusted gross income threshold is $79,975 in the case of a married individual filing a separate return (for 2008).

[88] Sec. 62(a)(2)(D).

EFFECTIVE DATE

The provision is effective for expenses paid or incurred in taxable years beginning after December 31, 2007.

6. One year extension of the election to treat combat pay as earned income for purposes of the earned income credit (Sec. 206 of the bill and sec. 32 of the Code)

PRESENT LAW

In general

Subject to certain limitations, military compensation earned by members of the Armed Forces while serving in a combat zone may be excluded from gross income. In addition, for up to two years following service in a combat zone, military personnel may also exclude compensation earned while hospitalized from wounds, disease, or injuries incurred while serving in the combat zone.

Child credit

Combat pay that is otherwise excluded from gross income under section 112 is treated as earned income which is taken into account in computing taxable income for purposes of calculating the refundable portion of the child credit.

Earned income credit

Any taxpayer may elect to treat combat pay that is otherwise excluded from gross income under section 112 as earned income for purposes of the earned income credit. This election is available with respect to any taxable year ending after the date of enactment and before January 1, 2008.

REASONS FOR CHANGE

The Committee believes that members of the armed forces serving in combat should have full availability of the earned income credit, notwithstanding the exclusion of combat pay from gross income for purposes of determining federal tax liability. The Committee believes an extension of the election to treat combat pay as earnings for purposes of the earned income credit is necessary to achieve this result.

EXPLANATION OF PROVISION

The provision extends for one year the availability of the election to treat combat pay that is otherwise excluded from gross income under section 112 as earned income for purposes of the earned income credit.

EFFECTIVE DATE

The provision is effective in taxable years beginning after December 31, 2007 and before January 1, 2009.

7. Extension of qualified mortgage bond program rules for veterans (Sec. 207 of the bill and sec. 143 of the Code)

PRESENT LAW

Private activity bonds are bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes both qualified mortgage bonds and qualified veterans' mortgage bonds.

Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for homebuyers and purchase price limitations for the home financed with bond proceeds. In addition, qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the "first-time homebuyer" requirement).

Under a special rule, qualified mortgage bonds may be issued to finance mortgages for veterans who served in the active military without regard to the first-time homebuyer requirement. Present-law income and purchase price limitations apply to loans to veterans financed with the proceeds of qualified mortgage bonds. Veterans are eligible for the exception from the first-time homebuyer requirement without regard to the date they last served on active duty or the date they applied for a loan after leaving active duty. However, veterans may only use the exception one time. This provision applies to bonds issued before January 1, 2008.

REASONS FOR CHANGE

The Committee believes that the mortgage bond program provides an effective tool for providing the benefits of homeownership to military veterans. The present-law exception to the first-time homebuyer rule allows a broader class of veterans to benefit from the program and the Committee believes it is appropriate to extend the exception for an additional year.

EXPLANATION OF PROVISION

The provision extends for one year the first-time homebuyer exception for veterans under the qualified mortgage bond program.

EFFECTIVE DATE

The provision applies to bonds issued after December 31, 2007.

8. Treatment of distributions to individuals called to active duty for at least 180 days (Sec. 208 of the bill and sec. 72 of the Code)

PRESENT LAW

Under present law, a taxpayer who receives a distribution from a qualified retirement plan prior to age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception to the tax applies. Among other exceptions, the early distribution tax does not apply to distributions made to an employee who separates from service after age 55, or to distributions that are part of a series of substantially equal periodic payments made for the life (or life expectancy) of the employee or the joint lives (or life expectancies) of the employee and his or her beneficiary.

Certain amounts held in a qualified cash or deferred arrangement (a "section 401(k) plan") or in a tax-sheltered annuity (a "section 403(b) annuity") may not be distributed before severance from employment, age 59½, death, disability, or financial hardship of the employee.

Pursuant to amendments to section 72(t) made by the Pension Protection Act of 2006,[89] the 10-percent early withdrawal tax does not apply to a qualified reservist distribution. A qualified reservist distribution is a distribution (1) from an IRA or attributable to elective deferrals under a section 401(k) plan, section 403(b) annuity, or certain similar arrangements, (2) made to an individual who (by reason of being a member of a reserve component as defined in section 101 of title 37 of the U.S. Code) was ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (3) that is made during the period beginning on the date of such order or call to duty and ending at the close of the active duty period. A section 401(k) plan or section 403(b) annuity does not violate the distribution restrictions applicable to such plans by reason of making a qualified reservist distribution.

An individual who receives a qualified reservist distribution may, at any time during the two-year period beginning on the day after the end of the active duty period, make one or more contributions to an IRA of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to IRAs do not apply to any contribution made pursuant to this special repayment rule. No deduction is allowed for any contribution made under the special repayment rule.

The special rules applicable to a qualified reservist distribution apply to individuals ordered or called to active duty after September 11, 2001, and before December 31, 2007.

REASONS FOR CHANGE

The Committee believes that the exception to the 10-percent early withdrawal tax is an important tax relief provision for reservists called to active duty. Reservists called to active duty may need access to amounts that they have contributed to tax-favored retirement savings programs in order to meet their personal financial obligations while serving our country. Given the continuing need for activation of reservists, the Committee believes that this tax relief provision should be extended so that it applies to reservists called to active duty on or after December 31, 2007.

[89] Pub. L. No. 109–280.

EXPLANATION OF PROVISION

The provision extends the rules applicable to qualified reservist distributions to individuals ordered or called to active duty before January 1, 2009.

EFFECTIVE DATE

The provision applies to individuals ordered or called to active duty on or after December 31, 2007.

9. Extension of special rule for regulated investment company stock held in the estate of a nonresident non-citizen (Sec. 209 of the bill and sec. 2105 of the Code)

PRESENT LAW

The gross estate of a decedent who was a U.S. citizen or resident generally includes all property—real, personal, tangible, and intangible—wherever situated.[90] The gross estate of a nonresident non-citizen decedent, by contrast, generally includes only property that at the time of the decedent's death is situated within the United States.[91] Property within the United States generally includes debt obligations of U.S. persons, including the Federal government and State and local governments, but does not include either bank deposits or portfolio obligations the interest on which would be exempt from U.S. income tax under section 871.[92] Stock owned and held by a nonresident non-citizen generally is treated as property within the United States if the stock was issued by a domestic corporation.[93]

Treaties may reduce U.S. taxation of transfers of the estates of nonresident non-citizens. Under recent treaties, for example, U.S. tax generally may be eliminated except insofar as the property transferred includes U.S. real property or business property of a U.S. permanent establishment.

Although stock issued by a domestic corporation generally is treated as property within the United States, stock of a regulated investment company ("RIC") that was owned by a nonresident non-citizen is not deemed property within the United States in the proportion that, at the end of the quarter of the RIC's taxable year immediately before a decedent's date of death, the assets held by the RIC are debt obligations, deposits, or other property that would be treated as situated outside the United States if held directly by the estate (the "estate tax look-through rule for RIC stock").[94] This estate tax look-through rule for RIC stock does not apply to estates of decedents dying after December 31, 2007.

REASONS FOR CHANGE

If a RIC satisfies certain income, asset, and distribution requirements, only one level of income tax generally is imposed on the in-

[90] Sec. 2031. The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") repealed the estate tax for estates of decedents dying after December 31, 2009. EGTRRA, however, included a termination provision under which EGTRRA's rules, including estate tax repeal, do not apply to estates of decedents dying after December 31, 2010.

[91] Sec. 2103.

[92] Secs. 2104(c), 2105(b).

[93] Sec. 2104(a); Treas. Reg. sec. 20.2104–1(a)(5)).

[94] Sec. 2105(d).

come and gains of a RIC, and this tax is imposed on the RIC stockholders. By extension, the Committee believes it is appropriate to treat a RIC as a conduit under the rules for determining the extent to which the transfer of the estate of a nonresident non-citizen is subject to U.S. Federal estate tax. To the extent the assets of a RIC would not be subject to U.S. estate tax if held directly by an estate, the Committee believes there should be no estate tax when the assets are owned indirectly by ownership of stock in a RIC.

EXPLANATION OF PROVISION

The provision permits the estate tax look-through rule for RIC stock to apply to estates of decedents dying before January 1, 2009.

EFFECTIVE DATE

The provision applies to estates of decedents dying after December 31, 2007.

10. Extend RIC "qualified investment entity" treatment under FIRPTA (Sec. 210 of the bill and sec. 897 of the Code)

PRESENT LAW

Special U.S. tax rules apply to capital gains of foreign persons that are attributable to dispositions of interests in U.S. real property. In general, a foreign person (a foreign corporation or a nonresident alien individual) is not generally taxed on U.S. source capital gains unless certain personal presence or effectively connected business requirements are met. However, under the Foreign Investment in Real Property Tax Act ("FIRPTA") provisions codified in section 897 of the Code, a foreign person who sells a U.S. real property interest (USRPI) is treated as if the gain from such a sale is effectively connected with a U.S. business, and is subject to tax at the same rates as a U.S. person. Withholding tax is also imposed under section 1445.

A USPRI, the sale of which is subject to FIRPTA tax, includes stock or a beneficial interest in any U.S. real property holding corporation (as defined), unless the stock is regularly traded on an established securities market and the selling foreign corporation or nonresident alien individual held no more than 5 percent of that stock within the 5-year period ending on date of disposition (or, if shorter, during the period in which the entity was in existence). There is an exception, however, for stock of a domestically controlled "qualified investment entity." However, if stock of a domestically controlled qualified investment entity is disposed of within the 30 days preceding a dividend distribution in an "applicable wash sale transaction," in which an amount that would have been a taxable distribution (as described below) is instead treated as nontaxable sales proceeds, but substantially similar stock is reacquired (or an option to obtain it is acquired) within a 61 day period, then the amount that would have been a taxable distribution continues to be taxed.

A distribution from a "qualified investment entity" that is attributable to the sale of a USRPI is subject to tax under FIRPTA unless the distribution is with respect to an interest that is regularly traded on an established securities market located in the United States and the recipient foreign corporation or nonresident alien individual held no more than 5 percent of that class of stock or beneficial interest within the 1-year period ending on the date of distribution. Special rules apply to situations involving tiers of qualified investment entities.

The term "qualified investment entity" includes a regulated investment company ("RIC") that meets certain requirements, although the inclusion of a RIC in that definition is scheduled to expire, for certain purposes, on December 31, 2007.[95] The definition does not expire for purposes of taxing distributions from the RIC that are attributable directly or indirectly to a distribution to the entity from a real estate investment trust, nor for purposes of the applicable wash sale rules.

REASONS FOR CHANGE

The committee believes it is desirable to extend the present law provision for an additional year.

EXPLANATION OF PROVISION

The provision extends the inclusion of a regulated investment company (RIC) within the definition of a "qualified investment entity" under section 897 of the Code through December 31, 2008, for those situations in which that inclusion would otherwise expire at the end of 2007. However, such extension does not apply to the application of withholding requirements with respect to any payment made on or before date of enactment.

EFFECTIVE DATE

The provision generally takes effect on January 1, 2008.

11. Group legal services plans (Sec. 211 of the bill and secs. 120 and 501 of the Code)

PRESENT LAW

For taxable years beginning before July 1, 1992, certain amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) of the value or legal services provided (or amounts paid for legal services) under such a plan with respect to an employee (or the employee's spouse or dependents) are excludable from an employee's gross income for income and employment tax purposes.[96] The exclusion is limited to an annual premium value of $70.

Additionally, for taxable years beginning before July 1, 1992, an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan is exempt from tax.[97]

REASONS FOR CHANGE

The Committee believes that it is appropriate to temporarily restore the exclusion for employer-provided group legal services and to temporarily provide tax-exempt status for organizations which provide qualified group legal services.

[95] Sec. 897(h).
[96] Secs. 120, 3121(a)(17), and 3306(b)(12).
[97] Sec. 501(c)(20).

EXPLANATION OF PROVISION

The provision restores the exclusion for employer-provided group legal services for taxable years beginning after December 31, 2007, and before January 1, 2009. Additionally, for taxable years beginning after December 31, 2007, and before January 1, 2009, the provision provides tax-exempt status for organizations which provide qualified group legal services.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2007, and before January 1, 2009.

B. EXTENSIONS PRIMARILY AFFECTING BUSINESSES

1. Extend the research and experimentation tax credit (Sec. 221 of the bill and sec. 41 of the Code)

PRESENT LAW

General rule

A taxpayer may claim a research credit equal to 20 percent of the amount by which the taxpayer's qualified research expenses for a taxable year exceed its base amount for that year.[98] Thus, the research credit is generally available with respect to incremental increases in qualified research.

A 20-percent research tax credit is also available with respect to the excess of (1) 100 percent of corporate cash expenses (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the university basic research credit.[99]

Finally, a research credit is available for a taxpayer's expenditures on research undertaken by an energy research consortium. This separate credit computation is commonly referred to as the energy research credit. Unlike the other research credits, the energy research credit applies to all qualified expenditures, not just those in excess of a base amount.

The research credit, including the university basic research credit and the energy research credit, has expired and does not apply to amounts paid or incurred after December 31, 2007.[100]

Computation of allowable credit

Except for energy research payments and certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research ex-

[98] Sec. 41.
[99] Sec. 41(e).
[100] The research tax credit was initially enacted in the Economic Recovery Tax Act of 1981. It has been subsequently extended and modified numerous times. Most recently, the Tax Relief and Health Care Act of 2006 extended the research credit through December 31, 2007, modified the alternative incremental research credit, and added an election to claim an alternative simplified credit.

penses for the current taxable year exceed its base amount. The base amount for the current year generally is computed by multiplying the taxpayer's fixed-base percentage by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenses and had gross receipts during each of at least three years from 1984 through 1988, then its fixed-base percentage is the ratio that its total qualified research expenses for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum fixed-base percentage of 16 percent). All other taxpayers (so-called start-up firms) are assigned a fixed-base percentage of three percent.[101]

In computing the credit, a taxpayer's base amount cannot be less than 50 percent of its current-year qualified research expenses.

To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, a special aggregation rule provides that all members of the same controlled group of corporations are treated as a single taxpayer.[102] Under regulations prescribed by the Secretary, special rules apply for computing the credit when a major portion of a trade or business (or unit thereof) changes hands, under which qualified research expenses and gross receipts for periods prior to the change of ownership of a trade or business are treated as transferred with the trade or business that gave rise to those expenses and receipts for purposes of recomputing a taxpayer's fixed-base percentage.[103]

Alternative incremental research credit regime

Taxpayers are allowed to elect an alternative incremental research credit regime.[104] If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced.

Generally, for amounts paid or incurred prior to 2007, under the alternative incremental credit regime, a credit rate of 2.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of one percent (i.e., the base amount equals one percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 3.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 per-

[101] The Small Business Job Protection Act of 1996 expanded the definition of start-up firms under section 41(c)(3)(B)(i) to include any firm if the first taxable year in which such firm had both gross receipts and qualified research expenses began after 1983. A special rule (enacted in 1993) is designed to gradually recompute a start-up firm's fixed-base percentage based on its actual research experience. Under this special rule, a start-up firm is assigned a fixed-base percentage of three percent for each of its first five taxable years after 1993 in which it incurs qualified research expenses. A start-up firm's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurs qualified research expenses is a phased-in ratio based on the firm's actual research experience. For all subsequent taxable years, the taxpayer's fixed-base percentage is its actual ratio of qualified research expenses to gross receipts for any five years selected by the taxpayer from its fifth through tenth taxable years after 1993. Sec. 41(c)(3)(B).

[102] Sec. 41(f)(1).

[103] Sec. 41(f)(3).

[104] Sec. 41(c)(4).

cent but do not exceed a base amount computed by using a fixed-base percentage of two percent. A credit rate of 3.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of two percent. Generally, for amounts paid or incurred after 2006, the credit rates listed above are increased to three percent, four percent, and five percent, respectively.[105]

An election to be subject to this alternative incremental credit regime can be made for any taxable year beginning after June 30, 1996, and such an election applies to that taxable year and all subsequent years unless revoked with the consent of the Secretary of the Treasury.

Alternative simplified credit

Generally, for amounts paid or incurred after 2006, taxpayers may elect to claim an alternative simplified credit for qualified research expenses.[106] The alternative simplified research credit is equal to 12 percent of qualified research expenses that exceed 50 percent of the average qualified research expenses for the three preceding taxable years. The rate is reduced to six percent if a taxpayer has no qualified research expenses in any one of the three preceding taxable years.

An election to use the alternative simplified credit applies to all succeeding taxable years unless revoked with the consent of the Secretary. An election to use the alternative simplified credit may not be made for any taxable year for which an election to use the alternative incremental credit is in effect. A transition rule applies which permits a taxpayer to elect to use the alternative simplified credit in lieu of the alternative incremental credit if such election is made during the taxable year which includes January 1, 2007. The transition rule applies only to the taxable year which includes that date.

Eligible expenses

Qualified research expenses eligible for the research tax credit consist of: (1) in-house expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid or incurred by the taxpayer to certain other persons for qualified research conducted on the taxpayer's behalf (so-called contract research expenses).[107] Notwithstanding the limitation for contract research expenses, qualified research expenses include 100 percent of amounts paid or incurred by the taxpayer to an eligible small business, university, or Federal laboratory for qualified energy research.

To be eligible for the credit, the research does not only have to satisfy the requirements of present-law section 174 (described below) but also must be undertaken for the purpose of discovering

[105] A special transition rule applies for fiscal year 2006–2007 taxpayers.

[106] A special transition rule applies for fiscal year 2006–2007 taxpayers.

[107] Under a special rule, 75 percent of amounts paid to a research consortium for qualified research are treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule under section 41(b)(3) governing contract research expenses) if (1) such research consortium is a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and is organized and operated primarily to conduct scientific research, and (2) such qualified research is conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer. Sec. 41(b)(3)(C).

information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and substantially all of the activities of which constitute elements of a process of experimentation for functional aspects, performance, reliability, or quality of a business component. Research does not qualify for the credit if substantially all of the activities relate to style, taste, cosmetic, or seasonal design factors.[108] In addition, research does not qualify for the credit: (1) if conducted after the beginning of commercial production of the business component; (2) if related to the adaptation of an existing business component to a particular customer's requirements; (3) if related to the duplication of an existing business component from a physical examination of the component itself or certain other information; or (4) if related to certain efficiency surveys, management function or technique, market research, market testing, or market development, routine data collection or routine quality control.[109] Research does not qualify for the credit if it is conducted outside the United States, Puerto Rico, or any U.S. possession.

Relation to deduction

Under section 174, taxpayers may elect to deduct currently the amount of certain research or experimental expenditures paid or incurred in connection with a trade or business, notwithstanding the general rule that business expenses to develop or create an asset that has a useful life extending beyond the current year must be capitalized.[110] However, deductions allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year.[111] Taxpayers may alternatively elect to claim a reduced research tax credit amount under section 41 in lieu of reducing deductions otherwise allowed.[112]

REASONS FOR CHANGE

The Committee acknowledges that research is important to the economy. Research is the basis of new products, new services, new industries, and new jobs for the domestic economy. Therefore, the Committee believes it is appropriate to extend the present-law research credit.

EXPLANATION OF PROVISION

The provision extends the research credit for one year, through December 31, 2008. The provision also clarifies the computation of the alternative incremental research credit and the alternative simplified credit for the taxable year in which the credit terminates.

[108] Sec. 41(d)(3).
[109] Sec. 41(d)(4).
[110] Taxpayers may elect 10-year amortization of certain research expenditures allowable as a deduction under section 174(a). Secs. 174(f)(2) and 59(e).
[111] Sec. 280C(c).
[112] Sec. 280C(c)(3).

EFFECTIVE DATE

The provision is effective for amounts paid or incurred after December 31, 2007.

2. Indian employment tax credit (Sec. 222 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 (sec. 45A). 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 costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.

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 or section 4(l) of the Indian Child Welfare Act of 1978. 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 currently $40,000).[113] 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 shareholders, partners, or grantors. Similarly, an employee will not be treated as a qualified employee where the employee has more than a 5 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.

[113] See Form 8845, Indian Employment Credit (Rev. Dec. 2006).

The Indian employment tax credit is not available for taxable years beginning after December 31, 2007.

REASONS FOR CHANGE

The Committee believes that extending the Indian employment credit will expand business and employment opportunities within Indian reservations.

EXPLANATION OF PROVISION

The provision extends for one year the present-law employment credit provision (through taxable years beginning on or before December 31, 2008).

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

3. Extend the new markets tax credit (Sec. 223 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").[114] 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. 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 for a taxable year 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. 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 ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the equity investment is redeemed.

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. A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired directly 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. Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community in-

[114] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106–554 (2000).

vestments. 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.

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 (rather than 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 has the authority to designate "targeted populations" as low-income communities for purposes of the new markets tax credit. 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 (12 U.S.C. 4702(20)) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments. Under such Act, "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.[115] is Under such Act, 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 such business is used in a low-income community; (3) a substantial portion of the services performed for such 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 such business is attributable to certain financial property or to certain collectibles.

[115] 12 U.S.C. 4702(17) (defines "low-income" for purposes of 12 U.S.C. 4702(20)).

The maximum annual amount of qualified equity investments is capped at $2.0 billion per year for calendar years 2004 and 2005, and at $3.5 billion per year for calendar years 2006, 2007, and 2008.

REASONS FOR CHANGE

The Committee believes that the new markets tax credit has proved to be an effective means of providing equity and other investments to benefit businesses in low income communities, and that it is appropriate to provide for the allocation of additional investments for another calendar year.

EXPLANATION OF PROVISION

The provision extends the new markets tax credit for one year, through 2009, permitting up to $3.5 billion in qualified equity investments for that calendar year.

EFFECTIVE DATE

The provision is effective on the date of enactment.

4. Extend railroad track maintenance credit (Sec. 224 of the bill and sec. 45G of the Code)

PRESENT LAW

Present law provides a 50-percent business tax credit for qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.[116] The credit is limited to the product of $3,500 times the number of miles of railroad track (1) owned or leased by an eligible taxpayer as of the close of its taxable year, 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.[117] 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. Under the provision, the credit is limited in respect of the total number of miles of track (1) owned or leased by the Class II. or Class III railroad and (2) assigned to the Class II or Class III railroad for purposes of the credit.

Qualified railroad track maintenance expenditures are defined as 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, 2005, 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).[118]

An eligible taxpayer means any Class II or Class III railroad, and any person who transports property using the rail facilities of a Class II or CIass III railroad or who furnishes railroad-related property or services to a Class II or Class III railroad, but only

[116] Sec. 45G(a).
[117] Sec. 45G(b)(1).
[118] Sec. 45G(d).

with respect to miles of railroad track assigned to such person by such railroad under the provision.[119]

The terms Class II or Class III railroad have the meanings given by the Surface Transportation Board.[120]

The provision applies to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

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 provision for one year, for qualified railroad track maintenance expenditures paid or incurred before January 1, 2009.

EFFECTIVE DATE

The provision is effective for expenditures paid or incurred after December 31, 2007.

5. Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements (Sec. 225 of the bill and sec. 168 of the Code)

PRESENT LAW

In general

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[121] The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years. Nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation allowance for the first year property is placed in service is based on the number of months the property was in service, and property placed in service at any time during a month is treated as having been placed in service in the middle of the month.

Depreciation of leasehold improvements

Generally, depreciation allowances for improvements made on leased property are determined under MACRS, even if the MACRS recovery period assigned to the property is longer than the term of the lease. This rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service. If a leasehold

[119] Sec. 45G(c).
[120] Sec. 45G(e)(1).
[121] Sec. 168.

improvement constitutes an addition or improvement to nonresidential real property already placed in service, the improvement generally is depreciated using the straight-line method over a 39-year recovery period, beginning in the month the addition or improvement was placed in service. However, exceptions exist for certain qualified leasehold improvements and qualified restaurant property.

Qualified leasehold improvement property

Section 168(e)(3)(E)(iv) provides a statutory 15-year recovery period for qualified leasehold improvement property placed in service before January 1, 2008. Qualified leasehold improvement property is recovered using the straight-line method and a half-year convention. Leasehold improvements placed in service in 2008 and later will be subject to the general rules described above.

Qualified leasehold improvement property is any improvement to an interior portion of a building that is nonresidential real property, provided certain requirements are met. The improvement must be made under or pursuant to a lease either by the lessee (or sublessee), or by the lessor, of that portion of the building to be occupied exclusively by the lessee (or sublessee). The improvement must be placed in service more than three years after the date the building was first placed in service. Qualified leasehold improvement property does not include any improvement for which the expenditure is attributable to the enlargement of the building, any elevator or escalator, any structural component benefiting a common area, or the internal structural framework of the building.

If a lessor makes an improvement that qualifies as qualified leasehold improvement property, such improvement does not qualify as qualified leasehold improvement property to any subsequent owner of such improvement. An exception to the rule applies in the case of death and certain transfers of property that qualify for nonrecognition treatment.

Qualified restaurant property

Section 168(e)(3)(E)(v) provides a statutory 15-year recovery period for qualified restaurant property placed in service before January 1, 2008. For purposes of the provision, qualified restaurant property means any improvement to a building if such improvement is placed in service more than three years after the date such building was first placed in service and more than 50 percent of the building's square footage is devoted to the preparation of, and seating for on-premises consumption of, prepared meals. Qualified restaurant property is recovered using the straight-line method and a half-year convention. Restaurant property placed in service in 2008 and later will be subject to the general rules described above.

REASONS FOR CHANGE

The Committee believes that it is appropriate to extend the 15-year recovery period for qualified leasehold improvements and qualified restaurant property.

EXPLANATION OF PROVISION

The present-law provisions for qualified leasehold improvement property and qualified restaurant property are extended for one year (through December 31, 2008).

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2007.

6. 7-year recovery period for motorsports racetrack property (Sec. 226 of the bill and sec. 168 of the Code)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[122] The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years. Nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation allowance for the first year property is placed in service is based on the number of months the property was in service, and property placed in service at any time during a month is treated as having been placed in service in the middle of the month. Land improvements (such as roads and fences) are recovered over 15 years. An exception exists for the theme and amusement park industry, whose assets are assigned a recovery period of seven years. Additionally, a motorsports entertainment complex placed in service before December 31, 2007 is assigned a recovery period of seven years.[123] For these purposes, a motorsports entertainment complex means a racing track facility which is permanently situated on land that during the 36 month period following its placed in service date it hosts a racing event.[124] The term motorsports entertainment complex also includes ancillary facilities, land improvements (e.g., parking lots, sidewalks, fences), support facilities (e.g., food and beverage retailing, souvenir vending), and appurtenances associated with such facilities (e.g., ticket booths, grandstands).

REASONS FOR CHANGE

The Committee believes that extending the depreciation incentive will encourage economic development. The Committee also believes that taxpayers should not be required to recover the costs of motorsports entertainment complex beyond the useful life of the investment. Therefore, the provision extends the 7-year recovery period for motorsports entertainment complex property.

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[122] Sec. 168.
[123] Sec. 168(e)(3)(C)(ii).
[124] Sec. 168(i)(15).

EXPLANATION OF PROVISION

The provision extends the present law seven year recovery period for one year through December 31, 2008.

EFFECTIVE DATE

The provision is effective for property placed in service after December 31, 2007.

7. Accelerated depreciation for business property on Indian reservations (Sec. 227 of the bill and sec. 168 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

"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;[125] and (4) is not property placed in service for purposes of conducting gaming activities.[126] Certain "qualified infrastructure property" may be eligible for the accelerated depreciation even if located outside an Indian reservation, 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).[127]

An "Indian reservation" means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 or section 4(10) of the Indian Child Welfare Act of 1978. 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).

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. The accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before January 1, 2008.

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[125] For these purposes, related persons is defined in Sec. 465(b)(3)(C).
[126] Sec. 168(j)(4)(A).
[127] Sec. 168(j)(4)(C).

REASONS FOR CHANGE

The Committee believes that extending the depreciation incentive will encourage economic development within Indian reservations and expand employment opportunities on such reservations.

EXPLANATION OF PROVISION

The provision extends for one year the present-law incentive relating to depreciation of qualified Indian reservation property (to apply to property placed in service through December 31, 2008).

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2007.

8. Extend expensing of brownfields remediation costs (Sec. 228 of the bill and sec. 198 of the Code)

PRESENT LAW

Present law allows a deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business.[128] Treasury regulations provide that the cost of incidental repairs that neither materially add to the value of property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted currently as a business expense. Section 263(a)(1) limits the scope of section 162 by prohibiting a current deduction for certain capital expenditures. Treasury regulations define "capital expenditures" as amounts paid or incurred to materially add to the value, or substantially prolong the useful life, of property owned by the taxpayer, or to adapt property to a new or different use. Amounts paid for repairs and maintenance do not constitute capital expenditures. The determination of whether an expense is deductible or capitalizable is based on the facts and circumstances of each case.

Taxpayers may elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred.[129] The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. In general, any expenditure for the acquisition of depreciable property used in connection with the abatement or control of hazardous substances at a qualified contaminated site does not constitute a qualified environmental remediation expenditure. However, depreciation deductions allowable for such property, which would otherwise be allocated to the site under the principles set forth in Commissioner v. Idaho Power Co.[130] and section 263A, are treated as qualified environmental remediation expenditures.

A "qualified contaminated site" (a so-called "brownfield") generally is any property that is held for use in a trade or business, for the production of income, or as inventory and is certified by the appropriate State environmental agency to be an area at or on

[128] Sec. 162.
[129] Sec. 198.
[130] 418 U.S. 1 (1974).

which there has been a release (or threat of release) or disposal of a hazardous substance. Both urban and rural property may qualify. However, sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA")[131] cannot qualify as targeted areas. Hazardous substances generally are defined by reference to sections 101(14) and 102 of CERCLA, subject to additional limitations applicable to asbestos and similar substances within buildings, certain naturally occurring substances such as radon, and certain other substances released into drinking water supplies due to deterioration through ordinary use, as well as petroleum products defined in section 4612(a)(3) of the Code.

In the case of property to which a qualified environmental remediation expenditure otherwise would have been capitalized, any deduction allowed under section 198 is treated as a depreciation deduction and the property is treated as section 1245 property. Thus, deductions for qualified environmental remediation expenditures are subject to recapture as ordinary income upon a sale or other disposition of the property. In addition, sections 280B (demolition of structures) and 468 (special rules for mining and solid waste reclamation and closing costs) do not apply to amounts that are treated as expenses under this provision.

Eligible expenditures are those paid or incurred before January 1, 2008.

The Gulf Opportunity Zone Act of 2005[132] added section 1400N(g) to the Code, which extended for two years (through December 31, 2007) the expensing of environmental remediation expenditures paid or incurred to abate contamination at qualified contaminated sites located in the Gulf Opportunity Zone. As a result of the extension of section 198 contained in the Tax Relief and Health Care Act of 2006,[133] eligible expenditures covered under both section 1400N(g) and section 198 must be paid or incurred prior to January 1, 2008.

REASONS FOR CHANGE

The Committee believes that the expensing of brownfields remediation costs promotes the goal of environmental remediation and promotes new investment and employment opportunities by lowering the net capital cost of a development project. Therefore, the Committee believes it is appropriate to extend the present-law provision permitting the expensing of these environmental remediation costs.

EXPLANATION OF PROVISION

The provision extends the present law expensing provision under section 198 for one year through December 31, 2008.

EFFECTIVE DATE

The provision is effective for expenditures paid or incurred after December 31, 2007.

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[131] Pub. L. No. 96–510 (1980).
[132] Pub. L. No. 109–135 (2005).
[133] Pub. L. No. 109–432 (2006).

9. Extension of deduction for income attributable to domestic production activities in Puerto Rico (Sec. 229 of the bill and sec. 199 of the Code)

PRESENT LAW

In general

Present law provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to a portion of the taxpayer's qualified production activities income. For taxable years beginning after 2009, the deduction is nine percent of that income. For taxable years beginning in 2005 and 2006, the deduction is three percent of qualified production activities income and for taxable years beginning in 2007, 2008, and 2009, the deduction is six percent of qualified production activities income. For taxpayers subject to the 35-percent corporate income tax rate, the nine-percent deduction effectively reduces the corporate income tax rate to just under 32 percent on qualified production activities income.

Qualified production activities income

In general, qualified production activities income is equal to domestic production gross receipts (defined by section 199(c)(4)), reduced by the sum of: (1) the costs of goods sold that are allocable to those receipts and (2) other expenses, losses, or deductions which are properly allocable to those receipts.

Domestic production gross receipts

Domestic production gross receipts generally are gross receipts of a taxpayer that are derived from (1) any sale, exchange, or other disposition, or any lease, rental, or license, of qualifying production property [134] that was manufactured, produced, grown or extracted by the taxpayer in whole or in significant part within the United States; (2) any sale, exchange, or other disposition, or any lease, rental, or license, of qualified film [135] produced by the taxpayer; (3) any lease, rental, license, sale, exchange, or other disposition of electricity, natural gas, or potable water produced by the taxpayer in the United States; (4) construction of real property performed in the United States by a taxpayer in the ordinary course of a construction trade or business; or (5) engineering or architectural services performed in the United States for the construction of real property located in the United States.

Wage limitation

For taxable years beginning after May 17, 2006, the amount of the deduction for a taxable year is limited to 50 percent of the wages paid by the taxpayer, and properly allocable to domestic production gross receipts, during the calendar year that ends in such

[134] Qualifying production property generally includes any tangible personal property, computer software, and sound recordings.

[135] Qualified film includes any motion picture film or videotape (including live or delayed television programming, but not including certain sexually explicit productions) if 50 percent or more of the total compensation relating to the production of the film (including compensation in the form of residuals and participations) constitutes compensation for services performed in the United States by actors, production personnel, directors, and producers.

taxable year.[136] Wages paid to bona fide residents of Puerto Rico generally are not included in the wage limitation amount.[137]

Rules for Puerto Rico

When used in the Code in a geographical sense, the term "United States" generally includes only the States and the District of Columbia.[138] A special rule for determining domestic production gross receipts, however, provides that in the case of any taxpayer with gross receipts from sources within the Commonwealth of Puerto Rico, the term "United States" includes the Commonwealth of Puerto Rico, but only if all of the taxpayer's gross receipts are taxable under the Federal income tax for individuals or corporations.[139] In computing the 50-percent wage limitation, that taxpayer is permitted to take into account wages paid to bona fide residents of Puerto Rico for services performed in Puerto Rico.[140]

The special rules for Puerto Rico apply only with respect to the first two taxable years of a taxpayer beginning after December 31, 2005 and before January 1, 2008.

REASONS FOR CHANGE

The Committee believes that given the expiration of the Puerto Rico economic activity credit after 2005, it is appropriate to use other means to encourage investment in Puerto Rico. In particular, the Committee believes it is appropriate to treat a U.S. taxpayer's manufacturing activities in Puerto Rico in a manner similar to the treatment of manufacturing activities in the United States.

EXPLANATION OF PROVISION

The provision allows the special domestic production activities rules for Puerto Rico to apply for one additional taxable year of a taxpayer.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

10. Modification of tax treatment of certain payments to controlling exempt organizations (Sec. 230 of the bill and sec. 512 of the Code)

PRESENT LAW

In general, organizations exempt from Federal income tax are subject to the unrelated business income tax on income derived from a trade or business regularly carried on by the organization that is not substantially related to the performance of the organiza-

[136] For purposes of the provision, "wages" include the sum of the amounts of wages as defined in section 3401(a) and elective deferrals that the taxpayer properly reports to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year. For taxable years beginning before May 18, 2006, the limitation is based upon all wages paid by the taxpayer, rather than only wages properly allocable to domestic production gross receipts.

[137] Sec. 3401(a)(8)(C).

[138] Sec. 7701(a)(9).

[139] Sec. 199(d)(8)(A).

[140] Sec. 199(d)(8)(B).

tion's tax-exempt functions.[141] In general, interest, rents, royalties, and annuities are excluded from the unrelated business income of tax-exempt organizations.[142]

Section 512(b)(13) provides special rules regarding income derived by an exempt organization from a controlled subsidiary. In general, section 512(b)(13) treats otherwise excluded rent, royalty, annuity, and interest income as unrelated business income if such income is received from a taxable or tax-exempt subsidiary that is 50-percent controlled by the parent tax-exempt organization to the extent the payment reduces the net unrelated income (or increases any net unrelated loss) of the controlled entity (determined as if the entity were tax exempt). However, a special rule enacted as part of the Pension Protection Act of 2006 provides that, for payments made pursuant to a binding written contract in effect on August 17, 2006 (or renewal of such a contract on substantially similar terms), the general rule of section 512(b)(13) applies only to the portion of payments received or accrued (before January 1, 2008) in a taxable year that exceeds the amount of the payment that would have been paid or accrued if the amount of such payment had been determined under the principles of section 482 (i.e., at arm's length).[143] In addition, the special rule imposes a 20-percent penalty on the larger of such excess determined without regard to any amendment or supplement to a return of tax, or such excess determined with regard to all such amendments and supplements.

In the case of a stock subsidiary, "control" means ownership by vote or value of more than 50 percent of the stock. In the case of a partnership or other entity, "control" means ownership of more than 50 percent of the profits, capital, or beneficial interests. In addition, present law applies the constructive ownership rules of section 318 for purposes of section 512(b)(13). Thus, a parent exempt organization is deemed to control any subsidiary in which it holds more than 50 percent of the voting power or value, directly (as in the case of a first-tier subsidiary) or indirectly (as in the case of a second-tier subsidiary).

REASONS FOR CHANGE

In enacting the special rule described above, the Pension Protection Act also required that, not later than January 1, 2009, the Secretary shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the effectiveness of the Internal Revenue Service in administering the special rule and on the extent to which payments by controlled entities to the controlling exempt organization meet the requirements of section 482 of the Code. Such report is required to include the results of any audit of any controlling organization or controlled entity and recommendations relating to the tax treatment of payments from controlled entities to controlling organizations. Considering that the report is not due until January 1, 2009, the Committee believes it is appropriate to extend the special rule for one year.

[141] Sec. 511.
[142] Sec. 512(b).
[143] Sec. 512(b)(13)(E).

EXPLANATION OF PROVISION

The provision extends the special rule of the Pension Protection Act to payments received or accrued before January 1, 2009. Accordingly, under the provision, payments of rent, royalties, annuities, or interest income by a controlled organization to a controlling organization pursuant to a binding written contract in effect on August 17, 2006 (or renewal of such a contract on substantially similar terms), may be includible in the unrelated business taxable income of the controlling organization only to the extent the payment exceeds the amount of the payment determined under the principles of section 482 (i.e., at arm's length). Any such excess is subject to a 20-percent penalty on the larger of such excess determined without regard to any amendment or supplement to a return of tax, or such excess determined with regard to all such amendments and supplements.

EFFECTIVE DATE

The provision is effective for payments received or accrued after December 31, 2007.

11. Extend and modify qualified zone academy bonds (Sec. 231 of the bill and new sec. 54D of the Code)

PRESENT LAW

Tax-exempt bonds

Interest paid on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. Activities that can be financed with these tax-exempt bonds include the financing of public schools.[144] An issuer must file with the IRS certain information about the bonds issued by them in order for that bond issue to be tax-exempt.[145] Generally, this information return is required to be filed no later than the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

The tax exemption for State and local bonds does not apply to any arbitrage bond.[146] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[147] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

[144] Sec. 103.
[145] Sec. 149(e).
[146] Sec. 103(a) and (b)(2).
[147] Sec. 148.

Qualified zone academy bonds

As an alternative to traditional tax-exempt bonds, States and local governments were given the authority to issue "qualified zone academy bonds." [148] A total of $400 million of qualified zone academy bonds is authorized to be issued annually in calendar years 1998 through 2007. The $400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit authority to qualified zone academies within such State.

Financial institutions that hold qualified zone academy bonds are entitled to a nonrefundable tax credit in an amount equal to a credit rate multiplied by the face amount of the bond. A taxpayer holding a qualified zone academy bond on the credit allowance date is entitled to a credit. The credit is includable in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and alternative minimum tax liability.

The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the bond was 50 percent of the face value. of the bond.

"Qualified zone academy bonds" are defined as any bond issued by a State or local government, provided that (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a "qualified zone academy" and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a "qualified zone academy" if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an empowerment zone or enterprise community designated under the Code, or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

The Tax Relief and Health Care Act of 2006 ("TRHCA") [149] imposed the arbitrage requirements that generally apply to interest-bearing tax-exempt bonds to qualified zone academy bonds. In addition, an issuer of qualified zone academy bonds must reasonably expect to and actually spend 95 percent or more of the proceeds of such bonds on qualified zone academy property within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified zone academy property during the five-year spending period, bonds will con-

[148] Sec. 1397E.
[149] Pub. L. No. 109–432.

tinue to qualify as qualified zone academy bonds if unspent proceeds are used within 90 days from the end of such five-year period to redeem any nonqualified bonds. The five-year spending period may be extended by the Secretary if the issuer establishes that the failure to meet the spending requirement is due to reasonable cause and the related purposes for issuing the bonds will continue to proceed with due diligence. Issuers of qualified zone academy bonds are required to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds.

REASONS FOR CHANGE

The Committee believes that tax-credit bonds provide an effective means of subsidizing rehabilitation and repairs to public school facilities. Thus, the Committee believes that the extension of authority to issue qualified zone academy bonds is appropriate in light of the educational needs that exist today. However, the Committee also recognizes that modifications to the present law qualified zone academy bond program may be necessary to increase the marketability of such bonds. These modifications also will promote additional investment in the beneficiary public schools.

EXPLANATION OF PROVISION

The provision extends and modifies the present-law qualified zone academy bond program. The provision authorizes issuance of up to $400 million of qualified zone academy bonds annually through 2008.

For bonds issued after the date of enactment, the provision also modifies the spending and arbitrage rules that apply to qualified zone academy bonds. The provision modifies the spending rule by requiring 100 percent of available project proceeds to be spent on qualified zone academy property. In addition, the provision modifies the arbitrage rules by providing that available project proceeds invested during the five-year period beginning on the date of issue are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). The provision defines "available project proceeds" as proceeds from the sale of an issue of qualified zone academy bonds, less issuance costs (not to exceed two percent) and any investment earnings on such proceeds. Thus, available project proceeds invested during the five-year spending period may be invested at unrestricted yields, but the earnings on such investments must be spent on qualified zone academy property.

The provision provides that amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified zone academy bonds are issued.

EFFECTIVE DATE

The provision applies to bonds issued after the date of enactment.

12. Tax incentives for investment in the District of Columbia (Sec. 232 of the bill and secs. 1400, 1400A, 1400B, and 1400C of the Code)

PRESENT LAW

In general

The Taxpayer Relief Act of 1997 designated certain economically depressed census tracts within the District of Columbia as the District of Columbia Enterprise Zone (the "D.C. Zone"), within which businesses and individual residents are eligible for special tax incentives. The census tracts that compose the D.C. Zone are (1) all census tracts that presently are part of the D.C. enterprise community designated under section 1391 (i.e., portions of Anacostia, Mt. Pleasant, Chinatown, and the easternmost part of the District), and (2) all additional census tracts within the District of Columbia where the poverty rate is not less than 20 percent. The D.C. Zone designation remained in effect for the period from January 1, 1998 through December 31, 2007. In general, the tax incentives available in connection with the D.C. Zone are a 20-percent wage credit, an additional $35,000 of section 179 expensing for qualified zone property, expanded tax-exempt financing for certain zone facilities, and a zero-percent capital gains rate from the sale of certain qualified D.C. zone assets.

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 D.C. Zone, and (2) performs substantially all employment services within the D.C. Zone in a trade or business of the employer.

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 D.C. Zone may claim the wage credit, regardless of whether the employer meets the definition of a "D.C. Zone business."[150]

An employer's deduction otherwise allowed for wages paid is reduced by the amount of wage credit claimed for that taxable year.[151] 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 or the welfare-to-work credit under section 51A.[152] In addition, the $15,000 cap is reduced by any wages taken into account in computing the work oppor-

[150] However, the wage credit is not available for wages paid in connection with certain business activities described in section 144(c)(6)(B) 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.

[151] Sec. 280C(a).

[152] Secs. 1400H(a), 1396(c)(3)(A) and 51A(d)(2).

tunity tax credit or the welfare-to-work credit.[153] The wage credit may be used to offset up to 25 percent of alternative minimum tax liability.[154]

Section 179 expensing

In general, a D.C. Zone business is allowed an additional $35,000 of section 179 expensing for qualifying property placed in service by a D.C. Zone business.[155] The section 179 expensing allowed to a taxpayer is phased out by the amount by which 50 percent of the cost of qualified zone property placed in service during the year by the taxpayer exceeds $200,000 ($500,000 for taxable years beginning after 2006 and before 2011). The term "qualified zone property" is defined as depreciable tangible property (including buildings), provided that (1) the property is acquired by the taxpayer (from an unrelated party) after the designation took effect, (2) the original use of the property in the D.C. Zone commences with the taxpayer, and (3) substantially all of the use of the property is in the D.C. Zone in the active conduct of a trade or business by the taxpayer.[156] Special rules are provided in the case of property that is substantially renovated by the taxpayer.

Tax-exempt financing

A qualified D.C. Zone business is permitted to borrow proceeds from tax-exempt qualified enterprise zone facility bonds (as defined in section 1394) issued by the District of Columbia.[157] Such bonds are subject to the District of Columbia's annual private activity bond volume limitation. Generally, qualified enterprise zone facility bonds for the District of Columbia are bonds 95 percent or more of the net proceeds of which are used to finance certain facilities within the D.C. Zone. The aggregate face amount of all outstanding qualified enterprise zone facility bonds per qualified D.C. Zone business may not exceed $15 million and may be issued only while the D.C. Zone designation is in effect.

Zero-percent capital gains

A zero-percent capital gains rate applies to capital gains from the sale of certain qualified D.C. Zone assets held for more than five years.[158] In general, a qualified "D.C. Zone asset" means stock or partnership interests held in, or tangible property held by, a D.C. Zone business. For purposes of the zero-percent capital gains rate, the D.C. Enterprise Zone is defined to include all census tracts within the District of Columbia where the poverty rate is not less than 10 percent.

In general, gain eligible for the zero-percent tax rate means gain from the sale or exchange of a qualified D.C. Zone asset that is (1) a capital asset or property used in the trade or business as defined in section 1231(b), and (2) acquired before January 1, 2008. Gain that is attributable to real property, or to intangible assets, qualifies for the zero-percent rate, provided that such real property or intangible asset is an integral part of a qualified D.C. Zone busi-

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[153] Secs. 1400H(a), 1396(c)(3)(B) and 51A(d)(2).
[154] Sec. 38(c)(2).
[155] Sec. 1397A.
[156] Sec. 1397D.
[157] Sec. 1400A.
[158] Sec. 1400B.

ness.[159] However, no gain attributable to periods before January 1, 1998, and after December 31, 2012, is qualified capital gain.

District of Columbia homebuyer tax credit

First-time homebuyers of a principal residence in the District of Columbia are eligible for a nonrefundable tax credit of up to $5,000 of the amount of the purchase price. The $5,000 maximum credit applies both to individuals and married couples. Married individuals filing separately can claim a maximum credit of $2,500 each. The credit phases out for individual taxpayers with adjusted gross income between $70,000 and $90,000 ($110,000–$130,000 for joint filers). For purposes of eligibility, "first-time homebuyer" means any individual if such individual did not have a present ownership interest in a principal residence in the District of Columbia in the one-year period ending on the date of the purchase of the residence to which the credit applies. The credit expired for purchases after December 31, 2007.[160]

REASONS FOR CHANGE

The Committee believes that it continues to be important to provide tax incentives to individuals and businesses in the D.C. Zone and that it is appropriate to extend such incentives for an additional year.

EXPLANATION OF PROVISION

The provision extends the designation of the D.C. Zone for one year (through December 31, 2008), thus extending the wage credit and section 179 expensing for one year.

The provision extends the tax-exempt financing authority for one year, applying to bonds issued during the period beginning on January 1, 1998, and ending on December 31, 2008.

The provision extends the zero-percent capital gains rate applicable to capital gains from the sale of certain qualified D.C. Zone assets for one year.

The provision extends the first-time homebuyer credit for one year, through December 31, 2008.

EFFECTIVE DATE

The provision is effective for periods beginning after, bonds issued after, acquisitions after, and property purchased after December 31, 2007.

13. Extension of economic development credit for American Samoa (Sec. 233 of the bill and sec. 119 of Pub. L. No. 109–432)

PRESENT AND PRIOR LAW

In general

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.[161] This credit off-

[159] However, sole proprietorships and other taxpayers selling assets directly cannot claim the zero-percent rate on capital gain from the sale of any intangible property (i.e., the integrally related test does not apply).

[160] Sec. 1400C(i).

[161] Secs. 27(b), 936.

set the U.S. tax imposed on certain income related to operations in the U.S. possessions.[162] For purposes of the credit, possessions included, among other places, American Samoa. Subject to certain limitations described below, 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.[163] 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.[164] The section 936 credit generally expired for taxable years beginning after December 31, 2005, but a special credit, described below, was allowed with respect to American Samoa.

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.

The possession tax credit was available only to a corporation that qualified as an existing credit claimant. The determination of whether a corporation was an existing credit claimant was made separately for each possession. The possession tax credit was computed separately for each possession with respect to which the corporation was an existing credit claimant, and the credit was subject to either an economic activity-based limitation or an income-based limitation.

Qualification as existing credit claimant

A corporation was an existing credit claimant with respect to a possession if (1) the corporation was engaged in the active conduct of a trade or business within the possession on October 13, 1995, and (2) the corporation elected the benefits of the possession tax credit in an election in effect for its taxable year that included October 13, 1995.[165] 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 taxable year ending before the date on which that new line of business was added.

[162] Domestic corporations with activities in Puerto Rico are eligible for the section 30A economic activity credit. That credit is calculated under the rules set forth in section 936.

[163] Under phase-out rules described below, investment only in Guam, American Samoa, and the Northern Mariana Islands (and not in other possessions) now may give rise to income eligible for the section 936 credit.

[164] Sec. 936(c).

[165] 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.

Economic activity-based limit

Under the economic activity-based limit, the amount of the credit determined under the rules described above was not permitted to 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.

Income-based limit

As an alternative to the economic activity-based limit, a. taxpayer was permitted elect to apply a limit equal to the applicable percentage of the credit that otherwise would have been allowable with respect to possession business income; in taxable years beginning in 1998 and subsequent years, the applicable percentage was 40 percent.

Repeal and phase out

In 1996, the section 936 credit was repealed for new claimants for taxable years beginning after 1995 and was phased out for existing credit claimants over a period including taxable years beginning before 2006. The amount of the available credit during the phase-out period generally was reduced by special limitation rules. These phase-out period limitation rules did not apply to the credit available to existing credit claimants for income from activities in Guam, American Samoa, and the Northern Mariana Islands. As described previously, the section 936 credit generally was repealed for all possessions, including Guam, American Samoa, and the Northern Mariana Islands, for all taxable years beginning after 2005, but a modified credit was allowed for activities in American Samoa.

American Samoa economic development credit

A domestic corporation that was 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 is allowed a credit based on the economic activity-based limitation rules described above. The credit is not part of the Code but is computed based on the rules secs. 30A and 936. The credit is allowed for the first two taxable years of a corporation that first two taxable years of a corporation that begin after December 31, 2005, and before January 1, 2008.

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 (described previously) 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.

The credit is not available for taxable years beginning after December 31, 2007.

REASONS FOR CHANGE

The Committee believes that it is important to encourage investment in American Samoa. With the expiration of the possession tax credit, the American Samoa economic development credit is an appropriate temporary provision while Congress considers long-term tax policy toward the U.S. possessions.

EXPLANATION OF PROVISION

The provision allows the American Samoa economic development credit for one additional taxable year of a taxpayer.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

14. Extension of the enhanced charitable deduction for contributions of food inventory (Sec. 234 of the bill and sec. 170 of the Code)

PRESENT LAW

General rules regarding contributions of food inventory

Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory, or if less, the fair market value of the inventory.

For certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one-half of fair market value in excess of basis) or (2) two times basis.[166] In general, a C corporation's charitable contribution deductions for a year may not exceed 10 percent of the corporation's taxable income.[167] To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act,

[166] Sec. 170(e)(3).
[167] Sec. 170(b)(2).

the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.

A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory.[168] Accordingly, if the allowable charitable deduction for inventory is the fair market value of the inventory, the donor reduces its cost of goods sold by such value, with the result that the difference between the fair market value and the donor's basis may still be recovered by the donor other than as a charitable contribution.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of disputes between taxpayers and the IRS.[169]

Temporary rule expanding and modifying the enhanced deduction for contributions of food inventory

Under a temporary provision enacted as part of the Katrina Emergency Tax Relief Act of 2005 and extended by the Pension Protection Act of 2006, any taxpayer, whether or not a C corporation, engaged in a trade or business is eligible to claim the enhanced deduction for donations of food inventory.[170] For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 10 percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non C corporation) from which contributions of apparently wholesome food are made. For example, if a taxpayer is a sole proprietor, a shareholder in an S corporation, and a partner in a partnership, and each business makes charitable contributions of food inventory, the taxpayer's deduction for donations of food inventory is limited to 10 percent of the taxpayer's net income from the sole proprietorship and the taxpayer's interests in the S corporation and partnership. However, if only the sole proprietorship and the S corporation made charitable contributions of food inventory, the taxpayer's deduction would be limited to 10 percent of the net income from the trade or business of the sole proprietorship and the taxpayer's interest in the S corporation, but not the taxpayer's interest in the partnership.[171]

Under the temporary provision, the enhanced deduction for food is available only for food that qualifies as "apparently wholesome food." "Apparently wholesome food" is defined as food intended for human consumption that meets all quality and labeling standards

[168] Treas. Reg. sec. 1.170A–4A(c)(3).

[169] *Lucky Stores Inc*. v. *Commissioner*, 105 T.C. 420 (1995) (holding that the value of surplus bread inventory donated to charity was the full retail price of the bread rather than half the retail price, as the IRS asserted).

[170] Sec. 170(e)(3)(C).

[171] The 10 percent limitation does not affect the application of the generally applicable percentage limitations. For example, if 10 percent of a sole proprietor's net income from the proprietor's trade or business was greater than 50 percent of the proprietor's contribution base, the available deduction for the taxable year (with respect to contributions to public charities) would be 50 percent of the proprietor's contribution base. Consistent with present law, such contributions may be carried forward because they exceed the 50 percent limitation. Contributions of food inventory by a taxpayer that is not a C corporation that exceed the 10 percent limitation but not the 50 percent limitation could not be carried forward.

imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

The temporary provision does not apply to contributions made after December 31, 2007.

REASONS FOR CHANGE

The Committee believes that charitable organizations benefit from charitable contributions of food by business other than C corporations and that the enhanced deduction is a useful incentive for the making of such contributions. Accordingly, the Committee believes it is appropriate to extend the special rule for charitable contributions of food inventory for one year.

EXPLANATION OF PROVISION

The provision extends the expansion of, and modifications to, the enhanced deduction for charitable contributions of food inventory to contributions made before January 1, 2009.

EFFECTIVE DATE

The provision is effective for contributions made after December 31, 2007.

15. Extension of the enhanced charitable deduction for contributions of book inventory (Sec. 235 of the bill and sec. 170 of the Code)

PRESENT LAW

Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory, or, if less, the fair market value of the inventory.

In general, for certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one-half of fair market value in excess of basis) or (2) two times basis.[172] In general, a C corporation's charitable contribution deductions for a year may not exceed 10 percent of the corporation's taxable income.[173] To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.

[172] Sec. 170(e)(3).
[173] Sec. 170(b)(2).

A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory.[174] Accordingly, if the allowable charitable deduction for inventory is the fair market value of the inventory, the donor reduces its cost of goods sold by such value, with the result that the difference between the fair market value and the donor's basis may still be recovered by the donor other than as a charitable contribution.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis.

The Katrina Emergency Tax Relief Act of 2005 expanded the generally applicable enhanced deduction for C corporations to certain qualified book contributions made after August 28, 2005, and before January 1, 2006. The Pension Protection Act of 2006 extended the deduction for qualified book contributions to contributions made before January 1, 2008. A qualified book contribution means a charitable contribution of books to a public school that provides elementary education or secondary education (kindergarten through grade 12) and that is an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The enhanced deduction for qualified book contributions is not allowed unless the donee organization certifies in writing that the contributed books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs and that the donee will use the books in such educational programs. The donee also must make the certifications required for the generally applicable enhanced deduction, i.e., the donee will (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements.

REASONS FOR CHANGE

The Committee believes that public schools benefit from charitable contributions of book inventory and that the enhanced deduction is a useful incentive for the making of such contributions. Accordingly, the Committee believes it is appropriate to extend the enhanced deduction for charitable contributions of book inventory to public schools for one year.

EXPLANATION OF PROVISION

The provision extends the enhanced deduction for contributions of book inventory to contributions made before January 1, 2009.

EFFECTIVE DATE

The provision is effective for contributions made after December 31, 2007.

[174] Treas. Reg. sec. 1.170A–4A(c)(3).

16. Extension of the enhanced charitable deduction for contributions of computer technology and equipment (Sec. 236 of the bill and sec. 170 of the Code)

PRESENT LAW

In the case of a charitable contribution of inventory or other ordinary-income or short-term capital gain property, the amount of the charitable deduction generally is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose. In cases 121 involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property.[175]

Under present law, a taxpayer's deduction for charitable contributions of computer technology and equipment generally is limited to the taxpayer's basis (typically, cost) in the property. However, certain corporations may claim a deduction in excess of basis for a "qualified computer contribution." [176] This enhanced deduction is equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis. The enhanced deduction for qualified computer contributions expires for any contribution made during any taxable year beginning after December 31, 2007.

A qualified computer contribution means a charitable contribution of any computer technology or equipment, which meets standards of functionality and suitability as established by the Secretary of the Treasury. The contribution must be to certain educational organizations or public libraries and made not later than three years after the taxpayer acquired the property or, if the taxpayer constructed or assembled the property, not later than the date construction or assembly of the property is substantially completed.[177] The original use of the property must be by the donor or the donee,[178] and in the case of the donee, must be used substantially for educational purposes related to the function or purpose of the donee. The property must fit productively into the donee's education plan. The donee may not transfer the property in exchange for money, other property, or services, except for shipping, installation, and transfer costs. To determine whether property is constructed or assembled by the taxpayer, the rules applicable to qualified research contributions apply. Contributions may be made to private foundations under certain conditions.[179]

REASONS FOR CHANGE

The Committee believes that public libraries and educational organizations continue to benefit from corporate contributions of com-

[175] Sec. 170(e)(1).
[176] Secs. 170(e)(4) and 170(e)(6).
[177] If the taxpayer constructed and reacquired such property, the contribution must be within three years of the date the original construction was substantially completed. Sec. 170(e)(6)(D)(i).
[178] This requirement does not apply if the property was reacquired by the manufacturer and contributed. Sec. 170(e)(6)(D)(ii).
[179] Sec. 170(e)(6)(C).

puter technology and equipment and that it is appropriate to extend the enhanced deduction for such contributions for one year.

EXPLANATION OF PROVISION

The provision extends the enhanced deduction for computer technology and equipment for one year to apply to contributions made during any taxable year beginning after December 31, 2007, and before January 1, 2009.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

17. Basis adjustment to stock of S corporations making charitable contributions of property (Sec. 237 of the bill and sec. 1367 of the Code)

PRESENT LAW

Under present law, if an S corporation contributes money or other property to a charity, each shareholder takes into account the shareholder's pro rata share of the contribution in determining its own income tax liability.[180] A shareholder of an S corporation reduces the basis in the stock of the S corporation by the amount of the charitable contribution that flows through to the shareholder.[181]

In the case of contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008, the amount of a shareholder's basis reduction in the stock of an S corporation by reason of a charitable contribution made by the corporation is equal to the shareholder's pro rata share of the adjusted basis of the contributed property. For contributions made in taxable years beginning after December 31, 2007, the amount of the reduction is the shareholder's pro rata share of the fair market value of the contributed property.

REASONS FOR CHANGE

The Committee believes that the present-law treatment of contributions of property by S corporations is appropriate and should be extended.

EXPLANATION OF PROVISION

The bill extends the rule relating to the basis reduction on account of charitable contributions of property for one year to contributions made in taxable years beginning before January 1, 2009.

EFFECTIVE DATE

The provision applies to contributions made in taxable years beginning after December 31, 2007.

[180] Sec. 1366(a)(1)(A).
[181] Sec. 1367(a)(2)(B).

18. Extension of the Hurricane Katrina work opportunity tax credit (Sec. 238 of the bill and sec. 201 of the Katrina Emergency Tax Relief Act of 2005)

PRESENT LAW

Work opportunity tax credit

In general

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of nine 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. There are nine targeted groups: (1) families receiving Temporary Assistance for Needy Families Program ("TANF"); (2) qualified veterans; (3) qualified ex-felons; (4) designated community residents; (5) vocational rehabilitation referrals; (6) qualified summer youth employees; (7) qualified food stamp recipients; (8) qualified supplemental security income ("SSI") benefit recipients; and (9) qualified long-term family assistance recipients.

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.

For purposes of the credit, generally, wages are defined by reference to the FUTA definition of wages contained in sec. 3306(b) (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). There are two exceptions to this general rule. First, with respect to qualified summer youth employees, the maximum credit is $1,200 (40 percent of the first $3,000 of qualified first-year wages). Second, with respect to qualified veterans who are entitled to compensation for a service-connected disability, the maximum credit is $4,800 because qualified first-year wages are $12,000 rather than $6,000 for such individuals.[182] Except for long-term family assistance recipients, no credit is allowed for second-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).

Certification rules

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.

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.

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 fifty-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.

Expiration

The work opportunity tax credit is not available for individuals who begin work for an employer after August 31, 2011.

[182] The expanded definition of qualified first-year wages does not apply to the veterans qualified with reference to a food stamp program, as defined under present law.

Work Opportunity Tax Credit for Hurricane Katrina Employees

In general

The Katrina Emergency Tax Relief Act of 2005 provided that a Hurricane Katrina employee is treated as a member of a targeted group for purposes of the work opportunity tax credit. A Hurricane Katrina employee was: (1) an individual who on August 28, 2005, had a principal place of abode in the core disaster area and was hired during the two-year period beginning on such date for a position, the principal place of employment of which was located in the core disaster area; and (2) an individual who on August 28, 2005, had a principal place of abode in the core disaster area, who was displaced from such abode by reason of Hurricane Katrina and was hired during the period beginning on such date and ending on December 31, 2005 without regard to whether the new principal place of employment is in the core disaster area.

The present-law WOTC certification requirement was waived for such individuals. In lieu of the certification requirement, an individual may have provided to the employer reasonable evidence that the individual is a Hurricane Katrina employee.

The present-law rule that denies the credit with respect to wages of employees who had been previously employed by the employer was waived for the first hire of such employee as a Hurricane Katrina employee unless such employee was an employee of the employer on August 28, 2005.

Definitions

The term "Hurricane Katrina disaster area" means an area with respect to which a major disaster has been declared by the President before September 14, 2005 under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The term "core disaster area" means that portion of the Hurricane Katrina disaster area 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.

REASONS FOR CHANGE

The Committee believes that the work opportunity tax credit should continue to be available as an incentive to provide employment opportunities in the core disaster area of Hurricane Katrina.

EXPLANATION OF PROVISION

The provision extends through August 28, 2008, the work opportunity tax credit for certain Hurricane Katrina employees employed within the core disaster area. For this purpose, a Hurricane Katrina employee employed within the core disaster area is an individual who on August 28, 2005, had a principal place of abode in the core disaster area and is hired on or after August 28, 2005 and before August 29, 2008 for a position, the principal place of employment of which was located in the core disaster area.[183] The

[183] The prior-law work opportunity tax credit for Katrina employees hired to a new place of employment outside of the core disaster area is not extended by this provision.

other special rules (e.g., certification and previous employment) for Hurricane Katrina employees apply.

EFFECTIVE DATE

The provision is effective for individuals hired after August 28, 2007, and before August 29, 2008.

19. Subpart F exception for active financing income (Sec. 239 of the bill and secs. 953 and 954 of the Code)

PRESENT LAW

Under the subpart F rules,[184] 10-percent-or-greater U.S. shareholders of a controlled foreign corporation ("CFC") are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, insurance income and foreign base company income. Foreign base company income includes, among other things, foreign personal holding company income and foreign base company services income (i.e., income derived from services performed for or on behalf of a related person outside the country in which the CFC is organized).

Foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents, and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and REMICs; (3) net gains from commodities transactions; (4) net gains from certain foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; (7) payments in lieu of dividends; and (8) amounts received under personal service contracts.

Insurance income subject to current inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization. Subpart F insurance income also includes income attributable to an insurance contract in connection with risks located within the CFC's country of organization, as the result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of other country risks. Investment income of a CFC that is allocable to any insurance or annuity contract related to risks located outside the CFC's country of organization is taxable as subpart F insurance income.[185]

Temporary exceptions from foreign personal holding company income, foreign base company services income, and insurance income apply for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, as a securities dealer, or in the conduct of an insurance business (so-called "active financing income").[186]

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[184] Secs. 951–964.

[185] Prop. Treas. Reg. sec. 1.953–1(a).

[186] Temporary exceptions from the subpart F provisions for certain active financing income applied only for taxable years beginning in 1998 (Taxpayer Relief Act of 1997, Pub. L. No. 105–

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be predominantly engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the active financing exceptions. In addition, certain nexus requirements apply, which provide that income derived by a CFC or a qualified business unit ("QBU") of a CFC from transactions with customers is eligible for the exceptions if, among other things, substantially all of the activities in connection with such transactions are conducted directly by the CFC or QBU in its home country, and such income is treated as earned by the CFC or QBU in its home country for purposes of such country's tax laws. Moreover, the exceptions apply to income derived from certain cross border transactions, provided that certain requirements are met. Additional exceptions from foreign personal holding company income apply for certain income derived by a securities dealer within the meaning of section 475 and for gain from the sale of active financing assets.

In the case of a securities dealer, the temporary exception from foreign personal holding company income applies to certain income. The income covered by the exception is any interest or dividend (or certain equivalent amounts) from any transaction, including a hedging transaction or a transaction consisting of a deposit of collateral or margin, entered into in the ordinary course of the dealer's trade or business as a dealer in securities within the meaning of section 475. In the case of a QBU of the dealer, the income is required to be attributable to activities of the QBU in the country of incorporation, or to a QBU in the country in which the QBU both maintains its principal office and conducts substantial business activity. A coordination rule provides that this exception generally takes precedence over the exception for income of a banking, financing or similar business, in the case of a securities dealer.

In the case of insurance, a temporary exception from foreign personal holding company income applies for certain income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization. In the case of insurance, temporary exceptions from insurance income and from foreign personal holding company income also apply for certain income of a qualifying branch of a qualifying insurance company with respect to risks located within the home country of the branch, provided certain requirements are met under each of the exceptions. Further, additional temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of certain CFCs or branches with respect to risks located in a country other than the United States, provided that the requirements for these exceptions are met. In the case of a life insurance or annuity contract, reserves for such contracts are determined under rules specific to the temporary exceptions. Present law also permits a taxpayer in certain circumstances, subject to approval by

34). Those exceptions were modified and extended for one year, applicable only for taxable years beginning in 1999 (the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105–277). The Tax Relief Extension Act of 1999 (Pub. L. No. 106–170) clarified and extended the temporary exceptions for two years, applicable only for taxable years beginning after 1999 and before 2002. The Job Creation and Worker Assistance Act of 2002 (Pub. L. No. 107–147) modified and extended the temporary exceptions for five years, for taxable years beginning after 2001 and before 2007. The Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. No. 109–222) extended the temporary provisions for two years, for taxable years beginning after 2006 and before 2009.

the IRS through the ruling process or in published guidance, to establish that the reserve of a life insurance company for life insurance and annuity contracts is the amount taken into account in determining the foreign statement reserve for the contract (reduced by catastrophe, equalization, or deficiency reserve or any similar reserve). IRS approval is to be based on whether the method, the interest rate, the mortality and morbidity assumptions, and any other factors taken into account in determining foreign statement reserves (taken together or separately) provide an appropriate means of measuring income for Federal income tax purposes.

REASONS FOR CHANGE

In the Taxpayer Relief Act of 1997, one-year temporary exceptions from foreign personal holding company income were enacted for income from the active conduct of an insurance, banking, financing, or similar business. In 1998, 1999, 2002, and 2006, the provisions were extended, and in some cases, modified. The Congress believes, that it is appropriate to extend the temporary provisions, as modified by the previous legislation, for an additional year.

EXPLANATION OF PROVISION

The provision extends for one year (for taxable years beginning before 2010) the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business.

EFFECTIVE DATE

The provision is effective for taxable years of foreign corporations beginning after December 31, 2008, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

20. Look-through treatment of payments between related controlled foreign corporations under foreign personal holding company income rules (Sec. 240 of the bill and sec. 954(c)(6) of the Code)

PRESENT LAW

In general

In general, the rules of subpart F (secs. 951–964) 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, regardless of whether the income is distributed to the shareholders.

Subpart F income includes foreign base company income. One category of foreign base company income is foreign personal holding company income. For subpart F purposes, foreign personal holding company income generally includes dividends, interest, rents, and royalties, among other types of income. 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. 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 which 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.

The "look-through rule" [187]

Under the "look-through rule" (sec. 954(c)(6)), dividends, interest (including factoring income which is treated as equivalent to interest under section 954(c)(1)(E)), rents, and royalties received 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 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 such regulations as are appropriate to prevent the abuse of the purposes of such rule.

The look-through rule is effective for taxable years of foreign corporations beginning after December 31, 2005, but before January 1, 2009, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

REASONS FOR CHANGE

The Committee believes that this provision should be extended for an additional year.

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, 2010, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

EFFECTIVE DATE

The provision is effective for taxable years of foreign corporations beginning after December 31, 2008 (but before January 1, 2010), and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

[187] The look-through rule was enacted by the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109–222, sec. 103(b)(1) (2006).

21. Extension of treatment of certain qualified film and television productions (Sec. 241 of the bill and sec. 181 of the Code)

PRESENT LAW

The modified Accelerated Cost Recovery System ("MACRS") does not apply to certain property, including any motion picture film, video tape, or sound recording, or to any other property if the taxpayer elects to exclude such property from MACRS and the taxpayer properly applies a unit-of-production method or other method of depreciation not expressed in a term of years. Section 197 does not apply to certain intangible property, including property produced by the taxpayer or any interest in a film, sound recording, video tape, book or similar property not acquired in a transaction (or a series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof. Thus, the recovery of the cost of a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "standalone" basis by the taxpayer may not be determined under either the MACRS depreciation provisions or under the section 197 amortization provisions. The cost recovery of such property may be determined under section 167, which allows a depreciation deduction for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property. A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. Section 167(g) provides that the cost of motion picture films, sound recordings, copyrights, books, and patents are eligible to be recovered using the income forecast method of depreciation.

Under section 181, taxpayers may elect [188] to deduct the cost of any qualifying film and television production, commencing prior to January 1, 2009, in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances.[189] A qualified film or television production is one in which the aggregate cost is $15 million or less.[190] The threshold is increased to $20 million if a significant amount of the production expenditures 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.[191]

A qualified film or television production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format) or television program 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.[192] The term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)).[193] With respect to property which is one or more episodes in a television series, each episode is treated as a

[188] See Treas. Reg. section 1.181–2T for rules on making an election under this section.
[189] For this purpose, a production is treated as commencing on the first date of principal photography.
[190] Sec. 181(a)(2)(A). A qualifying film or television production that is co-produced is eligible for the benefits of the provision only if its aggregate cost, regardless of funding source, does not exceed the threshold.
[191] Sec. 181(a)(2)(B).
[192] Sec. 181(d)(3)(A).
[193] Sec. 181(d)(3)(B).

separate production and only the first 44 episodes qualify under the provision.[194] Qualified property does not include sexually explicit productions as defined by section 2257 of title 18 of the U.S. Code.[195]

For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.[196]

REASONS FOR CHANGE

The Committee believes that section 181 encourages domestic film production. Therefore, the Committee believes that this provision should be extended.

EXPLANATION OF PROVISION

The provision extends the provision for one year, to qualified film and television productions commencing prior to January 1, 2010.

EFFECTIVE DATE

The provision applies to qualified film and television productions commencing after December 31, 2008.

C. OTHER EXTENSIONS

1. Authority to disclose information related to terrorist activity made permanent (Sec. 251 of the bill and sec. 6103 of the Code)

PRESENT LAW

In general

Section 6103 provides that returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Internal Revenue Code. Section 6103 contains a number of exceptions to this general rule of nondisclosure that authorize disclosure in specifically identified circumstances (including nontax criminal investigations) when certain conditions are satisfied.

Disclosure provisions relating to emergency circumstances

The IRS is authorized to disclose return information to apprise Federal law enforcement agencies of danger of death or physical injury to an individual or to apprise Federal law enforcement agencies of imminent flight of an individual from Federal prosecution.[197] This authority has been used in connection with the investigation of terrorist activity.[198]

Disclosure provisions relating specifically to terrorist activity

Also among the disclosures permitted under the Code is disclosure of returns and return information for purposes of investigating

[194] Sec. 181(d)(2)(B).
[195] Sec. 181(d)(2)(C).
[196] Sec. 1245(a)(2)(C).
[197] Sec. 6103(i)(3)(B).
[198] See, Joint Committee on Taxation, Disclosure Report for Public Inspection Pursuant to Internal Revenue Code Section 6103(p)(3)(C) for Calendar Year 2002 (JCX 29.04) April 6, 2004.

terrorist incidents, threats, or activities, and for analyzing intelligence concerning terrorist incidents, threats, or activities. The term "terrorist incident, threat, or activity" is statutorily defined to mean an incident, threat, or activity involving an act of domestic terrorism or international terrorism.[199]

The term "international terrorism" means activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum. The term "domestic terrorism" means activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States.

In general, returns and taxpayer return information must be obtained pursuant to an ex parte court order. Return information, other than taxpayer return information, generally is available upon a written request meeting specific requirements. The IRS also is permitted to make limited disclosures of such information on its own initiative to the appropriate Federal law enforcement agency.

No disclosures may be made under these provisions after December 31, 2007. The procedures applicable to these provisions are described in detail below.

Disclosure of returns and return information—by ex parte court order

Ex parte court orders sought by Federal law enforcement and Federal intelligence agencies

The Code permits, pursuant to an ex parte court order, the disclosure of returns and return information (including taxpayer return information) to certain officers and employees of a Federal law enforcement agency or Federal intelligence agency. These officers and employees are required to be personally and directly engaged in any investigation of, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. These officers and employees are permitted to use this information solely for their use in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceeding, pertaining to any such terrorist incident, threat, or activity.

[199] Sec. 6103(b)(11). For this purpose, "domestic terrorism" is defined in 18 U.S.C. sec. 2331(5) and "international terrorism" is defined in 18 U.S.C. sec. 2331(1).

The Attorney General, Deputy Attorney General, Associate Attorney General, an Assistant Attorney General, or a United States attorney, may authorize the application for the ex parte court order to be submitted to a Federal district court judge or magistrate. The Federal district court judge or magistrate would grant the order if based on the facts submitted he or she determines that: (1) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity; and (2) the return or return information is sought exclusively for the use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

Special rule for ex parte court ordered disclosure initiated by the IRS

If the Secretary of the Treasury (or his delegate) possesses returns or return information that may be related to a terrorist incident, threat, or activity, the Secretary may, on his own initiative, authorize an application for an ex parte court order to permit disclosure to Federal law enforcement. In order to grant the order, the Federal district court judge or magistrate must determine that there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity. The information may be disclosed only to the extent necessary to apprise the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity and for officers and employees of that agency to investigate or respond to such terrorist incident, threat, or activity. Further, use of the information is limited to use in a Federal investigation, analysis, or proceeding concerning a terrorist incident, threat, or activity. Because the Department of Justice represents the Secretary in Federal district court, the Secretary is permitted to disclose returns and return information to the Department of Justice as necessary and solely for the purpose of obtaining the special IRS ex parte court order.

Disclosure of return information other than by ex parte court order

Disclosure by the IRS without a request

The Code permits the IRS to disclose return information, other than taxpayer return information, related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The IRS on its own initiative and without a written request may make this disclosure. The head of the Federal law enforcement agency may disclose information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity. A taxpayer's identity is not treated as return information supplied by the taxpayer or his or her representative.

Disclosure upon written request of a Federal law enforcement agency

The Code permits the IRS to disclose return information, other than taxpayer return information, to officers and employees of Federal law enforcement upon a written request satisfying certain requirements. The request must: (1) be made by the head of the Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and (2) set forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity. The information is to be disclosed to officers and employees of the Federal law enforcement agency who would be personally and directly involved in the response to or investigation of terrorist incidents, threats, or activities. The information is to be used by such officers and employees solely for such response or investigation.

The Code permits the redisclosure by a Federal law enforcement agency to officers and employees of State and local law enforcement personally and directly engaged in the response to or investigation of the terrorist incident, threat, or activity. The State or local law enforcement agency must be part of an investigative or response team with the Federal law enforcement agency for these disclosures to be made.

Disclosure upon request from the Departments of Justice or the Treasury for intelligence analysis of terrorist activity

Upon written request satisfying certain requirements discussed below, the IRS is to disclose return information (other than taxpayer return information) to officers and employees of 136 the Department of Justice, Department of the Treasury, and other Federal intelligence agencies, who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence or investigation concerning terrorist incidents, threats, or activities. Use of the information is limited to use by such officers and employees in such investigation, collection, or analysis.

The written request is to set forth the specific reasons why the information to be disclosed is relevant to a terrorist incident, threat, or activity. The request is to be made by an individual who is: (1) an officer or employee of the Department of Justice or the Department of the Treasury, (2) appointed by the President with the advice and consent of the Senate, and (3) responsible for the collection and analysis of intelligence and counterintelligence information concerning terrorist incidents, threats, or activities. The Director of the United States Secret Service also is an authorized requester.

REASONS FOR CHANGE

The Committee believes that the disclosure provisions relating to terrorist activities assist in the country's investigations of and response to terrorism. It is the Committee's understanding that this assistance has been impaired by the expiration of the provisions on December 31, 2007. The Committee believes that it is appropriate to make the provisions permanent to avoid such interruptions in the future.

EXPLANATION OF PROVISION

The provision makes permanent the present-law disclosure authority relating to terrorist activities.

EFFECTIVE DATE

The provision is effective for disclosures made on or after the date of enactment.

2. IRS authority to fund undercover operations made permanent (Sec. 252 of the bill and sec. 7608 of the Code)

PRESENT LAW

IRS undercover operations are statutorily[200] exempt from the generally applicable restrictions controlling the use of Government funds (which generally provide that all receipts must be deposited in the general fund of the Treasury and all expenses be paid out of appropriated funds). In general, the Code permits the IRS to use proceeds from an undercover operation to pay additional expenses incurred in the undercover operation, through 2007. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is churning funds and to provide an annual audit report to the Congress on all such large undercover operations.

REASONS FOR CHANGE

The Committee believes it is appropriate to permanently extend the IRS's authority to use proceeds from undercover operations to pay additional enforcement expenses. This authority provides the IRS with an important enforcement tool and it is similar to the authority provided to other law enforcement agencies.

EXPLANATION OF PROVISION

The provision makes permanent the IRS's authority to use proceeds from an undercover operation to pay additional expenses incurred in the undercover operation.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. Authority to disclose return information for certain veterans programs made permanent (Sec. 253 of the bill and sec. 6103 of the Code)

PRESENT LAW

The Code prohibits disclosure of returns and return information, except to the extent specifically authorized by the Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service ("IRS") to another agency unless the other agency establishes procedures satisfactory to

[200] Sec. 7608(c).

the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Among the disclosures permitted under the Code is disclosure of certain tax information to the Department of Veterans Affairs. Disclosure is permitted to assist the Department of Veterans Affairs in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension, health care, and other programs (sec. 6103(1)(7)(D)(viii)). The Department of Veterans Affairs disclosure provisions do not apply after September 30, 2008.

REASONS FOR CHANGE

Ensuring that the correct amount of benefits is paid to recipients is an important budget priority. The Committee believes it is appropriate to make permanent the authority to disclose return information for certain veterans programs.

EXPLANATION OF PROVISION

The provision makes permanent the authority to make disclosures to the Department of Veterans Affairs. The provision also corrects the cross-references to Title 38.

EFFECTIVE DATE

The provision is effective for requests made after September 30, 2008.

4. Suspend limitation on rate of rum excise tax cover over to Puerto Rico and Virgin Islands (Sec. 254 of the bill and sec. 7652 of the Code)

PRESENT LAW

A $13.50 per proof gallon [201] excise tax is imposed on distilled spirits produced in or imported (or brought) into the United States.[202] The excise tax does not apply to distilled spirits that are exported from the United States, including exports to U.S. possessions (e.g., Puerto Rico and the Virgin Islands).[203]

The Code provides for cover over (payment) to Puerto Rico and the Virgin Islands of the excise tax imposed on rum imported (or brought) into the United States, without regard to the country of origin.[204] The amount of the cover over is limited under Code section 7652(f) to $10.50 per proof gallon ($13.25 per proof gallon during the period July 1, 1999 through December 31, 2007).

Tax amounts attributable to shipments to the United States of rum produced in Puerto Rico are covered over to Puerto Rico. Tax amounts attributable to shipments to the United States of rum produced in the Virgin Islands are covered over to the Virgin Islands. Tax amounts attributable to shipments to the United States of rum produced in neither Puerto Rico nor the Virgin Islands are divided

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[201] A proof gallon is a liquid gallon consisting of 50 percent alcohol. See sec. 5002(a)(10) and (11).

[202] Sec. 5001(a)(1).

[203] Secs. 5062(b), 7653(b) and (c).

[204] Secs. 7652(a)(3), (b)(3), and (e)(1). One percent of the amount of excise tax collected from imports into the United States of articles produced in the Virgin Islands is retained by the United States under section 7652(b)(3).

and covered over to the two possessions under a formula.[205] Amounts covered over to Puerto Rico and the Virgin Islands are deposited into the treasuries of the two possessions for use as those possessions determine.[206] All of the amounts covered over are subject to the limitation.

EXPLANATION OF PROVISION

The provision suspends for one year the $10.50 per proof gallon limitation on the amount of excise taxes on rum covered over to Puerto Rico and the Virgin Islands. Under the provision, the cover over amount of $13.25 per proof gallon is extended for rum brought into the United States after December 31, 2007 and before January 1, 2009. After December 31, 2008, the cover over amount reverts to $10.50 per proof gallon.

REASONS FOR CHANGE

The Committee believes that it is appropriate to extend the increase in the amount of the rum excise tax covered over to these possessions.

EFFECTIVE DATE

The change in the cover over rate is effective for articles brought into the United States after December 31, 2007.

5. Extension of parity in the application of certain limits to mental health benefits (Sec. 255 of the bill and sec. 9812 of the Code)

PRESENT LAW

The Code, the Employee Retirement Income Security Act of 1974 ("ERISA") and the Public Health Service Act ("PHSA") contain provisions under which group health plans that provide both medical and surgical benefits and mental health benefits cannot impose aggregate lifetime or annual dollar limits on mental health benefits that are not imposed on substantially all medical and surgical benefits ("mental health parity requirements"). In the case of a group health plan which provides benefits for mental health, the mental health parity requirements do not affect the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan, except as specifically provided in regard to parity in the imposition of aggregate lifetime limits and annual limits.

The Code imposes an excise tax on group health plans which fail to meet the mental health parity requirements. The excise tax is equal to $100 per day during the period of noncompliance and is generally imposed on the employer sponsoring the plan if the plan fails to meet the requirements. The maximum tax that can be imposed during a taxable year cannot exceed the lesser of 10 percent of the employer's group health plan expenses for the prior year or $500,000. No tax is imposed if the Secretary determines that the employer did not know, and in exercising reasonable diligence would not have known, that the failure existed.

[205] Sec. 7652(e)(2).
[206] Secs. 7652(a)(3), (b)(3), and (e)(1).

The mental health parity requirements do not apply to group health plans of small employers nor do they apply if their application results in an increase in the cost under a group health plan of at least one percent. Further, the mental health parity requirements do not require group health plans to provide mental health benefits.

The Code, ERISA and PHSA mental health parity requirements expired with respect to benefits for services furnished after December 31, 2007.

REASONS FOR CHANGE

The Committee recognizes that the Code provisions relating to mental health parity are important to carrying out the purposes of the Mental Health Parity Act. Thus, the Committee believes that extending the Code provisions relating to mental health parity is warranted.

EXPLANATION OF PROVISION

The provision extends the present-law Code excise tax for failure to comply with the mental health parity requirements for benefits for services furnished on or after the date of enactment through December 31, 2008.

EFFECTIVE DATE

The provision is effective upon the date of enactment.

TITLE III—ADDITIONAL TAX RELIEF

A. Individual Tax Relief

1. Additional standard deduction for state and local real property taxes (Sec. 301 of the bill and sec. 63 of the Code)

PRESENT LAW

An individual taxpayer's taxable income is computed by reducing adjusted gross income either by a standard deduction or, if the taxpayer elects, by the taxpayer's itemized deductions. Unless an individual taxpayer elects, no itemized deduction is allowed for the taxable year. The deduction for certain taxes, including income taxes, real property taxes, and personal property taxes, generally is an itemized deduction.[207]

REASONS FOR CHANGE

The Committee believes an additional standard deduction for real property taxes is appropriate in order to help lessen the impact of rising State and local property tax bills on those individual taxpayers with insufficient total itemized deductions to elect not to take the standard deduction.

[207] If the deduction for State and local taxes is attributable to business or rental income, the deduction is allowed in computing adjusted gross income and therefore is not an itemized deduction.

EXPLANATION OF PROVISION

The provision increases an individual taxpayer's standard deduction for a taxable year beginning in 2008 by the lesser of (1) the amount allowable[208] to the taxpayer as a deduction for State and local taxes described in section 164(a)(1) (relating to real property taxes), or (2) $350 ($700 in the case of married individuals filing a joint return). The increased standard deduction is determined by taking into account real estate taxes for which a deduction is allowable to the taxpayer under section 164 and, in the case of a tenant-stockholder in a cooperative housing corporation, real estate taxes for which a deduction is allowable to the taxpayer under section 216. No taxes deductible in computing adjusted gross income are taken into account in computing the increased standard deduction.

EFFECTIVE DATE

The provision applies to taxable years beginning in 2008.

2. Refundable child credit (Sec. 302 of the bill and sec. 24 of the Code)

PRESENT LAW

An individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is $1,000 through 2010, and $500 thereafter. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.

The credit is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.

The credit is allowable against the regular tax and the alternative minimum tax. To the extent the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child tax credit) equal to 15 percent of earned income in excess of a threshold dollar amount (the "earned income" formula). The threshold dollar amount is $12,050 (2008), and is indexed for inflation.

Families with three or more children may determine the additional child tax credit using the "alternative formula," if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income credit ("EIC").

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Unlike the EIC, which also includes the preceding items in its definition of earned income, the additional child tax credit is

[208] In the case of an individual taxpayer who does not elect to itemize deductions, although no itemized deductions are allowed to the taxpayer, itemized deductions are nevertheless treated as "allowable." See section 63(e).

based only on earned income to the extent it is included in computing taxable income. For example, some ministers' parsonage allowances are considered self-employment income, and thus are considered earned income for purposes of computing the EIC, but the allowances are excluded from gross income for individual income tax purposes, and thus are not considered earned income for purposes of the additional child tax credit since the income is not included in taxable income.

REASONS FOR CHANGE

The Committee believes it is appropriate to lower the threshold earnings level for the refundable child credit in order to increase the amount of available child credit for lower income households.

EXPLANATION OF PROVISION

The provision modifies the earned income formula for the determination of the refundable child credit to apply to 15 percent of earned income in excess of $8,500 for taxable years beginning in 2008.

EFFECTIVE DATE

The provision is effective for taxable years beginning in 2008.

3. Increase in AMT refundable credit amount for individuals with long-term unused credits for prior year minimum tax liability, etc. (Sec. 303 of the bill and sec. 53 of the Code)

PRESENT LAW

In general

Present law imposes an alternative minimum tax ("AMT") on an individual taxpayer to the extent the taxpayer's tentative minimum tax liability exceeds his or her regular income tax liability. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is the amount by which the alternative minimum taxable income ("AMTI") exceeds an exemption amount.

An individual's AMTI is the taxpayer's taxable income increased by certain preference items and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items.

The individual AMT attributable to deferral adjustments generates a minimum tax credit that is allowable to the extent the regular tax (reduced by other nonrefundable credits) exceeds the tentative minimum tax in a future taxable year. Unused minimum tax credits are carried forward indefinitely.

AMT treatment of incentive stock options

One of the adjustments in computing AMTI is the tax treatment of the exercise of an incentive stock option. An incentive stock option is an option granted by a corporation in connection with an individual's employment, so long as the option meets certain specified requirements.[209] Under the regular tax, the exercise of an incentive stock option is tax-free if the stock is not disposed of within one year of exercise of the option or within two years of the grant of the option.[210] The individual then computes the long-term capital gain or loss on the sale of the stock using the amount paid for the stock as the cost basis. If the holding period requirements are not satisfied, the individual generally takes into account at the exercise of the option an amount of ordinary income equal to the excess of the fair market value of the stock on the date of exercise over the amount paid for the stock. The cost basis of the stock is increased by the amount taken into account.[211]

Under the individual alternative minimum tax, the exercise of an incentive stock option is treated as the exercise of an option other than an incentive stock option. Under this treatment, generally the individual takes into account as ordinary income for purposes of computing AMTI the excess of the fair market value of the stock at the date of exercise over the amount paid for the stock.[212] When the stock is later sold, for purposes of computing capital gain or loss for purposes of AMTI, the adjusted basis of the stock includes the amount taken into account as AMTI.

The adjustment relating to incentive stock options is a deferral adjustment and therefore generates an AMT credit in the year the stock is sold.[213]

Allowance of long-term unused credits

Under present law, an individual's minimum tax credit allowable for any taxable year beginning after December 31, 2006, and beginning before January 1, 2013, is not less than the "AMT refundable credit amount." The "AMT refundable credit amount" is the amount (not in excess of the long-term unused minimum tax credit) equal to the greatest of (1) $5,000, (2) 20 percent of the long-term unused minimum tax credit for the taxable year, or (3) the amount (if any) of the AMT refundable credit amount for the preceding taxable year before any reduction by reason of the reduction for adjusted gross income described below. The long-term unused minimum tax credit for any taxable year means the portion of the minimum tax credit attributable to the adjusted net minimum tax for taxable years before the 3rd taxable year immediately preceding the taxable year (assuming the credits are used on a first-in, first-out basis).

In the case of an individual whose adjusted gross income for a taxable year exceeds the threshold amount (within the meaning of section 151(d)(3)(C)), the AMT refundable credit amount is reduced by the applicable percentage (within the meaning of section

[209] Sec. 422.
[210] Sec. 421.
[211] If the stock is sold at a loss before the required holding periods are met, the amount taken into account may not exceed the amount realized on the sale over the adjusted basis of the stock. If the stock is sold after the taxable year in which the option was exercised but before the required holding periods are met, the required inclusion is made in the year the stock is sold.
[212] If the stock is sold in the same taxable year the option is exercised, no adjustment in computing AMTI is required.
[213] If the stock is sold for less than the amount paid for the stock, the loss may not be allowed in full in computing AMTI by reason of the $3,000 limit on the deductibility of net capital losses. Thus, the excess of the regular tax over the tentative minimum tax may not reflect the full amount of the loss.

151(d)(3)(B)). The additional credit allowable by reason of this provision is refundable.

REASONS FOR CHANGE

The individual alternative minimum tax is intended to accelerate the tax on certain items of income that are deferred under the regular tax by initially imposing a tax and later allowing a minimum tax credit when the deferral ends. One of these items relates to the exercise of incentive stock options. However, because of technical problems, the credit may not be properly allowable where the value of the stock acquired on the exercise of an incentive stock option has declined in value when the stock is sold. In the past, Congress provided certain relief in these situations. The Committee believes that additional relief should be provided to correct this problem so that taxpayers are not paying tax on "phantom" income attributable to incentive stock options.

EXPLANATION OF PROVISION

The bill generally allows the long-term unused minimum tax credit to be claimed over a two-year period (rather than five years) and eliminates the AGI phase-out.

The bill provides that any underpayment of tax outstanding on the date of enactment which is attributable to the application of the minimum tax adjustment for incentive stock options (including any interest or penalty relating thereto) is abated. No tax which is abated is taken into account in determining the minimum tax credit.

The bill provides that the AMT refundable credit amount and the AMT credit for each of the first two taxable years beginning after December 31, 2007, is increased by one-half of the amount of any interest and penalty paid before the date of enactment on account of the application of the minimum adjustment for incentive stock options.

EFFECTIVE DATE

The provision generally applies to taxable years beginning after December 31, 2007.

The provision relating to the abatement of tax, interest, and penalties takes effect on date of enactment.

B. Business Related Provisions

1. Uniform treatment of attorney-advanced expenses and court costs in contingency fee cases (Sec. 311 of the bill and new sec. 162 of the Code)

PRESENT LAW

In general, a deduction is allowed for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.[214] For advanced litigation costs in contingency fee cases, the tax treatment is determined based on the type of arrangement that exists between the attorney and client. The contingent fee arrangements generally take two forms: (1) net fee ar-

[214] Sec. 162(a).

rangements, whereby the attorney's compensation is based on a percentage of the gross recovery net of the advanced litigation costs, and (2) gross fee arrangements, whereby the attorney's compensation is based on a percentage of the gross recovery without regard to the amount of advanced litigation costs. The advanced litigation costs typically include travel expenses, witness fees, deposition costs, court filing fees, expert witness fees, and other case related costs. When these costs are paid by the attorney, effectively on behalf of the client, they are generally considered to be advanced litigation costs.

The advanced litigation costs incurred as part of net fee arrangements have been viewed by the IRS and the courts as a loan from the attorney to the client. A current deduction under section 162 is not permitted; however, the attorney may claim a bad debt deduction under section 166 at such time as the loan becomes worthless.[215] This conclusion has primarily been reached based on the attorney's expectation of reimbursement based on the screening process used to accept cases with a high probability of victory (e.g., the rate of collection on the advances is typically in excess of 90%). In the case of a gross fee arrangement, the Ninth Circuit Court of Appeals has ruled that the costs are deductible by the attorney in the year incurred and the payment of such costs cannot be described as an advance or a loan when there is no obligation on the part of the client to repay the money expended.[216]

REASONS FOR CHANGE

The Committee believes that uniform treatment of attorney-advanced expenses and court costs in contingency fee cases is an issue of tax fairness. A large number of attorneys are small business owners and many frequently work under contingency fee arrangements. Under present law, these expenses are deductible as paid or incurred in gross fee arrangements, but not in net fee arrangements. The average contingency fee case lasts two and one-half years, which leads to an extended deferral of these expenses. Additionally, while attorneys are required to capitalize these costs until the case is resolved in a net fee arrangement, similar expenditures are currently deductible when paid or incurred in other businesses. The provision eliminates this disparity.

EXPLANATION OF PROVISION

The provision ensures a uniform set of rules for attorney-advanced expenses and court costs in contingency fee cases by providing that in the case of any expense or court cost which is paid or incurred in the course of the trade or business of practicing law and the repayment of which is contingent on a recovery by judgment or settlement in the action to which such expense or cost relates, the deduction of an ordinary and necessary business expense is determined as if such expense or cost is not subject to repayment. Thus, the amounts paid or incurred by the attorney are not considered to be a loan to the client, and the attorney is entitled

[215] *Burnett* v. *Commissioner*, 356 F.2d 755 (5th Cir. 1966); *Hearn* v. *Commissioner*, 309 F.2d 431 (9th Cir. 1962); *Canelo* v. *Commissioner*, 447 F.2d 484 (9th Cir. 1971); *Boccardo* v. *United States*, 12 Cl. Ct. 184 (1987).

[216] *Boccardo* v. *Commissioner*, 56 F.3d 1016 (9th Cir. 1995).

to an otherwise permissible deduction in the taxable year in which the expense or cost is paid or incurred.

EFFECTIVE DATE

The provision applies to expenses and costs paid or incurred in taxable years beginning after date of enactment.

2. Modification of treatment of certain qualified film and television productions (Sec. 312(a) of the bill and sec. 181 of the Code)

PRESENT LAW

The modified Accelerated Cost Recovery System ("MACRS") does not apply to certain property, including any motion picture film, video tape, or sound recording, or to any other property if the taxpayer elects to exclude such property from MACRS and the taxpayer properly applies a unit-of-production method or other method of depreciation not expressed in a term of years. Section 197 does not apply to certain intangible property, including property produced by the taxpayer or any interest in a film, sound recording, video tape, book or similar property not acquired in a transaction (or a series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof. Thus, the recovery of the cost of a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "stand-alone" basis by the taxpayer may not be determined under either the MACRS depreciation provisions or under the section 197 amortization provisions. The cost recovery of such property may be determined under section 167, which allows a depreciation deduction for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property. A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. Section 167(g) provides that the cost of motion picture films, sound recordings, copyrights, books, and patents are eligible to be recovered using the income forecast method of depreciation.

Under section 181, taxpayers may elect[217] to deduct the cost of any qualifying film and television production, commencing prior to January 1, 2009, in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances.[218] A qualified film or television production is one in which the aggregate cost is $15 million or less.[219] The threshold is increased to $20 million if a significant amount of the production expenditures 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.[220]

A qualified film or television production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format) or television program if at least 75 percent of the total compensation expended on the production is for

[217] See Treas. Reg. section 1.181–2T for rules on making an election under this section.

[218] For this purpose, a production is treated as commencing on the first date of principal photography.

[219] Sec. 181(a)(2)(A). A qualifying film or television production that is co-produced is eligible for the benefits of the provision only if its aggregate cost, regardless of funding source, does not exceed the threshold.

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

services performed in the United States by actors, directors, producers, and other relevant production personnel.[221] The term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)).[222] With respect to property which is one or more episodes in a television series, each episode is treated as a separate production and only the first 44 episodes qualify under the provision.[223] Qualified property does not include sexually explicit productions as defined by section 2257 of title 18 of the U.S. Code.[224]

For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.[225]

REASONS FOR CHANGE

The Committee believes that section 181 encourages domestic film production and that the provision should be enhanced to include more expensive film productions. The issue of runaway production affects all productions, regardless of cost, and therefore the Committee believes that it is appropriate to treat as an expense the first $15 million ($20 million in certain cases) of production costs of otherwise qualified films.

EXPLANATION OF PROVISION

The provision modifies the dollar limitation so that the first $15 million ($20 million for productions in low income communities or distressed area or isolated area of distress) of an otherwise qualified film or television production may be treated as an expense in cases where the aggregate cost of the production exceeds the dollar limitation. The cost of the production in excess of the dollar limitation is capitalized and recovered under the taxpayer's method of accounting for the recovery of such property.

EFFECTIVE DATE

The provision applies to qualified film and television productions commencing after December 31, 2007.

3. Modification of domestic production activities deduction for film production (Sec. 312(b) of the bill and sec. 199 of the Code)

PRESENT LAW

In general

Section 199 of the Code provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to a portion of the taxpayer's qualified production activities income. For taxable years beginning after 2009, the deduction is nine percent of such income. For taxable years beginning in 2008 and 2009, the deduction is six percent of such income. The deduction for a taxable year is limited to 50 percent of the wages prop-

[221] Sec. 181(d)(3)(A).
[222] Sec. 181(d)(3)(B).
[223] Sec. 181(d)(2)(B).
[224] Sec. 181(d)(2)(C).
[225] Sec. 1245(a)(2)(C).

erly allocable to domestic production gross receipts paid by the taxpayer during the calendar year that ends in such taxable year.[226]

Qualified production activities income

In general, qualified production activities income ("QPAI") is equal to domestic production gross receipts ("DPGR"), reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts; (2) other expenses, losses, or deductions which are properly allocable to such receipts.[227]

Domestic production gross receipts

DPGR generally are gross receipts of a taxpayer that are derived from: (1) any sale, exchange or other disposition, or any lease, rental or license, of qualifying production property ("QPP") that was manufactured, produced, grown or extracted ("MPGE") by the taxpayer in whole or in significant part within the United States;[228] (2) any sale, exchange or other disposition, or any lease, rental or license, of qualified film produced by the taxpayer; (3) any sale, exchange or other disposition of electricity, natural gas, or potable water produced by the taxpayer in the United States; (4) in the case of a taxpayer engaged in the active conduct of a construction trade or business, construction of real property performed in the United States by the taxpayer in the ordinary course of such trade or business;[229] or (5) in the case of a taxpayer engaged in the active conduct of an engineering or architectural services trade or business, engineering or architectural services performed in the United States by the taxpayer in the ordinary course of such trade or business with respect to the construction of real property in the United States.[230]

Domestic production gross receipts do not include any gross receipts of the taxpayer that are derived from: (1) the sale of food or beverages prepared by the taxpayer at a retail establishment; (2) the transmission or distribution of electricity, natural gas, or potable water; or (3) the lease, rental, license, sale, exchange, or other disposition of land.[231]

A special rule for government contracts provides that property that is manufactured or produced by the taxpayer pursuant to a contract with the Federal Government is considered to be DPGR even if title or risk of loss is transferred to the Federal Government

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[226] For purposes of the provision, "wages" include the sum of the amounts of wages as defined in section 3401(a) and elective deferrals that the taxpayer properly reports to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and, designated Roth contributions (as defined in section 402A).

[227] Sec. 199(c)(1).

[228] Domestic production gross receipts include gross receipts of a taxpayer derived from any sale, exchange or other disposition of agricultural products with respect to which the taxpayer performs storage, handling or other processing activities (other than transportation activities) within the United States, provided such products are consumed in connection with, or incorporated into, the manufacturing, production, growth or extraction of qualifying production property (whether or not by the taxpayer).

[229] For this purpose, construction activities include activities that are directly related to the erection or substantial renovation of residential and commercial buildings and infrastructure. Substantial renovation would include structural improvements, but not mere cosmetic changes, such as painting, that is not performed in connection with activities that otherwise constitute substantial renovation.

[230] Sec. 199(c)(4)(A).

[231] Sec. 199(c)(4)(B).

before the manufacture or production of such property is complete to the extent required by the Federal Acquisition Regulation.[232]

For purposes of determining DPGR of a partnership and its partners, provided all of the interests in the capital and profits of the partnership are owned by members of the same expanded affiliated group ("EAG") at all times during the taxable year of the partnership, then the partnership and all members of that EAG are treated as a single taxpayer during such period.[233]

Qualifying production property and qualified film

QPP generally includes any tangible personal property, computer software, or sound recordings. "Qualified film" includes any motion picture film or videotape[234] (including live or delayed television programming, but not including certain sexually explicit productions) if 50 percent or more of the total compensation relating to the production of such film (including compensation in the form of residuals and participations)[235] constitutes compensation for services performed in the United States by actors, production personnel, directors, and producers.[236]

Other rules

Qualified production activities income of partnerships and S corporations

With respect to the domestic production activities of a partnership or S corporation, the deduction under section 199 is determined at the partner or shareholder level.[237] In performing the calculation, each partner or shareholder generally will take into account such person's allocable share of the components of the calculation (including domestic production gross receipts; the cost of goods sold allocable to such receipts; and other expenses, losses, or deductions allocable to such receipts) from the partnership or S corporation as well as any items relating to the partner or shareholder's own qualified production activities, if any.[238] Each partner or shareholder is treated as having W–2 wages for the taxable year in an amount equal to such person's allocable share of the W–2 wages of the partnership or S corporation for the taxable year.[239]

The Treasury regulations provide that, except for certain qualifying in-kind partnerships and EAG partnerships, an owner of a pass-thru entity is not treated as conducting the qualified production activities of the of the pass-thru entity, and vice versa.[240]

Alternative minimum tax

The deduction under section 199 is allowed for purposes of computing alternative minimum taxable income (including adjusted

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[232] Sec. 199(c)(4)(C).
[233] Sec. 199(c)(4)(D).
[234] The nature of the material on which properties described in section 168(f)(3) are embodied and the methods and means of distribution of such properties does not affect their qualification under this provision.
[235] To the extent that a taxpayer has included an estimate of participations and/or residuals in its income forecast calculation under section 167(g), the taxpayer must use the same estimate of participations and/or residuals for purposes of determining total compensation.
[236] Sec. 199(c)(6).
[237] Sec. 199(d)(1)(A)(i).
[238] Sec. 199(d)(1)(A)(ii).
[239] Sec. 199(d)(1)(A)(iii).
[240] Treas. Reg. Sec. 1.199–5T(g).

current earnings), without regard to alternative minimum tax adjustments.[241] The deduction in computing alternative minimum taxable income is determined by reference to the lesser of the qualified production activities income (as determined for the regular tax) or the alternative minimum taxable income (in the case of an individual, adjusted gross income as determined for the regular tax) without regard to this deduction.[242]

REASONS FOR CHANGE

The Committee believes that domestic film production is important to the United States economy and the domestic production activities deduction under section 199 should be modified to take into consideration how the film industry operates. Therefore, the Committee believes that it is appropriate to modify how the deduction is applied to this industry with regard to the type of qualifying property, the methods and means of distributing qualified films, commonly used structures for film production and distribution, and the W–2 wage limitation.

EXPLANATION OF PROVISION

The provision provides that a qualified film includes any copyrights, trademarks, and other intangibles with respect to the film.

The provision provides that the deduction under section 199 for qualified films is not affected by the methods and means of distributing an otherwise qualified film.[243] For example, the distribution of a qualified film via the internet (whether the film is viewed online or downloaded or whether or not there is a fee charged) is considered to be a disposition of the film for purposes of determining DPGR. Likewise, the distribution of a qualified film through an open air (free of charge) broadcast is considered a disposition of the film for these purposes.

The provision modifies the application of section 199 to partnerships and S corporations. First, the provision provides that each partner with at least a 20 percent capital interest or shareholder with at least a 20 percent ownership interest, either directly or indirectly, in such entity is treated as having engaged directly. in any film produced by the partnership or S corporation. For example, Studio A and Studio B form a partnership in which each is a 50-percent partner to produce a qualified film. Studio A has the rights to distribute the film domestically and Studio B has the rights to distribute the film outside the United States. Under the provision, the production activities of the partnership are attributed to each partner, and thus each partner's revenue from the distribution of the qualified film is not treated as non-DPGR solely because neither Studio A nor Studio B produced the qualified film itself. Additionally, a partnership or S corporation is treated as having engaged directly in any film produced by any partner with at least a 20 percent capital interest or shareholder with at least a 20 percent ownership interest, either directly or indirectly, in the partnership or S corporation. For example, Studio A and Studio B form a partnership in which each is a 50-percent partner to distribute

[241] Sec. 199(d)(6)(A).
[242] Sec. 199(d)(6)(A).
[243] This provision is consistent with H.R. Conf. Rep. No. 108–755, at 262, Fn. 30 (2004).

a qualified film. Studio A produced the film and contributes it to the partnership and Studio B contributes distribution services to the partnership. Under the provision, the production activities of Studio A are attributed to the partnership, and thus the partnership's revenue from the distribution of the qualified film is not treated as non-DPGR solely because the partnership did not produce the qualified film. Thus, the Treasury regulation providing that an owner of a pass-thru entity is not treated as conducting the qualified production activities of the of the pass-thru entity, and vice versa,[244] does not apply to situations to which this provision applies.

The provision modifies the W–2 wage limitation by defining the term "W–2 wages" for qualified films to include any compensation for services performed in the United States by actors, production personnel, directors, and producers. Thus, compensation is not restricted to W–2 wages for the limitation of qualified films.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

C. Modification of Penalty on Understatement of Taxpayer's Liability by Tax Return Preparer

1. Modified standard for imposition of tax return preparer penalties (Sec. 321 of the bill and sec. 6694 of the Code)

PRESENT LAW

Taxpayer standards

Present law imposes accuracy-related penalties on a taxpayer at a rate of 20 percent of the portion of any underpayment that is attributable to any substantial understatement of income tax. In determining whether a substantial understatement exists, the amount of the understatement generally is reduced by any portion attributable to an item if (1) the treatment of the item is supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment.

In the case of a tax shelter item of a non-corporate taxpayer, the substantial understatement penalty does not apply if the taxpayer had substantial authority for the tax position and the taxpayer can demonstrate that he or she had a reasonable belief that the position is "more likely than not" the proper treatment. A taxpayer will be considered to have a reasonable belief that the treatment is more likely than not the proper treatment if the taxpayer relies upon the opinion of a professional advisor and the opinion is based upon the pertinent facts and authorities analyzed similar to the manner described in the substantial authority standard.[245]

Tax return preparer standards

Prior to enactment of the Small Business and Work Opportunity Tax Act of 2007, an income tax return preparer who prepared a tax

[244] Treas. Reg. sec. 1.199–5T(g).
[245] Treas. Reg. sec. 1.6662–4(g).

return with respect to which there was an understatement of tax that was due to an undisclosed position for which there was not a realistic possibility of being sustained on its merits was liable for a $250 penalty. For a disclosed position, the preparer was liable only if the position was frivolous.

Legislation enacted as part of the Small Business and Work Opportunity Tax Act of 2007 broadened the scope of the preparer penalty by applying it to all tax return preparers and altered the standards of conduct a tax return preparer is required to meet in order to avoid the imposition of penalties for the preparation of a return with respect to which there is an understatement of tax. A tax return preparer now can be penalized for preparing a return on which there is an understatement of tax liability as a result of an "unreasonable position." Any position that a return preparer does not reasonably believe is more likely than not to be sustained on its merits is an "unreasonable position" unless the position is disclosed on the return and there is a reasonable basis for the position.

In general, the term "tax return preparer" is broadly defined as any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or any claim for refund of tax.[246] Preparation of a substantial portion of a return is treated as if it were the preparation of such return.

REASONS FOR CHANGE

The Committee believes that the standards of conduct for taxpayers and return preparers generally should be uniform. The Committee believes that the present-law standard for return preparers, which is generally higher than that for taxpayers, can result in a conflict of interest for return preparers. The conflict of interest arises because it is in the interest of a preparer to advise his taxpayer client to either disclose a tax position or alter such position in order to avoid the preparer penalty, even though the taxpayer could legally and appropriately take the position without disclosure or facing penalties. This may have the unintended consequence of causing taxpayers to be less inclined to use the services of professional tax preparers, which could harm the system of tax collections. Thus, the Committee believes the standards of conduct for taxpayers and return preparers generally should be uniform.

EXPLANATION OF PROVISION

The provision changes the standards for imposition of the tax return preparer penalty. The preparer standard for undisclosed positions is reduced to "substantial authority." The preparer standard for disclosed positions is "reasonable basis." For tax shelters and reportable transactions to which section 6662A applies (i.e., listed transactions and reportable transactions with significant avoidance or evasion purposes), a tax return preparer is required to have a reasonable belief that such a transaction was more likely than not to be sustained on its merits.

[246] Sec. 7701(a)(36)(A).

EFFECTIVE DATE

The proposal generally is effective with respect to returns prepared after May 25, 2007. In the case of tax shelters and reportable transactions, the proposal is effective for returns prepared for taxable years ending after the date of enactment.

D. Extension and Expansion of Certain GO Zone Incentives

1. Election to amend returns for hurricane-related casualty losses (Sec. 331(a) of the bill)

PRESENT LAW

Under present law, a taxpayer may generally claim a deduction for any loss sustained during the taxable year and not compensated by insurance or otherwise.[247] For individual taxpayers, deductible losses must be incurred in a trade or business or other profit-seeking activity or consist of property losses arising from fire, storm, shipwreck, or other casualty, or from theft.[248] Generally, personal casualty or theft losses are deductible only if they exceed $100 per casualty or theft and net casualty and theft losses are deductible only to the extent it exceeds 10 percent of adjusted gross income.[249] However, for hurricane-related casualty losses, these two casualty loss limitations are removed.[250]

Casualty losses are generally allowed for the taxable year of the loss. However, in the case of a disaster loss arising in an area determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the taxpayer may elect to take the loss into account for the taxable year immediately before the taxable year in which the disaster occurred.[251]

When a taxpayer receives reimbursement for such loss in a subsequent taxable year, the deductible loss is not recomputed for the taxable year in which the deduction was taken, the reimbursement amount is taken into income in the taxable year received.[252]

REASONS FOR CHANGE

The Committee believes that homeowners who sustained hurricane related casualty losses on a principal residence should receive additional relief. Taxpayers may elect to include grant reimbursements into income in the year the casualty loss was taken to avoid being subject to higher marginal tax rate brackets in the year of receipt. This provides tax relief that allows homeowners to put more funds into rebuilding their principal residences.

EXPLANATION OF PROVISION

The provision allows a taxpayer who claimed a casualty loss to a principal residence (within the meaning of section 121) resulting from Hurricane Katrina, Hurricane Rita, or Hurricane Wilma and in a subsequent year receives a grant as reimbursement of such

[247] Sec. 165.
[248] Sec. 165(c)(3).
[249] Sec. 165(h).
[250] Sec. 1400S(6).
[251] Sec. 165(i).
[252] Treas. Reg. sec. 165–1(d)(2)(iii)

loss to elect to file an amended return for the taxable year to which such deduction was allowed.[253] The casualty loss deduction is reduced, but not below zero, by the amount of such reimbursement. The time for filing such amended return is the later of three years after the original due date for filing the tax return or one year after the date of enactment of this Act. Any underpayment of tax shall not be subject to penalty or interest if paid not later than one year after the filing of the amended return.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Waiver of deadline on construction of GO Zone property eligible for bonus depreciation (Sec. 331(b) of the bill and sec. 1400N of the Code)

PRESENT LAW

In general

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (other than residential rental property and nonresidential real property) range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

Gulf Opportunity Zone

The "Gulf Opportunity Zone" is defined as that portion of the Hurricane Katrina Disaster Area 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 Katrina. The term "Hurricane Katrina disaster area" means an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

Gulf Opportunity Zone property

Present law provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified Gulf Opportunity Zone property. In order to qualify, property generally must be placed in service on or before December 31, 2007 (December 31, 2008, in the case of nonresidential real property and residential rental property).

[253] To qualify the grant must be received under Public Law Nos. 109–148, 109–234, or 110–116.

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or subject to capitalization under section 263 or 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. In addition, the provision provides that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be (1) property to which the general rules of the Modified Accelerated Cost Recovery System ("MACRS") apply with an applicable recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property (as defined in section 168(e)(5)), (4) certain leasehold improvement property, or (5) certain nonresidential real property and residential rental property. Second, substantially all of the use of such property must be in the Gulf Opportunity Zone and in the active conduct of a trade or business by the taxpayer in the Gulf Opportunity Zone. Third, the original use of the property in the Gulf Opportunity Zone must commence with the taxpayer on or after August 28, 2005. (Thus, used property may constitute qualified property so long as it has not previously been used within the Gulf Opportunity Zone. In addition, it is intended that additional capital expenditures incurred to recondition or rebuild property the original use of which in the Gulf Opportunity Zone began with the taxpayer would satisfy the "original use" requirement. See Treasury Regulation section 1.48–2 Example 5.) Finally, the property must be acquired by purchase (as defined under section 179(d)) by the taxpayer on or after August 28, 2005, and placed in service on or before December 31, 2007. For qualifying nonresidential real property and residential rental property, the property must be placed in service on or before December 31, 2008, in lieu of December 31, 2007. Property does not qualify if a binding written contract for the acquisition of such property was in effect before August 28, 2005. However, property is not precluded from qualifying for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to August 28, 2005.

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 on or after August 28, 2005, and before January 1, 2008, and the property is placed in service on or before December 31, 2007 (and all other requirements are met). In the case of qualified nonresidential real property and residential rental property, the property must be placed in service on or before December 31, 2008. Property that is manufactured, constructed, or 159 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.

Under a special rule, property any portion of which is financed with the proceeds of a tax-exempt obligation under section 103 is not eligible for the additional first-year depreciation deduction. Recapture rules apply under the provision if the properly ceases to be qualified Gulf Opportunity Zone property.

Gulf Opportunity Zone extension property

The placed-in-service deadline is extended for specified Gulf Opportunity Zone extension property to qualify for the additional first-year depreciation deduction. Specified Gulf Opportunity Zone extension property is defined as property substantially all the use of which is in one or more specified portions of the Gulf Opportunity Zone and which is either: (1) nonresidential real property or residential rental property which is placed in service by the taxpayer on or before December 31, 2010, or (2) in the case of a taxpayer who places in service a building described in (1), property described in section 168(k)(2)(A)(i)[254] placed in service on or before December 31, 2010, if substantially all the use of such property is in such building and such property is placed in service within 90 days of the date the building is placed in service. However, in the case of nonresidential real property or residential rental property, only the adjusted basis of such property attributable to manufacture, construction, or production before January 1, 2010 ("progress expenditures") is eligible for the additional first-year depreciation.

The specified portions of the Gulf Opportunity Zone are defined as those portions of the Gulf Opportunity Zone which are in a county or parish which is identified by the Secretary of the Treasury (or his delegate) as being a county or parish in which hurricanes occurring in 2005 damaged (in the aggregate) more than 60 percent of the housing units in such county or parish which were occupied (determined according to the 2000 Census). These areas include the Louisiana parishes of Calcasieu, Cameron, Orleans, Plaquemines, St. Bernard, St. Tammany, and Washington, and the Mississippi counties of Hancock, Harrison, Jackson, Pearl River, and Stone.[255]

REASONS FOR CHANGE

Many taxpayers have been unable to begin the construction of property in the Gulf Opportunity Zone due to the lack of electricity, clean water, and other circumstances beyond their control. Therefore, the Committee believes the commencement date for beginning the construction of self-constructed property should be removed so that these taxpayers may qualify for the additional first-year depreciation deduction to the extent the other requirements are met.

[254] Property described in section 168(k)(2)(A)(i) includes (1) property to which the general rules of the Modified Accelerated Cost Recovery System ("MACRS") apply with an applicable recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property (as defined in section 168(e)(5)), and (4) certain leasehold improvement property.

[255] Notice 2007–36, 2007–17 I.R.B. 1000.

EXPLANATION OF PROVISION

The provision removes the commencement date of January 1, 2008, for self-constructed Gulf Opportunity Zone extension property. The placed in service date of December 31, 2010, and the progress expenditure date of January 1, 2010, are not modified.

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2007.

3. Expansion of Gulf Opportunity Zone for purposes of tax-exempt bond financing (Sec. 331(c) of the bill and sec. 1490N of the Code)

PRESENT LAW

In general

Under present law, gross income generally does not include interest paid on State or local bonds. State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or are repaid with governmental funds. Private activity bonds are bonds with respect to which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds").

GO Zone

The Gulf Opportunity Zone Act authorized the issuance of qualified private activity bonds to finance the construction and rehabilitation of residential and nonresidential property located in the Gulf Opportunity Zone ("Gulf Opportunity Zone Bonds"). Gulf Opportunity Zone Bonds must be before January 1, 2011.

Gulf Opportunity Zone Bonds may be issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof. Issuance of bonds authorized under the provision is limited to projects approved by the Governor of the State (or the State bond commission in the case of a bond which is required under State law to be approved by such commission) in which the financed project shall be located. The maximum aggregate face amount of Gulf Opportunity Zone Bonds that may be issued in any State is limited to $2,500 multiplied by the population of the respective State within the Gulf Opportunity Zone. Current refundings of outstanding bonds issued under the provision do not count against the aggregate volume limit to the extent that the principal amount of the refunding bonds does not exceed the outstanding principal amount of the bonds being refunded. Gulf Opportunity Zone Bonds may not be advance refunded.

Depending on the purpose for which such bonds are issued, Gulf Opportunity Zone Bonds are treated as either exempt facility bonds or qualified mortgage bonds. Gulf Opportunity Zone Bonds are treated as exempt facility bonds if 95 percent or more of the net proceeds of such bonds are to be used for qualified project costs located in the Gulf Opportunity Zone. Qualified project costs include the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including buildings and their structural components and fixed improvements associated with such property), qualified residential rental projects (as defined in section 142(d) with certain modifications), and public utility property. For purposes of the provision, costs associated with improving a facility (e.g., installing equipment that enhances the pollution control of a manufacturing facility) may be permitted project costs if such costs are chargeable to the capital account of the facility or would be so chargeable either with a proper election by a taxpayer or but for a proper election by a taxpayer to deduct the costs.

Bond proceeds may not be used to finance movable fixtures and equipment. The purpose of this limitation is to ensure that property financed with the bonds will remain in the Gulf Opportunity Zone. "Movable fixtures and equipment" does not include components that are assembled to construct an industrial plant. Such term also does not include consumer appliances installed in owner-occupied residences and residential rental property financed with the proceeds of Gulf Opportunity Zone Bonds.

Rather than applying the 20–50 and 40–60 test under present law, a project is a qualified residential rental project under the provision if 20 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income or if 40 percent or more of the residential units in such project are occupied by individuals whose income is 70 percent or less of area median gross income.

Gulf Opportunity Zone Bonds are treated as qualified mortgage bonds if the bonds of such issue meet the requirements of a qualified mortgage issue (as defined in section 143 and modified by this provision) and the residences financed with such bonds are located in the Gulf Opportunity Zone. For these purposes, residences located in the Gulf Opportunity Zone are treated as targeted area residences. Thus, the first-time homebuyer rule is waived and purchase and income rules for targeted area residences apply to residences financed with bonds issued under the provision. Under the provision, 100 percent of the mortgages must be made to mortgagors whose family income is 140 percent or less of the applicable median family income. Thus, the present law rule allowing one-third of the mortgages to be made without regard to any income limits does not apply. In addition, the provision increases from $15,000 to $150,000 the amount of a qualified home-improvement loan that may be financed with bond proceeds.

Subject to the following exceptions and modifications, issuance of Gulf Opportunity Zone Bonds is subject to the general rules applicable to issuance of qualified private activity bonds:

(1) Except as otherwise permitted for a qualified mortgage issue, repayments of bond-financed loans may not be used to make additional loans;

(2) Issuance of the bonds is not subject to the aggregate annual State private activity bond volume limits (sec. 146);

(3) The restriction on acquisition of existing property is applied using a minimum requirement of 50 percent of the cost of acquiring the building being devoted to rehabilitation (sec. 147(d));

(4) The special arbitrage expenditure rules for certain construction bond proceeds apply to available construction proceeds of Gulf Opportunity Zone Bonds issued to finance qualified project costs, treating such bonds as a construction issue (sec. 148(t)(4)(C));

(5) Interest on the bonds is not a preference item for purposes of the alternative minimum tax preference for private activity bond interest (sec. 57(a)(5)); and

(6) No portion of the proceeds of the bonds may be used to provide any property described in section 144(c)(6)(B) (i.e., any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal purpose of which is the sale alcoholic beverages for consumption off premises).

REASONS FOR CHANGE

The Committee believes that areas affected by Hurricane Katrina need additional recovery tools. The Committee believes that the Gulf Opportunity Zone bonds are a valuable resource for promoting recovery in the affected areas. The Committee believes that the Gulf Opportunity Zone bonds should be expanded so that this resource may be utilized by those areas that were not originally designated as part of the Gulf Opportunity Zone, but were severely impacted by the hurricane.

EXPLANATION OF PROVISION

The provision adds Colbert County, Alabama and Dallas County, Alabama to the Gulf Opportunity Zone for the purpose of issuing Gulf Opportunity Zone Bonds.

EFFECTIVE DATE

The provision is effective as if included in the Gulf Opportunity Zone Act.

TITLE IV—REVENUE PROVISIONS

A. MODIFY TAX TREATMENT OF OFFSHORE NONQUALIFIED DEFERRED COMPENSATION

(Sec. 401 of the bill and new sec. 457A of the Code)

PRESENT LAW

In general

Under present law, the determination of when amounts deferred under a nonqualified deferred compensation arrangement are includible in the gross income of the person earning the compensation depends on the facts and circumstances of the arrangement. A variety of tax principles and Code provisions may be relevant in making this determination, including the doctrine of constructive receipt, the economic benefit doctrine,[256] the provisions of section 83 relating generally to transfers of property in connection with the performance of services, provisions relating specifically to non-

[256] See, e.g., *Sproull* v. *Commissioner*, 16 T.C. 244 (1951), *aff'd, per curiam*, 194 F.2d 541 (6th Cir. 1952); Rev. Rut. 60–31, 1960–1 C.B. 174.

exempt employee trusts (sec. 402(b)) and nonqualified annuities (sec. 403(c)), and the requirements of section 409A.

In general, the time for income inclusion of nonqualified deferred compensation depends on whether the arrangement is unfunded or funded. If the arrangement is unfunded, then the compensation generally is includible in income by a cash-basis taxpayer when it is actually or constructively received. If the arrangement is funded, then income is includible for the year in which the individual's rights are transferable or not subject to a substantial risk of forfeiture.

An arrangement generally is considered funded if there has been a transfer of property under section 83. Under that section, a transfer of property occurs when a person acquires a beneficial ownership interest in such property. The term "property" is defined very broadly for purposes of section 83.[257] Property includes real and personal property other than money or an unfunded and unsecured promise to pay money in the future. Property also includes a beneficial interest in assets (including money) that are transferred or set aside from claims of the creditors of the transferor; for example, in a trust or escrow account. Accordingly, if, in connection with the performance of services, vested contributions are made to a trust on an individual's behalf and the trust assets may be used solely to provide future payments to the individual, the payment of the contributions to the trust constitutes a transfer of property to the individual that is taxable under section 83. On the other hand, deferred amounts generally are not includible in income if nonqualified deferred compensation is payable from general corporate funds that are subject to the claims of general creditors, as such amounts are treated as unfunded and unsecured promises to pay money or property in the future.

As discussed above, if the arrangement is unfunded, then the compensation generally is includible in income by a cash-basis taxpayer when it is actually or constructively received under section 451.[258] Income is constructively received when it is credited to a person's account, set apart, or otherwise made available so that it may be drawn on at any time. Income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions. A requirement to relinquish a valuable right in order to make withdrawals is generally treated as a substantial limitation or restriction.

Prior to the enactment of section 409A, arrangements had developed in an effort to provide employees with security for nonqualified deferred compensation, while still allowing deferral of income inclusion under the constructive receipt doctrine (which applies to unfunded arrangements). One such arrangement is a "rabbi trust." A rabbi trust is a trust or other fund established by the employer to hold assets from which nonqualified deferred compensation payments will be made. The trust or fund is generally irrevocable and does not permit the employer to use the assets for purposes other than to provide nonqualified deferred compensation, except that the terms of the trust or fund provide that the assets are subject to the claims of the employer's creditors in the case of insol-

[257] Treas. Reg. sec. 1.83–3(e). This definition, in part, reflects previous IRS rulings on nonqualified deferred compensation.

[258] Treas. Reg. secs. 1.451–1 and 1.451–2.

vency or bankruptcy. In the case of a rabbi trust, these terms have been the basis for the conclusion that the creation of a rabbi trust does not cause the related nonqualified deferred compensation arrangement to be funded for income tax purposes.[259] As a result, no amount is included in income by reason of the rabbi trust; generally income inclusion occurs as payments are made from the trust.

Section 409A

Reason for enactment

The Congress enacted section 409A[260] because it was concerned that many nonqualified deferred compensation arrangements had developed which allowed improper deferral of income. Executives often used arrangements that allowed deferral of income, but also provided security of future payment and control over amounts deferred. For example, nonqualified deferred compensation arrangements often contained provisions that allowed participants to receive distributions upon request, subject to forfeiture of a minimal amount (i.e., a "haircut" provision). In addition, Congress was aware that since the concept of a rabbi trust was developed, techniques had been used that attempted to protect the assets from creditors despite the terms of the trust. For example, the trust or fund would be located in a foreign jurisdiction, making it difficult or impossible for creditors to reach the assets.

Prior to the enactment of section 409A, while the general tax principles governing deferred compensation were well established, the determination whether a particular arrangement effectively allowed deferral of income was generally made on a facts and circumstances basis. There was limited specific guidance with respect to common deferral arrangements. The Congress believed that it was appropriate to provide specific rules regarding whether deferral of income inclusion should be permitted and to provide a clear set of rules that would apply to these arrangements. The Congress believed that certain arrangements that allow participants inappropriate levels of control or access to amounts deferred should not result in deferral of income inclusion. The Congress also believed that certain arrangements, such as offshore trusts, which effectively protect assets from creditors of the employer, should be treated as funded and not result in deferral of income inclusion to the extent the amounts are vested.

General requirements of section 409A

In general.—Under section 409A, all amounts. deferred by a service provider under a nonqualified deferred compensation plan[261] for all taxable years are currently includible in gross income of the service provider to the extent such amounts are not subject to a

[259] This conclusion was first provided in a 1980 private ruling issued by the IRS with respect to an arrangement covering a rabbi; hence, the popular name "rabbi trust." Priv. Ltr. RuI. 8113107 (Dec. 31, 1980).

[260] Section 409A was added to the Code by sec. 885 of the American Job Creation Act of 2004, Pub. L. No. 108–357.

[261] A plan includes an agreement or arrangement, including an agreement or arrangement that includes one person. Amounts deferred also include actual or notional earnings.

substantial risk of forfeiture[262] and not previously included in gross income, unless certain requirements are satisfied. If the requirements of section 409A are not satisfied, in addition to current income inclusion, interest at the rate applicable to underpayments of tax plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to a 20-percent additional tax.

Section 409A does not limit the amount that may be deferred under a nonqualified deferred compensation plan. The Secretary of the Treasury is authorized to prescribe regulations as are necessary or appropriate to carry out the purposes of section 409A. The Secretary of the Treasury published final regulations under section 409A on April 17, 2007.[263]

Under these regulations, the term "service provider" includes an individual, corporation, subchapter S corporation, partnership, personal service corporation (as defined in section 269A(b)(1)), noncorporate entity that would be a personal service corporation if it were a corporation, or qualified personal service corporation (as defined in section 448(d)(2)) for any taxable year in which such individual or entity accounts for gross income from the performance of services under the cash receipts and disbursements method of accounting.[264] Section 409A does not apply to a service provider that provides significant services to at least two service recipients that are not related to each other or the service provider. This exclusion does not apply to a service provider who is an employee or a director of a corporation (or similar position in the case of an entity that is not a corporation).[265] In addition, the exclusion does not apply to an entity that operates as the manager of a hedge fund or private equity fund. This is because the exclusion does not apply to the extent that a service provider provides management services to a service recipient. Management services for this purpose means services that involve the actual or de facto direction or control of the financial or operational aspects of a trade or business of the service recipient or investment management or advisory services provided to a service recipient whose primary trade or business includes the investment of financial assets, such as a hedge fund.[266]

Permissible distribution events.—Under section 409A, distributions from a nonqualified deferred compensation plan may be allowed only upon separation from service (as determined by the Secretary of the Treasury), death, a specified time (or pursuant to a fixed schedule), change in control of a corporation (to the extent provided by the Secretary of the Treasury), occurrence of an unforeseeable emergency, or if the service provider becomes disabled. A nonqualified deferred compensation plan may not allow distributions other than upon the permissible distribution events and, ex-

[262] The rights of a person to compensation are subject to a substantial risk of forfeiture if the person's rights to such compensation are conditioned upon the performance of substantial services by any individual.

[263] On October 22, 2007, the IRS announced that during 2008, taxpayers are not required to comply with the fmal regulations. Instead, taxpayers must operate a plan in compliance with section 409A and the otherwise applicable guidance. To the extent an issue is not addressed, a reasonable, good faith interpretation of the statute must be used. Notice 2007–86.

[264] Treas. Reg. sec. 1.409A–1(f)(1).

[265] Treas. Reg. sec. 1.409A–1(f)(2).

[266] Treas. Reg. sec. 1.409A–1(f)(2)(iv).

cept as provided in regulations by the Secretary of the Treasury, may not permit acceleration of a distribution. In the case of a specified employee who separates from service, distributions may not be made earlier than six months after the date of the separation from service or upon death. Specified employees are key employees [267] of publicly-traded corporations.

Elections.—Section 409A requires that a plan must provide that compensation for services performed during a taxable year may be deferred at the service provider's election only if the election to defer is made no later than the close of the preceding taxable year, or at such other time as provided in Treasury regulations. In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than six months before the end of the service period. The time and form of distributions must be specified at the time of initial deferral. A plan may allow changes in the time and form of distributions subject to certain requirements.

Back-to-back arrangements.—Back-to-back service recipients (i.e., situations under which an entity receives services from a service provider such as an employee, and the entity in turn provides services to a client) that involve back-to-back nonqualified deferred compensation arrangements (i.e., the fees payable by the client are deferred at both the entity level and the employee level) are subject to special rules under section 409A. For example, the final regulations generally permit the deferral agreement between the entity and its client to treat as a permissible distribution event those events that are specified as distribution events in the deferral agreement between the entity and its employee. Thus, if separation from employment is a specified distribution event between the entity and the employee, the employee's separation generally is a permissible distribution event for the deferral agreement between the entity and its client.[268]

Offshore funding arrangements.—Section 409A requires current income inclusion in the case of certain offshore funding of nonqualified deferred compensation. Under section 409A, in the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary of the Treasury) for purposes of paying nonqualified deferred compensation, such assets are treated as property transferred in connection with the performance of services under section 83 (whether or not such assets are available to satisfy the claims of general creditors) at the time set aside if such assets (or trust or other arrangement) are located outside of the United States or at the time transferred if such assets (or trust or other arrangement) are subsequently transferred outside of the United States. Any subsequent increases in the value of, or any earnings with respect to, such assets are treated as additional transfers of property.

Interest at the underpayment rate plus one percentage point is imposed on the underpayments of tax that would have occurred had the amounts set aside been includible in income for the taxable year in which first deferred or, if later, the first taxable year not

[267] Key employees are defined in section 416(i) and generally include officers (limited to 50 employees) having annual compensation greater than $145,000 (for 2007), five percent owners, and one percent owners having annual compensation from the employer greater than $150,000.

[268] Treas. Reg. sec. 1.409A–3(i)(6).

subject to a substantial risk of forfeiture. The amount required to be included in income also is subject to an additional 20-percent tax.

The special funding rule does not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such foreign jurisdiction. The Secretary of the Treasury has authority to exempt arrangements from the provision if the arrangements do not result in an improper deferral of U.S. tax and will not result in assets being effectively beyond the reach of creditors.

Definition of substantial risk of forfeiture

Under the Treasury regulations, compensation is subject to a substantial risk of forfeiture if entitlement to the amount is conditioned upon either the performance of substantial future services by any person or the occurrence of a condition related to a purpose of the compensation, provided that the possibility of forfeiture is substantial.[269]

Definition of nonqualified deferred compensation

Under section 409A, a nonqualified deferred compensation plan generally includes any plan that provides for the deferral of compensation other than a qualified employer plan or any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan. A qualified employer plan means a qualified retirement plan, tax-deferred annuity, simplified employee pension, and SIMPLE. A qualified governmental excess benefit arrangement (sec. 415(m)) and an eligible deferred compensation plan (sec. 457(b)) is a qualified employer plan.

The Treasury regulations also provide that certain other types of plans are not considered deferred compensation, and thus are not subject to section 409A. For example, if a service recipient transfers property to a service provider, there is no deferral of compensation merely because the value of the property is either not includible in income under section 83 by reason of the property being substantially nonvested or is includible in income because of a valid section 83(b) election.[270] Special rules apply in the case of stock options.[271] Another exception applies to amounts that are not deferred beyond a short period of time after the amount is no longer subject to a substantial risk of forfeiture.[272] Under this exception, there generally is no deferral for purposes of section 409A if the service provider actually or constructively receives the amount on or before the last day of the applicable 2½ month period. The applicable 2½ month period is the period ending on the later of the 15th day of the third month following the end of: (1) the service provider's first taxable year in which the right to the payment is no longer subject to a substantial risk of forfeiture; or (2) the service recipient's first taxable year in which the right to the payment is no longer subject to a substantial risk of forfeiture.

[269] Treas. Reg. see. 1.409A–l(d)(1).
[270] Treas. Reg. Sec. 1.409A–l(b)(6).
[271] Treas. Reg. Sec. 1.409A–1(b)(5).
[272] Treas. Reg. sec. 1.409A–1(b)(4).

Special rules apply in the case of stock appreciation rights ("SARs").[273] Under the final Treasury regulations, a SAR is a right to compensation based on the appreciation in value of a specified number of shares of service recipient stock occurring between the date of grant and the date of exercise of such right. The final regulations generally provide that a SAR does not result in a deferral of compensation for purposes of section 409A (and thus is not subject to section 409A) if the compensation payable under the SAR is not greater than the excess of the fair market value of the underlying stock on the date the SAR is exercised over the fair market value of the underlying stock on the date the SAR is granted.[274]

The Treasury regulations provide exclusions from the definition of nonqualified deferred compensation in the case of services performed by individuals who participate in certain foreign plans, including plans covered by an applicable treaty and broad-based foreign retirement plans.[275] In the case of a U.S. citizen or lawful permanent alien, nonqualified deferred compensation plan does not include a broad-based foreign retirement plan, but only with respect to the portion of the plan that provides for nonelective deferral of foreign earned income and subject to limitations on the annual amount deferred under the plan or the annual amount payable under the plan. In general, foreign earned income refers to amounts received by an individual from sources within a foreign country that constitutes earned income attributable to services.

Timing of the service recipient's deduction

Special statutory provisions govern the timing of the deduction for nonqualified deferred compensation, regardless of whether the arrangement covers employees or nonemployees and regardless of whether the arrangement is funded or unfunded.[276] Under these provisions, the amount of nonqualified deferred compensation that is includible in the income of the service provider is deductible by the service recipient for the taxable year in which the amount is includible in the service provider's income.[277] Thus, for example, in the case of an unfunded nonqualified deferred compensation plan, a deduction to the taxable service recipient is deferred until the deferred compensation is actually paid or made available to the service provider.

[273] Treas. Reg. sec. 1.409A–1(b)(5).

[274] Treas. Reg. sec. 1.409A–1(b)(5)(i)(B).

[275] Treas. Reg. sec. 1.409A–1(a)(3).

[276] Secs. 404(a)(5), (b) and (d) and sec. 83(h).

[277] In the case of a publicly held corporation, no deduction is allowed for a taxable year for remuneration with respect to a covered employee to the extent that the remuneration exceeds $1 million. Code sec. 162(m). The Code defines the term "covered employee" in part by reference to Federal securities law. In light of changes to Federal securities law, the Internal Revenue Service interprets the term covered employee as the principal executive officer of the taxpayer as of the close of the taxable year or the 3 most highly compensated employees of the taxpayer for the taxable year whose compensation must be disclosed to the taxpayer's shareholders (other than the principal executive officer or the principal financial officer). Notice 2007–49, 2007–25 I.R.B. 1429. For purposes of the deduction limit, remuneration generally includes all remuneration for which a deduction is otherwise allowable, although commission-based compensation and certain performance-based compensation are not subject to the limit. Remuneration does not include compensation for which a deduction is allowable after a covered employee ceases to be a covered employee. Thus, the deduction limitation often does not apply to deferred compensation that is otherwise subject to the deduction limitation (e.g., is not performance-based compensation) because the payment of the compensation is deferred until after termination of employment.

Section 457

Special income recognition rules apply in the case of a participant in a deferred compensation plan that is sponsored by a State or local government or an organization that is exempt from Federal income tax under section 501(a). Section 457 provides for different income inclusion rules, for two basic types of deferred compensation arrangements: (1) arrangements that limit the amount of compensation that may be deferred (generally, $15,500 in 2007) and that meet certain other requirements specified in section 457(b) (referred to as a "section 457(b) plan" or an "eligible deferred compensation plan"); and (2) arrangements that do not satisfy the requirements of section 457(b) (referred to as a "section 457(f) plan" or an "ineligible deferred compensation plan"). Section 457 does not provide a limit on the amount of compensation that may be deferred under a section 457(f) plan.

A participant in a section 457(b) plan does not recognize income with respect to the participant's interest in such plan until the time of actual distribution (or, if earlier, the time the participant's interest is made available to the participant, but only in the case of a section 457(b) plan maintained by a tax-exempt sponsor other than a State or local government). In contrast, a participant in a section 457(f) plan must include amounts deferred under such a plan in gross income for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation.

Charitable contributions

In general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization. The amount of deduction generally equals the fair market value of the contributed property on the date of the contribution. Charitable deductions are provided for income, estate, and gift tax purposes.

In general, for individuals, the amount deductible is a percentage of the taxpayer's contribution base, which is the taxpayer's adjusted gross income computed without regard to any net operating loss carryback. The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. Cash contributions by an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base. Charitable contributions in excess of applicable percentage limits generally may be carried over to the five succeeding taxable years.

REASONS FOR CHANGE

Under present law, there is a tension in the case of a nonqualified deferred compensation agreement between a service provider and a taxable service recipient. This arises because the timing rule under the Code defers the service recipient's deduction for nonqualified deferred compensation until the taxable year in which such compensation is includible in the service provider's gross income. This tension may limit the amount of compensation that a service recipient is willing to permit a service provider to defer under a nonqualified deferred compensation arrangement. Even when this tension does not limit the amount of compensation that a service recipient is willing to permit a service provider to defer under a nonqualified deferred compensation arrangement, this tension ensures that the cost of allowing this deferral is borne by the service recipient.

Under present law, the ability to defer nonqualified deferred compensation is limited in certain cases in which this tension is not present. When this tension is not present, the cost of allowing service providers to defer under a nonqualified deferred compensation arrangement is not borne by the service recipient. Instead, this cost is borne by the Treasury. In order to limit the cost to the Treasury, Congress passed special rules limiting deferral in certain situations. Specifically, section 457 provides special rules that limit deferred compensation arrangements sponsored by State and local governments and other tax-exempt entities.

The Committee has become aware of other situations in which the present law tension does not exist. Specifically, foreign corporations that are not subject to a comprehensive income tax and partnerships that are comprised of foreign persons and U.S. tax-exempt entities are indifferent to the timing of deductions for nonqualified deferred compensation. The Committee believes that in such cases additional rules should apply that limit the ability to defer service provider compensation.

EXPLANATION OF PROVISION

In general

Under the provision, any compensation that is deferred under a nonqualified deferred compensation plan of a nonqualified entity is includible in gross income by the service provider when there is no substantial risk of forfeiture of the service provider's rights to such compensation. The provision applies in addition to the requirements of section 409A (or any other provision of the Code or general tax law principle) with respect to nonqualified deferred compensation.

Nonqualified deferred compensation

For purposes of the provision, the term nonqualified deferred compensation plan is defined in the same manner as for purposes of section 409A. As under section 409A, the term nonqualified deferred compensation includes earnings with respect to previously deferred amounts. Earnings are treated in the same manner as the amount deferred to which the earnings relate.

Under the provision, nonqualified deferred compensation includes any arrangement under which compensation is based on the increase in value of a specified number of equity units of the service recipient. Thus, stock appreciation rights (SARs) are treated as nonqualified deferred compensation under the provision, regardless of the exercise price of the SAR. It is not intended that the term nonqualified deferred compensation plan include an arrangement taxable under section 83 providing for the grant of an option on employer stock with an exercise price that is not less than the fair market value of the underlying stock on the date of grant if such arrangement does not include a deferral feature other than the feature that the option holder has the right to exercise the option in the future. The provision is not intended to change the tax treatment of incentive stock options meeting the requirements of section 422 or options granted under an employee stock purchase plan meeting the requirements of section 423. Similarly, nonqualified deferred compensation for purposes of the provision does not include a transfer of property to which section 83 is applicable (such as a transfer of restricted stock), provided that the arrangement does not include a deferral feature.

Compensation is not treated as deferred for purposes of the provision if the service provider receives payment of the compensation not later than 12 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

Nonqualified entity

The term nonqualified entity includes certain foreign corporations and certain partnerships (either domestic or foreign). A foreign corporation is a nonqualified entity unless substantially all of such income is effectively connected with the conduct of a United States trade or business or is subject to a comprehensive foreign income tax. A partnership is a nonqualified entity unless substantially all of such income is allocated to persons other than foreign persons with respect to whom such income is not subject to a comprehensive income tax and organizations which are exempt from U.S. income tax.

The term comprehensive foreign income tax means with respect to a foreign person, the income tax of a foreign country if (1) such person is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or (2) such person demonstrates to the satisfaction of the Secretary of the Treasury that such foreign country has a comprehensive income tax.

In the case of a foreign corporation with income that is taxable under section 882, the provision does not apply to compensation which, had such compensation been paid in cash on the date that such compensation ceased to be subject to a substantial risk of forfeiture, would have been deductible by such foreign corporation against such income.

Additional rules

For purposes of the provision, compensation of a service provider is subject to a substantial risk of forfeiture only if such person's right to the compensation is conditioned upon the future performance of substantial services by any person. Thus, compensation is subject to a substantial risk of forfeiture only if entitlement to the compensation is conditioned on the performance of substantial future services and the possibility of forfeiture is substantial. Substantial risk of forfeiture does not include a condition related to a purpose of the compensation (other than future performance of substantial services), regardless of whether the possibility of forfeiture is substantial.

To the extent provided in regulations prescribed by the Secretary, if compensation is determined solely by reference to the amount of gain recognized on the disposition of an investment asset, such compensation is treated as subject to a substantial risk of forfeiture until the date of such disposition. Investment asset means any single asset (other than an investment fund or similar entity) (1) acquired directly by an investment fund or similar entity, (2) with respect to which such entity does not (nor does any person related to such entity) participate in the active management of such asset (or if such asset is an interest in an entity, in the active management of the assets of such entity), and (3) substantially all of any gain on the disposition of which (other than the nonqualified deferred compensation) is allocated to investors of such entity. The rule only applies if the compensation is determined solely by reference to the gain upon the disposition of an investment asset. Thus, for example, the rule does not apply in the case of an arrangement under which the amount of this compensation is reduced for losses on the disposition of any other asset. With respect to any gain attributable to the period before the asset is treated as no longer subject to a substantial risk of forfeiture, it is intended that Treasury regulations will limit the application of this rule to gain attributable to the period that the service provider is performing services.

The rule is intended to apply to compensation contingent on the disposition of a single asset held as a long-term investment, provided that the service provider does not actively manage the asset (other than the decision to purchase or sell the investment). If the asset is an interest in an entity (such as a company that produces products or services), the rule does not apply if the service provider actively participates in the management of the entity. Active management is intended to include participation in the day-to-day activities of the asset, but does not include the election of a director or other voting rights exercised by shareholders.

The rule is intended to apply solely to compensation arrangements relating to passive investments by an investment fund in a single asset. For example, if an investment fund acquires XYZ operating corporation, the rule is intended to apply to an arrangement that the fund manager receive 20 percent of the gain from the disposition of XYZ operating corporation if the fund manager does not actively participate in the management of XYZ operating corporation. In contrast, the rule does not apply if the investment fund holds two or more operating corporations and the fund manger's compensation is based on the net gain resulting from the disposition of the operating corporations. The rule does not apply to the disposition of a foreign subsidiary which holds a variety of assets the investment of which is managed by the service provider.

Under the provision, if the amount of any deferred compensation is not determinable at the time that such compensation is otherwise required to be taken into account into income under the provision, the amount is taken into account when such amount becomes determinable. This rule applies in lieu of the general rule of the provision, under which deferred compensation is taken into account in income when such compensation is no longer subject to a substantial risk of forfeiture. In addition, the income tax with respect to such amount is increased by the sum of (1) an interest charge, and (2) an amount equal to 20 percent of such compensation. The interest charge is equal to the interest at the rate applicable to underpayments of tax plus one percentage point imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture.

Treasury regulations

It is intended that the Secretary of the Treasury issue regulations as to when an amount is not determinable for purposes of the provision. It is intended that an amount of deferred compensation is not determinable at the time the amount is no longer subject to a substantial risk of forfeiture if the amount varies depending on the satisfaction of an objective condition. For example, if a deferred amount varies depending on the satisfaction of an objective condition at the time the amount is no longer subject to substantial risk of forfeiture (e.g., no amount is paid unless a certain threshold is achieved, 100 percent is paid if the threshold is achieved, and 200 percent is paid if a higher threshold is achieved), the amount deferred is not determinable.

The Secretary of the Treasury is also authorized to issue such regulations as may be necessary or appropriate to carry out the purposes of the provision, including regulations disregarding a substantial risk of forfeiture as necessary to carry out such purposes.

Under the provision, aggregation rules similar to those that apply under section 409A apply for purposes of determining whether a plan sponsor is a nonqualified entity. It is intended, however, that such aggregation rules are limited by the Secretary to operate in accordance with the purposes of the provision. For example, it is intended that the aggregation rules do not result in the application of the provision to employees of a U.S. subsidiary C corporation that is wholly owned by a nonqualified entity when the U.S. subsidiary sponsors the nonqualified deferred compensation plan in which the employees of the subsidiary participate. This is because the subsidiary is subject to the timing rule with respect to its deduction of its employees' nonqualified deferred compensation.

Charitable contributions of existing deferrals permitted

Under the provision, the 50-percent limit on the deduction for charitable contributions does not apply to qualified contributions to the extent of the qualified inclusion amount. A qualified contribution means a charitable contribution (1) of cash (2) made during the last taxable year beginning before 2018 (3) to an organization described in section 170(b)(1)(A) (in general, a public charity), other than a supporting organization described in section 509(a) or a donor advised fund described in section 4966(d)(2). The qualified inclusion amount is the amount includable in gross income under the provision during such last taxable year attributable to services performed on or before December 31, 2008.

In applying the percentage limitations on the deduction for charitable contributions under section 170(b) to the remaining charitable contributions, section 170(b) is applied without regard to the contributions to which the 50-percent limit does not apply, and the contribution base is reduced by that amount.

In applying the carryover rules of section 170(d), contributions that are not subject to the 50-percent limit under the provision are not taken into account, because those contributions are deductible in the current taxable year.

The provision may be illustrated by the following example:

Example.—Assume an individual for 2017 has a contribution base of $1 million without regard to the qualified inclusion amount and a $1 million qualified inclusion amount which increases the contribution base to $2 million. The individual contributes $2 million in cash to organizations described in section 170(b)(1)(A), of which $1 million are qualified contributions. Without the waiver of the percentage limitation, the taxpayer's charitable contribution deduction would be $1 million (i.e., 50 percent of a contribution base of $2 million), and $1 million would be carried forward. Under the provision, the individual is allowed a charitable contribution deduction of $1.5 million—the sum of (1) $1 million in qualified contributions up to the qualified inclusion amount plus (2) $500,000 (the deduction that would be computed if the contribution base were reduced from $2 million to $1 million by the $1 million contributions to which the section 170(b) limitation does not apply, and those contributions were not taken into account). $500,000 is carried forward to future years.

EFFECTIVE DATE

The provision is effective with respect to amounts deferred which are attributable to services performed after December 31, 2008. In the case of an amount deferred which is attributable to services performed on or before December 31, 2008, to the extent such amount is not includible in gross income in a taxable year beginning before 2018, then such amount is includible in gross income in the later of (1) the last taxable year beginning before 2018, or (2) the taxable year in which there is no substantial risk of forfeiture of the rights to such compensation. Earnings on amounts deferred which are attributable to services performed on or before December 31, 2008, are subject to the provision only to the extent that the amounts to which such earnings relate are subject to the provision.

No later than 120 days after date of enactment, the Secretary shall issue guidance providing a limited period of time during which a nonqualified deferred compensation arrangement attributable to services performed on or before December 31, 2008, may, without violating the requirements of section 409A(a), be amended to conform the date of distribution to the date the amounts are required to be included in income. If the taxpayer is also a service recipient and maintains one or more nonqualified deferred compensation arrangements for its service providers under which any amount is attributable to services performed on or before December 31, 2008, the guidance shall permit such arrangements to be amended to conform the dates of distribution under the arrangement to the date amounts are required to be included in income of the taxpayer under the provision. An amendment made pursuant to the Treasury guidance will not be treated as a material modification of the arrangement for purposes of section 409A.

B. Delay Implementation of Worldwide Interest Allocation

(Sec. 402 of the bill and Sec. 864 of the Code)

PRESENT LAW

In general

In order to compute the foreign tax credit limitation, a taxpayer must determine the amount of its taxable income from foreign sources. Thus, the taxpayer must allocate and apportion deductions between items of U.S.-source gross income, on the one hand, and items of foreign-source gross income, on the other.

In the case of interest expense, the rules generally are based on the approach that money is fungible and that interest expense is properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring an obligation on which interest is paid.[278] For interest allocation purposes, all members of an affiliated group of corporations generally are treated as a single corporation (the so-called "one-taxpayer rule") and allocation must be made on the basis of assets rather than gross income. The term "affiliated group" in this context generally is defined by reference to the rules for determining whether corporations are eligible to file consolidated returns.

For consolidation purposes, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if: (1) the common parent owns directly stock possessing at least 80 percent of the total voting power and at least 80 percent of the total value of at least one other includible corporation; and (2) stock meeting the same voting power and value standards with respect to each includible corporation (excluding the common parent) is directly owned by one or more other includible corporations.

Generally, the term "includible corporation" means any domestic corporation except certain corporations exempt from tax under section 501 (for example, corporations organized and operated exclusively for charitable or educational purposes), certain life insurance companies, corporations electing application of the possession tax credit, regulated investment companies, real estate investment trusts, and domestic international sales corporations. A foreign corporation generally is not an includible corporation.

Subject to exceptions, the consolidated return and interest allocation definitions of affiliation generally are consistent with each other.[279] For example, both definitions generally exclude all foreign corporations from the affiliated group. Thus, while debt generally is considered fungible among the assets of a group of domestic affiliated corporations, the same rules do not apply as between the domestic and foreign members of a group with the same degree of common control as the domestic affiliated group.

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[278] However, exceptions to the fungibility principle are provided in particular cases, some of which are described below.

[279] One such exception is that the affiliated group for interest allocation purposes includes section 936 corporations that are excluded from the consolidated group.

Banks, savings institutions, and other financial affiliates

The affiliated group for interest allocation purposes generally excludes what are referred to in the Treasury regulations as "financial corporations" (Treas. Reg. sec. 1.861–11T(d)(4)). These include any corporation, otherwise a member of the affiliated group for consolidation purposes, that is a financial institution (described in section 581 or section 591), the business of which is predominantly with persons other than related persons or their customers, and which is required by State or Federal law to be operated separately from any other entity which is not a financial institution (sec. 864(e)(5)(C)). The category of financial corporations also includes, to the extent provided in regulations, bank holding companies (including financial holding companies), subsidiaries of banks and bank holding companies (including financial holding companies), and savings institutions predominantly engaged in the active conduct of a banking, fmancing, or similar business (sec. 864(e)(5)(D)).

A financial corporation is not treated as a member of the regular affiliated group for purposes of applying the one-taxpayer rule to other non-financial members of that group. Instead, all such financial corporations that would be so affiliated are treated as a separate single corporation for interest allocation purposes.

Worldwide interest allocation

In general

The American Jobs Creation Act of 2004 ("AJCA")[280] modifies the interest expense allocation rules described above (which generally apply for purposes of computing the foreign tax credit limitation) by providing a one-time election (the "worldwide affiliated group election") under which the taxable income of the domestic members of an affiliated group from sources outside the United States generally is determined by allocating and apportioning interest expense of the domestic members of a worldwide affiliated group on a worldwide-group basis (i.e., as if all members of the worldwide group were a single corporation). If a group makes this election, the taxable income of the domestic members of a worldwide affiliated group from sources outside the United States is determined by allocating and apportioning the third-party interest expense of those domestic members to foreign-source income in an amount equal to the excess (if any) of (1) the worldwide affiliated group's worldwide third-party interest expense multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to the total assets of the worldwide affiliated group,[281] over (2) the third-party interest expense incurred by foreign members of the group to the extent such interest would be allocated to foreign sources if the principles of worldwide interest allocation were applied separately to the foreign members of the group.[282]

[280] Pub. L. No. 108–357, sec. 401 (2004).

[281] For purposes of determining the assets of the worldwide affiliated group, neither stock in corporations within the group nor indebtedness (including receivables) between members of the group is taken into account.

[282] Although the interest expense of a foreign subsidiary is taken into account for purposes of allocating the interest expense of the domestic members of the electing worldwide affiliated group for foreign tax credit limitation purposes, the interest expense incurred by a foreign subsidiary is not deductible on a U.S. return.

For purposes of the new elective rules based on worldwide fungibility, the worldwide, affiliated group means all corporations in an affiliated group as well as all controlled foreign corporations that, in the aggregate, either directly or indirectly,[283] would be members of such an affiliated group if section 1504(b)(3) did not apply (i.e., in which at least 80 percent of the vote and value of the stock of such corporations is owned by one or more other corporations included in the affiliated group). Thus, if an affiliated group makes this election, the taxable income from sources outside the United States of domestic group members generally is determined by allocating and apportioning interest expense of the domestic members of the worldwide affiliated group as if all of the interest expense and assets of 80-percent or greater owned domestic corporations (i.e., corporations that are part of the affiliated group, as modified to include insurance companies) and certain controlled foreign corporations were attributable to a single corporation.

The common parent of the domestic affiliated group must make the worldwide affiliated group election. It must be made for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists that includes at least one foreign corporation that meets the requirements for inclusion in a worldwide affiliated group. Once made, the election applies to the common parent and all other members of the worldwide affiliated group for the taxable year for which the election was made and all subsequent taxable years, unless revoked with the consent of the Secretary of the Treasury.

Financial institution group election

Taxpayers are allowed to apply the bank group rules to exclude certain financial institutions from the affiliated group for interest allocation purposes under the worldwide fungibility approach. The rules also provides a one-time "financial institution group" election that expands the bank group. At the election of the common parent of the pre-election worldwide affiliated group, the interest expense allocation rules are applied separately to a subgroup of the worldwide affiliated group that consists of (1) all corporations that are part of the bank group, and (2) all "financial corporations." For this purpose, a corporation is a financial corporation if at least 80 percent of its gross income is financial services income (as described in section 904(d)(2)(C)(i) and the regulations thereunder) that is derived from transactions with unrelated persons.[284] For these purposes, items of income or gain from a transaction or series of transactions are disregarded if a principal purpose for the transaction or transactions is to qualify any corporation as a financial corporation.

The common parent of the pre-election worldwide affiliated group must make the election for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group includes a financial corporation. Once made, the election applies to the financial institution group for the taxable year and all subsequent taxable years. In addition, anti-abuse rules are provided under which certain transfers from one member of a financial institution

[283] Indirect ownership is determined under the rules of section 958(a)(2) or through applying rules similar to those of section 958(a)(2) to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

[284] See Treas. Reg. sec. 1.904–4(e)(2).

group to a member of the worldwide affiliated group outside of the financial institution group are treated as reducing the amount of indebtedness of the separate financial institution group. Regulatory authority is provided with respect to the election to provide for the direct allocation of interest expense in circumstances in which such allocation is appropriate to carry out the purposes of these rules, to prevent assets or interest expense from being taken into account more than once, or to address changes in members of any group (through acquisitions or otherwise) treated as affiliated under these rules.

Effective date of worldwide interest allocation under AJCA

The worldwide interest allocation rules under AJCA are effective for taxable years beginning after December 31, 2008.

REASONS FOR CHANGE

The Committee believes that it is appropriate to delay implementation of the worldwide interest allocation rules.

EXPLANATION OF PROVISION

The provision delays the effective date of worldwide interest allocation rules for ten years, until taxable years beginning after December 31, 2018. The required dates for making the worldwide affiliated group election and the financial institution group election are changed accordingly.

EFFECTIVE DATE

The provision is effective on the date of enactment.

C. Modifications to Corporate Estimated Tax Payments

(Sec. 403 of the bill and sec. 401 of the Tax Increase Prevention and Reconciliation Act of 2005)

PRESENT LAW

In general

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Tax Increase Prevention and Reconciliation Act of 2005 ("TIPRA")

TIPRA provided the following special rules:

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2012, shall be increased to 106.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, shall be increased to 100.75 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

Subsequent legislation

Several public laws have been enacted since TIPRA which further increase the percentage of payments due under each of the two special rules enacted by TIPRA described above.

REASONS FOR CHANGE

The Committee believes it is appropriate to adjust the corporate estimated tax payments.

EXPLANATION OF PROVISION

The provision makes two modifications to the corporate estimated tax payment rules.

First, in case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, are increased by 37¾ percentage points of the payment otherwise due and the next required payment shall be reduced accordingly.

Second, in case of a corporation with assets of at least $1 billion, the increased payments due in July, August, and September, 2012 under the special rules in TIPRA and subsequent legislation are repealed. In effect the general rule is applied (i.e., such corporations are required to make quarterly estimated tax payments based on their income tax liability.)

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 6049, the "Renewable Energy and Jobs Creation Act of 2008".

MOTION TO REPORT RECOMMENDATIONS

The Chairman's Amendment in the Nature of a Substitute, was ordered favorably reported by a rollcall vote of 25 yeas to 12 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel	X			Mr. McCrery		X	
Mr. Stark	X			Mr. Herger		X	
Mr. Levin	X			Mr. Camp		X	
Mr. McDermott	X			Mr. Ramstad		X	
Mr. Lewis (GA)	X			Mr. Johnson	X		
Mr. Neal	X			Mr. English		X	
Mr. McNulty				Mr. Weller		X	
Mr. Tanner	X			Mr. Hulshof			
Mr. Becerra	X			Mr. Lewis (KY)			
Mr. Doggett	X			Mr. Brady		X	
Mr. Pomeroy	X			Mr. Reynolds		X	
Ms. Tubbs Jones	X			Mr. Ryan		X	
Mr. Thompson	X			Mr. Cantor		X	
Mr. Larson	X			Mr. Linder		X	
Mr. Emanuel				Mr. Nunes		X	
Mr. Blumenauer	X			Mr. Tiberi	X		
Mr. Kind	X			Mr. Porter	X		
Mr. Pascrell	X						

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Ms. Berkley	X						
Mr. Crowley	X						
Mr. Van Hollen	X						
Mr. Meek	X						
Ms. Schwartz	X						
Mr. Davis	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the Chairman's Amendment in the Nature of a Substitute.

An amendment offered by Mr. Stark which would strike Section 111, relating to the "Expansion and Modification of Advanced Coal Project Investment Credit", was defeated by a rollcall vote of 2 yeas to 36 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery		X	
Mr. Stark	X			Mr. Herger		X	
Mr. Levin		X		Mr. Camp		X	
Mr. McDermott		X		Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson		X	
Mr. Neal		X		Mr. English		X	
Mr. McNulty		X		Mr. Weller		X	
Mr. Tanner		X		Mr. Hulshof			
Mr. Becerra		X		Mr. Lewis (KY)			
Mr. Doggett	X			Mr. Brady		X	
Mr. Pomeroy		X		Mr. Reynolds		X	
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor		X	
Mr. Larson		X		Mr. Linder		X	
Mr. Emanuel				Mr. Nunes		X	
Mr. Blumenauer		X		Mr. Tiberi		X	
Mr. Kind		X		Mr. Porter		X	
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

An amendment offered by Mr. Reynolds which would extend temporary alternative minimum tax relief for an additional year, through December 31, 2008, was defeated by a rollcall vote of 15 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (Ga)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof			
Mr. Becerra		X		Mr. Lewis (KY)			
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

An amendment offered by Mr. Stark, which would eliminate the tax credit for ethanol in Section 124, was defeated by a rollcall vote of 8 yeas to 30 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark	X			Mr. Herger	X		
Mr. Levin		X		Mr. Camp		X	
Mr. McDermott	X			Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English		X	
Mr. McNulty		X		Mr. Weller		X	
Mr. Tanner			pass	Mr. Hulshof			
Mr. Becerra		X		Mr. Lewis (KY)			
Mr. Doggett	X			Mr. Brady		X	
Mr. Pomeroy		X		Mr. Reynolds		X	
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor		X	
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi		X	
Mr. Kind		X		Mr. Porter		X	
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

An amendment by Mr. English which would repeal the individual alternative minimum tax, beginning in tax year 2019, was defeated by a rollcall vote of 15 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof			
Mr. Becerra		X		Mr. Lewis (KY)			
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Crowley	....	X					
Mr. Van Hollen	....	X					
Mr. Meek	....	X					
Ms. Schwartz	....	X					
Mr. Davis	....	X					

An amendment offered by Mr. Stark, which would prevent any racehorse which is 2 years old or younger at the time it is placed in service from qualifying as 3-year property under Section 168 of the Internal Revenue Code, was defeated by a rollcall vote of 15 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel	....	X	....	Mr. McCrery	....	X	....
Mr. Stark	X	....	....	Mr. Herger	....	X	....
Mr. Levin	X	....	....	Mr. Camp	....	X	....
Mr. McDermott	X	....	....	Mr. Ramstad	....	X	....
Mr. Lewis (GA)	X	....	....	Mr. Johnson	....	X	....
Mr. Neal	X	....	....	Mr. English	....	X	....
Mr. McNulty	....	X	....	Mr. Weller	....	X	....
Mr. Tanner	....	X	....	Mr. Hulshof	....	....	....
Mr. Becerra	X	....	....	Mr. Lewis (KY)	....	....	....
Mr. Doggett	X	....	....	Mr. Brady	....	X	....
Mr. Pomeroy	....	X	....	Mr. Reynolds	....	X	....
Ms. Tubbs Jones	....	X	....	Mr. Ryan	X	....	....
Mr. Thompson	....	X	....	Mr. Cantor	....	X	....
Mr. Larson	X	....	....	Mr. Linder	X	....	....
Mr. Emanuel	X	....	....	Mr. Nunes	....	X	....
Mr. Blumenauer	X	....	....	Mr. Tiberi	....	X	....
Mr. Kind	X	....	....	Mr. Porter	....	X	....
Mr. Pascrell	X	....	....				
Ms. Berkley	....	X	....				
Mr. Crowley	....	X	....				
Mr. Van Hollen	X	....	....				
Mr. Meek	....	X	....				
Ms. Schwartz	....	X	....				
Mr. Davis	....	X	....				

An amendment offered by Mr. Brady was offered which would strike Section 311, the "Attorney-Advanced Expenses" provision, which is estimated to cost $1.572 billion (over ten years). The amendment would then apply the $1.572 billion (over ten years) towards lowering the floor of the refundable child credit (Section 302) over the same period. The amendment was defeated by a rollcall vote of 14 yeas to 25 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel	....	X	....	Mr. McCrery	X	....	....
Mr. Stark	....	X	....	Mr. Herger	X	....	....
Mr. Levin	....	X	....	Mr. Camp	X	....	....
Mr. McDermott	....	X	....	Mr. Ramstad	X	....	....
Mr. Lewis (GA)	....	X	....	Mr. Johnson	X	....	....
Mr. Neal	....	X	....	Mr. English	....	X	....
Mr. McNulty	....	X	....	Mr. Weller	X	....	....
Mr. Tanner	....	X	....	Mr. Hulshof	....	....	....
Mr. Becerra	....	X	....	Mr. Lewis (KY)	....	....	....
Mr. Doggett	....	X	....	Mr. Brady	X	....	....
Mr. Pomeroy	....	X	....	Mr. Reynolds	X	....	....
Ms. Tubbs Jones	....	X	....	Mr. Ryan	X	....	....
Mr. Thompson	....	X	....	Mr. Cantor	X	....	....
Mr. Larson	....	X	....	Mr. Linder	X	....	....
Mr. Emanuel	....	X	....	Mr. Nunes	X	....	....
Mr. Blumenauer	....	X	....	Mr. Tiberi	X	....	....

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Kind	....	X	....	Mr. Porter	X	....	....
Mr. Pascrell	....	X	....				
Ms. Berkley	....	X	....				
Mr. Crowley	....	X	....				
Mr. Van Hollen	....	X	....				
Mr. Meek	....	X	....				
Ms. Schwartz	....	X	....				
Mr. Davis	....	X	....				

An en bloc amendment consisting of amendments offered by Mr. English (Safe Harbor from Underestimated Quarterly Tax Payments for Some Individual Alternative Minimum Tax Filers); Mr. Brady (Striking Title IV, Revenue Provision); Mr. Brady, (Expressing the Sense of Congress that the Extenders Bill should not be funded by offsets); Mr. Herger (Extend all expiring provisions through 2009, and extend the AMT patch through 2008); Mr. Camp (Extend the Research and Development Tax Credit for one year); Mr. Brady (Requiring the Secretary of the Treasury to conduct a study on the adverse effects if the Section 199, manufacturing tax credit, is repealed for major oil and gas companies); Mr. Brady (extend the deduction for state and local taxes) and Mr. Weller (Extension of the New and Existing Homes tax credit). The en bloc amendment was defeated by a rollcall vote of 15 yeas to 23 nays.

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel	....	X	....	Mr. McCrery	X	....	....
Mr. Stark	....	X	....	Mr. Herger	X	....	....
Mr. Levin	....	X	....	Mr. Camp	X	....	....
Mr. McDermott	....	X	....	Mr. Ramstad	X	....	....
Mr. Lewis (GA)	....	X	....	Mr. Johnson	X	....	....
Mr. Neal	....	X	....	Mr. English	X	....	....
Mr. McNulty	....	....	....	Mr. Weller	X	....	....
Mr. Tanner	....	X	....	Mr. Hulshof	....	....	....
Mr. Becerra	....	X	....	Mr. Lewis (KY)	....	....	....
Mr. Doggett	....	X	....	Mr. Brady	X	....	....
Mr. Pomeroy	....	X	....	Mr. Reynolds	X	....	....
Ms. Tubbs Jones	....	X	....	Mr. Ryan	X	....	....
Mr. Thompson	....	X	....	Mr. Cantor	X	....	....
Mr. Larson	....	X	....	Mr. Linder	X	....	....
Mr. Emanuel	....	X	....	Mr. Nunes	X	....	....
Mr. Blumenauer	....	X	....	Mr. Tiberi	X	....	....
Mr. Kind	....	X	....	Mr. Porter	X	....	....
Mr. Pascrell	....	X	....				
Ms. Berkley	....	X	....				
Mr. Crowley	....	X	....				
Mr. Van Hollen	....	X	....				
Mr. Meek	....	X	....				
Ms. Schwartz	....	X	....				
Mr. Davis	....	X	....				

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 6049 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2008–2018:

ESTIMATED REVENUE EFFECTS OF H.R. 6049,
THE "RENEWABLE ENERGY AND JOB CREATION ACT OF 2008,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2008 - 2018

[Millions of Dollars]

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
I. Energy Tax Incentives														
A. Clean Energy Production Incentives														
1. Extension and modification of the section 45 renewable energy credit - extend by three years (one year for wind facilities) the section 45 placed- in-service period (excluding refined coal, Indian coal, and solar facilities); place cap on annual allowable credit; add marine and hydrokinetic energy as qualified energy resource; allow new biomass units to qualify for credit; clarify definition of trash combustion facilities; treat sales of electricity to regulated public utilities as sales to unrelated persons, and change definition of qualified hydropower production (sunset 12/31/09 and 12/31/11)..	[1]	---	-158	-375	-573	-728	-796	-826	-852	-881	-899	-956	-2,632	-7,046
2. Extension and modification of the section 48 energy credit - add CHP at 10% credit, increase fuel cell credit cap to $1,500 per half KW, waive public utility rule, and allow against AMT (sunset 12/31/14).......................................	[2]	-38	-125	-188	-224	-203	-194	-207	-114	-44	-28	-9	-974	-1,376
3. Extend and modify credit for residential energy efficient property - allow credit against AMT, raise solar electric property cap to $4,000; and add small wind ($4,000 cap) and geothermal ($2,000 cap) property (sunset 12/31/14).............	ea 12/31/07	-2	-49	-98	-101	-104	-108	-112	-92	---	---	---	-462	-666
4. Extension and modification of special rule to implement FERC and State electric restructuring policy (sunset 12/31/09)..................	[3]	-229	-290	-39	90	90	90	90	109	72	16	---	-287	---

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
5. New clean renewable energy bonds ($2 billion of bond allocation) [4]	bia DOE	[5]	-2	-8	-19	-36	-57	-76	-86	-88	-88	-88	-122	-548
6. Expansion and modification of the advanced coal project investment credit	DOE	-106	-331	-351	-307	-206	-103	-46	-10	9	14	14	-1,403	-1,422
7. Expansion and modification of coal gasification investment credit	DOE	Estimate Included in Line 6. Above												
8. Extend excise tax on coal at current rates (sunset 12/31/18)	DOE	---	---	---	---	---	---	203	271	271	271	271	---	1,287
9. Special rules for refund of coal excise taxes paid by certain coal producers and exporters [6]	DOE	-28	-232	16	14	12	8	5	3	3	---	---	-211	-199
10. Carbon audit of the tax code	DOE	No Revenue Effect												
Total of Clean Energy Production Incentives		-403	-1,187	-1,043	-1,120	-1,175	-1,160	-969	-771	-658	-714	-768	-6,091	-9,970
B. Transportation and Domestic Fuel Security Provisions														
1. Inclusion of cellulosic biofuel in bonus depreciation	ppisa DOE in tyea DOE	---	-1	-2	-1	---	---	1	1	1	---	---	-3	---
2. Extension and modification of credits for biodiesel and renewable diesel:														
a. Extend biodiesel and make $1.00 per gallon credit available to all biodiesel (sunset 12/31/09)	fpsoua 12/31/08	---	-370	-137	---	---	---	---	---	---	---	---	-507	-507
b. Extend renewable diesel through 12/31/09; eliminate thermal depolymerization requirement; disallow credit to renewable diesel co-produced with petroleum products	fpsoua 12/31/08 & 2/13/08	---	50	-5	---	---	---	---	---	---	---	---	45	45
c. Qualify biomass jet fuel for renewable diesel credit	fpsoua 12/31/08	---	[5]	[5]	---	---	---	---	---	---	---	---	[5]	[5]
3. Deny certain fuel credits for fuels produced and used outside the United States	[7]	8	34	16	3	---	---	---	---	---	---	---	61	61
4. Credit for plug-in electric drive vehicles; nonbusiness alternative motor vehicle credit treated as personal credit	tyba 12/31/08 & tyba 12/31/07	---	-1	-4	-28	-128	-150	-194	-242	-141	-102	-65	-311	-1,056
5. Exclusion from heavy vehicles excise tax for idling reduction units and advanced insulation	DOE	-1	-2	-3	-5	-7	-9	-10	-12	-14	-15	-17	-28	-96
6. Restructure New York Liberty Zone incentives (credits begin 2009 with maximum of $115 million per year through 2018 and $425 million in 2019 and 2020; New York Liberty Zone incentives sunset date of enactment) [8]	DOE	5	-86	-107	-116	-116	-116	-116	-116	-116	-116	-116	-536	-1,117

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
7. Extend transportation fringe benefit to bicycle commuters	tyba 12/31/08	---	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10
8. Extension and modification of alternative fuel vehicle refueling property credit (sunset 12/31/10)	[9]	-5	-15	-60	-47	-19	-13	-8	1	3	3	4	-159	-156
Total of Transportation and Domestic Fuel Security Provisions		7	-392	-303	-195	-271	-289	-328	-369	-268	-231	-195	-1,443	-2,836
C. Energy Conservation and Efficiency Provisions														
1. Qualified energy conservation bonds ($3.0 billion allocation) [4]	bia DOE	-2	-24	-66	-102	-119	-119	-119	-119	-119	-119	-119	-432	-1,027
2. Extension and modification of credit for energy efficiency improvements to existing homes (sunset 12/31/08)	ppisa 12/31/07	-212	-849	---	---	---	---	---	---	---	---	---	-1,061	-1,061
3. Extension of energy efficient commercial buildings deduction (sunset 12/31/13)	DOE	---	-113	-183	-193	-197	-201	-59	17	15	13	10	-888	-891
4. Extension and modification of energy efficient appliance credit	apa 12/31/07	-74	-108	-65	-36	-26	-11	-2	---	---	---	---	-320	-323
5. 10-year applicable recovery period for qualified smart electric distribution property, 150 declining balance method	ppisa DOE	---	-5	-18	-35	-53	-71	-90	-115	-144	-177	-213	-182	-921
6. Extend qualified green building and sustainable design project bonds ($2 billion authority) (sunset 9/30/12)	DOE	---	---	-1	-3	-5	-6	-6	-6	-6	-6	-6	-15	-45
Total of Energy Conservation and Efficiency Provisions		-288	-1,099	-333	-369	-400	-408	-276	-223	-254	-289	-328	-2,898	-4,268
Total of Energy Tax Incentives		**-684**	**-2,678**	**-1,679**	**-1,684**	**-1,846**	**-1,857**	**-1,573**	**-1,363**	**-1,180**	**-1,234**	**-1,291**	**-10,432**	**-17,074**
II. One-Year Extension of Temporary Provisions														
A. Extensions Primarily Affecting Individuals														
1. Deduction for State and local general sales taxes (sunset 12/31/08)	tyba 12/31/07	---	-1,529	-213	---	---	---	---	---	---	---	---	-1,742	-1,742
2. Deduction for qualified tuition and related expenses (sunset 12/31/08)	tyba 12/31/07	-174	-2,430	---	---	---	---	---	---	---	---	---	-2,603	-2,603
3. Treatment of certain dividends of regulated investment companies (sunset 12/31/08)	[10]	-10	-61	---	---	---	---	---	---	---	---	---	-71	-71
4. Tax-free distributions from IRAs to certain public charities from age 70 1/2 or older, not to exceed $100,000 per taxpayer per year (sunset 12/31/08)	Da 12/31/07	-143	-150	-15	-16	-18	-18	-19	-20	-21	-22	-23	-360	-465
5. Above-the-line deduction of up to $250 for teacher classroom expenses (sunset 12/31/08)	tyba 12/31/07	-3	-201	---	---	---	---	---	---	---	---	---	-204	-204

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
6. Extend election to include combat pay in earned income for purposes of the earned income credit (sunset 12/31/08)........................	tyba 12/31/07	---	-20	---	---	---	---	---	---	---	---	---	-20	-20
7. Use of qualified mortgage bonds to finance residences for veterans without regard to first-time homebuyer requirement (sunset 12/31/08)........................	bia 12/31/07	-3	-10	-16	-16	-16	-16	-16	-16	-16	-16	-16	-77	-158
8. Penalty-free withdrawals from retirement plans for individuals called to active duty (sunset 12/31/08)........................	tyba 12/31/07	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]
9. Estate tax look-through for certain RIC stock held by nonresidents (sunset 12/31/08)...............	dda 12/31/07						Negligible Revenue Effect							
10. Extend the treatment of RICs as "qualified investment entities" under section 897 (FIRPTA) (sunset 12/31/08)........................	1/1/08	-5	-5	---	---	---	---	---	---	---	---	---	-10	-10
11. Reinstate the exclusion from gross income for amounts received under qualified group legal services plans (sunset 12/31/08)........................	tyba 12/31/07	-4	-36	---	---	---	---	---	---	---	---	---	-40	-40
Total of Extensions Primarily Affecting Individuals		-342	-4,442	-244	-32	-34	-34	-35	-36	-37	-38	-39	-5,127	-5,313
B. Extensions Primarily Affecting Businesses														
1. Tax credit for R&E expenses (sunset 12/31/08)........................	apoia 12/31/07	-2,817	-2,161	-863	-729	-630	-531	-431	-268	-134	-99	-99	-7,729	-8,761
2. Indian employment tax credit (sunset 12/31/08)........................	tyba 12/31/07	-21	-28	-9	-1	---	---	---	---	---	---	---	-59	-59
3. New markets tax credit (sunset 12/31/09)............	ima 12/31/08	---	-106	-168	-170	-192	-205	-202	-202	-77	[11]	7	-841	-1,315
4. 50% tax credit for certain expenditures for maintaining railroad tracks (sunset 12/31/08)......	epoid tyba 12/31/07	-83	-83	[5]	[5]	---	---	---	---	---	---	---	-165	-165
5. 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property (sunset 12/31/08)........................	ppisa 12/31/07	-2,102	-2,099	-192	-181	-168	-98	-84	-154	-154	-157	-10	-4,840	-5,399
6. 7-year recovery period for certain motorsports racing track facilities (sunset 12/31/08)........................	ppisa 12/31/07	-49	-12	-6	-3	[5]	-1	-1	3	7	7	7	-72	-48
7. Accelerated depreciation for business property on Indian reservations (sunset 12/31/08)............	ppisa 12/31/07	-132	-230	-85	19	63	98	80	43	5	-8	-5	-267	-152
8. Expensing of "Brownfields" environmental remediation costs (sunset 12/31/08)....................	epoia 12/31/07	-227	-140	21	25	29	26	23	20	17	15	14	-267	-178
9. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico (sunset 12/31/08)........................	tyba 12/31/07	-58	-58	---	---	---	---	---	---	---	---	---	-116	-116

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
10. Modify tax treatment of certain payments under existing arrangements to controlling exempt organizations (sunset 12/31/08)..............	proaa 12/31/07	-14	-21	[5]	---	---	---	---	---	---	---	---	-35	-35
11. Extension and modification of credit to holders of qualified zone academy bonds - allocations of bond authority (sunset 12/31/08)............	oia 12/31/07	-1	-6	-13	-19	-24	-25	-24	-23	-23	-22	-22	-88	-202
12. Tax Incentives for Investment in the District of Columbia (sunset 12/31/08)............................	tyba 12/31/07	-33	-29	-6	-4	-6	-10	-13	-10	-8	-6	-4	-88	-129
13. Extension of economic development credit for American Samoa (sunset 12/31/08)...............	tyba 12/31/07	-6	-10	---	---	---	---	---	---	---	---	---	-16	-16
14. Enhanced charitable deduction for contributions of food inventory (sunset 12/31/08)...................	cma 12/31/07	-39	-32	---	---	---	---	---	---	---	---	---	-71	-71
15. Enhanced charitable deduction for contributions of book inventories to public schools (sunset 12/31/08)....................................	cma 12/31/07	-17	-14	---	---	---	---	---	---	---	---	---	-31	-31
16. Enhanced charitable deduction for qualified computer contributions (sunset 12/31/08)............	cmd tyba 12/31/07	-143	-117	---	---	---	---	---	---	---	---	---	-260	-260
17. Basis adjustment to stock of S corporations making charitable contributions of property (sunset 12/31/08)..	tyba 12/31/07	-18	-19	-2	-3	-3	-3	-3	-3	-3	-3	-2	-48	-62
18. Extension of WOTC for Hurricane Katrina employees (sunset 08/28/08)...............................	8/28/07	-4	-6	-3	-1	-1	[5]	[5]	---	---	---	---	-16	-16
19. Exception under subpart F for active financing income (sunset 12/31/09)....................................	tyba 12/31/08	---	-960	-3,010	---	---	---	---	---	---	---	---	-3,970	-3,970
20. Look-through treatment of payments between related CFCs under foreign personal holding company income rules (sunset 12/31/09)............	tyba 2008	---	-143	-468	---	---	---	---	---	---	---	---	-611	-611
21. Extension of treatment of certain qualified film and television productions (sunset 12/31/09).......	qfatpca 12/31/08	---	-8	-47	-8	20	11	6	5	4	4	3	-32	-10
Total of Extensions Primarily Affecting Businesses		-5,764	-6,282	-4,851	-1,075	-912	-738	-649	-589	-366	-269	-111	-19,622	-21,606
C. Other Extensions														
1. Authority to disclose information related to terrorist activities made permanent......................	da 12/31/07						*No Revenue Effect*							
2. Permanent authority for undercover operations...	1/1/08	[11]	[11]	[11]	[11]	[11]	[11]	[11]	[11]	[11]	[11]	[11]	[11]	[11]
3. Permanent extension of disclosure authority to the Department of Veterans Affairs [12]............	10/01/08						*No Revenue Effect*							
4. Increase in Limit on Cover Over of Rum Excise Tax Revenues (from $10.50 to $13.25 per proof gallon) to Puerto Rico and the Virgin Islands (sunset 12/31/08) [6] [12].......................	abiUSa 12/31/07	-76	-20	---	---	---	---	---	---	---	---	---	-96	-96

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
5. Extension of parity in the application of certain limits to mental health benefits (sunset 12/31/08) [12]	bfsfo/a DOE	---	-15	-10	---	---	---	---	---	---	---	---	-25	-25
Total of Other Extensions		-76	-35	-10	[11]	[11]	[11]	[11]	[11]	[11]	[11]	[11]	-121	-121
Total of One-Year Extensions of Temporary Provisions		**-6,182**	**-10,759**	**-5,105**	**-1,107**	**-946**	**-772**	**-684**	**-625**	**-403**	**-307**	**-150**	**-24,870**	**-27,040**
III. Additional Tax Relief														
A. Individual Tax Relief														
1. Additional standard deduction for real property taxes for nonitemizers equal to the lesser of actual property tax or $350/$700 in 2008	tyba 12/31/07	---	-1,174	---	---	---	---	---	---	---	---	---	-1,174	-1,174
2. Set refundable threshold for the child tax credit at $8,500 (sunset 12/31/08)	tyba 12/31/07	---	-3,129	---	---	---	---	---	---	---	---	---	-3,129	-3,129
3. Increase of AMT refundable credit amount for individuals with long-term unused credits for prior year minimum tax liability:														
a. Remove AGI limits from refundable AMT credit and change usage rate of unused credit from 20% to 50%	tyba 12/31/07	-408	-1,465	-262	200	276	191	120	106	99	91	84	-1,467	-966
b. Abatement of incentive stock option AMT liability, penalty, and interest	DOE	-75	-273	-151	-151	-136	-114	-99	-91	-84	-76	-76	-900	-1,325
B. Business Related Provisions														
1. Uniform treatment of attorney-advanced expenses and court costs in contingency fee cases	tyba DOE	---	-110	-422	-341	-250	-148	-65	-67	-65	-61	-42	-1,271	-1,572
2. Modification of treatment of certain qualified film and television productions (sunset 12/31/09)	qfatpca 12/31/07	-17	-268	-51	100	43	30	25	22	18	15	12	-163	-71
3. Modification of domestic production activities deduction for film production under section 199	tyba 2007	-3	-15	-25	-34	-37	-39	-42	-45	-49	-52	-56	-153	-397
C. Modification of Penalty on Understatement of Taxpayer's Liability by Tax Return Preparer	rpa 5/25/07	---	-1	-1	-2	-2	-2	-2	-2	-3	-3	-3	-9	-22
D. Extension and Expansion of Certain GO Zone Incentives														
1. Election to amend returns with hurricane-related casualty losses without interest for Louisiana, Mississippi, Texas, Florida, and Alabama	DOE	-784	-218	-20	---	---	---	---	---	---	---	---	-1,022	-1,022

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
2. Waiver of deadline on construction of GO Zone property eligible for bonus depreciation.....	ppisa 12/31/07	---	-92	-173	-72	-6	-1	3	6	8	10	10	-344	-308
3. Inclusion of certain counties in GO Zone for purposes of tax-exempt bond financing..............	[13]	[5]	-2	-1	---	---	---	---	---	---	---	---	-3	-3
Total of Additional Tax Relief		**-1,287**	**-6,747**	**-1,106**	**-300**	**-112**	**-83**	**-60**	**-71**	**-76**	**-76**	**-71**	**-9,635**	**-9,989**
IV. Revenue Provisions														
A. Modify tax Treatment of Offshore Nonqualified Deferred Compensation................	spa 12/31/08 [14]	---	1,849	2,539	2,313	2,275	2,028	1,513	942	453	7,319	3,057	11,003	24,289
B. Delay Implementation of Worldwide Allocation of Interest expense until 2019...........	tyba 12/31/08	---	999	2,736	2,845	2,958	3,077	3,203	3,328	3,461	3,610	3,745	12,615	29,962
C. Modify Timing for Corporate Estimated Tax Payments [15]..	DOE	---	---	---	---	-9,934	31,312	-21,378	---	---	---	---	21,378	---
Total of Revenue Provisions		---	**2,848**	**5,275**	**5,158**	**-4,701**	**36,417**	**-16,662**	**4,270**	**3,914**	**10,929**	**6,802**	**44,996**	**54,251**
NET TOTAL		**-8,153**	**-17,336**	**-2,615**	**2,067**	**-7,605**	**33,705**	**-18,979**	**2,211**	**2,255**	**9,312**	**5,290**	**59**	**148**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be June 1, 2008.

Legend for "Effective" column:

abiUSa = articles brought into the United States after
apa = appliances produced after
apoia = amounts paid or incurred after
bfsfo/a = benefits for services furnished on or after
bia = bonds issued after
cma = contributions made after
cmd = contributions made during
da = disclosures after
Da = distributions after
dda = decedents dying after
DOE = date of enactment
ea = expenditures after
epoia = expenditures paid or incurred after
epoid = expenses paid or incurred during
fpsoua = fuels produced, sold, or used after
frap = Federal regulations are prescribed
ima = investments made after
oia = obligations issued after
pa = payments after
ppisa = property placed in service after
proaa = payments received or accrued after
qfatpca = qualified film and television productions commencing after
rpa = returns prepared after
spa = services performed after
tyba = taxable years beginning after

[Footnotes for the Table appear on the following page]

Footnotes for the Table:

[1] The proposal is generally effective for property originally placed in service after December 31, 2008. The repeal of the credit phaseout is effective for taxable years ending after December 31, 2008. The production credit for marine renewables is effective for electricity produced and sold after the date of enactment in taxable years ending after the date of enactment.

[2] The provision extending the 30% credit is generally effective on the date of enactment. The CHP credit and the increase in the credit cap for fuel cells apply to periods after the date of enactment, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code (the "Code") (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990). The provision relating to the restrictions on public utility property applies to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990). The allowance of the credit against the alternative minimum tax is effective for taxable years beginning after the date of enactment.

[3] The extension and change in definition applies to transactions after December 31, 2007. The change in timing of transfer of operational control is effective as if included in the American Jobs Creation Act of 2004. The exception for property located outside the United States applies to transactions after the date of enactment.

[4] Credit rate set at 70 percent of the credit rate that would allow bonds to be issued without discount or premium.

[5] Loss of less than $500,000.

[6] Estimate is preliminary and subject to change.

[7] Effective for claims for credit or payment made on or after May 15, 2008.

[8] Estimate includes an increase in outlays of $1,150 million for fiscal years 2008 through 2018.

[9] Effective for property placed in service after the date of enactment, in taxable years ending after such date.

[10] Effective for dividends with respect to taxable years of regulated investment companies beginning after December 31, 2007.

[11] Gain of less than $500,000.

[12] Estimate provided by the Congressional Budget Office.

[13] Effective as if included in the provisions of the Gulf Opportunity Zone Act of 2005 to which it relates.

[14] In the case of compensation attributable to services performed on or before December 31, 2008, effective for last tax year beginning before 2018.

[15] Reduce to 100 percent the required corporate estimated tax payments factor for corporations with assets of at least $1 billion for payments due in July, August, and September 2012; increase by 37.75 percentage points such payments due in July, August, and September 2013.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with 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 income tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 19, 2008.

Hon. Charles B. Rangel,
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. 6049, the Energy and Tax Extenders Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Zachary Epstein.

Sincerely,

Robert A. Sunshine
(For Peter R. Orszag, Director).

Enclosure.

H.R. 6049—Energy and Tax Extenders Act of 2008

Summary: H.R. 6049 would amend tax law as it relates to a variety of expiring provisions, incentives for renewable energy investments, the treatment of income from deferred compensation, and the allocation of business interest expenses. The Joint Committee on Taxation (JCT) and the Congressional Budget Office estimate that enacting H.R. 6049 would decrease revenues by $8.1 billion in 2008 and increase revenues by $5.8 billion over the 2008–2018 period. CBO and JCT estimate that the bill would increase direct spending by $0.1 billion in 2008 and by $5.6 billion over the 2008–2018 period. On net, the bill would decrease budget deficits (or increase surpluses) by $0.1 billion over the 2008–2018 period.

CBO and JCT have reviewed the bill and determined that it contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO has reviewed the nontax provisions of the bill and determined that they contain no private-sector mandates as defined in UMRA. JCT has reviewed the tax provisions of the bill and determined that they contain three private-sector mandates: the extension of the excise tax on coal at current rates, the immediate tax on deferred compensation paid by certain foreign entities, and the delay in implementing worldwide allocation of interest expense unti1 2019. JCT estimates that the costs required to comply with the mandates would exceed the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation) in each of the next 10 years (2009 through 2018).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 6049 is shown in the following table. The costs of this legislation fall within budget functions 600 (income security), 800 (general government), and all other functions that contain salaries and expenses.

	By fiscal year, in millions of dollars—												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008–2013	2008–2018
CHANGES IN REVENUES													
Energy Tax Provisions	−662	−2,386	−1,564	−1.569	−1,731	−1,742	−1,458	−1,248	−1,065	−1,119	−1,176	−9,658	−15,725
Extension and Modification of Certain Provisions	−6,106	−10,722	−5,105	−1,107	−946	−772	−684	−625	−403	−307	−150	−24,757	−26,927
Immediate Tax on Deferred Compensation	0	1,849	2,539	2,313	2,275	2,028	1,513	942	453	7,319	3,057	11,003	24,289
Delay in Worldwide Interest Allocation Rules	0	999	2,736	2,845	2,958	3,077	3,203	3,328	3,461	3,610	3,745	12,615	29,962
Corporate Estimated Tax Payments Due in 2012 and 2013	0	0	0	0	−9,934	31,312	−2l,378	0	0	0	0	21,378	0
Other Provisions	−1,287	−2,739	−949	−300	−112	−83	−60	1	6	−76	−71	−5470	−5824
Total Changes in Revenues	−8,055	−12,999	−2,343	2,182	−7,490	33,820	−18,864	2,326	2,370	9,427	5,405	5,111	5,775
On-budget	−8,055	−12,994	−2,341	2,182	−7,490	33,820	−18,864	2,326	2,370	9,427	5,405	5,118	5,782
Off budget	0	−5	−2	0	0	0	0	0	0	0	0	−7	−7
CHANGES IN DIRECT SPENDING (OUTLAYS) [1]													
Refundable Child Credit	0	3,129	0	0	0	0	0	0	0	0	0	3,129	3,129
Refundable AMT Credit	0	879	157	0	0	0	0	0	0	0	0	1,036	1,036
Refunds for Excise Tax on Exported Coal	22	177	0	0	0	0	0	0	0	0	0	199	199
Funding for New York's Transportation Infrastructure	0	115	115	115	115	115	115	115	115	115	115	575	1,150
Include Combat Pay in Earned Income for Calculating the EIC	0	17	0	0	0	0	0	0	0	0	0	17	17
Payment of Tax on Distilled Spirits	76	20	0	0	0	0	0	0	0	0	0	96	96
Total Changes in Direct Spending	98	4,337	272	115	115	115	115	115	115	115	115	5,052	5,627
NET EFFECT ON THE BUDGET DEFICIT OR SURPLUS FROM CHANGES IN REVENUES AND DIRECT SPENDING													
Net Change in the Budget Deficit or Surplus [2]	−8,153	−17,336	−2,615	2,067	−7,605	33,705	−18,979	2,211	2,255	9,312	5,290	59	148
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Transportation Fringe Benefit													
Estimated Authorization Level	0	2	3	3	3	3	3	3	3	3	3	14	29
Estimated Outlays	0	2	3	3	3	3	3	3	3	3	3	14	29
Reports													
Estimated Authorization Level	*	2	*	*	0	0	0	0	0	0	0	2	2
Estimated Outlays	*	2	*	*	0	0	0	0	0	0	0	2	2
Total Changes in Spending Subject to Appropriation.													
Estimated Authorization Level	*	4	3	3	3	3	3	3	3	3	3	16	31

	By fiscal year, in millions of dollars—												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008–2013	2008–2018
Estimated Outlays	*	4	3	3	3	3	3	3	3	3	3	16	31

[1] For all direct spending changes, budget authority equals outlays.
[2] Negative numbers indicate increases in deficits (or decreases in surpluses); positive numbers indicate decreases in deficits (or increases in surpluses).

Sources: Congressional Budget Office and Joint Committee on Taxation.
Notes: AMT = alternative minimum tax; EIC = earned income credit; * = effect less than $500,000.

Basis of the estimate: JCT estimated the effects of H.R. 6049 on revenues, with the exception of one provision. CBO estimated the effects on revenues from the provision that would extend parity in the application of certain limits to mental health benefits. CBO and JCT estimated the effects on direct spending. For this estimate, CBO and JCT assume the legislation is enacted by June 1, 2008.

Revenues

Among other energy-related provisions, the bill extends for one year the tax credit for renewable energy production from various qualifying facilities, including wind, biomass, geothermal, and hydropower facilities, and adds facilities that generate electricity from renewable marine sources, such as tides and waves, to the list of those eligible for the production credit. Additionally, the bill would extend for one year the credit for energy-efficient improvements to a home, expand the advanced coal project and coal gasification investment credits, and provide a tax credit to purchasers of plug-in electric vehicles. JCT estimates that these and other energy-related provisions would reduce revenues by $15.7 billion over the 2008–2018 period.

H.R. 6049 would extend a number of other expiring tax provisions for one year, including the deductions from taxable income for state and local sales taxes and certain higher-education tuition expenses. The bill also would extend for one year the tax credit for businesses that incur certain research and experimentation expenses and the 15-year straight line cost recovery method for certain types of expenses associated with improvements to leased property or restaurants. In addition to extending and modifying various expiring tax laws, the bill would allow taxpayers who do not itemize their deductions to add up to $350 of their 2008 property taxes paid to their standard deduction ($750 in the case of a married couple filing a joint return). JCT estimates that these extensions and other provisions would reduce revenues by $32.8 billion over the 2008–2018 period.

The bill includes several provisions that would raise revenues over the 2008–2018 period. Such provisions include a delay until 2019 of the effective date of a provision enacted in the American Jobs Creation Act of 2004 that, starting in 2009, allows businesses to use an alternative method for allocating their interest expense between the United States and foreign sources. The bill also would modify the rules related to the taxation of deferred compensation. JCT estimates that these provisions would increase revenues by $54.3 billion over the 2008–2018 period. The bill also would shift revenues out of 2012 and 2014 and into 2013 by adjusting the portion of corporate estimated tax payments due in July through September of 2012 and 2013.

Direct spending

Refundable Tax Credits. Individuals may claim a tax credit for qualifying children under the age of 17. In the event that the credit exceeds a taxpayer's liability in a tax year, the taxpayer is allowed a refundable credit for that excess amount subject to certain limitations. The amount of that refundable credit is recorded as an outlay in the budget. Under H.R. 6049, those limitations would be loosened. Furthermore, the bill would modify the refundable credit associated with payments of the AMT. Under current law, an individual who pays the alternative minimum tax in any tax year may be eligible for a refundable tax credit in future years. H.R. 6049 would allow for an accelerated use of unused credits from previous years. JCT estimates that these provisions would increase outlays for the refundable credits by $4.2 billion over the 2008–2018 period.

Refunds for Excise Tax on Exported Coal. The bill would allow coal producers and exporters to claim a refund for excise taxes imposed on coal exported from the United States. Those taxes have been ruled unconstitutional. Refunds of the principal amount would be treated as a reduction in revenues, while refunds of the interest on those payments would be treated as direct spending. JCT estimates that refunding such payments would decrease revenues and increase outlays over the 2008–2009 period by $0.1 billion and $0.2 billion, respectively. That estimate is based on two factors: the number of outstanding court cases involving coal producers and exporters currently seeking repayment of coal export taxes (as well as interest on those earlier payments), and the average court settlement for previous cases. JCT assumes that all refunds for pending cases would be paid in 2008 and 2009. Payments in those years accelerate some settlements that would have occurred in later years; as a result, JCT estimates that between 2010 and 2018, revenues would increase by $0.1 billion, offsetting the revenue decrease in 2008 and 2009.

Funding for New York's Transportation Infrastructure. The bill would provide the city and the state of New York with tax credits for a certain amount of their expenditures made for transportation infrastructure related to the Liberty Zone. The credits could be used against the income taxes that the jurisdictions withhold from the paychecks of their employees and remit to the Internal Revenue Service. Because the jurisdictions do not themselves pay federal income taxes, the credits would essentially be grants and are treated as direct spending. JCT estimates that instituting the credits would increase direct spending by $1.2 billion over the 2008–2018 period.

Include Combat Pay as Earned Income. The bill would extend the option for individuals to include combat pay in earned income for purposes of the earned income credit through December 31, 2008. JCT estimates that this change would increase outlays from the refundable credit by $17 million in 2009.

Payment of Tax on Distilled Spirits. An excise tax of $13.50 per proof gallon is assessed on distilled spirits produced or brought into the United States. The treasuries of Puerto Rico and the Virgin Islands have received $10.50 per proof gallon of the excise tax on rum imported into the United States from any country or those territories (that amount is known as the tax cover over) since the higher payment rate of $13.25 per proof gallon expired on December 31, 2007. Section 254 would increase the cover over to $13.25 per proof gallon for assessments made between January 1, 2008, and December 31, 2008. Those payments to Puerto Rico and the Virgin Islands are recorded in the budget as outlays. Based on recent tax and payment data, CBO estimates that this provision would increase direct spending by $96 million over the 2008–2009 period.

Spending subject to appropriation

Transportation Fringe Benefits. The bill would expand the use of transportation fringe benefits for federal employees to include bicycle commuters. The provision would allow up to $20 per month for repair expenses, equipment costs, and storage costs for employees who regularly use a bicycle for commuting purposes. Based on information from the U.S. Census Bureau, CBO estimates that about 11,000 federal employees currently commute to work via bicycle. Assuming appropriation of the necessary amounts, CBO estimates that implementing this provision would cost $2 million in 2009 and $14 million over the 2009–2013 period.

Reports. H.R. 6049 would require two reports to the Congress by the National Academy of Sciences. One would evaluate the tax provisions in the Internal Revenue Code that affect carbon and greenhouse gas emissions, while the other would concern biofuels, including their present status and future potential. Based on the costs of similar studies and assuming appropriation of the specified and necessary amounts, CBO estimates that those studies would cost $2 million over the 2008–2012 period.

Intergovernmental and private-sector impact: CBO and JCT have reviewed the bill and determined that it contains no intergovernmental mandates as defined in UMRA. CBO has reviewed the nontax provisions of the bill and determined that they contain no private-sector mandates as defined in UMRA. JCT has determined that the tax provisions of the bill contain three private-sector mandates as defined in UMRA. The bill would extend the excise tax on coal at its current rates, adjust the rules for taxation of deferred compensation, and delay the implementation of worldwide interest allocation rules. JCT estimates the costs required to comply with the mandates would exceed the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation) in each of the next 10 years.

Estimate prepared by: Federal Revenues: Zachary Epstein and Shinobu Suzuki; Federal Spending: Matthew Pickford and Dwayne Wright; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Amy Petz.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Assistant Director for Budget Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The temporary nature and limited scope of the tax reductions in this bill limit the amount of probable change in economic behavior that could be expected. The revenue raising provisions affect primarily repatriation or timing of on-shore realization of certain specialized sources of income, which is accounted for in the conventional estimate. Therefore, the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

E. PAY-GO RULE

In compliance with clause 10 of rule XXI of the Rules of the House of Representatives, the following statement is made concerning the effects of the bill, H.R. 6049, as reported: the provisions of the bill affecting revenues have the net effect of not increasing the deficit or reducing the surplus for either: (1) the period comprising the current fiscal and the five fiscal years beginning with the fiscal year that ends in the following calendar year; and (2) the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year.

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 of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on taxpayers that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

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. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises. . ."), and from the 16th Amendment to the Constitution.

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill contains four unfunded Federal mandates on the private sector: (1) extend excise tax on coal at current rates (sunset 12/31/18); (2) modification of the incentives relating to alcohol fuels (VEETC) 45 cents; (3) immediate tax on deferred compensation paid by certain foreign entities; and (4) delay implementation of worldwide allocation of interest expense until 2019.

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

G. LIMITED TAX BENEFITS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that rule.

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, 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 H. NONREFUNDABLE CREDIT TO HOLDERS OF CERTAIN BONDS.】

SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS.

SUBPART I. QUALIFIED TAX CREDIT BONDS.

* * * * * * *

Subpart A—Nonrefundable Personal Credits

* * * * * * *

SEC. 23. ADOPTION EXPENSES.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

(4) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) * * *

(B) the sum of the credits allowable under this subpart (other than this section *and section 25D*) and section 27 for the taxable year.

* * * * * * *

SEC. 24. CHILD TAX CREDIT.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

(3) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) * * *

(B) the sum of the credits allowable under this subpart (other than this section and sections 23 【and 25B】*, 25B, 25D, and 30D*) and section 27 for the taxable year.

* * * * * * *

(d) PORTION OF CREDIT REFUNDABLE.—

(1) IN GENERAL.—The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

(A) * * *

(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 26(a)(2) or subsection (b)(3), as the case may be, were increased by the greater of—

(i) 15 percent of so much of the taxpayer's earned income (within the meaning of section 32) which is taken into account in computing taxable income for the taxable year as exceeds $10,000 *($8,500 in the case of taxable years beginning in 2008)*, or

* * * * * * *

SEC. 25. INTEREST ON CERTAIN HOME MORTGAGES.

(a) * * *

* * * * * * *

(e) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

(1) CARRYFORWARD OF UNUSED CREDIT.—

(A) * * *

* * * * * * *

(C) APPLICABLE TAX LIMIT.—For purposes of this paragraph, the term "applicable tax limit" means—

(i) * * *

(ii) in the case of a taxable year to which section 26(a)(2) does not apply, the limitation imposed by section 26(a)(1) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25B, 25D, *30D,* and 1400C).

* * * * * * *

SEC. 25B. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS.

(a) * * *

* * * * * * *

(g) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(1) * * *

(2) the sum of the credits allowable under this subpart (other than this section and ⟦section 23⟧ *sections 23, 25D, and 30D*) and section 27 for the taxable year.

SEC. 25C. NONBUSINESS ENERGY PROPERTY.

(a) * * *

* * * * * * *

(d) RESIDENTIAL ENERGY PROPERTY EXPENDITURES.—For purposes of this section—

(1) * * *

(2) QUALIFIED ENERGY PROPERTY.—

(A) * * *

* * * * * * *

⟦(C) REQUIREMENTS FOR STANDARDS.—The standards and requirements prescribed by the Secretary under subparagraph (B)—

[(i) in the case of 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, and

[(ii) in the case of geothermal heat pumps—

[(I) shall be based on testing under the conditions of ARI/ISO Standard 13256–1 for Water Source Heat Pumps or ARI 870 for Direct Expansion GeoExchange Heat Pumps (DX), as appropriate, and

[(II) shall include evidence that water heating services have been provided through a desuperheater or integrated water heating system connected to the storage water heater tank.]

(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) * * *

* * * * * * *

[(C) a geothermal heat pump which—

[(i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3,

[(ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and

[(iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5,]

[(D)] *(C)* a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2006, [and]

[(E)] *(D)* a natural gas, propane, or oil water heater which has an energy factor of at least 0.80[.], *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.

* * * * * * *

(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.

* * * * * * *

(g) TERMINATION.—This section shall not apply with respect to any property placed in service after ❲December 31, 2007❳ *December 31, 2008*.

SEC. 25D. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

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

(1) * * *

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during such year, ❲and❳

(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year❲.❳*,*

(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year, and

(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.

(b) LIMITATIONS.—

(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed—

(A) ❲$2,000❳ *$4,000* with respect to any qualified solar electric property expenditures,

(B) $2,000 with respect to any qualified solar water heating property expenditures, ❲and❳

(C) $500 with respect to each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made❲.❳*,*

(D) $500 with respect to each half kilowatt of capacity (not to exceed $4,000) of wind turbines for which qualified small wind energy property expenditures are made, and

(E) $2,000 with respect to any qualified geothermal heat pump property expenditures.

* * * * * * *

❲(c) CARRYFORWARD OF UNUSED CREDIT.—

❲(1) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

[(2) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, and 25B), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.]

(c) LIMITATION BASED ON AMOUNT OF TAX; CARRYFORWARD OF UNUSED CREDIT.—

(1) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

(2) CARRYFORWARD OF UNUSED CREDIT.—

(A) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

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

(1) * * *

*   *   *   *   *   *   *

(4) QUALIFIED SMALL WIND ENERGY PROPERTY EXPENDITURE.—The term "qualified small wind energy property expenditure" means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(5) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY EXPENDITURE.—

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

(B) QUALIFIED GEOTHERMAL HEAT PUMP PROPERTY.—The term "qualified geothermal heat pump property" means any equipment which—

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

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

(e) SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(4) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by two or more individuals the following rules shall apply:

(A) MAXIMUM EXPENDITURES.—The maximum amount of expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be—

(i) **[**$6,667**]** *$13,333* in the case of any qualified solar electric property expenditures,

(ii) $6,667 in the case of any qualified solar water heating property expenditures, **[**and**]**

(iii) $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made**[**.**]***,*

(iv) $1,667 in the case of each half kilowatt of capacity (not to exceed $13,333) of wind turbines for which qualified small wind energy property expenditures are made, and

(v) $6,667 in the case of any qualified geothermal heat pump property expenditures.

* * * * * * *

(g) TERMINATION.—The credit allowed under this section shall not apply to property placed in service after **[**December 31, 2008**]** *December 31, 2014*.

SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

(a) LIMITATION BASED ON AMOUNT OF TAX.—

(1) IN GENERAL.—The aggregate amount of credits allowed by this subpart (other than sections 23, 24, **[**and 25B**]** *25B, 25D, and 30D*) for the taxable year shall not exceed the excess (if any) of—

(A) * * *

* * * * * * *

(b) REGULAR TAX LIABILITY.—For purposes of this part—

(1) * * *

(2) EXCEPTION FOR CERTAIN TAXES.—For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) * * *

* * * * * * *

(U) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses), [and]

(V) subsections (a)(1)(B)(i) and (b)(4)(A) of section 409A (relating to interest and additional tax with respect to certain deferred compensation)[.]*, and*

(W) section 457A(c)(1)(B) (relating to determinability of amounts of compensation).

* * * * * * *

Subpart B—Other Credits

* * * * * * *

SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) * * *

* * * * * * *

(d) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

(1) * * *

* * * * * * *

(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

(A) * * *

* * * * * * *

(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.

* * * * * * *

(g) APPLICATION WITH OTHER CREDITS.—

(1) * * *

[(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 sections 27 and 30, over

[(B) the tentative minimum tax for the taxable year.]

(2) PERSONAL CREDIT.—The credit allowed under subsection (a) for any taxable year (after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

* * * * * * *

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] *50 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] *$50,000* in the case of a property of a character subject to an allowance for depreciation, and

* * * * * * *

(d) APPLICATION WITH OTHER CREDITS.—

(1) * * *

(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 [sections 27, 30, and 30B] *sections 27 and 30*, over

* * * * * * *

(g) TERMINATION.—This section shall not apply to any property placed in service—

(1) * * *

(2) in the case of any other property, after [December 31, 2009] *December 31, 2010*.

* * * * * * *

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 $3,000.

(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 $200, plus $200 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $2,000.

(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.—

(A) IN GENERAL.—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.

(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(ii) the sum of the credits allowable under subpart A (other than this section and sections 23 and 25D) and section 27 for the 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 (as defined in section 30(c)(2))—

(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 has a gross vehicle weight rating of less than 14,000 pounds,

(E) which has received a certificate of conformity under the Clean Air Act and meets or exceeds 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

(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) EXCEPTION.—The term "new qualified plug-in electric drive motor vehicle" 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.

(3) OTHER TERMS.—The terms "passenger automobile", "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) 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 the date of the enactment of this section, 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.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

(f) SPECIAL RULES.—

(1) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (c)).

(2) 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.

(3) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed 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 vehicle if the taxpayer elects to not have this section apply to such vehicle.

(5) PROPERTY USED BY TAX-EXEMPT ENTITY; INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Rules similar to the rules of paragraphs (6) and (10) of section 30B(h) shall apply for purposes of this section.

Subpart C—Refundable Credits

* * * * * * *

SEC. 32. EARNED INCOME.

(a) * * *

* * * * * * *

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

(2) EARNED INCOME.—

(A) * * *

(B) For purposes of subparagraph (A)—

(i) * * *

* * * * * * *

(vi) in the case of any taxable year ending—

(I) * * *

(II) before ⟦January 1, 2008⟧ *January 1, 2009*, a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.

* * * * * * *

Subpart D—Business Related Credits

* * * * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) * * *

(b) CURRENT YEAR BUSINESS CREDIT.—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) * * *

* * * * * * *

(30) the Hurricane Wilma employee retention credit determined under section 1400R(c), ⟦plus⟧

(31) the mine rescue team training credit determined under section 45N(a)⟦.⟧*, plus*

(32) the portion of the new qualified plug-in electric drive motor vehicle credit to which section 30D(c)(1) applies.

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) * * *

* * * * * * *

(3) SPECIAL RULES FOR NEW YORK LIBERTY ZONE BUSINESS EMPLOYEE CREDIT.—

(A) * * *

(B) NEW YORK LIBERTY ZONE BUSINESS EMPLOYEE CREDIT.—For purposes of this subsection, the term “New York Liberty Zone business employee credit” means the portion of work opportunity credit under section 51 determined under ⟦section 1400L(a)⟧ *section 1400K(a)*.

(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

(A) * * *

(B) SPECIFIED CREDITS.—For purposes of this subsection, the term “specified credits” means—

(i) * * *

* * * * * * *

(iii) the credit determined under section 45B, ⟦and⟧

(iv) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48, and

⟦(iv)⟧ *(v)* the credit determined under section 51.

* * * * * * *

SEC. 40. ALCOHOL USED AS FUEL.

(a) * * *

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(6) 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.

* * * * * * *

SEC. 40A. BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.

(a) * * *

(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 ❲50 cents❳ *$1.00* for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

* * * * * * *

(2) BIODIESEL CREDIT.—

(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is ❲50 cents❳ *$1.00* for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

(i) * * *

* * * * * * *

❲(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting "$1.00" for "50 cents".❳

❲(4)❳ *(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.

❲(5)❳ *(4)* SMALL AGRI-BIODIESEL PRODUCER CREDIT.—

(A) * * *

* * * * * * *

(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

(A) * * *

* * * * * * *

(C) PRODUCER CREDIT.—If—

(i) * * *

(ii) any person does not use such fuel for a purpose described in ❲subsection (b)(5)(B)❳ *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.

* * * * * * *

(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) * * *

(2) AGGREGATION RULE.—For purposes of the 15,000,000 gallon limitation under ⟦subsection (b)(5)(C)⟧ *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)(5)(C)⟧ *subsection (b)(4)(C)* and paragraph (1) shall be applied at the entity level and at the partner or similar level.

* * * * * * *

(f) RENEWABLE DIESEL.—For purposes of this title—

(1) * * *

⟦(2) EXCEPTIONS.—

⟦(A) RATE OF CREDIT.—Subsections (b)(1)(A) and (b)(2)(A) shall be applied with respect to renewable diesel by substituting "$1.00" for "50 cents".

⟦(B) NONAPPLICATION OF CERTAIN CREDITS.—Subsections (b)(3) and (b)(5) shall not apply with respect to renewable diesel.⟧

(2) EXCEPTION.—Subsection (b)(4) shall not apply with respect to renewable diesel.

(3) RENEWABLE DIESEL DEFINED.—The term "renewable diesel" means ⟦diesel fuel⟧ *liquid fuel* derived from biomass ⟦(as defined in section 45K(c)(3)) using a thermal depolymerization process⟧ which meets—

(A) * * *

(B) the requirements of the American Society of Testing and Materials D975 ⟦or D396⟧*, D396, or other equivalent standard approved by the Secretary*.

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). The term "renewable diesel" also means 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.

(g) TERMINATION.—This section shall not apply to any sale or use after ⟦December 31, 2008⟧ *December 31, 2009*.

SEC. 41. CREDIT FOR INCREASING RESEARCH ACTIVITIES.

(a) * * *

* * * * * * *

(h) TERMINATION.—

(1) IN GENERAL.—This section shall not apply to any amount paid or incurred—

(A) * * *

(B) after ⟦December 31, 2007⟧ *December 31, 2008*.

⟦(2) COMPUTATION OF BASE AMOUNT.—In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.⟧

(2) COMPUTATION OF CREDIT FOR TAXABLE YEAR IN WHICH CREDIT TERMINATES.—

(A) IN GENERAL.—In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year, the applicable base amount with respect to such taxable year shall be the amount which bears the same ratio to such applicable amount (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.

(B) APPLICABLE BASE AMOUNT.—For purposes of subparagraph (A), the term "applicable base amount" means, with respect to any taxable year—

(i) except as otherwise provided in this subparagraph, the base amount for the taxable year,

(ii) in the case of a taxable year with respect to which an election under subsection (c)(4) (relating to election of alternative incremental credit) is in effect, the average described in subsection (c)(1)(B) for the taxable year, and

(iii) in the case of a taxable year with respect to which an election under subsection (c)(5) (relating to election of alternative simplified credit) is in effect, the average qualified research expenses for the 3 taxable years preceding the taxable year.

* * * * * * *

SEC. 45. ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES, ETC.

(a) * * *

(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.]

(1) LIMITATION BASED ON INVESTMENT IN FACILITY.—

(A) IN GENERAL.—In the case of any qualified facility originally placed in service after December 31, 2009, the amount of the credit determined under subsection (a) for any taxable year with respect to electricity produced at such facility shall not exceed the product of—

(i) the applicable percentage with respect to such facility, multiplied by

(ii) the eligible basis of such facility.

(B) CARRYFORWARD OF UNUSED LIMITATION AND EXCESS CREDIT.—

(i) UNUSED LIMITATION.—If the limitation imposed under subparagraph (A) with respect to any facility for any taxable year exceeds the prelimitation credit for such facility for such taxable year, the limitation imposed under subparagraph (A) with respect to such facility for the succeeding taxable year shall be increased by the amount of such excess.

(ii) EXCESS CREDIT.—If the prelimitation credit with respect to any facility for any taxable year exceeds the limitation imposed under subparagraph (A) with respect to such facility for such taxable year, the credit determined under subsection (a) with respect to such facility for the succeeding taxable year (determined before the application of subparagraph (A) for such succeeding taxable year) shall be increased by the amount of such excess. With respect to any facility, no amount may be carried forward under this clause to any taxable year beginning after the 10-year period described in subsection (a)(2)(A)(ii) with respect to such facility.

(iii) PRELIMITATION CREDIT.—The term "prelimitation credit" with respect to any facility for a taxable year means the credit determined under subsection (a) with respect to such facility for such taxable year, determined without regard to subparagraph (A) and after taking into account any increase for such taxable year under clause (ii).

(C) APPLICABLE PERCENTAGE.—For purposes of this paragraph—

(i) IN GENERAL.—The term "applicable percentage" means, with respect to any facility, the appropriate percentage prescribed by the Secretary for the month in which such facility is originally placed in service.

(ii) METHOD OF PRESCRIBING APPLICABLE PERCENTAGES.—The applicable percentages prescribed by the Secretary for any month under clause (i) shall be percentages which yield over a 10-year period amounts of limitation under subparagraph (A) which have a

present value equal to 35 percent of the eligible basis of the facility.

(iii) METHOD OF DISCOUNTING.—The present value under clause (ii) shall be determined—

(I) as of the last day of the 1st year of the 10-year period referred to in clause (ii),

(II) by using a discount rate equal to the greater of 110 percent of the Federal long-term rate as in effect under section 1274(d) for the month preceding the month for which the applicable percentage is being prescribed, or 4.5 percent, and

(III) by taking into account the limitation under subparagraph (A) for any year on the last day of such year.

(D) ELIGIBLE BASIS.—For purposes of this paragraph—

(i) IN GENERAL.—The term "eligible basis" means, with respect to any facility, the sum of—

(I) the basis of such facility determined as of the time that such facility is originally placed in service, and

(II) the portion of the basis of any shared qualified property which is properly allocable to such facility under clause (ii).

(ii) RULES FOR ALLOCATION.—For purposes of subclause (II) of clause (i), the basis of shared qualified property shall be allocated among all qualified facilities which are projected to be placed in service and which require utilization of such property in proportion to projected generation from such facilities.

(iii) SHARED QUALIFIED PROPERTY.—For purposes of this paragraph, the term "shared qualified property" means, with respect to any facility, any property described in section 168(e)(3)(B)(vi)—

(I) which a qualified facility will require for utilization of such facility, and

(II) which is not a qualified facility.

(iv) SPECIAL RULE RELATING TO GEOTHERMAL FACILITIES.—In the case of any qualified facility using geothermal energy to produce electricity, the basis of such facility for purposes of this paragraph shall be determined as though intangible drilling and development costs described in section 263(c) were capitalized rather than expensed.

(E) SPECIAL RULE FOR FIRST AND LAST YEAR OF CREDIT PERIOD.—In the case of any taxable year any portion of which is not within the 10-year period described in subsection (a)(2)(A)(ii) with respect to any facility, the amount of the limitation under subparagraph (A) with respect to such facility shall be reduced by an amount which bears the same ratio to the amount of such limitation (determined without regard to this subparagraph) as such portion of the taxable year which is not within such period bears to the entire taxable year.

(F) ELECTION TO TREAT ALL FACILITIES PLACED IN SERVICE IN A YEAR AS 1 FACILITY.—At the election of the tax-

payer, all qualified facilities which are part of the same project and which are placed in service during the same calendar year shall be treated for purposes of this section as 1 facility which is placed in service at the mid-point of such year or the first day of the following calendar year.

(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), 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.

* * * * * * *

(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), ⟦or (9)⟧ *(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.

* * * * * * *

(c) RESOURCES.—For purposes of this section:

(1) IN GENERAL.—The term "qualified energy resources" means—

(A) * * *

* * * * * * *

(G) municipal solid waste, ⟦and⟧

(H) qualified hydropower production⟦.⟧*, and*

(I) marine and hydrokinetic renewable energy.

* * * * * * *

(8) QUALIFIED HYDROPOWER PRODUCTION.—

(A) * * *

* * * * * * *

⟦(C) NONHYDROELECTRIC DAM.—For purposes of subparagraph (A), a facility is described in this subparagraph if—

⟦(i) the facility is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

⟦(ii) the facility was placed in service before the date of the enactment of this paragraph and did not produce hydroelectric power on the date of the enactment of this paragraph, and

⟦(iii) turbines or other generating devices are to be added to the facility after such date to produce hydroelectric power, but only if there is not any enlargement of the diversion structure, or construction or enlargement of a bypass channel, or the impoundment or any withholding of any additional water from the natural stream channel.]

(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.

*　　*　　*　　*　　*　　*　　*

(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 before [January 1, 2009] *January 1, 2010. Such term shall not include any facility with respect to which any qualified small wind energy property ex-*

penditure (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 before ❲January 1, 2009❳ *January 1, 2012*, or

(ii) owned by the taxpayer which before ❲January 1, 2009❳ *January 1, 2012*, 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.

(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.

❲(B)❳ *(C)* SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

(i) * * *

* * * * * * *

(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 before ❲January 1, 2009❳ *January 1, 2012*, and

* * * * * * *

(ii) in the case of any other facility, is originally placed in service before ❲January 1, 2009❳ *January 1, 2012*.

(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.

❲(B)❳ *(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 before ⟦January 1, 2009⟧ *January 1, 2012* (January 1, 2006, in the case of a facility using solar energy). 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 ⟦January 1, 2009⟧ *the date of the enactment of paragraph (11)*.

(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 before ⟦January 1, 2009⟧ *January 1, 2012*.

(7) TRASH ⟦COMBUSTION⟧ FACILITIES.—In the case of a ⟦facility which burns⟧ *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 before ⟦January 1, 2009⟧ *January 1, 2012*. 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.

* * * * * * *

(9) QUALIFIED HYDROPOWER FACILITY.—In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term "qualified facility" means—

(A) 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, 2009⟧ *January 1, 2012*, and

(B) any other facility placed in service after the date of the enactment of this paragraph and before ⟦January 1, 2009⟧ *January 1, 2012*.

* * * * * * *

(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 before January 1, 2012.

(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(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. *The net amount of electricity sold by any taxpayer to a regulated public utility (as defined in section 7701(a)(33)) shall be treated as sold to an unrelated person.*

* * * * * * *

SEC. 45A. INDIAN EMPLOYMENT CREDIT.

(a) * * *

* * * * * * *

(f) TERMINATION.—This section shall not apply to taxable years beginning after ❲December 31, 2007❳ *December 31, 2008*.

* * * * * * *

SEC. 45C. CLINICAL TESTING EXPENSES FOR CERTAIN DRUGS FOR RARE DISEASES OR CONDITIONS.

(a) * * *

(b) QUALIFIED CLINICAL TESTING EXPENSES.—For purposes of this section—

(1) QUALIFIED CLINICAL TESTING EXPENSES.—

(A) * * *

* * * * * * *

(D) SPECIAL RULE.—For purposes of this paragraph, section 41 shall be deemed to remain in effect for periods after June 30, 1995, and before July 1, 1996, and periods after ❲December 31, 2007❳ *December 31, 2008*.

* * * * * * *

SEC. 45D. NEW MARKETS TAX CREDIT.

(a) * * *

* * * * * * *

(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) * * *

* * * * * * *

(D) $3,500,000,000 for 2006, 2007, ❲and 2008❳ *2008, and 2009*.

* * * * * * *

SEC. 45G. RAILROAD TRACK MAINTENANCE CREDIT.

(a) * * *

* * * * * * *

(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, 2008❳ *January 1, 2009*.

* * * * * * *

SEC. 45M. ENERGY EFFICIENT APPLIANCE CREDIT.

(a) * * *

❲(b) APPLICABLE AMOUNT.—

❲(1) IN GENERAL.—For purposes of subsection (a)—

❲(A) DISHWASHERS.—The applicable amount is the energy savings amount in the case of a dishwasher which—

❲(i) is manufactured in calendar year 2006 or 2007, and

❲(ii) meets the requirements of the Energy Star program which are in effect for dishwashers in 2007.

❲(B) CLOTHES WASHERS.—The applicable amount is $100 in the case of a clothes washer which—

❲(i) is manufactured in calendar year 2006 or 2007, and

❲(ii) meets the requirements of the Energy Star program which are in effect for clothes washers in 2007.

❲(C) REFRIGERATORS.—

❲(i) 15 PERCENT SAVINGS.—The applicable amount is $75 in the case of a refrigerator which—

❲(I) is manufactured in calendar year 2006, and

❲(II) consumes at least 15 percent but not more than 20 percent less kilowatt hours per year than the 2001 energy conservation standards.

❲(ii) 20 PERCENT SAVINGS.—The applicable amount is $125 in the case of a refrigerator which—

❲(I) is manufactured in calendar year 2006 or 2007, and

❲(II) consumes at least 20 percent but not more than 25 percent less kilowatt hours per year than the 2001 energy conservation standards.

❲(iii) 25 PERCENT SAVINGS.—The applicable amount is $175 in the case of a refrigerator which—

❲(I) is manufactured in calendar year 2006 or 2007, and

❲(II) consumes at least 25 percent less kilowatt hours per year than the 2001 energy conservation standards.

❲(2) ENERGY SAVINGS AMOUNT.—For purposes of paragraph (1)(A)—

❲(A) IN GENERAL.—The energy savings amount is the lesser of—

❲(i) the product of—

❲(I) $3, and

❲(II) 100 multiplied by the energy savings percentage, or

❲(ii) $100.

[(B) ENERGY SAVINGS PERCENTAGE.—For purposes of subparagraph (A), the energy savings percentage is the ratio of—

[(i) the EF required by the Energy Star program for dishwashers in 2007 minus the EF required by the Energy Star program for dishwashers in 2005, to

[(ii) the EF required by the Energy Star program for dishwashers in 2007.]

(b) APPLICABLE AMOUNT.—For purposes of subsection (a)—

(1) DISHWASHERS.—The applicable amount is—

(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and

(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

(2) CLOTHES WASHERS.—The applicable amount is—

(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and

(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

(3) REFRIGERATORS.—The applicable amount is—

(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and

(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards.

(c) ELIGIBLE PRODUCTION.—

⟦(1) IN GENERAL.—Except as provided in paragraphs (2), the eligible⟧

The eligible production in a calendar year with respect to each type of energy efficient appliance is the excess of—

⟦(A)⟧ *(1)* the number of appliances of such type which are produced by the taxpayer in the United States during such calendar year, over

⟦(B)⟧ *(2)* the average number of appliances of such type which were produced by the taxpayer (or any predecessor) in the United States during the preceding ⟦3-calendar year⟧ *2-calendar year* period.

⟦(2) SPECIAL RULE FOR REFRIGERATORS.—The eligible production in a calendar year with respect to each type of refrigerator described in subsection (b)(1)(C) is the excess of—

⟦(A) the number of appliances of such type which are produced by the taxpayer in the United States during such calendar year, over

⟦(B) 110 percent of the average number of appliances of such type which were produced by the taxpayer (or any predecessor) in the United States during the preceding 3-calendar year period.

⟦(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

⟦(1) dishwashers described in subsection (b)(1)(A),

⟦(2) clothes washers described in subsection (b)(1)(B),

⟦(3) refrigerators described in subsection (b)(1)(C)(i),

⟦(4) refrigerators described in subsection (b)(1)(C)(ii), and

⟦(5) refrigerators described in subsection (b)(1)(C)(iii).⟧

(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

(1) dishwashers described in subsection (b)(1),

(2) clothes washers described in subsection (b)(2), and

(3) refrigerators described in subsection (b)(3).

(e) LIMITATIONS.—

⟦(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years.

⟦(2) AMOUNT ALLOWED FOR 15 PERCENT SAVINGS REFRIGERATORS.—In the case of refrigerators described in subsection (b)(1)(C)(i), the aggregate amount of the credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $20,000,000.⟧

(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2007.

(2) AMOUNT ALLOWED FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Refrigerators described in subsection

(b)(3)(D) and clothes washers described in subsection (b)(2)(D) shall not be taken into account under paragraph (1).

* * * * * * *

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

⟦(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term "qualified energy efficient appliance" means—

⟦(A) any dishwasher described in subsection (b)(1)(A),

⟦(B) any clothes washer described in subsection (b)(1)(B), and

⟦(C) any refrigerator described in subsection (b)(1)(C).⟧

(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term "qualified energy efficient appliance" means—

(A) any dishwasher described in subsection (b)(1),

(B) any clothes washer described in subsection (b)(2), and

(C) any refrigerator described in subsection (b)(3).

* * * * * * *

(3) CLOTHES WASHER.—The term "clothes washer" means a 1 residential model clothes washer, including a *commercial* residential style coin operated washer.

(4) TOP-LOADING CLOTHES WASHER.—The term "top-loading clothes washer" means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.

⟦(4)⟧ *(5)* REFRIGERATOR.—The term "refrigerator" means a residential model automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

⟦(5) EF.—The term "EF" means the energy factor established by the Department of Energy for compliance with the Federal energy conservation standards.⟧

(6) MODIFIED ENERGY FACTOR.—The term "modified energy factor" means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.

⟦(6)⟧ *(7)* PRODUCED.—The term "produced" includes manufactured.

⟦(7)⟧ *(8)* 2001 ENERGY CONSERVATION STANDARD.—The term "2001 energy conservation standard" means the energy conservation standards promulgated by the Department of Energy and effective July 1, 2001.

(9) GALLONS PER CYCLE.—The term "gallons per cycle" means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

(10) WATER CONSUMPTION FACTOR.—The term "water consumption factor" means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

* * * * * * *

Subpart E—Rules for Computing Investment Credit

* * * * * * *

SEC. 48. ENERGY CREDIT.

(a) ENERGY CREDIT.—

(1) * * *

(2) ENERGY PERCENTAGE.—

(A) IN GENERAL.—The energy percentage is—

(i) 30 percent in the case of—

(I) * * *

(II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before [January 1, 2009] *January 1, 2015*, and

* * * * * * *

(3) ENERGY PROPERTY.—For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) * * *

* * * * * * *

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before [January 1, 2009] *January 1, 2015*,

(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, [or]

(iv) qualified fuel cell property or qualified microturbine property, *or*

(v) combined heat and power system property,

* * * * * * *

[The term "energy property" shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).] 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.

* * * * * * *

(c) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this section—

(1) QUALIFIED FUEL CELL PROPERTY.—

(A) * * *

(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 [$500] *$1,500* for each 0.5 kilowatt of capacity of such property.

* * * * * * *

[(D) SPECIAL RULE.—The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified fuel cell property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).]

⟦(E)⟧ *(D)* TERMINATION.—The term "qualified fuel cell property" shall not include any property for any period after ⟦December 31, 2008⟧ *December 31, 2014*.

(2) QUALIFIED MICROTURBINE PROPERTY.—

(A) * * *

* * * * * * *

⟦(D) SPECIAL RULE.—The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified microturbine property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).⟧

⟦(E)⟧ *(D)* TERMINATION.—The term "qualified microturbine property" shall not include any property for any period after ⟦December 31, 2008⟧ *December 31, 2014*.

(d) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of subsection (a)(3)(A)(v)—

(1) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term "combined heat and power system property" means property comprising a system—

(A) 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),

(B) 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),

(C) the energy efficiency percentage of which exceeds 60 percent, and

(D) which is placed in service before January 1, 2015.

(2) LIMITATION.—

(A) 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.

(B) APPLICABLE CAPACITY.—For purposes of subparagraph (A), 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.

(C) 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.

(3) SPECIAL RULES.—

(A) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this subsection, 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.

(B) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under paragraph (1)(B) shall be determined on a Btu basis.

(C) 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.

(4) 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—

(A) paragraph (1)(C) shall not apply, but

(B) 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 paragraph) as the energy efficiency percentage of such system bears to 60 percent.

SEC. 48A. QUALIFYING ADVANCED COAL PROJECT CREDIT.

(a) IN GENERAL.—For purposes of section 46, the qualifying advanced coal project credit for any taxable year is an amount equal to—

(1) 20 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(i), **[**and**]**

(2) 15 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(ii)**[**.**]**, *and*

(3) 30 percent of the qualified investment for such taxable year in the case of projects described in clause (iii) of subsection (d)(3)(B).

* * * * * * *

(d) QUALIFYING ADVANCED COAL PROJECT PROGRAM.—

(1) * * *

(2) CERTIFICATION.—

[(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1).**]**

(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application

meeting the requirements of subparagraph (B). An applicant may only submit an application—

(i) for an allocation from the dollar amount specified in clause (i) or (ii) of paragraph (3)(B) during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1), and

(ii) for an allocation from the dollar amount specified in paragraph (3)(B)(iii) during the 3-year period beginning at the earlier of the termination of the period described in clause (i) or the date prescribed by the Secretary.

* * * * * * *

(3) AGGREGATE CREDITS.—

(A) IN GENERAL.—The aggregate credits allowed under subsection (a) for projects certified by the Secretary under paragraph (2) may not exceed ❲$1,300,000,000❳ *$2,550,000,000.*

❲(B) PARTICULAR PROJECTS.—Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

❲(i) $800,000,000 for integrated gasification combined cycle projects, and

❲(ii) $500,000,000 for projects which use other advanced coal-based generation technologies.❳

(B) PARTICULAR PROJECTS.—Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

(i) $800,000,000 for integrated gasification combined cycle projects the application for which is submitted during the period described in paragraph (2)(A)(i),

(ii) $500,000,000 for projects which use other advanced coal-based generation technologies the application for which is submitted during the period described in paragraph (2)(A)(i), and

(iii) $1,250,000,000 for advanced coal-based generation technology projects the application for which is submitted during the period described in paragraph (2)(A)(ii).

* * * * * * *

(5) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection or section 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.

(e) QUALIFYING ADVANCED COAL PROJECTS.—

(1) REQUIREMENTS.—For purposes of subsection (c)(1), a project shall be considered a qualifying advanced coal project that the Secretary may certify under subsection (d)(2) if the Secretary determines that, at a minimum—

(A) * * *

* * * * * * *

(E) the applicant provides evidence of ownership or control of a site of sufficient size to allow the proposed project to be constructed and to operate on a long-term basis; ❲and❳

(F) the project will be located in the United States【.】*; and*

(G) in the case of any project the application for which is submitted during the period described in subsection (d)(2)(A)(ii), the project includes equipment which separates and sequesters at least 65 percent (70 percent in the case of an application for reallocated credits under subsection (d)(4)) of such project's total carbon dioxide emissions.

* * * * * * *

(3) PRIORITY FOR 【INTEGRATED GASIFICATION COMBINED CYCLE】 *CERTAIN* PROJECTS.—In determining which qualifying advanced coal projects to certify under subsection (d)(2), the Secretary shall—

(A) certify capacity, in accordance with the procedures set forth in subsection (d), in relatively equal amounts to—

(i) * * *

* * * * * * *

(iii) projects using lignite as a primary feedstock, 【and】

(B) give high priority to projects which include, as determined by the Secretary—

(i) * * *

(ii) increased by-product utilization, 【and】

(iii) applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)), and

【(iii)】 *(iv)* other benefits【.】*, and*

(C) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions.

* * * * * * *

(h) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements of subsection (e)(1)(G).

(i) COMPETITIVE CERTIFICATION AWARDS MODIFICATION AUTHORITY.—In implementing this section or section 48B, the Secretary is directed to modify the terms of any competitive certification award and any associated closing agreement where such modification—

(1) is consistent with the objectives of such section,

(2) is requested by the recipient of the competitive certification award, and

(3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base,

unless the Secretary determines that the dollar amount of tax credits available to the taxpayer under such section would increase as a result of the modification or such modification would result in such project not being originally certified. In considering any such modification, the Secretary shall consult with other relevant Federal agencies, including the Department of Energy.

SEC. 48B. QUALIFYING GASIFICATION PROJECT CREDIT.

(a) IN GENERAL.—For purposes of section 46, the qualifying gasification project credit for any taxable year is an amount equal to 20 percent *(30 percent in the case of credits allocated under subsection (d)(1)(B))* of the qualified investment for such taxable year.

* * * * * * *

(d) QUALIFYING GASIFICATION PROJECT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits under this section to qualifying gasification project sponsors under this section. The total amounts of credit that may be allocated under the program ⟦shall not exceed $350,000,000 under rules similar to the rules of section 48A(d)(4).⟧ *shall not exceed—*

(A) $350,000,000, plus

(B) $250,000,000 for qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide emissions.

* * * * * * *

(4) SELECTION PRIORITIES.—In determining which qualifying gasification projects to certify under this section, the Secretary shall—

(A) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions, and

(B) give high priority to applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)).

* * * * * * *

(f) RECAPTURE OF CREDIT FOR FAILURE TO SEQUESTER.—The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements for such project under subsection (d)(1).

* * * * * * *

Subpart G—Credit Against Regular Tax for Prior Year Minimum Tax Liability

SEC. 53. CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY.

(a) * * *

* * * * * * *

(e) SPECIAL RULE FOR INDIVIDUALS WITH LONG-TERM UNUSED CREDITS.—

(1) * * *

⟦(2) AMT REFUNDABLE CREDIT AMOUNT.—For purposes of paragraph (1)—

⟦(A) IN GENERAL.—The term "AMT refundable credit amount" means, with respect to any taxable year, the amount (not in excess of the long-term unused minimum tax credit for such taxable year) equal to the greater of—

[(i) $5,000,

[(ii) 20 percent of the long-term unused minimum tax credit for such taxable year, or

[(iii) the amount (if any) of the AMT refundable credit amount determined under this paragraph for the taxpayer's preceding taxable year (as determined before any reduction under subparagraph (B)).

[(B) PHASEOUT OF AMT REFUNDABLE CREDIT AMOUNT.—

[(i) IN GENERAL.—In the case of an individual whose adjusted gross income for any taxable year exceeds the threshold amount (within the meaning of section 151(d)(3)(C)), the AMT refundable credit amount determined under subparagraph (A) for such taxable year shall be reduced by the applicable percentage (within the meaning of section 151(d)(3)(B)).

[(ii) ADJUSTED GROSS INCOME.—For purposes of clause (i), adjusted gross income shall be determined without regard to sections 911, 931, and 933.]

(2) AMT REFUNDABLE CREDIT AMOUNT.—For purposes of paragraph (1), the term "AMT refundable credit amount" means, with respect to any taxable year, the amount (not in excess of the long-term unused minimum tax credit for such taxable year) equal to the greater of—

(A) 50 percent of the long-term unused minimum tax credit for such taxable year, or

(B) the amount (if any) of the AMT refundable credit amount for the taxpayer's preceding taxable year (determined without regard to subsection (f)(2)).

* * * * * * *

(f) TREATMENT OF CERTAIN UNDERPAYMENTS, INTEREST, AND PENALTIES ATTRIBUTABLE TO THE TREATMENT OF INCENTIVE STOCK OPTIONS.—

(1) ABATEMENT.—Any underpayment of tax outstanding on the date of the enactment of this subsection which is attributable to the application of section 56(b)(3) for any taxable year ending before January 1, 2008 (and any interest or penalty with respect to such underpayment which is outstanding on such date of enactment), is hereby abated. The amount determined under subsection (b)(1) shall not include any tax abated under the preceding sentence.

(2) INCREASE IN CREDIT FOR CERTAIN INTEREST AND PENALTIES ALREADY PAID.—The AMT refundable credit amount, and the minimum tax credit determined under subsection (b), for the taxpayer's first 2 taxable years beginning after December 31, 2007, shall each be increased by 50 percent of the aggregate amount of the interest and penalties which were paid by the taxpayer before the date of the enactment of this subsection and which would (but for such payment) have been abated under paragraph (1).

Subpart H—Nonrefundable Credit to Holders of [Certain Bonds] *Clean Renewable Energy Bonds*

SEC. 54. CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS.

(a) * * *

* * * * * * *

(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) * * *

(2) the sum of the credits allowable under this part (other than [subpart C] *subparts C and I*, section 1400N(l), and this section).

* * * * * * *

Subpart I—Qualified Tax Credit Bonds

SEC. 54A. CREDIT TO HOLDERS OF QUALIFIED TAX CREDIT BONDS.

(a) ALLOWANCE OF CREDIT.—If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, 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 credits determined under subsection (b) with respect to such dates.

(b) AMOUNT OF CREDIT.—

(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified tax credit bond is the product of—

(A) the applicable credit rate, multiplied by

(B) the outstanding face amount of the bond.

(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) QUALIFIED TAX CREDIT BOND.—For purposes of this section—

(1) QUALIFIED TAX CREDIT BOND.—The term "qualified tax credit bond" means—

(A) a new clean renewable energy bond,

(B) a qualified energy conservation bond, or

(C) a qualified zone academy bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).

(2) SPECIAL RULES RELATING TO EXPENDITURES.—

(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

(i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and

(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

(B) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 3 YEARS.—

(i) IN GENERAL.—To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(ii) EXPENDITURE PERIOD.—For purposes of this subpart, the term "expenditure period" means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

(iii) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the pro-

ceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term "qualified purpose" means—

(i) in the case of a new clean renewable energy bond, a purpose specified in section 54B(a)(1),

(ii) in the case of a qualified energy conservation bond, a purpose specified in section 54C(a)(1), and

(iii) in the case of a qualified zone academy bond, a purpose specified in section 54D(a)(1).

(D) REIMBURSEMENT.—For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if—

(i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

(ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(3) REPORTING.—An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

(4) SPECIAL RULES RELATING TO ARBITRAGE.—

(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

(B) SPECIAL RULE FOR INVESTMENTS DURING EXPENDITURE PERIOD.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

(C) SPECIAL RULE FOR RESERVE FUNDS.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if—

(i) such fund is funded at a rate not more rapid than equal annual installments,

(ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and

(iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

(5) MATURITY LIMITATION.—

(A) IN GENERAL.—An issue shall not be treated as meeting the requirements of this paragraph if the maturity of

any bond which is part of such issue exceeds the maximum term determined by the Secretary under subparagraph (B).

(B) MAXIMUM TERM.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(6) PROHIBITION ON FINANCIAL CONFLICTS OF INTEREST.—An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that—

(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

(e) OTHER DEFINITIONS.—For purposes of this subchapter—

(1) CREDIT ALLOWANCE DATE.—The term "credit allowance date" means—

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term includes the last day on which the bond is outstanding.

(2) BOND.—The term "bond" includes any obligation.

(3) STATE.—The term "State" includes the District of Columbia and any possession of the United States.

(4) AVAILABLE PROJECT PROCEEDS.—The term "available project proceeds" means—

(A) the excess of—

(i) the proceeds from the sale of an issue, over

(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

(B) the proceeds from any investment of the excess described in subparagraph (A).

(f) CREDIT TREATED AS INTEREST.—For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

(g) S CORPORATIONS AND PARTNERSHIPS.—In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

(h) BONDS HELD BY REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary.

(i) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

(1) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

(2) CERTAIN RULES TO APPLY.—In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

SEC. 54B. NEW CLEAN RENEWABLE ENERGY BONDS.

(a) NEW CLEAN RENEWABLE ENERGY BOND.—For purposes of this subpart, the term "new clean renewable energy bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by public power providers or cooperative electric companies for one or more qualified renewable energy facilities,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

(1) IN GENERAL.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

(2) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national new clean renewable energy bond limitation of $2,000,000,000 which shall be allocated by the Secretary as provided in paragraph (3), except that—

(A) not more than 33 1/3 percent thereof may be allocated to qualified projects of public power providers,

(B) not more than 33 1/3 percent thereof may be allocated to qualified projects of governmental bodies, and

(C) not more than 33 1/3 percent thereof may be allocated to qualified projects of cooperative electric companies.

(3) METHOD OF ALLOCATION.—

(A) ALLOCATION AMONG PUBLIC POWER PROVIDERS.—After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under paragraph (2)(A) bears to the cost of all such projects.

(B) ALLOCATION AMONG GOVERNMENTAL BODIES AND COOPERATIVE ELECTRIC COMPANIES.—The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraphs (2)(B) and (2)(C) among qualified projects of governmental bodies and cooperative electric companies, respectively, in such manner as the Secretary determines appropriate.

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

(1) QUALIFIED RENEWABLE ENERGY FACILITY.—The term "qualified renewable energy facility" means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company.

(2) PUBLIC POWER PROVIDER.—The term "public power provider" means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

(3) GOVERNMENTAL BODY.—The term "governmental body" means any State or Indian tribal government, or any political subdivision thereof.

(4) COOPERATIVE ELECTRIC COMPANY.—The term "cooperative electric company" means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

(5) CLEAN RENEWABLE ENERGY BOND LENDER.—The term "clean renewable energy bond lender" means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(6) QUALIFIED ISSUER.—The term "qualified issuer" means a public power provider, a cooperative electric company, a governmental body, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

SEC. 54C. QUALIFIED ENERGY CONSERVATION BONDS.

(a) QUALIFIED ENERGY CONSERVATION BOND.—For purposes of this subchapter, the term "qualified energy conservation bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

(2) the bond is issued by a State or local government, and

(3) the issuer designates such bond for purposes of this section.

(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any qualified energy conservation bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (e).

(d) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified energy conservation bond limitation of $3,000,000,000.

(e) ALLOCATIONS.—

(1) IN GENERAL.—The limitation applicable under subsection (d) shall be allocated by the Secretary among the States in proportion to the population of the States.

(2) ALLOCATIONS TO LARGEST LOCAL GOVERNMENTS.—

(A) IN GENERAL.—In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

(B) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

(C) LARGE LOCAL GOVERNMENT.—For purposes of this section, the term "large local government" means any municipality or county if such municipality or county has a population of 100,000 or more.

(3) ALLOCATION TO ISSUERS; RESTRICTION ON PRIVATE ACTIVITY BONDS.—Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

(f) QUALIFIED CONSERVATION PURPOSE.—For purposes of this section—

(1) IN GENERAL.—The term "qualified conservation purpose" means any of the following:

(A) Capital expenditures incurred for purposes of—

(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

(ii) implementing green community programs,

(iii) rural development involving the production of electricity from renewable energy resources, or

(iv) any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).

(B) Expenditures with respect to research facilities, and research grants, to support research in—

(i) development of cellulosic ethanol or other nonfossil fuels,

(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,

(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

(v) technologies to reduce energy use in buildings.

(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

(D) Demonstration projects designed to promote the commercialization of—

(i) green building technology,

(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

(iii) advanced battery manufacturing technologies,

(iv) technologies to reduce peak use of electricity, or

(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

(E) Public education campaigns to promote energy efficiency.

(2) SPECIAL RULES FOR PRIVATE ACTIVITY BONDS.—For purposes of this section, in the case of any private activity bond, the term "qualified conservation purposes" shall not include any expenditure which is not a capital expenditure.

(g) POPULATION.—

(1) IN GENERAL.—The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

(2) SPECIAL RULE FOR COUNTIES.—In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

(h) APPLICATION TO INDIAN TRIBAL GOVERNMENTS.—An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that—

(1) an Indian tribal government shall be treated for purposes of subsection (e) as located within a State to the extent of so much of the population of such government as resides within such State, and

(2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.

SEC. 54D. QUALIFIED ZONE ACADEMY BONDS.

(a) QUALIFIED ZONE ACADEMY BONDS.—For purposes of this subchapter, the term "qualified zone academy bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and

(3) the issuer—

(A) designates such bond for purposes of this section,

(B) certifies that it has written assurances that the private business contribution requirement of subsection (b) will be met with respect to such academy, and

(C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

(b) PRIVATE BUSINESS CONTRIBUTION REQUIREMENT.—For purposes of subsection (a), the private business contribution requirement of this subsection is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

(1) NATIONAL LIMITATION.—There is a national zone academy bond limitation for each calendar year. Such limitation is $400,000,000 for 2008, and, except as provided in paragraph (4), zero thereafter.

(2) ALLOCATION OF LIMITATION.—The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

(3) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) CARRYOVER OF UNUSED LIMITATION.—

(A) IN GENERAL.—If for any calendar year—

(i) the limitation amount for any State, exceeds

(ii) the amount of bonds issued during such year which are designated under subsection (a) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

(B) LIMITATION ON CARRYOVER.—Any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(C) COORDINATION WITH SECTION 1397E.—Any carryover determined under section 1397E(e)(4) (relating to carryover of unused limitation) with respect to any State to calendar year 2008 shall be treated for purposes of this section as a carryover with respect to such State for such calendar year under subparagraph (A), and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

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

(1) QUALIFIED ZONE ACADEMY.—The term "qualified zone academy" means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

(A) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(B) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(C) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(D)(i) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(ii) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

(2) ELIGIBLE LOCAL EDUCATION AGENCY.— For purposes of this section, the term "eligible local education agency" means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(3) QUALIFIED PURPOSE.—The term "qualified purpose" means, with respect to any qualified zone academy—

(A) rehabilitating or repairing the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(4) QUALIFIED CONTRIBUTIONS.—The term "qualified contribution" means any contribution (of a type and quality acceptable to the eligible local education agency) of—

(A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(B) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(C) services of employees as volunteer mentors,

(D) internships, field trips, or other educational opportunities outside the academy for students, or

(E) any other property or service specified by the eligible local education agency.

PART VI—ALTERNATIVE MINIMUM TAX

* * * * * * *

SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.

(a) * * *

* * * * * * *

(c) REGULAR TAX.—

(1) * * *

* * * * * * *

(3) CROSS REFERENCES.—For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 26(a), 30(b)(3), ⟦30B(g)(2),⟧ 30C(d)(2), and 38(c).

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Subchapter B—Computation of Taxable Income

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PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC

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SEC. 62. ADJUSTED GROSS INCOME DEFINED.

(a) GENERAL RULE.—For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) * * *

(2) CERTAIN TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES.—

(A) * * *

* * * * * * *

(D) CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.—In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, ⟦or 2007⟧ *2007, or 2008*, the deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

* * * * * * *

SEC. 63. TAXABLE INCOME DEFINED.

(a) * * *

* * * * * * *

(c) STANDARD DEDUCTION.—For purposes of this subtitle—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "standard deduction" means the sum of—

(A) the basic standard deduction, ❲and❳

(B) the additional standard deduction❲.❳*, and*

(C) in the case of any taxable year beginning in 2008, the real property tax deduction.

* * * * * * *

(7) REAL PROPERTY TAX DEDUCTION.—For purposes of paragraph (1), the real property tax deduction is the lesser of—

(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

(B) $350 ($700 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.

* * * * * * *

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

* * * * * * *

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) * * *

* * * * * * *

(t) 10-PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.—

(1) * * *

(2) SUBSECTION NOT TO APPLY TO CERTAIN DISTRIBUTIONS.—Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

(A) * * *

* * * * * * *

(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

(i) * * *

* * * * * * *

(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before ❲December 31, 2007❳ *January 1, 2009*. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * * * *

SEC. 120. AMOUNTS RECEIVED UNDER QUALIFIED GROUP LEGAL SERVICES PLANS.

(a) * * *

* * * * * * *

(e) TERMINATION.—This section and section 501(c)(20) ⟦shall not apply to taxable years beginning after June 30, 1992⟧ *shall apply to taxable years beginning after December 31, 2007, and before January 1, 2009*.

* * * * * * *

SEC. 132. CERTAIN FRINGE BENEFITS.

(a) * * *

* * * * * * *

(f) QUALIFIED TRANSPORTATION FRINGE.—

(1) IN GENERAL.—For purposes of this section, the term "qualified transportation fringe" means any of the following provided by an employer to an employee:

(A) * * *

* * * * * * *

(D) Any qualified bicycle commuting reimbursement.

(2) LIMITATION ON EXCLUSION.—The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

(A) $100 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1), ⟦and⟧

(B) $175 per month in the case of qualified parking⟦.⟧*, and*

(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

* * * * * * *

(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe *(other than a qualified bicycle commuting reimbursement)* and compensation which would otherwise be includible in gross income of such employee.

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

(A) * * *

* * * * * * *

(F) DEFINITIONS RELATED TO BICYCLE COMMUTING REIMBURSEMENT.—

(i) QUALIFIED BICYCLE COMMUTING REIMBURSEMENT.—The term "qualified bicycle commuting reimbursement" means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) APPLICABLE ANNUAL LIMITATION.—The term "applicable annual limitation" means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) QUALIFIED BICYCLE COMMUTING MONTH.—The term "qualified bicycle commuting month" means, with respect to any employee, any month during which such employee—

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

* * * * * * *

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

* * * * * * *

Subpart A—Private Activity Bonds

* * * * * * *

SEC. 142. EXEMPT FACILITY BOND.

(a) * * *

* * * * * * *

(l) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

(1) * * *

* * * * * * *

(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after ❲September 30, 2009❳ *September 30, 2012*.

(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before ❲October 1, 2009❳ *October 1, 2012*, if—

(A) * * *

* * * * * * *

SEC. 143. MORTGAGE REVENUE BONDS: QUALIFIED MORTGAGE BOND AND QUALIFIED VETERANS' MORTGAGE BOND.

(a) * * *

* * * * * * *

(d) 3-year requirement

(1) * * *

(2) EXCEPTIONS.—For purposes of paragraph (1), the proceeds of an issue which are used to provide—

(A) * * *

* * * * * * *

(D) in the case of bonds issued after the date of the enactment of this subparagraph and before [January 1, 2008] *January 1, 2009*, financing of any residence for a veteran (as defined in section 101 of title 38, United States Code), if such veteran has not previously qualified for and received such financing by reason of this subparagraph,

shall be treated as used as described in paragraph (1).

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) * * *

* * * * * * *

(q) ATTORNEY-ADVANCED EXPENSES AND COURT COSTS IN CONTINGENCY FEE CASES.—In the case of any expense or court cost which is paid or incurred in the course of the trade or business of practicing law and the repayment of which is contingent on a recovery by judgment or settlement in the action to which such expense or cost relates, the deduction under subsection (a) shall be determined as if such expense or cost was not subject to repayment.

[(q)] *(r)* CROSS REFERENCE.—

(1) * * *

* * * * * * *

SEC. 164. TAXES.

(a) * * *

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

(A) * * *

* * * * * * *

(I) APPLICATION OF PARAGRAPH.—This paragraph shall apply to taxable years beginning after December 31, 2003, and before [January 1, 2008] *January 1, 2009*.

* * * * * * *

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) * * *

(b) APPLICABLE DEPRECIATION METHOD.—For purposes of this section—
(1) * * *
(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) * * *
(B) any property used in a farming business (within the meaning of section 263A(e)(4)), ⟦or⟧
(C) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or
⟦(C)⟧ *(D)* 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.

* * * * * * *

(e) CLASSIFICATION OF PROPERTY.—For purposes of this section—
(1) * * *

* * * * * * *

(3) CLASSIFICATION OF CERTAIN PROPERTY.—
(A) * * *

* * * * * * *

(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)), ⟦and⟧
(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) * * *

* * * * * * *

(iv) any qualified leasehold improvement property placed in service before ⟦January 1, 2008⟧ *January 1, 2009*,
(v) any qualified restaurant property placed in service before ⟦January 1, 2008⟧ *January 1, 2009*,

* * * * * * *

(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—
(1) * * *

* * * * * * *

(15) MOTORSPORTS ENTERTAINMENT COMPLEX.—
(A) * * *

* * * * * * *

(D) TERMINATION.—Such term shall not include any property placed in service after [December 31, 2007] *December 31, 2008.*

* * * * * * *

(18) QUALIFIED SMART ELECTRIC METERS.—

(A) IN GENERAL.—The term "qualified smart electric meter" means any smart electric meter which is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

(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 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.

(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) * * *

* * * * * * *

(8) TERMINATION.—This subsection shall not apply to property placed in service after [December 31, 2007] *December 31, 2008.*

(k) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER DECEMBER 31, 2007, AND BEFORE JANUARY 1, 2009.—

(1) * * *

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

(A) * * *

* * * * * * *

(D) EXCEPTIONS.—

(i) * * *

(ii) QUALIFIED NEW YORK LIBERTY ZONE LEASEHOLD IMPROVEMENT PROPERTY.—The term "qualified property" shall not include any qualified New York Liberty Zone leasehold improvement property (as defined in ❲section 1400L(c)(2)❳ *section 1400K(c)(2)*).

* * * * * * *

(l) SPECIAL ALLOWANCE FOR ❲CELLULOSIC BIOMASS ETHANOL❳ *CELLULOSIC BIOFUEL* PLANT PROPERTY.—

(1) ADDITIONAL ALLOWANCE.—In the case of any qualified ❲cellulosic biomass ethanol❳ *cellulosic biofuel* plant property—

(A) * * *

* * * * * * *

(2) QUALIFIED ❲CELLULOSIC BIOMASS ETHANOL❳ *CELLULOSIC BIOFUEL* PLANT PROPERTY.—The term "qualified ❲cellulosic biomass ethanol❳ *cellulosic 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 ❲cellulosic biomass ethanol❳ *cellulosic biofuel*,

* * * * * * *

❲(3) CELLULOSIC BIOMASS ETHANOL.—For purposes of this subsection, the term "cellulosic biomass ethanol" means ethanol produced by hydrolysis of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.❳

(3) CELLULOSIC BIOFUEL.—The term "cellulosic biofuel" means any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

* * * * * * *

(5) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) * * *

* * * * * * *

(C) by substituting "qualified ❲cellulosic biomass ethanol❳ *cellulosic biofuel* plant property" for "qualified property" in clause (iv) thereof.

* * * * * * *

(7) RECAPTURE.—For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified ❲cellulosic biomass ethanol❳ *cellulosic biofuel* plant property which ceases to be qualified ❲cellulosic biomass ethanol❳ *cellulosic biofuel* plant property.

(8) DENIAL OF DOUBLE BENEFIT.—Paragraph (1) shall not apply to any qualified ❲cellulosic biomass ethanol❳ *cellulosic biofuel* plant property with respect to which an election has

been made under section 179C (relating to election to expense certain refineries).

* * * * * * *

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) * * *

* * * * * * *

(e) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME AND CAPITAL GAIN PROPERTY.—

(1) * * *

* * * * * * *

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—

(A) * * *

* * * * * * *

(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

(i) * * *

* * * * * * *

(iv) TERMINATION.—This subparagraph shall not apply to contributions made after ❲December 31, 2007❳ *December 31, 2008*.

(D) Special rule for contributions of book inventory to public schools

(i) * * *

* * * * * * *

(iv) TERMINATION.—This subparagraph shall not apply to contributions made after ❲December 31, 2007❳ *December 31, 2008*.

* * * * * * *

(6) SPECIAL RULE FOR CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—

(A) * * *

* * * * * * *

(G) TERMINATION.—This paragraph shall not apply to any contribution made during any taxable year beginning after ❲December 31, 2007❳ *December 31, 2008*.

* * * * * * *

SEC. 179D. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) * * *

* * * * * * *

(h) TERMINATION.—This section shall not apply with respect to property placed in service after ❲December 31, 2008❳ *December 31, 2013*.

* * * * * * *

SEC. 181. TREATMENT OF CERTAIN QUALIFIED FILM AND TELEVISION PRODUCTIONS.

(a) ELECTION TO TREAT COSTS AS EXPENSES.—

(1) * * *

(2) DOLLAR LIMITATION.—

【(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds $15,000,000.】

(A) IN GENERAL.—Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production as exceeds $15,000,000.

* * * * * * *

(f) TERMINATION.—This section shall not apply to qualified film and television productions commencing after 【December 31, 2008】 *December 31, 2009*.

* * * * * * *

SEC. 198. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) * * *

* * * * * * *

(h) TERMINATION.—This section shall not apply to expenditures paid or incurred after 【December 31, 2007】 *December 31, 2008*.

SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

(a) * * *

(b) DEDUCTION LIMITED TO WAGES PAID.—

(1) * * *

(2) W-2 WAGES.—For purposes of this section—

(A) * * *

* * * * * * *

(D) SPECIAL RULE FOR QUALIFIED FILM.—In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.–

* * * * * * *

(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

(1) * * *

* * * * * * *

(6) QUALIFIED FILM.—The term "qualified film" means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code. *A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.*

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—

(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—

(A) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation—

(i) * * *

(ii) each partner or shareholder shall take into account such person's allocable share of each item described in subparagraph (A) or (B) of subsection (c)(1) (determined without regard to whether the items described in such subparagraph (A) exceed the items described in such subparagraph (B)), ⟦and⟧

(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary)⟦.⟧*, and–*

(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation—

(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.–

* * * * * * *

(8) TREATMENT OF ACTIVITIES IN PUERTO RICO.—

(A) * * *

* * * * * * *

(C) TERMINATION.—This paragraph shall apply only with respect to the ⟦first 2 taxable years⟧ *first 3 taxable years* of the taxpayer beginning after December 31, 2005, and before ⟦January 1, 2008⟧ *January 1, 2009*.

* * * * * * *

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

* * * * * * *

SEC. 222. QUALIFIED TUITION AND RELATED EXPENSES.

(a) * * *

* * * * * * *

(e) TERMINATION.—This section shall not apply to taxable years beginning after ⟦December 31, 2007⟧ *December 31, 2008*.

* * * * * * *

Subchapter D—Deferred Compensation, Etc

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC

* * * * * * *

Subpart A—general rule

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) * * *

* * * * * * *

(d) TAX TREATMENT OF DISTRIBUTIONS.—

(1) * * *

* * * * * * *

(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

(A) * * *

* * * * * * *

(F) TERMINATION.—This paragraph shall not apply to distributions made in taxable years beginning after [December 31, 2007] *December 31, 2008*.

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

* * * * * * *

PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart B—Taxable Year for Which Items of Gross Income Included

* * * * * * *

SEC. 451. GENERAL RULE FOR TAXABLE YEAR OF INCLUSION.

(a) * * *

* * * * * * *

(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

(1) * * *

* * * * * * *

(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, 2010, in the case of a qualified electric utility)*, of—

(A) * * *

* * * * * * *

(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term "independent transmission company" means—

(A) * * *

(B) a person—

(i) * * *

(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 [December 31, 2007] *the date which is 4 years after the close of the taxable year in which the transaction occurs*, or

* * * * * * *

(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection:

(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))).

[(6)] *(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).

[(7)] *(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) * * *

* * * * * * *

[(8)] *(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.

[(9)] *(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.

[(10)] *(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.

* * * * * * *

SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION FROM CERTAIN TAX INDIFFERENT PARTIES.

(a) IN GENERAL.—Any compensation which is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

(b) NONQUALIFIED ENTITY.—For purposes of this section, the term "nonqualified entity" means—

(1) any foreign corporation unless substantially all of its income is—

(A) effectively connected with the conduct of a trade or business in the United States, or

(B) subject to a comprehensive foreign income tax, and

(2) any partnership unless substantially all of its income is allocated to persons other than—

(A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and

(B) organizations which are exempt from tax under this title.

(c) DETERMINABILITY OF AMOUNTS OF COMPENSATION.—

(1) IN GENERAL.—If the amount of any compensation is not determinable at the time that such compensation is otherwise includible in gross income under subsection (a)—

(A) such amount shall be so includible in gross income when determinable, and

(B) the tax imposed under this chapter for the taxable year in which such compensation is includible in gross income shall be increased by the sum of—

(i) the amount of interest determined under paragraph (2), and

(ii) an amount equal to 20 percent of the amount of such compensation.

(2) INTEREST.—For purposes of paragraph (1)(B)(i), the interest determined under this paragraph for any taxable year is the amount of interest at the underpayment rate under section 6621 plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) SUBSTANTIAL RISK OF FORFEITURE.—

(A) IN GENERAL.—The rights of a person to compensation shall be treated as subject to a substantial risk of forfeiture only if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(B) EXCEPTION FOR COMPENSATION BASED ON GAIN RECOGNIZED ON AN INVESTMENT ASSET.—

(i) IN GENERAL.—To the extent provided in regulations prescribed by the Secretary, if compensation is determined solely by reference to the amount of gain recognized on the disposition of an investment asset, such compensation shall be treated as subject to a substantial risk of forfeiture until the date of such disposition.

(ii) INVESTMENT ASSET.—For purposes of clause (i), the term "investment asset" means any single asset (other than an investment fund or similar entity)—

(I) acquired directly by an investment fund or similar entity,

(II) with respect to which such entity does not (nor does any person related to such entity) participate in the active management of such asset (or if such asset is an interest in an entity, in the active management of the activities of such entity), and

(III) substantially all of any gain on the disposition of which (other than such deferred compensation) is allocated to investors in such entity.

(iii) COORDINATION WITH SPECIAL RULE.—Paragraph (3)(B) shall not apply to any compensation to which clause (i) applies.

(2) COMPREHENSIVE FOREIGN INCOME TAX.—The term "comprehensive foreign income tax" means, with respect to any foreign person, the income tax of a foreign country if—

(A) such person is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

(B) such person demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

(3) NONQUALIFIED DEFERRED COMPENSATION PLAN.—

(A) IN GENERAL.—The term "nonqualified deferred compensation plan" has the meaning given such term under section 409A(d), except that such term shall include any plan that provides a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.

(B) EXCEPTION.—Compensation shall not be treated as deferred for purposes of this section if the service provider receives payment of such compensation not later than 12 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

(4) EXCEPTION FOR CERTAIN COMPENSATION WITH RESPECT TO EFFECTIVELY CONNECTED INCOME.—In the case a foreign corporation with income which is taxable under section 882, this section shall not apply to compensation which, had such compensation had been paid in cash on the date that such compensation ceased to be subject to a substantial risk of forfeiture, would have been deductible by such foreign corporation against such income.

(5) APPLICATION OF RULES.—Rules similar to the rules of paragraphs (5) and (6) of section 409A(d) shall apply.

(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.–

* * * * * * *

Subchapter F—Exempt Organizations

* * * * * * *

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

* * * * * * *

SEC. 512. UNRELATED BUSINESS TAXABLE INCOME.

(a) * * *

(b) MODIFICATIONS.—The modifications referred to in subsection (a) are the following:

(1) * * *

* * * * * * *

(13) Special rules for certain amounts received from controlled entities—

(A) * * *

* * * * * * *

(E) PARAGRAPH TO APPLY ONLY TO CERTAIN EXCESS PAYMENTS.—

(i) * * *

* * * * * * *

(iv) TERMINATION.—This subparagraph shall not apply to payments received or accrued after [December 31, 2007] *December 31, 2008*.

* * * * * * *

Subchapter N—Tax Based on Income From Sources Within or Without the United States

* * * * * * *

PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME

* * * * * * *

SEC. 864. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(f) ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.—

(1) * * *

* * * * * * *

(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

(A) * * *

* * * * * * *

(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, ⟦2008⟧ *2018*, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

* * * * * * *

(6) ELECTION.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, ⟦2008⟧ *2018*, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

* * * * * * *

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

* * * * * * *

Subpart A—Nonresident Alien Individuals

SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) * * *

* * * * * * *

(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

(1) INTEREST-RELATED DIVIDENDS.—

(A) * * *

* * * * * * *

(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph, the term "interest-related dividend" means any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated. Such term shall not include any dividend with respect to any taxable year of the company beginning after ⟦December 31, 2007⟧ *December 31, 2008*.

* * * * * * *

(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

(A) * * *

* * * * * * *

(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph, the term "short-term capital gain dividend" means any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated. Such term shall not include any dividend with respect to any taxable year of the company beginning after ⟦December 31, 2007⟧ *December 31, 2008*.

* * * * * * *

Subpart D—Miscellaneous Provisions

* * * * * * *

SEC. 897. DISPOSITION OF INVESTMENT IN UNITED STATES REAL PROPERTY.

(a) * * *

* * * * * * *

(h) SPECIAL RULES FOR CERTAIN INVESTMENT ENTITIES.—For purposes of this section—

(1) * * *

* * * * * * *

(4) DEFINITIONS.—

(A) QUALIFIED INVESTMENT ENTITY.—

(i) * * *

(ii) TERMINATION.—Clause (i)(II) shall not apply after ⟦December 31, 2007⟧ *December 31, 2008*. Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.

* * * * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

* * * * * * *

Subpart F—Controlled Foreign Corporations

* * * * * * *

SEC. 953. INSURANCE INCOME.

(a) * * *

* * * * * * *

(e) EXEMPT INSURANCE INCOME.—For purposes of this section—

(1) * * *

* * * * * * *

(10) APPLICATION.—This subsection and section 954(i) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before ⟦January 1, 2009⟧ *January 1, 2010*, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. If this subsection does not apply to a taxable year of a foreign corporation beginning after ⟦December 31, 2008⟧ *December 31, 2009* (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.

* * * * * * *

SEC. 954. FOREIGN BASE COMPANY INCOME.

(a) * * *

* * * * * * *

(c) FOREIGN PERSONAL HOLDING COMPANY INCOME.—

(1) * * *

* * * * * * *

(6) LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.—

(A) * * *

* * * * * * *

(C) APPLICATION.—Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before ⟦January 1, 2009⟧ *January 1, 2010*, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

* * * * * * *

(h) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—

(1) * * *

* * * * * * *

(9) APPLICATION.—This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before ⟦January 1, 2009⟧ *January 1, 2010*, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

* * * * * * *

Subchapter O—Gain or Loss on Disposition of Property

* * * * * * *

PART II—BASIS RULES OF GENERAL APPLICATION

* * * * * * *

SEC. 1016. ADJUSTMENTS TO BASIS.

(a) GENERAL RULE.—Proper adjustment in respect of the property shall in all cases be made—

(1) * * *

* * * * * * *

(35) to the extent provided in section 30B(h)(4), ⟦and⟧

(36) to the extent provided in section 30C(e)(1)⟦.⟧*, and*

(37) to the extent provided in section 30D(f)(1).

* * * * * * *

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

* * * * * * *

PART II—TAX TREATMENT OF SHAREHOLDERS

* * * * * * *

SEC. 1367. ADJUSTMENTS TO BASIS OF STOCK OF SHAREHOLDERS, ETC.

(a) GENERAL RULE.—

(1) * * *

(2) DECREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) * * *

* * * * * * *

The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property. The preceding sentence shall not apply to contributions made in taxable years beginning after ❲December 31, 2007❳ *December 31, 2008*.

* * * * * * *

Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

* * * * * * *

PART IV—INCENTIVES FOR EDUCATION ZONES

SEC. 1397E. CREDIT TO HOLDERS OF QUALIFIED ZONE ACADEMY BONDS.

(a) * * *

* * * * * * *

(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) * * *

(2) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits, and ❲subpart H❳ *subparts H and I* thereof).

* * * * * * *

(m) TERMINATION.—This section shall not apply to any obligation issued after the date of the enactment of this Act.

* * * * * * *

Subchapter W—District of Columbia Enterprise Zone

SEC. 1400. ESTABLISHMENT OF DC ZONE.

(a) * * *

* * * * * * *

(f) TIME FOR WHICH DESIGNATION APPLICABLE.—

(1) IN GENERAL.—The designation made by subsection (a) shall apply for the period beginning on January 1, 1998, and ending on December 31, ❲2007❳ *2008*.

(2) COORDINATION WITH DC ENTERPRISE COMMUNITY DESIGNATED UNDER SUBCHAPTER U.—The designation under subchapter U of the census tracts referred to in subsection (b)(1) as an enterprise community shall terminate on December 31, ❲2007❳ *2008*.

SEC. 1400A. TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.

(a) * * *

(b) PERIOD OF APPLICABILITY.—This section shall apply to bonds issued during the period beginning on January 1, 1998, and ending on December 31, ❲2007❳ *2008*.

SEC. 1400B. ZERO PERCENT CAPITAL GAINS RATE.

(a) * * *

(b) DC ZONE ASSET.—For purposes of this section—

(1) * * *

* * * * * * *

(2) DC ZONE BUSINESS STOCK.—

(A) IN GENERAL.—The term "DC Zone business stock" means any stock in a domestic corporation which is originally issued after December 31, 1997, if—

(i) such stock is acquired by the taxpayer, before January 1, 【2008】 *2009*, at its original issue (directly or through an underwriter) solely in exchange for cash,

* * * * * * *

(3) DC ZONE PARTNERSHIP INTEREST.—The term "DC Zone partnership interest" means any capital or profits interest in a domestic partnership which is originally issued after December 31, 1997, if—

(A) such interest is acquired by the taxpayer, before January 1, 【2008】 *2009*, from the partnership solely in exchange for cash,

* * * * * * *

(4) DC ZONE BUSINESS PROPERTY.—

(A) IN GENERAL.—The term "DC Zone business property" means tangible property if—

(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 1997, and before January 1, 【2008】 *2009*,

* * * * * * *

(B) SPECIAL RULE FOR BUILDINGS WHICH ARE SUBSTANTIALLY IMPROVED.—

(i) IN GENERAL.—The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met with respect to—

(I) property which is substantially improved by the taxpayer before January 1, 【2008】 *2009*, and

* * * * * * *

(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

(2) GAIN BEFORE 1998 OR AFTER 【2012】 *2013* NOT QUALIFIED.—The term "qualified capital gain" shall not include any gain attributable to periods before January 1, 1998, or after December 31, 【2012】 *2013*.

* * * * * * *

(g) SALES AND EXCHANGES OF INTERESTS IN PARTNERSHIPS AND S CORPORATIONS WHICH ARE DC ZONE BUSINESSES.—In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was a DC Zone business during substantially all of the period the taxpayer held such interest or stock, the amount of qualified capital gain shall be determined without regard to—

(1) * * *

(2) any gain attributable to periods before January 1, 1998, or after December 31, 【2012】 *2013*.

SEC. 1400C. FIRST-TIME HOMEBUYER CREDIT FOR DISTRICT OF COLUMBIA.

(a) * * *

* * * * * * *

(d) CARRYFORWARD OF UNUSED CREDIT.—

(1) * * *

(2) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and sections 23, 24, 25B, ⟦and 25D⟧ *25D, and 30D*), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

* * * * * * *

(i) APPLICATION OF SECTION.—This section shall apply to property purchased after August 4, 1997, and before January 1, ⟦2008⟧ *2009*.

* * * * * * *

PART II—RENEWAL COMMUNITY CAPITAL GAIN; RENEWAL COMMUNITY BUSINESS

SEC. 1400F. RENEWAL COMMUNITY CAPITAL GAIN.

(a) * * *

* * * * * * *

(d) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of paragraphs (5), (6), and (7) of subsection (b), and subsections (f) and (g), of section 1400B shall apply; except that for such purposes section 1400B(g)(2) shall be applied by substituting "January 1, 2002" for "January 1, 1998" and "December 31, 2014" for "December 31, ⟦2012⟧ *2013*".

* * * * * * *

Subchapter Y—Short-Term Regional Benefits

* * * * * * *

PART I—TAX BENEFITS FOR NEW YORK LIBERTY ZONE

SEC. ⟦1400L.⟧ *1400K.* TAX BENEFITS FOR NEW YORK LIBERTY ZONE.

(a) * * *

(b) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001.—

(1) * * *

(2) QUALIFIED NEW YORK LIBERTY ZONE PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified New York Liberty Zone property" means property—(i) * * *

* * * * * * *

The term “termination date” means December 31, 2006 [(December 31, 2009, in the case of nonresidential real property and residential rental property)] *(in the case of nonresidential real property and residential rental property, the date of the enactment of the Renewable Energy and Job Creation Act of 2008 or, if acquired pursuant to a binding contract in effect on such enactment date, December 31, 2009).*

* * * * * * *

SEC. 1400L. NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—In the case of a New York Liberty Zone governmental unit, there shall be allowed as a credit against any taxes imposed for any payroll period by section 3402 for which such governmental unit is liable under section 3403 an amount equal to so much of the portion of the qualifying project expenditure amount allocated under subsection (b)(3) to such governmental unit for the calendar year as is allocated by such governmental unit to such period under subsection (b)(4).

(b) QUALIFYING PROJECT EXPENDITURE AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term “qualifying project expenditure amount” means, with respect to any calendar year, the sum of—

(A) the total expenditures paid or incurred during such calendar year by all New York Liberty Zone governmental units and the Port Authority of New York and New Jersey for any portion of qualifying projects located wholly within the City of New York, New York, and

(B) any such expenditures—

(i) paid or incurred in any preceding calendar year which begins after the date of enactment of this section, and

(ii) not previously allocated under paragraph (3).

(2) QUALIFYING PROJECT.—The term “qualifying project” means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400K(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

(3) GENERAL ALLOCATION.—

(A) IN GENERAL.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to each New York Liberty Zone governmental unit the portion of the qualifying project expenditure amount which may be taken into account by such governmental unit under subsection (a) for any calendar year in the credit period.

(B) AGGREGATE LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

(C) ANNUAL LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

(i) $115,000,000 ($425,000,000 in the case of the last 2 years in the credit period), plus

(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

(D) UNALLOCATED AMOUNTS AT END OF CREDIT PERIOD.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate to New York Liberty Zone governmental units for any calendar year in the 5-year period following the credit period an amount equal to—

(i) the lesser of—

(I) such excess, or

(II) the qualifying project expenditure amount for such calendar year, reduced by

(ii) the aggregate amount allocated under this subparagraph for all preceding calendar years.

(4) ALLOCATION TO PAYROLL PERIODS.—Each New York Liberty Zone governmental unit which has been allocated a portion of the qualifying project expenditure amount under paragraph (3) for a calendar year may allocate such portion to payroll periods beginning in such calendar year as such governmental unit determines appropriate.

(c) CARRYOVER OF UNUSED ALLOCATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the amount allocated under subsection (b)(3) to a New York Liberty Zone governmental unit for any calendar year exceeds the aggregate taxes imposed by section 3402 for which such governmental unit is liable under section 3403 for periods beginning in such year, such excess shall be carried to the succeeding calendar year and added to the allocation of such governmental unit for such succeeding calendar year.

(2) REALLOCATION.—If a New York Liberty Zone governmental unit does not use an amount allocated to it under subsection (b)(3) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(3) in the same manner as if it had never been allocated.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) CREDIT PERIOD.—The term "credit period" means the 12-year period beginning on January 1, 2009.

(2) NEW YORK LIBERTY ZONE GOVERNMENTAL UNIT.—The term "New York Liberty Zone governmental unit" means—

(A) the State of New York,

(B) the City of New York, New York, and

(C) any agency or instrumentality of such State or City.

(3) TREATMENT OF FUNDS.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

(4) TREATMENT OF CREDIT AMOUNTS FOR PURPOSES OF WITHHOLDING TAXES.—For purposes of this title, a New York Liberty Zone governmental unit shall be treated as having paid to the Secretary, on the day on which wages are paid to employees, an amount equal to the amount of the credit allowed to such entity under subsection (a) with respect to such wages, but only if such governmental unit deducts and withholds wages for such payroll period under section 3401 (relating to wage withholding).

(e) REPORTING.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly submit to the Secretary an annual report—

(1) which certifies—

(A) the qualifying project expenditure amount for the calendar year, and

(B) the amount allocated to each New York Liberty Zone governmental unit under subsection (b)(3) for the calendar year, and

(2) includes such other information as the Secretary may require to carry out this section.

(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to ensure compliance with the purposes of this section.

PART II—TAX BENEFITS FOR GO ZONES

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SEC. 1400N. TAX BENEFITS FOR GULF OPPORTUNITY ZONE.

(a) TAX-EXEMPT BOND FINANCING.—

(1) * * *

* * * * * * *

(8) INCLUSION OF CERTAIN COUNTIES.—For purposes of this subsection, the Gulf Opportunity Zone includes Colbert County, Alabama and Dallas County, Alabama.

* * * * * * *

(d) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED ON OR AFTER AUGUST 28, 2005.—

(1) * * *

* * * * * * *

(3) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) * * *

[(B) by substituting "January 1, 2008" for "January 1, 2009" in clause (i) thereof, and]–

(B) without regard to "and before January 1, 2009" in clause (i) thereof, and–

* * * * * * *

(l) CREDIT TO HOLDERS OF GULF TAX CREDIT BONDS.—

(1) * * *

* * * * * * *

(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under paragraph (1) for any taxable year shall not exceed the excess of—

(A) * * *

(B) the sum of the credits allowable under part IV of subchapter A (other than ❲subpart C❳ *subparts C and I* and this subsection).

* * * * * * *

Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAX

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Subchapter B—Estates of Nonresidents Not Citizens

* * * * * * *

SEC. 2105. PROPERTY WITHOUT THE UNITED STATES.

(a) * * *

* * * * * * *

(d) STOCK IN A RIC.—

(1) * * *

* * * * * * *

(3) TERMINATION.—This subsection shall not apply to estates of decedents dying after ❲December 31, 2007❳ *December 31, 2008*.

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 31—RETAIL EXCISE TAXES

* * * * * * *

Subchapter C—Heavy Trucks and Trailers

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SEC. 4053. EXEMPTIONS.

No tax shall be imposed by section 4051 on any of the following articles:

(1) * * *

* * * * * * *

(9) IDLING REDUCTION DEVICE.—Any device or system of devices which—

(A) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity) that would otherwise require the operation of the main drive engine while

the vehicle is temporarily parked or remains stationary using one or more devices affixed to a tractor, and

(B) is certified by the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

(10) ADVANCED INSULATION.—Any insulation that has an R value of not less than R35 per inch.

* * * * * * *

CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter A—Automotive and Related Items

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PART III—PETROLEUM PRODUCTS

* * * * * * *

Subchapter B—Coal

* * * * * * *

SEC. 4121. IMPOSITION OF TAX.

(a) * * *

* * * * * * *

(e) REDUCTION IN AMOUNT OF TAX.—

(1) * * *

(2) TEMPORARY INCREASE TERMINATION DATE.—For purposes of paragraph (1), the temporary increase termination date is the earlier of—

(A) ⟦January 1, 2014⟧ *December 31, 2018*, or

(B) the first ⟦January 1 after 1981⟧ *December 31 after 2007* as of which there is—

(i) * * *

* * * * * * *

Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

* * * * * * *

Subpart B—Information Concerning Transactions With Other Persons

* * * * * * *

SEC. 6049. RETURNS REGARDING PAYMENTS OF INTEREST.

(a) * * *

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(9) REPORTING OF CREDIT ON QUALIFIED TAX CREDIT BONDS.—

(A) IN GENERAL.—For purposes of subsection (a), the term "interest" includes amounts includible in gross income under section 54A and such amounts shall be treated as paid on the credit allowance date (as defined in section 54A(e)(1)).

(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.–

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Subchapter B—Miscellaneous Provisions

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

* * * * * * *

(i) DISCLOSURE TO FEDERAL OFFICERS OR EMPLOYEES FOR ADMINISTRATION OF FEDERAL LAWS NOT RELATING TO TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

(3) DISCLOSURE OF RETURN INFORMATION TO APPRISE APPROPRIATE OFFICIALS OF CRIMINAL OR TERRORIST ACTIVITIES OR EMERGENCY CIRCUMSTANCES.—

(A) * * *

* * * * * * *

(C) TERRORIST ACTIVITIES, ETC.—

(i) * * *

* * * * * * *

【(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2007.】

* * * * * * *

(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

(A) * * *

* * * * * * *

【(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2007.】

* * * * * * *

(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

(7) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL AGENCIES ADMINISTERING CERTAIN PROGRAMS UNDER THE SOCIAL SECURITY ACT, THE FOOD STAMP ACT OF 1977, OR TITLE 38, UNITED STATES CODE, OR CERTAIN HOUSING ASSISTANCE PROGRAMS.—

(A) * * *

* * * * * * *

(D) PROGRAMS TO WHICH RULE APPLIES.—The programs to which this paragraph applies are:

(i) * * *

* * * * * * *

(viii)(I) * * *

* * * * * * *

(III) health-care services furnished under 【sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)】 *sections 1710(a)(2)(G), 1710(a)(3), and 1710(b)* of such title; and

* * * * * * *

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV). 【Clause (viii) shall not apply after September 30, 2008.】

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter A—Procedure in General

SEC. 6401. AMOUNTS TREATED AS OVERPAYMENTS.

(a) * * *

(b) EXCESSIVE CREDITS.—

(1) IN GENERAL.—If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (re-

duced by the credits allowable under subparts A, B, D, G, ⟦and H⟧ *H, and I* of such part IV), the amount of such excess shall be considered an overpayment.

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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) * * *

*　*　*　*　*　*　*

(c) BIODIESEL MIXTURE CREDIT.—

(1) * * *

⟦(2) APPLICABLE AMOUNT.—For purposes of this subsection—

⟦(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

⟦(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.⟧

(2) APPLICABLE AMOUNT.—For purposes of this subsection, the applicable amount is $1.00.

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(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after ⟦December 31, 2008⟧ *December 31, 2009*.

*　*　*　*　*　*　*

(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.–

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) * * *

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(e) ALCOHOL, BIODIESEL, OR ALTERNATIVE FUEL.—Except as provided in subsection (k)—

(1) * * *

*　*　*　*　*　*　*

(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).

⟦(5)⟧ *(6)* TERMINATION.—This subsection shall not apply with respect to—

(A) * * *

(B) any biodiesel mixture (as defined in section 6426(c)(3)) sold or used after ⟦December 31, 2008⟧ *December 31, 2009*,

* * * * * * *

SEC. 6428. 2008 RECOVERY REBATES FOR INDIVIDUALS.

(a) * * *

* * * * * * *

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

(1) * * *

* * * * * * *

(4) EARNED INCOME.—The term "earned income" has the meaning set forth in section 32(c)(2) ⟦except that—

⟦(A) subclause (II) of paragraph (B)(vi) thereof shall be applied by substituting "January 1, 2009" for "January 1, 2008", and

⟦(B) such term⟧ *except that such term* shall not include net earnings from self-employment which are not taken into account in computing taxable income.

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CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) * * *

* * * * * * *

(m) DEFICIENCIES ATTRIBUTABLE TO ELECTION OF CERTAIN CREDITS.—The period for assessing a deficiency attributable to any election under section 30(d)(4), 30B(h)(9), 30C(e)(5), *30D(f)(4),* 40(f), 43, 45B, 45C(d)(4), 45H(g), or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

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SEC. 6694. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY TAX RETURN PREPARER.

⟦(a) UNDERSTATEMENT DUE TO UNREASONABLE POSITIONS.—

⟦(1) IN GENERAL.—Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of—

⟦(A) $1,000, or

⟦(B) 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

⟦(2) UNREASONABLE POSITION.—A position is described in this paragraph if—

⟦(A) the tax return preparer knew (or reasonably should have known) of the position,

⟦(B) there was not a reasonable belief that the position would more likely than not be sustained on its merits, and

⟦(C)(i) the position was not disclosed as provided in section 6662(d)(2)(B)(ii), or

⟦(ii) there was no reasonable basis for the position.

⟦(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.⟧

(a) UNDERSTATEMENT DUE TO UNREASONABLE POSITIONS.—

(1) IN GENERAL.—If a tax return preparer—

(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) UNREASONABLE POSITION.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

(B) DISCLOSED POSITIONS.—If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

(C) TAX SHELTERS AND REPORTABLE TRANSACTIONS.—If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.

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CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

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Subchapter A—Examination and Inspection

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SEC. 7608. AUTHORITY OF INTERNAL REVENUE ENFORCEMENT OFFICERS.

(a) * * *

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(c) RULES RELATING TO UNDERCOVER OPERATIONS.—

(1) * * *

* * * * * * *

⟦(6) APPLICATION OF SECTION.—The provisions of this subsection—

⟦(A) shall apply after November 17, 1988, and before January 1, 1990, and

⟦(B) shall apply after the date of the enactment of this paragraph and before January 1, 2007.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2007.⟧

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Subchapter D—Possessions

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SEC. 7652. SHIPMENTS TO THE UNITED STATES.

(a) * * *

* * * * * * *

(f) LIMITATION ON COVER OVER OF TAX ON DISTILLED SPIRITS.—For purposes of this section, with respect to taxes imposed under section 5001 or this section on distilled spirits, the amount covered into the treasuries of Puerto Rico and the Virgin Islands shall not exceed the lesser of the rate of—

(1) $10.50 ($13.25 in the case of distilled spirits brought into the United States after June 30, 1999, and before ⟦January 1, 2008⟧ *January 1, 2009*), or

* * * * * * *

ADDITIONAL VIEWS OF THE HON. RAHM EMANUEL

I was not present during the rollcall for the Stark amendment to remove the coal sequestration and capture provisions contained in the underlying bill. If present, I would have voted no on the amendment. Additionally, I was not recorded as voting on final passage of the bill. I want the record to reflect that I support the legislation and indicated to the recording clerk that my intention was to vote in support of the bill but did so before my name was called during the rollcall tally.

RAHM EMANUEL.

ADDITIONAL VIEWS OF REPRESENTATIVE EARL POMEROY, COMMITTEE ON WAYS AND MEANS

I would like to thank the Chairman for including an extension of the Wind Production Tax Credit (PTC) in H.R. 6049, the Energy and Tax Extenders Act of 2008. It is vital that we extend this important tax credit as soon as possible. However, I am concerned, as I know the Chair is, that we have not been able to provide the developing wind industry with a long term extension of this credit.

The PTC has a history of short term extensions and expirations that have hampered industries ability to effectively develop generation capacity. Since 1999 the PTC has expired 3 times, each of these expirations saw dramatic slow down in wind power investment and the loss of thousands of jobs across the industry. In my district alone, LM Glasfiber, a blade manufacturer with more than 900 employees, was forced to furlough a sizable portion of its employees when the credit had expired 2004. In this time of economic insecurity a longer extension would provide workers in this industry with a greater degree of certainty.

In 2004 when the credit had expired for 10 months of the year only 389 MW were installed. We have seen over the past three years how effective the PTC has been when there is some level of certainty that the credit will not expire. A staggering 5,200 MW of wind power were installed in 2007 after the credit had been in place for three uninterrupted years.

I look forward to working with the Chairman to pass this one year extension with the hopes that next year we might be able to work out a long term extension.

EARL POMEROY.

DISSENTING VIEWS

This bill, above all, is about missed opportunities. The Majority has yet again missed the opportunity to avoid its own paygo tax trap. They've again missed the opportunity to work in a bipartisan, bicameral way to ensure that important extensions of expiring tax law are enacted seamlessly and without further unwarranted delay. And, perhaps most notably of all, they've missed the opportunity to address the single biggest "extender" requiring immediate congressional attention: the urgently-needed annual "patch" for the alternative minimum tax (AMT). While we strongly support many of this bill's provisions—and will continue our efforts to see them enacted promptly as part of a workable, bipartisan package that can actually be signed into law by the President—the missed opportunities that abound in this bill require us to oppose H.R. 6049 in its current form.

COMPLIANCE WITH PAYGO MEANS HIGHER TAXES

As we've consistently pointed out since the beginning of this Congress, the new Majority's paygo rules require massive tax increases to fund their party's legislative agenda. Whether that agenda includes proposals for new spending, brand new tax incentives, or merely extensions of the low-tax policies originally enacted by Republicans that would otherwise expire, Democrats' paygo rules necessitate higher and higher taxes in the form of new, revenue-raising offsets.

But as we have argued all along, Washington doesn't have a revenue problem. Indeed, we are already collecting more taxes as a percentage of our GDP than the historical average. What Washington really has is a *spending* problem, although the Majority consistently fails to recognize it. Democrats' refusal to even consider the spending side of the equation was amply on display during the party-line defeat of Mr. Brady's amendment to express the Sense of Congress that the bill should be offset by spending reductions, rather than tax increases.

As Republicans, we believe that Congress shouldn't be in the business of raising taxes, generally, and that it certainly shouldn't be doing so to "pay for" extensions of current law. Democrats were wrong to propose such offsetting tax hikes last year, and they are wrong again now. And as we look ahead toward 2010, when a huge number of critically important tax policies—ranging from the expanded $1,000 child credit to the lower rates on dividends and capital gains—are set to expire, the Majority's paygo logic will require more than $3.5 trillion in tax increases simply to maintain current law. Such enormous, looming tax hikes, baked into the budget by the Majority's ill-advised paygo rules, would be disastrous for our Nation's families, businesses, and the economy at large. We should not begin down that road today by endorsing the Majority's plan to offset this smaller "extenders" package with offsetting revenue enhancements of questionable merit.

A PARTISAN EXERCISE THAT THREATENS ENACTMENT OF IMPORTANT EXTENDERS

The House spent much of 2007 passing substantially similar tax bills over and over again because the Majority failed to recognize that the Senate was unwilling to pass the tax hikes contained in those bills. It is abundantly clear that the Senate will not pass this bill, either. Last month, forty-one Senators, enough to sustain a filibuster, signed a letter pledging to oppose tax bills that, like this one, contain revenue-raising offsets. Moreover, on the very same day that our Committee passed H.R. 6049, the Senate passed a motion to instruct conferees on the FY '09 budget resolution to reject the House amendment assuming $110 billion in tax increases as a result of having to offset the extension of expiring provisions, including the AMT patch.

In short, we've read ahead, and we already know how this story is going to end. The final chapter involves House Democrats accepting the reality that, if they want to see anything enacted into law this year, they will have to abandon their partisan efforts to raise taxes and work with House Republicans, the Senate, and the White House to achieve a reasonable, workable solution that satisfies everyone involved.

Unfortunately, the Majority's ongoing refusal to accept this reality has real consequences for America's hard-working families and U.S. businesses. Until the Majority backs off its tax-hike demands and demonstrates a willingness to compromise, broadly popular tax deductions for state and local sales taxes, higher education expenses, and out-of-pocket classroom expenses for schoolteachers, just to name a few, will not be renewed for 2008. Similarly, the Majority's intransigence threatens the seamless, uninterrupted extension of the R&D tax credit, the active financing exception under subpart F, and other critical tax policies important to our Nation's business community. Even a broadly popular set of energy-related extenders—ranging from tax credits for electricity production from wind, biomass, and other renewable resources, to investment credits for solar energy and fuel cell property—has been put at risk by the partisan exercise undertaken by the Majority with H.R. 6049.

As we have since the opening day of the 110th Congress, we stand ready to work with the Majority to find a common-sense, bipartisan pathway to getting these, and other, critical extenders enacted into law. In fact, during the Committee's consideration of the bill, Mr. Herger offered the Majority just such an opportunity with his amendment to extend the expiring provisions for not just one, but *two* years, without any offsetting tax hikes. Regrettably, by rejecting that approach on a party-line vote, the Majority demonstrated yet again its unwillingness to embrace a reasonable solution on behalf of American taxpayers.

FAILURE TO PATCH THE A.M.T.

Perhaps the greatest single flaw in the Majority's bill, however, is what it fails to include. Although the legislation extends dozens of expiring provisions—some for several years, including many that have not yet expired—it is deafeningly silent on the urgently-needed AMT patch, which has already expired. The Majority's failure to patch the AMT for 2008 means that more than 21 million middle-class individuals and families will pay an additional $61.5 billion in taxes next April—an average of over $2,800 per affected taxpayer.

As we all painfully remember from the procedural fiasco engineered by the Majority last year, the AMT patch covering 2007 was enacted later in the legislative year than ever before. That historically late enactment of the AMT patch caused significant headaches and uncertainty not only for middle-class taxpayers, but for the IRS in its administrative capacity as well. Indeed, according to the Government Accountability Office, the IRS could not even begin processing AMT-affected returns until about four weeks into the filing season.

To avoid a repeat performance of last year's legislative debacle, we believe we should be focusing our attention on enacting this year's AMT patch right now, not at some unspecified time "down the road" as the Majority feebly promised during Committee debate. In light of the Democrats' gross mismanagement of the process last year, we hope our skepticism about the Majority's unconvincing pledge can be forgiven.

During our Committee markup, Republicans unanimously supported an amendment by Mr. Reynolds that would have patched the AMT for 2008. Sadly, even members of the Majority from high-tax states, where the AMT often hits the hardest, turned their backs on their own constituents in voting down this amendment on a party-line vote. Given that outcome, it was altogether unsurprising that Democrats also unanimously rejected two other amendments offered by Mr. English—one that would have repealed the invidious AMT altogether and another that would at least protect taxpayers from owing interest and penalties for under-withholding during the year in case the Majority fails to enact a patch at all.

It was only once the Majority abandoned its quest for tax hikes and waived its own paygo rules that last year's AMT patch saga could finally come to its merciful conclusion. There is simply no good reason to replicate last year's procedural nightmare, and we should be working together now to avoid a similar legislative train wreck in 2008. Without an AMT patch, H.R. 6049 is woefully incomplete.

Conclusion

We have chosen not to focus here on the objections that many of us have to the inclusion of a host of additional items—beyond the traditional extenders package and the energy provisions on which there is a broad, bipartisan consensus—that the Majority has tucked into this legislation. For instance, the bill contains a laundry list of new temporary provisions that add more than $7 billion to the cost of the bill, questionable new tax credit bonds that appear to be little more than "green pork," as well as a $1.5 billion tax break for trial lawyers who use certain types of contingency fee arrangements. Many of these provisions were never subject to formal hearings, depriving the Committee the opportunity to fully understand the implications of these proposals.

As discussed above, our most pressing concerns about H.R. 6049 are much broader, however. The Majority's paygo rules require large tax hikes now and unfathomably large tax hikes over years to come. H.R. 6049 is little more than a political exercise that further threatens the prospects of enacting a seamless, bipartisan extenders package in a timely manner. Inaction on the AMT is inexcusable. It simply does not make sense to extend dozens of tax provisions (some for several years), to create a wide array of new extenders, and to hand out new, permanent tax benefits to certain groups, while failing to deal with the biggest and most important expired provision in the tax code, the AMT patch.

We urge the Majority to address the concerns outlined above prior to bringing H.R. 6049 to the House floor.

JIM MCCRERY.
WALLY HERGER.
DAVE CAMP.
JIM RAMSTAD.
PHIL ENGLISH.
JERRY WELLER.
KEVIN BRADY.
TOM REYNOLDS.
PAUL RYAN.
ERIC CANTOR.
DEVIN NUNES.

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