Senate

The Senate was not in session today. Its next meeting will be held on Monday, December 18, 2017, at 3 p.m.

House of Representatives

FRIDAY, DECEMBER 15, 2017

The House met at 5:30 p.m. and was called to order by the Speaker pro tempore (Mr. SIMPSON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:


I hereby appoint the Honorable MICHAEL K. SIMPSON to act as Speaker pro tempore on this day.

PAUL D. RYAN, Speaker of the House of Representatives.

PRAYER

Reverend Dr. Dan C. Cummins, Peoples Church, Jacksonville, Texas, offered the following prayer:

Our Father in Heaven, during this Christmas season may we remember it is better to give than to receive. And the best gift is the one given to those who cannot repay.

And let us remember the homeless this holiday season, for so was our Savior’s family on the night of his birth.

And while the world went to be taxed, God taught the world about giving your best to perfect strangers, for in so doing we may be entertaining angels unaware.

And like the wise men, let us never consider the distance or difficulty of our journey to offer our gifts to the King. And may we follow the example of this King, who being the very image of God, humbled himself to save others, laying down his life on the cross for their sin. That was the most perfect Christmas gift of all.

In Jesus’ name I pray.

Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day’s proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Texas (Mr. BRADY) come forward and lead the House in the Pledge of Allegiance.

Mr. BRADY of Texas led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CONFERENCE REPORT ON H.R. 1, TAX CUTS AND JOBS ACT

Mr. BRADY of Texas submitted the following conference report and statement on the bill (H.R. 1) to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, having met, after full and free conference, to agree to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

TITLE I

SEC. 11000. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the “Tax Cuts and Jobs Act”.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title 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.

Subtitle A—Individual Tax Reform

PART I—TAX RATE REFORM

SEC. 11001. MODIFICATION OF RATES.

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

“(f) MODIFICATIONS FOR TAXABLE YEARS 2018 THROUGH 2025.—

“(1) IN GENERAL.—In the case of a taxable year beginning after December 31, 2017, and before January 1, 2026—

“(A) subsection (i) shall not apply, and

“(B) this section (other than subsection (i)) shall be applied as provided in paragraphs (2) through (6).

“(2) RATE TABLES.—

“(A) MARRIED INDIVIDUALS FILING JOINT RETURN AND SURVIVING SPOUSES.—The following table shall be applied in lieu of the table contained in subsection (a):
### (B) HEADS OF HOUSEHOLDS — the following table shall be applied in lieu of the table contained in subsection (b):

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Tax Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $20,000</td>
<td>$4,089,50, plus 35% of the excess over $20,000.</td>
</tr>
<tr>
<td>Over $18,000</td>
<td>$3,089,50, plus 32% of the excess over $18,000.</td>
</tr>
<tr>
<td>Over $16,000</td>
<td>$2,089,50, plus 30% of the excess over $16,000.</td>
</tr>
<tr>
<td>Over $14,000</td>
<td>$1,089,50, plus 28% of the excess over $14,000.</td>
</tr>
<tr>
<td>Over $12,500</td>
<td>$210,50, plus 25% of the excess over $12,500.</td>
</tr>
<tr>
<td>Over $12,000</td>
<td>$180,50, plus 24% of the excess over $12,000.</td>
</tr>
<tr>
<td>Over $11,500</td>
<td>$150,50, plus 22% of the excess over $11,500.</td>
</tr>
<tr>
<td>Over $11,000</td>
<td>$120,50, plus 20% of the excess over $11,000.</td>
</tr>
<tr>
<td>Over $10,500</td>
<td>$90,50, plus 18% of the excess over $10,500.</td>
</tr>
<tr>
<td>Over $10,000</td>
<td>$60,50, plus 16% of the excess over $10,000.</td>
</tr>
<tr>
<td>Over $9,500</td>
<td>$30,50, plus 14% of the excess over $9,500.</td>
</tr>
<tr>
<td>Over $9,000</td>
<td>$10,50, plus 12% of the excess over $9,000.</td>
</tr>
<tr>
<td>Not over $9,000</td>
<td>$0, plus 10% of the excess over $9,000.</td>
</tr>
</tbody>
</table>

### (C) UNMARRIED INDIVIDUALS OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS — the following table shall be applied in lieu of the table contained in subsection (c):

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Tax Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $9,525</td>
<td>$995,20, plus 12% of the excess over $9,525.</td>
</tr>
<tr>
<td>Over $8,525</td>
<td>$895,20, plus 11% of the excess over $8,525.</td>
</tr>
<tr>
<td>Over $7,525</td>
<td>$795,20, plus 10% of the excess over $7,525.</td>
</tr>
<tr>
<td>Over $6,525</td>
<td>$695,20, plus 9% of the excess over $6,525.</td>
</tr>
<tr>
<td>Over $5,525</td>
<td>$595,20, plus 8% of the excess over $5,525.</td>
</tr>
<tr>
<td>Over $4,525</td>
<td>$495,20, plus 7% of the excess over $4,525.</td>
</tr>
<tr>
<td>Over $3,525</td>
<td>$395,20, plus 6% of the excess over $3,525.</td>
</tr>
<tr>
<td>Over $2,525</td>
<td>$295,20, plus 5% of the excess over $2,525.</td>
</tr>
<tr>
<td>Over $1,525</td>
<td>$195,20, plus 4% of the excess over $1,525.</td>
</tr>
<tr>
<td>Over $0,525</td>
<td>$0, plus 0% of the excess over $0,525.</td>
</tr>
</tbody>
</table>

### (D) MARRIED INDIVIDUALS FILING SEPARATE RETURNS — the following table shall be applied in lieu of the table contained in subsection (d):

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Tax Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $30,000</td>
<td>$80,689,50, plus 37% of the excess over $30,000.</td>
</tr>
<tr>
<td>Over $20,000</td>
<td>$45,689,50, plus 35% of the excess over $20,000.</td>
</tr>
<tr>
<td>Over $15,000</td>
<td>$32,089,50, plus 32% of the excess over $15,000.</td>
</tr>
<tr>
<td>Over $11,000</td>
<td>$22,089,50, plus 28% of the excess over $11,000.</td>
</tr>
<tr>
<td>Over $7,500</td>
<td>$14,089,50, plus 24% of the excess over $7,500.</td>
</tr>
<tr>
<td>Over $5,000</td>
<td>$7,089,50, plus 20% of the excess over $5,000.</td>
</tr>
<tr>
<td>Over $2,000</td>
<td>$2,089,50, plus 12% of the excess over $2,000.</td>
</tr>
<tr>
<td>Not over $2,000</td>
<td>$0, plus 10% of the excess over $2,000.</td>
</tr>
</tbody>
</table>
(i) Maximum Zero Rate Amount.—The maximum zero rate amount shall be

(ii) in the case of a joint return or surviving spouse, $77,200,

(iii) in the case of any other individual (other than an estate or trust), an amount equal to

(iv) in the case of an estate or trust, $2,600.

(b) C-CPI-U.—Subsection (f) of section 1 is amended by striking paragraph (7), by redesignating paragraph (8) as paragraph (7), and by inserting after paragraph (5) the following new paragraph:

(8) C-CPI-U.—For purposes of this subsection—

(A) IN GENERAL.—The term ‘C-CPI-U’ means the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor).

(B) Determination for Calendar Year.—The C-CPI-U for any calendar year is the average of the C-CPI-U for each of the 12-month period ending on August 31 of such calendar year.

(c) Application to Permanent Tax Tables.—In the case of any taxable year beginning after 2016, each of the dollar amounts in clauses (i) and (ii) of subparagraph (B) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 2(h)(3)(H)(i) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2017’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

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

 SEC. 11060. INFLATION ADJUSTMENTS BASED ON CHAINED CPI.

(a) In General.—Subsection (f) of section 1 is amended by striking paragraph (2) and by inserting after paragraph (2) the following new paragraph:

(3) the cost-of-living adjustment for any calendar year is determined by multiplying the amount determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2017’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

(b) Due Diligence Tax Preparer Requirement—(A) In General.—The term ‘C-CPI-U’ means the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor).

(B) Determination for Calendar Year.—The C-CPI-U for any calendar year is the average of the C-CPI-U for each of the 12-month period ending on August 31 of such calendar year.

(c) Application to Permanent Tax Tables.—(1) In general—

(II) the automobile component of the CPI (as defined in section 1(f)(4)) for October of 1987, October of the preceding calendar year, exceeds

(ii) the automobile component of the CPI (as defined in section 1(f)(4)) for August of 1987, by $500 for each such failure.

(2) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

 SEC. 11061. INFLATION ADJUSTMENTS BASED ON RETAIL CONSUMER PRICE INDEX.

(a) In General.—Subsection (f) of section 1 is amended by striking paragraph (2) and by inserting after paragraph (2) the following new paragraph:

(3) the cost-of-living adjustment for any calendar year is determined by multiplying the amount determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2017’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

(b) Due Diligence Tax Preparer Requirement—(A) In General.—The term ‘C-CPI-U’ means the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor).

(B) Determination for Calendar Year.—The C-CPI-U for any calendar year is the average of the C-CPI-U for each of the 12-month period ending on August 31 of such calendar year.

(c) Application to Permanent Tax Tables.—(1) In general—

(i) the C-CPI-U for the base calendar year before 2016 shall never be taken into account under clause (i) (if any) by which—

(ii) the base calendar year for which the taxable year begins, determined by substituting ‘calendar year 1999’ for ‘calendar year 1990’ in subparagraph (A)(ii) thereof.

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.
(ii) C-CPI-U AUTOMOBILE COMPONENT.—The term ‘C-CPI-U automobile component’ means the automobile component of the Chained Consumer Price Index for All Urban Consumers (as described in section 1(f)(6)).


(10) The return of section 1274A(d) is amended to read as follows:

‘(2) ADJUSTMENT FOR INFLATION.—In the case of any debt instrument arising out of a sale or exchange during any calendar year after 1989, each dollar amount contained in the preceding provisions of this section shall be increased by an amount equal to—

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘calendar year 1988’ for ‘calendar year 2016’ in subparagraph (A)(ii).’

Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100)."


(12) Section 4801(b)(3)(C)(v)(I) is amended by striking ‘for “1992” in subparagraph (B)’ and inserting ‘for “2016” in subparagraph (A)(ii)."

(13) Section 6039F(d) is amended by striking ‘subparagraph (B) thereof’ shall be applied by substituting ‘1995’ for ‘2016’.

(14) Section 1872(g)(5) is amended to read as follows:

‘(5) ADJUSTMENT OF LIMIT FOR INFLATION.—In the case of any loan made during any calendar year after 1986, the dollar amount in paragraph (2) shall be increased by an amount equal to—

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘calendar year 1985’ for ‘calendar year 2016’ in subparagraph (A)(ii).’

Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

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

PART II—DEDUCTION FOR QUALIFIED BUSINESS INCOME OF PASS-THRU ENTITIES

SEC. 11011. DEDUCTION FOR QUALIFIED BUSINESS INCOME.

(a) IN GENERAL.—Part VI of chapter B of chapter 1 is amended by adding at the end the following new section:

‘SEC. 199A. QUALIFIED BUSINESS INCOME.

(a) IN GENERAL.—In the case of a taxpayer other than a corporation, there shall be allowed as a deduction for any taxable year an amount equal to the sum of—

(1) the lesser of—

(A) the combined qualified business income amount of the taxpayer, or

(B) an amount equal to 20 percent of the excess (if any) of—

(i) the taxable income of the taxpayer for the taxable year, over

(ii) the sum of any net capital gain (as defined in section 1(h)), plus the aggregate amount of the qualified cooperative dividends, of the taxpayer for the taxable year, plus

(ii) the combined qualified business income amount of any trade or business carried on by the taxpayer, or

(ii) the sum of any net capital gain (as defined in section 1(h)), plus the aggregate amount of the qualified cooperative dividends, of the taxpayer for the taxable year, plus

(2) the lesser of—

(A) the sum of the aggregate amount of the qualified cooperative dividends of the taxpayer for the taxable year, or

(b) COMBINED QUALIFIED BUSINESS INCOME AMOUNT.—For purposes of paragraph (2), there shall be included in the aggregate amount of the qualified cooperative dividends—

(1) the taxable income (reduced by the net capital gain (as so defined)) of the taxpayer for the taxable year.

Any increase under the preceding sentence shall not exceed the taxable income (reduced by the net capital gain (as so defined)) of the taxpayer for the taxable year.

(b) COMBINED QUALIFIED BUSINESS INCOME AMOUNT.—For purposes of paragraph (2), there shall be included in the aggregate amount of the qualified cooperative dividends—

(1) IN GENERAL.—The term ‘combined qualified business income amount’ means, with respect to any taxable year, an amount equal to—

(A) the sum of amounts determined under paragraph (2) for each qualified trade or business carried on by the taxpayer, plus

(B) 20 percent of the aggregate amount of the qualified REIT dividends and qualified publicly traded partnership income of the taxpayer for the taxable year.

(2) DETERMINATION OF DEDUCTIBLE AMOUNT FOR EACH TRADE OR BUSINESS.—The amount determined under this paragraph with respect to any qualified trade or business is the lesser of—

(A) 20 percent of the taxpayer’s qualified business income (as so defined) with respect to the qualified trade or business, or

(B) the greater of—

(i) 50 percent of the W-2 wages with respect to the qualified trade or business, or

(ii) the sum of 25 percent of the W-2 wages with respect to the qualified trade or business, plus 2.5 percent of the unadjusted basis immediately after acquisition of all qualified property.

(3) MODIFICATIONS TO LIMIT BASED ON TAXABLE INCOME.—

(A) EXCEPTION FROM LIMIT.—In the case of any taxpayer whose taxable income for the taxable year does not exceed the threshold amount, paragraph (2) shall be applied without regard to subparagraph (B).

(B) PHASE-IN OF LIMIT FOR CERTAIN TAXPAYERS.—

(i) IN GENERAL.—If—

(I) the taxable income of a taxpayer for any taxable year exceeds the threshold amount, but does not exceed the sum of the threshold amount plus $50,000 ($100,000 in the case of a joint return), and

(II) the amount determined under paragraph (2)(A) (determined without regard to this subparagraph) with respect to any qualified trade or business carried on by the taxpayer is less than the amount determined under paragraph (2)(A) with respect to such trade or business, then paragraph (2) shall be applied with respect to such trade or business without regard to subparagraph (B) thereof and by reducing the amount determined under subparagraph (A) thereof by the amount determined under clause (ii).

(ii) AMOUNT OF REDUCTION.—The amount determined under this subparagraph is the amount which bears the same ratio to the excess amount as—

(I) the amount by which the taxpayer’s taxable income for the taxable year exceeds the threshold amount, bears to

(II) $50,000 ($100,000 in the case of a joint return).

(iii) EXCESS AMOUNT.—For purposes of clause (ii), the excess amount is the excess of—

(I) the amount determined under paragraph (2)(A) (determined without regard to this paragraph), over

(II) the amount determined under paragraph (2)(B) (determined without regard to this paragraph).

(4) WAGES, ETC.—

(A) IN GENERAL.—The term ‘W-2 wages’ means, with respect to any person for any taxable year, the amount described in paragraphs (3) and (6) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending before the close of such taxable year.

(B) LIMITATION TO WAGES ATTRIBUTABLE TO QUALIFIED BUSINESS INCOME.—Such term shall not include any amount which is not properly allocable to qualified business income for purposes of subsection (c)(1).

(C) RETURN REQUIREMENT.—Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(5) ACQUISITIONS, DISPOSITIONS, AND SHORT TAXABLE YEARS.—The Secretary shall provide for the application of this subsection in cases of—

(A) a short taxable year or where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separately identifiable trade or business during the taxable year.

(6) QUALIFIED PROPERTY.—For purposes of this section—

(A) IN GENERAL.—The term ‘qualified property’ means, with respect to any qualified trade or business for a taxable year, tangible property of a character subject to the allowance for depreciation under section 167—

(i) which is held by, and available for use in, the qualified trade or business at the close of the taxable year,

(ii) which is used at any point during the taxable year in the production of qualified business income, and

(iii) the depreciable period for which has not ended before the close of the taxable year.

(B) DEPRECIABLE PERIOD.—The term ‘depreciable period’ means, with respect to qualified property, the period, starting on the date the property was first placed in service by the taxpayer and ending on the later of—

(I) the date that is 10 years after such date, or

(ii) the last day of the last full year in the applicable recovery period that would apply to the property under section 168 (determined without regard to subsection (g) thereof).

(c) QUALIFIED BUSINESS INCOME.—For purposes of this section—

(A) IN GENERAL.—The term ‘qualified business income’ means, for any taxable year, the net amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer. Such term shall not include any qualified REIT dividends, qualified cooperative dividends, or qualified publicly traded partnership income.

(2) CARRYOVER OF LOSSES.—If the net amount of qualified income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer is less than zero, such amount shall be treated as a loss from a qualified trade or business in the succeeding taxable year.

(3) QUALIFIED ITEMS OF INCOME, GAIN, DE- DUCTION, AND LOSS.—For purposes of this subsection—

(A) IN GENERAL.—The term ‘qualified items of income, gain, deduction, and loss’ means items of income, gain, deduction, and loss to the extent such items are—

(i) effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting qualified trade or business for nonresident alien individual or for a foreign corporation’ or for a foreign corporation’ each place it appears), and

(ii) included in the determination of taxable income for the taxable year.

(B) EXCEPTIONS.—The following investment income shall not be taken into account as a qualified item of income, gain, deduction, or loss:

(i) Any item of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(ii) Any dividend, income equivalent to a dividend, or payment in lieu of dividends described in section 954(c)(1)(G).

(iii) Any interest income other than interest income which is properly allocable to a trade or business.
purposes of this section—

(b) any guaranteed payment described in section 707(a) paid to a partner or shareholder with respect to the trade or business.

d. QUALIFIED TRADE OR BUSINESS.—For purposes of this section—

(1) IN GENERAL.—The term ‘qualified trade or business’ means any trade or business other than—

(A) a specified service trade or business, or

(B) the trade or business of performing services as an employee.

(c) SPECIFIED SERVICE TRADE OR BUSINESS.—The term ‘specified service trade or business’ means any trade or business—

(A) which is described in section 1221(c)(3)(B)(ii) (as so applicable without regard to the words ‘engineering, architecture,’) or which would be so described if the term ‘employees or owners’ were substituted for ‘employees therein,’ or

(B) which involves the performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2), partnership interests, or commodities (as defined in section 475(c)(2)).

(d) EXCEPTION FOR SPECIFIED SERVICE BUSINESSES BASED ON TAXPAYER’S INCOME.—

(A) IN GENERAL.—If, for any taxable year, the taxpayer other than a corporation is within the sum of the threshold amount plus $50,000 ($100,000 in the case of a joint return), then—

(i) any specified service trade or business of the taxpayer fail to be treated as a qualified trade or business due to paragraph (1)(A), but

(ii) only the applicable percentage of qualified items of income, gain, deduction, or loss, and the W–2 wages and the unadjusted basis immediately after acquisition of qualified property, of the taxpayer allocable to such specified service trade or business shall be taken into account in computing the qualified business income, W–2 wages, and the unadjusted basis immediately after acquisition of qualified property of the taxpayer for the taxable year for purposes of applying this section.

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term ‘applicable percentage’ means, with respect to any taxable year, 100 percent reduced (not below zero) by the percentage equal to the ratio of—

(i) the sum of—

(A) 20 percent of the excess (if any) of—

(a) the sum of the threshold amount plus $50,000 ($100,000 in the case of a joint return), and

(b) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2017’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2017’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

The amount of any increase under the preceding sentence shall be rounded as provided in section 1(f)(7).

(2) QUALIFIED REIT DIVIDEND.—The term ‘qualified REIT dividend’ means any dividend from a real estate investment trust received during the taxable year which—

(A) is not a capital gain dividend, as defined in section 857(b)(3), and

(B) is not qualified dividend income, as defined in section 1(h)(11).

(3) QUALIFIED COOPERATIVE DIVIDEND.—The term ‘qualified cooperative dividend’ means any patronage dividend (as defined in section 1368(h)(3)) or qualified annuity (as defined in section 1368(f)), and any qualified written notice of allocation (as defined in section 1368(c)), or any similar amount received from an organization described in subparagraph (B)(ii), which—

(A) is includible in gross income, and

(B) is received from—

(i) an organization or corporation described in section 501(c)(12) or 1381(a), or

(ii) an organization which is governed under this title by the rules applicable to cooperatives before the enactment of subchapter T.

(4) QUALIFIED PUBLICLY TRADED PARTNER¬SHIP INCOME.—The term ‘qualified publicly traded partnership income’ means, with respect to any qualified trade or business of a taxpayer, the sum of—

(A) the net amount of such taxpayer’s allocable share of each qualified item of income, gain, deduction, and loss (as defined in subsection (c)(3) and determined after the application of subsection (c)(4)) from a publicly traded partnership included in section 7704(a) which is not treated as a corporation under section 7704(c), plus

(B) any gain recognized by such taxpayer upon disposition of its interest in such partnership to the extent such gain is treated as an amount realized from the sale or exchange of property other than a capital asset under section 732(a).

(5) SPECIAL RULES.—

(1) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

(A) IN GENERAL.—In the case of a partnership or S corporation—

(i) this section shall be applied at the partner or shareholder level,

(ii) each partner or shareholder shall take into account such person’s allocable share of each qualified item of income, gain, deduction, and loss,

(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W–2 wages and unadjusted basis immediately after acquisition of qualified property of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary).

For purposes of clause (i), the partner’s or shareholder’s allocable share of W–2 wages shall be the partner’s or shareholder’s allocable share of W–2 wages. For purposes of such clause, partner’s or shareholder’s allocable share of the unadjusted basis immediately after acquisition of qualified property shall be determined in the same manner as the partner’s or shareholder’s allocable share of W–2 wages. For purposes of this subparagraph, in the case of an S corporation, an allocable share shall be the shareholder’s pro rata share of an item.

(B) APPLICABLE TO TRUSTS AND ESTATES.—

Rules similar to the rules under section 190(d)(1)(B)(i) (as in effect on December 1, 2017) for the apportionment of W–2 wages shall apply to the apportionment of W–2 wages. The apportionment of unadjusted basis immediately after acquisition of qualified property under this section shall include the Commonwealth of Puerto Rico.

(6) AGRICULTURAL OR HORTICULTURAL COOPERATIVES.—

(A) IN GENERAL.—In the case of any taxpayer with qualified business income from sources within the commonwealth of Puerto Rico, if all such income is taxable under section 1 for such taxable year, then for purposes of determining reporting requirements of income of such taxpayer for such taxable year, the term ‘United States’ shall include the Commonwealth of Puerto Rico.

(B) SPECIAL RULE FOR APPL YING LIMIT.—In the case of any taxpayer described in clause (i), the determination of W–2 wages of such taxpayer with respect to any qualified trade or business conducted in Puerto Rico shall be made with regard to any adjustment under section 3401(a)(4) for remuneration paid for services in Puerto Rico.

(2) COORDINATION WITH MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, qualified business income shall be determined without regard to any adjustments under sections 56 through 59.

(3) DEDUCTION LIMITED TO INCOME TAXES.—

The deduction under subsection (a) shall only be allowed for purposes of this chapter.

(4) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations—

(A) for requiring or restricting the allocation of items and wages under this section and such reporting requirements as the Secretary determines appropriate, and

(B) for the application of this section in the case of tiered entities.

(1) QUALIFIED BUSINESS ALLOWED TO SPECIFIED AGRICULTURAL OR HORTICULTURAL COOPERATIVES.—

(A) IN GENERAL.—In the case of any taxable year of a specified agricultural or horticultural cooperative beginning after December 15, 2017, there shall be allowed a deduction in an amount equal to the lesser of—

(A) 50 percent of the excess (if any) of—

(i) the gross income of a specified agricultural or horticultural cooperative, over

(ii) the qualified cooperative dividends (as defined in subsection (e)(4)) paid during the taxable year for the taxable year, or

(B) the greater of—

(i) 50 percent of the W–2 wages of the cooperative with respect to its trade or business, or

(ii) the sum of 25 percent of the W–2 wages of the cooperative with respect to its trade or business, plus 2.5 percent of the unadjusted basis immediately after acquisition of all qualified property of the cooperative.

(B) LIMITATION.—The amount determined under paragraph (1) shall be treated as the taxable income of the specified agricultural or horticultural for the taxable year.

(2) SPECIFIED AGRICULTURAL OR HORTICULTURAL COOPERATIVE.—For purposes of this subsection, the term ‘specified agricultural or horticultural cooperative’ means an organization to which part I of subchapter T applies which is engaged in—

(A) the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product; and

(B) the marketing of agricultural or horticultural products which its patrons have so
(a) IN GENERAL.—Section 461 is amended by adding at the end the following new subsection: "(1) LIMITATION ON EXCESS BUSINESS LOSSES OF NONCORPORATE TAXPAYERS.—(1) LIMITATION.—The limitation of taxable year of a taxpayer other than a corporation beginning after December 31, 2017, and before January 1, 2026—

(4) A subsection (j) (relating to limitation on excess farm losses of certain taxpayers) shall not apply, and

(5) any excess business loss of the taxpayer for the taxable year shall not be allowed.

(2) DISALLOWED LOSS CARRYOVER.—Any loss which is disallowed under paragraph (1) shall be treated as a non-recaptured loss carried over to the following taxable year under section 172.

(3) EXCESS BUSINESS LOSS.—For purposes of this subsection—

(A) IN GENERAL.—The term 'excess business loss' means the excess (if any) of—

(i) the aggregate deductions of the taxpayer for the taxable year which are attributable to trades or businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1)), over

(ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such trades or businesses, plus

(II) $250,000 (200 percent of such amount in the case of a joint return).

(B) ADJUSTMENT FOR INFLATION.—In the case of any taxable year beginning after December 31, 2018, the $250,000 amount in subparagraph (A)(II) shall be increased by an amount equal to

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '2017' for '2016' in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(4) APPLICATION OF SUBSECTION IN CASE OF PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partnership or S corporation level.

(B) each partner's allocable share of the items of income, gain, deduction, or loss of the partnership or S corporation for any taxable year from trades or businesses attributable to the partnership or S corporation which is disallowed under paragraph (1) shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

For purposes of this paragraph, in the case of an S corporation, allocable share shall be determined without regard to all that follows 'resident of the United States' in section 152(b)(1).'

(5) ADDITIONAL REPORTING.—The Secretary shall prescribe such additional reporting requirements as the Secretary determines necessary to carry out the purposes of this section.

(6) COORDINATION WITH SECTION 468.—This subsection shall be applied after the application of section 468.

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

PART III—TAX BENEFITS FOR FAMILIES AND INDIVIDUALS

SEC. 11001. INCREASE IN STANDARD DEDUCTION.

(a) IN GENERAL.—Section 62(a) is amended by adding at the end the following new paragraph:

(7) SPECIAL RULES FOR TAXABLE YEARS 2018 THROUGH 2025.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.
“(7) SOCIAL SECURITY NUMBER REQUIRED.—No credit shall be allowed under this section to a taxpayer with respect to any qualifying child unless the taxpayer includes the social security number of such child as determined for the return of tax for the taxable year. For purposes of the preceding sentence, the term ‘social security number’ means a social security number issued to an individual by the Social Security Administration, but only if the social security number is—

“(A) to a citizen of the United States or pursuant to subclause (1) or (2) of subsection (ii) of section 265(c)(2)(B)(ii) of the Social Security Act, and

(B) before the due date for such return.”.

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

SEC. 11023. INCREASED LIMITATION FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Section 170(b)(1) is amended by redesigning subparagraph (G) as subparagraph (H) and by inserting after subparagraph (F) the following new subparagraph:

“(G) INCREASED LIMITATION FOR CASH CONTRIBUTIONS.—

“(1) IN GENERAL.—In the case of any contribution of cash to an organization described in subparagraph (A), the total amount of such contributions which may be taken into account under any taxable year shall be reduced by—

(B) the aggregate amount of contributions described in clause (i) exceeds the applicable limitation under clause (i) for any taxable year described in such clause, such excess shall be carried over in a manner consistent with the rules of subsection (d)(1) as a charitable contribution to which clause (i) applies in each of the 5 succeeding years in order of time.

(ii) LIMITATION REDUCTION.—For each taxable year to which a charitable contribution applies, the limitation under clause (i) shall be reduced by an amount equal to the product of—

(II) the limitation under subparagraph (C) for such taxable year, and

(iii) the aggregate amount of contributions described in clause (i) for such taxable year.

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

SEC. 11024. INCREASED LIMITATION FOR ABLE ACCOUNTS.

(a) INCREASE IN LIMITATION FOR CONTRIBUTIONS FROM INDIVIDUALS WITH DISABILITIES.—

“(1) EXCEPTED.—Section 529A(b)(2)(B) is amended by striking subsection (C).”.

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

SEC. 11025. ROLLOVERS TO ABLE PROGRAMS FROM 529 PROGRAMS.

(a) IN GENERAL.—Clause (i) of section 529A(c)(3)(C) is amended by striking “or” at the end of clause (i), by striking the period at the end of subparagraph (A) and inserting “, and”, and by inserting at the end the following:

“(3) ELEIGIBLE DESIGNATED BENEFICIARY.—Sec-

tion describes an eligible designated beneficiary as a beneficiary of this section any member of the Armed Forces who is serving in a hazardous duty area.”.

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

SEC. 11026. TREATMENT OF CERTAIN INDIVIDUALS RECEIVING SERVICES IN THE SINAL PENINSULA OF EGYPT.

(a) IN GENERAL.—For purposes of the following provisions of the Internal Revenue Code of 1986, with respect to the applicable period, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

(1) Section 112 (relating to special rule where deceased spouse was in missing status);

(2) Section 112 (relating to the exclusion of combat pay of members of the Armed Forces);

(3) Section 692 (relating to income taxes of members of the Armed Forces dying in combat zone or by reason of combat-zone-injured warrants, etc.).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2016.

SEC. 11027. TEMPORARY REDUCTION IN MEDICAL EXPENSE DEDUCTION FLOOR.

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

“(f) SPECIAL RULES FOR 2013 THROUGH 2016.—

“(1) IN GENERAL.—Section 213(f)(1)(B) is amended by striking ‘‘(B) the amount of contributions made before January 1, 2016, by such individual to the ABLE account for the taxable year described in such clause, such excess shall be carried over in a manner consistent with the rules of subsection (d)(1) as a charitable contribution to which clause (i) applies in each of the 5 succeeding years in order of time.’’.

“(2) LIMITATION REDUCTION.—For each taxable year to which a charitable contribution applies, the limitation under clause (i) shall be reduced by an amount equal to the product of—

(II) the limitation under subparagraph (C) for such taxable year, and

(iii) the aggregate amount of contributions described in clause (i) for such taxable year.

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

SEC. 11028. RELIEF FOR 2016 DISASTER AREAS.

(a) IN GENERAL.—Except as provided in paragraph (2), the applicable period—

(1) the portion of the first taxable year ending after June 9, 2015, which begins on such date, and

(2) any subsequent taxable year beginning before January 1, 2026.

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

(c) APPLICABLE PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of this section shall take effect on June 9, 2015.

(2) NOT WITHSTANDING.—Subsection (a)(5) shall apply to remuneration paid after the date of the enactment of this Act.

SEC. 11029. TEMPORARY EXCLUSION OF CERTAIN DEFENSE PAY FROM COMPENSATION.Payments of combat-zone-incurred wounds, etc. shall not exceed 60 percent of the earnings of any taxpayer, from members of the Armed Forces dying in combat zone or by reason of combat-zone-injured warrants, etc.).

(b) AGGREGATE DOLLAR LIMITATION.—
SEC. 11031. TREATMENT OF STUDENT LOANS DISCHARGED ON ACCOUNT OF DEATH OR DISABILITY.

(a) In general.—Section 108(f) is amended by adding at the end the following new paragraph:

"(i) DISCHARGES ON ACCOUNT OF DEATH OR DISABILITY.—

"(A) In general.—In the case of an individual whose gross income does not include any amount which (but for this subsection) would be includible in gross income for such taxable year by reason of the discharge (in whole or in part) of any loan described in subparagraph (B) after December 31, 2017, and before January 1, 2026, if such discharge was—

"(I) pursuant to subsection (a) or (d) of section 6201 of the Higher Education Act of 1965 or the parallel benefit under part D of title IV of such Act relating to the repayment of loan liability,

"(II) pursuant to section 464(e)(1)(F) of such Act, or

"(iii) otherwise discharged on account of the death of or total and permanent disability of the student.

"(B) Loans described.—A loan is described in this subparagraph if such loan was—

"(i) a student loan (as defined in paragraph (2), or

"(ii) a private education loan (as defined in section 140(f) of the Consumer Credit Protection Act, 15 U.S.C. 1667(f))."

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

SEC. 11032. 529 ACCOUNT FUNDING FOR ELEMENTARY AND SECONDARY EDUCATION.

(a) In general.—Section 529(c) is amended by adding at the end the following new paragraph:

"(T) TREATMENT OF ELEMENTARY AND SECONDARY EDUCATION EXPENSES.—In this subsection to the term ‘qualified higher education expense’ shall include a reference to—

"(A) expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, and

"(B) expenses for—

"(i) curriculum and instructional materials,

"(ii) books or other instructional materials,

"(iii) online educational materials,

"(iv) travel to or from educational classes outside of the home (but only if the tutor or instructor is not related (within the meaning of section 152(d)(2)) to the student),

"(v) dual enrollment in an institution of higher education, and

"(vi) educational therapies for students with disabilities, in connection with a homeschool (whether treated as a homeschool or a private school for purposes of applicable State law)."

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(2) LIMITATION.—Section 529(e)(3)(A) is amended by adding at the end the following new subsection:

“(m) any additional amounts to which the employee elects to take into account under subsection (m), but only if the employee’s spouse does not have in effect a withholding allowance certificate making such an election;

“(n) the standard deduction allowable to such employee of such standard deduction determined based on the standard deduction for the taxable year in which the levy occurs.”

(3) EFFECTIVE DATE.—The amendments made by this section shall be effective for taxable years beginning after December 31, 2017.

PART V—DEDUCTIONS AND EXCLUSIONS

SEC. 10941. SENSITIVE OF DEDUCTION FOR PERSONAL EXEMPTIONS.

(a) IN GENERAL.—Subsection (d) of section 151 is amended—

(2) LIMITATION.—Section 529(e)(3)(A) is amended by adding at the end the following new subsection:

“(n) any additional amounts to which the employee elects to take into account under subsection (m), but only if the employee’s spouse does not have in effect a withholding allowance certificate making such an election;

“(o) the standard deduction allowable to such employee of such standard deduction determined based on the standard deduction for the taxable year in which the levy occurs.”

(3) EFFECTIVE DATE.—The amendments made by this section shall be effective for taxable years beginning after December 31, 2017.

PART V—DEDUCTIONS AND EXCLUSIONS

SEC. 10942. LIMITATION ON DEDUCTION FOR STATE AND LOCAL, ETC. TAXES.

(a) IN GENERAL.—Subsection 164(h) is amended by adding at the end the following new paragraph:

“(i) the AMOUNT DETERMINED.—For purposes of subparagraph (A), the amount determined under subparagraph (B) shall be increased by an amount equal to—

“(II) the sum of the amount determined under subparagraph (B) and the standard deduction determined under section 151(d) for the taxable year in which the levy occurs.”

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective for taxable years beginning after January 1, 2019.
“(6) LIMITATION ON INDIVIDUAL DEDUCTIONS FOR TAXABLE YEARS 2018 THROUGH 2025.—In the case of an individual and a taxable year beginning after December 31, 2017, and before January 1, 2026, (a) if the taxpayer is married, (b) the aggregate amount of taxes taken into account under subparagraphs (A), (B), (C), and (D) of section 163(h) shall not apply to any indebtedness incurred on or after December 15, 2017, (c) the limitation under such subparagraph shall be reduced by (but not below zero) the aggregate amount of taxes taken into account for or before December 15, 2017, which is treated as indebtedness for purposes of this section for the taxable year in which the indebtedness was incurred.

(II) IN GENERAL.—Subsection (h) of section 165 is amended by inserting at the end the following new paragraph:

“(i) LIMITATION ON INDIVIDUAL DEDUCTIONS FOR QUALIFIED RESIDENCE INTEREST.—In general, subsection (h) of section 165 shall not apply to any indebtedness incurred on or before December 15, 2017, and in applying such subsection to any indebtedness incurred after such date, the limitation under such subsection shall be reduced by (but not below zero) the aggregate amount of taxes taken into account for or before December 15, 2017, which is treated as indebtedness for purposes of this section for the taxable year in which the indebtedness was incurred.

(III) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE DECEMBER 15, 2017.—Subclause (II) shall not apply to any indebtedness incurred on or before December 15, 2017, and, in applying such subsection to any indebtedness incurred after such date, the limitation under such subsection shall be reduced (but not below zero) by the aggregate amount of taxes taken into account for or before December 15, 2017, which is treated as indebtedness for purposes of this section for the taxable year in which the indebtedness was incurred.

(IV) TREATMENT OF REFINANCING OF INDEBTEDNESS.—

“(I) IN GENERAL.—In the case of any indebtedness which is incurred to refinance indebtedness, such refinanced indebtedness shall be treated for purposes of clause (I)(III) as incurred on the date that the original indebtedness was incurred to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

“(II) LIMITATION ON PERIOD OF REFINANCING.—Subclause (I) shall not apply to any indebtedness after the expiration of the term of the original indebtedness or, if the principal of such original indebtedness is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

“(iii) TREATMENT OF INTEREST ALLOWED.—In the case of any indebtedness incurred on or after December 15, 2017, the limitation under subparagraph (A) to the extent such loss does not exceed such gains, and

“(iv) TREATMENT OF LIMITATION IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2017.—In the case of any indebtedness incurred after such date, the limitation under such subsection (a) to the extent it is attributable to a Federally declared disaster (as defined in subsection (1)(i)(I)) shall be reduced by the portion of such gains taken into account under paragraph (2)(A) shall be reduced by the portion of such gains taken into account under paragraph (A).

(9) SUSPENSION OF DEDUCTION FOR QUALIFIED PERSONAL CASUALTY LOSSES.

(a) IN GENERAL.—Subsection (h) of section 165 is amended by adding at the end the following new paragraph:

“(i) LIMITATION FOR TAXABLE YEARS 2018 THROUGH 2025.—

“(A) IN GENERAL.—In the case of any individual, except as provided in subparagraph (B), any personal casualty loss which (but for this paragraph) would be deductible in a taxable year beginning after December 31, 2017, and before January 1, 2026, shall be allowed as a deduction under subsection (a) only to the extent it is attributable to a Federally declared disaster (as defined in subsection (1)(i)(I)).

“(B) EXCEPTIONS TO PERSONAL CASUALTY GAINS.—If a taxpayer has personal casualty gains for any taxable year to which subparagraph (A) applies—

“(i) subparagraph (A) shall not apply to the portion of the personal casualty loss which is so attributable to such a disaster, this section shall apply to any taxable year beginning after December 31, 2017, and before January 1, 2026.

“(ii) TREATMENT OF LIMITATION IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2025.—In the case of any taxable year beginning after December 31, 2025, and before January 1, 2026.,

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

SEC. 11049. SUSPENSION OF DEDUCTION FOR MOVING EXPENSES.

(a) IN GENERAL.—Section 217 is amended by adding at the end the following new paragraph:

“(i) SUSPENSION OF DEDUCTION FOR TAXABLE YEARS 2018 THROUGH 2025.—Except in the case of an individual to whom subsection (g) applies, this section shall not apply to any taxable year beginning after December 31, 2017, and before January 1, 2026.

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

SEC. 11050. LIMITATION ON WAGERING LOSSES.

(a) IN GENERAL.—Section 165(a)(10) is amended by adding at the end the following new paragraph:

“(i) SUSPENSION OF DEDUCTION FOR ALimony PAYMENTS.—In the case of any taxable year beginning after December 31, 2017, and before January 1, 2026, losses from wagering transactions includes any deduction otherwise allowable under this chapter incurred in carrying on any wagering transaction.

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

SEC. 11051. REPEAL OF DEDUCTION FOR ALLimony PAYMENTS.

(a) IN GENERAL.—Part VII of subchapter B is amended by striking by striking section 215 (and by striking the item relating to such section in the table of sections for such subpart).

(b) CONFORMING AMENDMENTS.—

(1) CORRESPONDING REPEAL OF PROVISIONS PROVIDING FOR INCLUSION OF ALIMONY IN GROSS INCOME.—

(II) IN GENERAL.—The term ‘divorce or separation’ is defined by adding at the end the following new subsection:

“(ii) a decree (not described in clause (i)) restraining a spouse or a former spouse from committing a new marital offense or from violating a domestic relations order of which the court, in its discretion, is satisfied should be made to prevent the abuse of child custody rights or to promote the welfare of the child in the custody of a spouse, or

“(ii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.”.
(B) Section 152(d)(5) is amended to read as follows:

“(5) SPECIAL RULES FOR SUPPORT.—

(A) IN GENERAL.—For purposes of this subsection—

(i) payments to a spouse of alimony or separate maintenance payments shall not be treated as a payment by the payor spouse for the support of any dependent, and

(ii) in the case of the remarriage of a parent, support of a child received from the parent’s spouse shall be treated as received from the parent—

“(B) ALIMONY OR SEPARATE MAINTENANCE PAYMENT.—For purposes of subparagraph (A), the term ‘separate maintenance payment’ means any payment in cash if—

“(i) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument (as defined in section 121(d)(3)(C)), and

“(ii) in the case of an individual legally separated from the individual’s spouse under a decree of divorce or of separate maintenance, the payee and payor spouses are not members of the same household at the time such payment is made, and

“(iii) there is no liability to make any such payment after the divorce or separation.

”

(B) the credit allowed against such tax under section 2605, including in computing—

“(i) the applicable credit amount under section 2605(a)(1), and

“(ii) the amounts allowed as a credit for all preceding periods under section 2605(a)(2).

(2) MODIFICATIONS TO ESTATE TAX PAYABLE TO REFL ECT DIFFERENT BASIS EXCLUSION AMOUNTS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section with respect to any difference between—

“(A) the basic exclusion amount under section 2010A(c)(3) applicable at the time of the decedent’s death, and

“(B) the basic exclusion amount under such section applicable with respect to any gifts made by the decedent.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying and gifts made after December 31, 2017.

PART VII—EXTENSION OF TIME LIMIT FOR CONTESTING IRS LEVY

SECTION 11971. EXTENSION OF TIME LIMIT FOR CONTESTING IRS LEVY

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY.—Subsection (b) of section 6334 is amended—

(1) by inserting “9 months” in paragraph (1) and inserting “2 years”, and

(2) by striking “9-month” in paragraph (2) and inserting “2-year”.

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

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6434(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

PART VIII—INDIVIDUAL MANDATE

SECTION 11801. ELIMINATION OF SHARED RESPONSIBILITY PAYMENT FOR INDIVIDUALS FAILING TO MAINTAIN MINIMUM ESSENTIAL COVERAGE

(a) IN GENERAL.—Section 5000A(c) is amended—

(1) in paragraph (2)(B)(iii), by striking “2.5 percent” and inserting “Zero percent”, and

(2) in paragraph (3)—

(A) by striking “$685” in subparagraph (A) and inserting “$0”, and

(B) by striking paragraph (D).

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

Subtitle B—Alternative Minimum Tax

SECTION 12801. REPEAL OF TAX FOR CORPORATIONS.

(a) IN GENERAL.—Section 55(a) is amended by striking “There” and inserting “In the case of a taxpayer other than a corporation, there”.

(b) CONFORMING AMENDMENTS.—

(1) Section 3832(b)(7) is amended by adding at the end the following new subparagraph:

“(E) CORPORATIONS.—In the case of a corporation, this subsection shall be applied by treating the corporation as having a tentative minimum tax of zero.”.

(2) Section 53(d)(2) is amended by inserting “, except that in the case of a corporation, the tentative minimum tax shall be treated as zero” before the period at the end.

(3) A section 55(b)(1) is amended to read as follows:

“(1) AMOUNT OF TENTATIVE TAX.—

“(A) IN GENERAL.—The tentative minimum tax for the taxable year is the sum of—

“(i) 26 percent of so much of the taxable excess amounts as does not exceed $175,000, plus

“(ii) 28 percent of so much of the taxable excess as exceeds $175,000.

The amount determined under the preceding sentence shall be reduced by the alternative minimum tax foreign tax credit for the taxable year.

(b) TAXABLE EXCESS.—For purposes of this subsection, the term ‘taxable excess’ means so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

“(C) MARRIED INDIVIDUAL FILING SEPARATE RETURN.—In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting 50 percent of the dollar amount otherwise applicable under clause (i) and clause (ii) thereof. For purposes of the preceding sentence, marital status shall be determined under section 1(b).

(B) Section 55(b)(3) is amended by striking “(1)(A)(i)” and inserting “(1)(A)”.

(c) Section 59(a) is amended—

(1) by striking subparagraph (A)(i) or (B)(i) of section 55(b)(1)(B) (whether applicable in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies)) in lieu of section 55(b)(1)(B)

(2) by striking “section 55(b)(1)(A)” and inserting “section 55(b)(1)”.

(E) Section 911(f) is amended—

(1) in paragraph (1)(B), by striking “section 55(b)(1)(A)” and inserting “section 55(b)(1)”.

(2) in paragraph (2)(B), by striking “section 55(b)(1)(A)” and inserting “section 55(b)(1)(A)”.

(3) in paragraph (3)(A) for purposes of the preceding sentence, marital status shall be determined under section 1(b).

(4) Section 55(b)(3) is amended by striking “(1)(A)” and inserting “(1)(A)”.

(5) Section 55(b)(4) is amended by striking “section 55(b)(1)” and inserting “section 55(b)(1)”.

(6) Section 55 is amended by striking subsection (e).

(7) Section 56(b)(2) is amended by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C).

(8) (A) Section 56 is amended by striking subsections (c) and (d).

(B) Section 847 is amended by striking the last sentence of paragraph (9).

(C) Section 884 is amended by striking section (i).

(D) Section 58(a) is amended by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(10) Section 59 is amended by striking subsections (a) and (b).

(11) Section 11(d) is amended by striking “the taxes imposed by subsection (a) and section 55” and inserting “the tax imposed by subsection (a)”.

(12) Section 12 is amended by striking paragraph (7).

(13) Section 168(k) is amended by striking paragraph (4).

(14) Section 882(a)(1) is amended by striking “, 55.”.
(15) Section 562(a)(1) is amended by striking “sections 11 and 55” and inserting “section 11”.

(16) Section 561(a) is amended—

(a) by inserting “and” at the end of paragraph (4), and

(b) by striking the last sentence.

(17) Section 6242(c)(1)(A) is amended to read as follows:

“(A) the tax imposed by section 11 or 1201(a), or chapter 1 of part 2 of subchapter C, whichever is applicable, over—”.

(18) Section 6555(e)(2) is amended by striking “and alternative minimum taxable income” each time it appears in subparagraphs (A) and (B).

(19) Section 6555(g)(1)(A) is amended by inserting “plus” at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

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

SEC. 12900. CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY OF CORPORATIONS.

(a) CREDITS TREATED AS REFUNDABLE.—Section 55 is amended by adding at the end the following new subsection:

“(e) PORTION OF CREDIT TREATED AS REFUNDABLE.—

“(1) IN GENERAL.—In the case of any taxable year of a corporation beginning in 2018, 2019, 2020, or 2021, the limitation under subsection (c) shall be increased by the AMT refundable credit amount for such year.

“(2) AMT REFUNDABLE CREDIT AMOUNT.—For purposes of paragraph (1), the AMT refundable credit amount is an amount equal to 50 percent of the AMT minimum tax credit allowed under section 55(d), as amended by subsection (c), for such taxable year.

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

Subtitle C—Tax-Related Provisions

PART I—CORPORATE PROVISIONS

SEC. 13001. 21-PERCENT CORPORATE TAX RATE.

(a) IN GENERAL.—Subsection (b) of section 11 is amended to read as follows:

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be 21 percent of taxable income.”.

(b) CONFORMING AMENDMENTS.—

(1) The following sections are each amended by striking “section 11(b)(1)” and inserting “section 11(b)”: (A) Section 280C(c)(3)(B)(ii)(II), (B) Paragraphs (3)(B) and (6)(A)(ii) of section 860B(e), (C) Section 874(e)(1)(B), (D) Part I of subchapter P of chapter 1 is amended by striking section 1201 and (E) by striking the item relating to such section in the table of sections for such part).

(B) Section 12 is amended by striking paragraphs (4) and (6), and by redesignating paragraph (5) as paragraph (4).

(C) Section 453A(c)(3) is amended by striking “or 1201 (whichever is appropriate)”.

(D) Section 527(b) is amended—

(i) by striking paragraph (2), and

(ii) by striking all that precedes “is hereby imposed” and inserting “tax imposed.—A tax.”.

(E) Sections 594(a) is amended by striking “taxes imposed by section 11 or 1201(a)” and inserting “tax imposed by section 11(i)”.

(F) Section 801(c)(4) is amended by striking “1201.”.

(G) Section 801(a) is amended—

(i) by striking paragraph (2), and

(ii) by striking all that precedes “is hereby imposed” and inserting “tax imposed.—A tax.”.

(H) Section 81(e) is amended by striking paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(1) paragraph (1) shall be applied—

“(i) by substituting ‘$109,400’ for ‘$78,750’ in subparagraph (A), and

“(ii) by substituting ‘$70,300’ for ‘$50,600’ in subparagraph (B).”.

(ii) paragraph (2) shall be applied—

“(i) by substituting ‘$1,000,000’ for ‘$150,000’ in subparagraph (A), and

“(ii) in subparagraph (B), for a taxpayer described in paragraph (1)(D), without regard to the substitute minimum tax under subparagraph (I).

“(B) INFLATION ADJUSTMENT.—

“(i) In order to take account of any change in the purchasing power of the dollar after 2017, such amounts described in clause (ii) shall be increased by the AMT cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2017’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

“(ii) AMOUNTS DESCRIBED.—The amounts described in this clause are the $109,400 amount in subparagraph (A)(ii)(I), the $70,300 amount in subparagraph (A)(ii)(II), and the $1,000,000 amount in subparagraph (A)(ii)(III).

“(iii) Rounding.—Any increased amount determined under clause (i) shall be rounded to the nearest multiple of $100.

“(iv) COORDINATION WITH CURRENT ADJUSTMENTS.—In the case of any taxable year to which subparagraph (A) applies, any adjustments required to be made under paragraph (3) to any of the numbers which are substituted under subparagraph (A) and adjusted under this subparagraph.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.
records did not contain the vintage account
ity property on the basis of an average life or
year that includes the date of enactment of this
in this subsection, the amendments made by
purposes and reflecting operating results in its reg-
ers made after December 31, 2017.
section (b)(6) shall apply to trans-
''corporation)''.
''Sec. 1561. Limitation on accumulated earnings
the following new item:
the item relating to section 1561 and inserting
chapter B of chapter 5 is amended by striking
of the preceding sentence, section 1563(b) shall
member of a controlled group of corporations
not include a December 31 and is a component
of the preceding sentence, section 1563(b) shall
shall, for their taxable years which include
such December 31, be limited for purposes of
this subtitle to one $300,000 ($150,000 if any
any corporation described in
section 535(c)(2)(B)) amount for purposes of
accounting shall not be treated as being used
fers made after December 31, 2017.
subsection (b)(3) shall apply to distribu-
percent'', and
percent'', and
percent'', and
percent'', in subparagraph (B), and
percent'', in subparagraph (B), and
percent'', and
percent'', in subparagraph (B), and
percent'', in subparagraph (B), and
``(5) CROSS REFERENCE.—For limitation on
credit in the case of cer-
account which gave rise to the reserve for de-
d provide in
average rate assumption method is the method
all prior periods.
the property reverse, the amount of the adjust-
calculated by multiplying—
the ratio of the aggregate deferred taxes for
the property to the aggregate timing differences
for the property as of the beginning of the pe-
(ii) the amount of the timing differences which reverse during such period.
(C) ALTERNATIVE METHOD.—The "alternative
method" is the method in which the taxpayer
computes the excess tax reserve on all pub-
utility property included in the plant ac-
count on the basis of the weighted average life or composite rate used to compute depreciation
for regulatory purposes, and
reduces the excess tax reserve ratably over
the remaining regulatory life of the property.
(TAX INCREASED FOR NORMALIZATION VIOL-
—If, for any taxable year ending after the
date of the enactment of this Act, the taxpayer
does not use a normalization method of account-
cing for the corporation rate reductions provided in the
amendments made by this section.
(A) the taxpayer's tax for the taxable year
shall be increased by the amount by which it re-
duces its excess tax reserve more rapidly than
permitted under a normalization method of ac-
counting, and
(B) such taxpayer shall not be treated as
using a normalization method of accounting for
purposes of subsections (f)(2) and (i)(9)(C) of
section 168 of the Internal Revenue Code of
1986.
SEC. 13002. REDUCTION IN DIVIDEND RECEIVED
DEDUCTIONS TO REFLECT LOWER CORPORATE INCOME TAX RATES.
(a) DIVIDENDS RECEIVED BY CORPORATIONS.—
(1) IN GENERAL.—Section 243(a)(1) is amended
by striking "70 percent" and inserting "50 per-
cent''.
(2) DIVIDENDS FROM 20-PERCENT OWNED COR-
porations.—Section 243(c)(1) is amended—
poses the year described in subsection (b)(6) as to
the property reverse, the amount of the adjust-
supplemental capital gains for public utility
property placed in service:
The last sentence of section 179(d)(1) is
amended by inserting "(other than paragraph
(5)(A))'' after "$10,000''.
(b) Section 179 Property To Include Qualified
UTILITY VEHICLES.—Section
179(b)(6) is amended—
(i) in subparagraph (A), by striking "para-
graphs (1) and (2)'' and inserting "paragraphs
(1), (2), and (5)(A)''.
(ii) in subparagraph (B), by inserting "$100 in
the case of any increase in the amount under
paragraph (5)(A)'' after "$10,000''.
(b) Section 179 Property To Include Qualified
Real Property.—
(1) IN GENERAL.—Subparagraph (B) of
section 179(d)(1) is amended to read as follows:
"(i) section 1245 property (as defined in sec-
1245(a)(3)), or
"(ii) at the election of the taxpayer, qualified
real property (as defined in section (j)), and
"(ii) QUALIFIED REAL PROPERTY.—For pur-
poses of this section, the term 'qualified real
property' means—
"(1) any qualified improvement property de-
scribed in section 168(e)(6), and
"(2) any of the following improvements to
nonresidential real property placed in service
after the date such property was first placed in
service:
"(i) Roofs.
"(ii) Heating, ventilation, and air-condi-
tioning property.
"(iii) Fire protection and alarm systems.
"(D) Security systems.''.
"(C) REPEAL OF EXCLUSION FOR CERTAIN PROP-
(1) by striking "(other than paragraph
(2) thereof)'' after "section 50(b)''.
(d) EFFECTIVE DATE.—The amendments made
by this section shall apply to property placed in
service in taxable years beginning after Decem-
SEC. 13102. SMALL BUSINESS ACCOUNTING METHOD REFORM AND SIMPLIFICATION.

(a) MODIFICATION OF LIMITATION ON CASH METHOD OF ACCOUNTING—

(1) INCREASED LIMITATION.—So much of section 446(c) as precedes paragraph (2) is amended to read as follows—

“(c) GROSS RECEIPTS TEST.—For purposes of this section—

“(1) IN GENERAL.—A corporation or partnership which meets the gross receipts test of section 446(c) shall be treated as a corporation or partnership for purposes of this section if the average annual gross receipts of such entity for the 3-taxable-year period ending with the taxable year which precedes such taxable year does not exceed $25,000,000.’’.}

(2) APPLICATION OF EXCEPTION ON ANNUAL BASIS.—Section 446(b)(3) is amended to read as follows—

“(3) ENTITIES WHICH MEET GROSS RECEIPTS TEST.—(Paragraphs (1) and (2) of subsection (a) shall not apply to any corporation or partnership for any taxable year if such entity (or any predecessor) meets the gross receipts test of subsection (c) for such taxable year.’’.}

(3) INFLATION ADJUSTMENT.—Section 446(c) is amended by inserting at the end the following new paragraph—

“(4) ADJUSTMENT FOR INFLATION.—In the case of any taxable year beginning after December 31, 2026, the amount in paragraph (1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘calendar year 2017’ for ‘calendar year 2016’ in subparagraph (B).’’

If any amount as increased under the preceding sentence is not a multiple of $1,000,000, such amount shall be rounded to the nearest multiple of $1,000,000.

(4) COORDINATION WITH SECTION 481.—Section 445(d)(7) is amended to read as follows—

“(d) COORDINATION WITH SECTION 481.—Any change in method of accounting made pursuant to this section shall be treated for purposes of section 481 as initiated by the taxpayer and made with the consent of the Secretary.’’.}

(5) APPLICATION OF EXCEPTION TO CORPORATIONS ENGAGED IN FARMING.—

(A) IN GENERAL.—Section 447(c) is amended—

(i) by inserting “for any taxable year after not being a corporation” in the matter preceding paragraph (1), and

(ii) by amending paragraph (2) to read as follows—

“(2) a corporation which meets the gross receipts test of section 446(c) for any taxable year.’’

(B) COORDINATION WITH SECTION 481.—Section 447(f)(1) is amended to read as follows—

“(f) COORDINATION WITH SECTION 481.—Any change in method of accounting made pursuant to this section shall be treated for purposes of section 481 as initiated by the taxpayer and made with the consent of the Secretary.’’.}

(6) CONFORMING AMENDMENTS.—Section 447 is amended—

(i) by striking subsections (d), (e), (h), and (i), and

(ii) by redesignating subsections (f) and (g) (as amended by subparagraph (B)) as subsections (d) and (e), respectively.

(B) EXEMPTION FROM UNICAP REQUIREMENTS—

(A) IN GENERAL.—Section 263A is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection—

“(i) EXEMPTION FOR CERTAIN SMALL BUSINESSES.—

(A) IN GENERAL.—In the case of any taxpayer (other than a tax shelter prohibited from using the cash method of accounting under section 448(a)(3)) which meets the gross receipts test of section 446(c) for any taxable year, this section shall not apply with respect to such taxpayer for such taxable year.

(B) COORDINATION WITH SECTION 481.—Any change in method of accounting made pursuant to paragraph (1) by (ii) shall be treated as initiated by the taxpayer and made with the consent of the Secretary. Such change shall be effective on a cut-off basis for all similarly classified contracts entered into or on or after the date of change.’’.}

(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, 2017.

(2) PRESERVATION OF SUSPENSE ACCOUNT RULES WITH RESPECT TO ANY EXISTING SUSPENSE ACCOUNTS.—So much of the amendments made by subsection (a)(5)(C) as relate to section 447(i) of the Internal Revenue Code of 1986 shall not apply with respect to any suspense account established under such section before the date of the enactment of this Act.

(3) EXEMPTION FROM PERCENTAGE COMPLETION FOR LONG-TERM CONTRACTS.—The amendment made by paragraph (2) shall apply to contracts entered into after December 31, 2017, in taxable years ending after such date.

PART III—COST RECOVERY AND ACCOUNTING METHODS

Subpart A—Cost Recovery

SEC. 13201. TEMPORARY 100-PERCENT EXPENSING FOR CERTAIN BUSINESS ASSETS.

(a) INCREASED EXPENSING.—

(1) IN GENERAL.—Section 168(k) is amended—

(A) in paragraph (1)(A), by striking “50 percent” and inserting “the applicable percentage”, and

(B) in paragraph (5)(A)(i), by striking “50 percent” and inserting “the applicable percentage”.

(2) APPLICABLE PERCENTAGE.—Paragraph (6) of section 168(k) is amended to read as follows—

“(6) APPLICABLE PERCENTAGE.—

(i) in the case of property placed in service after September 27, 2017, and before January 1, 2023, 100 percent,

(ii) in the case of property placed in service after December 31, 2022, and before January 1, 2024, 100 percent,

(iii) in the case of property placed in service after December 31, 2023, and before January 1, 2024, 100 percent,

(iv) in the case of property placed in service after December 31, 2024, and before January 1, 2025, 100 percent,

(v) in the case of property placed in service after December 31, 2025, and before January 1, 2026, 25 percent,

(vi) in the case of property placed in service after December 31, 2026, and before January 1, 2027, 20 percent.

(B) RULE FOR PROPERTY WITH LONGER PRODUCTION PERIODS.—In the case of property described in subparagraph (B) or (C) of paragraph (2), the term ‘applicable percentage’ means—

(i) in the case of property placed in service after September 27, 2017, and before January 1, 2023, 100 percent,

(ii) in the case of property placed in service after December 31, 2022, and before January 1, 2024, 100 percent,

(iii) in the case of property placed in service after December 31, 2023, and before January 1, 2025, 80 percent,

(iv) in the case of property placed in service after December 31, 2024, and before January 1, 2026, 60 percent,

(v) in the case of property placed in service after December 31, 2025, and before January 1, 2027, 40 percent,

(vi) in the case of property placed in service after December 31, 2026, and before January 1, 2028, 20 percent.

(C) RULE FOR PLANTS BEARING FRUITS AND NUCLEI.—So much of the amendment described in paragraph (5), the term ‘applicable percentage’ means—
“(i) the case of a plant which is planted or grafted after December 31, 2027, and before January 1, 2028; 

(ii) the case of a plant which is planted or grafted after December 31, 2025, and before January 1, 2026; 

(iii) the case of a plant which is planted or grafted after December 31, 2023, and before January 1, 2024, 80 percent; 

(iv) the case of a plant which is planted or grafted after December 31, 2021, and before January 1, 2022, 60 percent; 

(v) the case of a plant which is planted or grafted after December 31, 2019, and before January 1, 2020, 40 percent; 

(vi) the case of a plant which is planted or grafted after December 31, 2017, and before January 1, 2018, 20 percent; 

(vii) the case of a plant which is planted or grafted after December 31, 2015, and before January 1, 2016, 10 percent; 

(viii) the case of a plant which is planted or grafted after December 31, 2013, and before January 1, 2014, 0 percent.

(b) PHASE DOWN.—In the case of qualified property acquired by the taxpayer before September 20, 2017, and placed in service by the taxpayer after September 27, 2017, paragraph (6) shall be applied by substituting for each percentage therein—

(A) ‘‘50 percent’’ in the case of—

(i) property placed in service before January 1, 2018, and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2018, 

(B) ‘‘40 percent’’ in the case of—

(i) property placed in service in 2018 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2019, 

(C) ‘‘30 percent’’ in the case of—

(i) property placed in service in 2019 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service after 2019.

(2) IN GENERAL.—Clause (i) of section 168(k)(2)(A), as amended by section 13204, is amended—

(A) in paragraph (2)—

(i) in subparagraph (A)(iii), clauses (i)(III) and (ii) of subparagraph (B), and subparagraph (E)(ii), each place it appears and inserting ‘‘January 1, 2027’’; and

(ii) in subparagraph (B)—

(1) in clause (i)(II), by striking ‘‘January 1, 2021’’ and inserting ‘‘January 1, 2022’’, and

(2) in clause (ii), by striking ‘‘PRE-JANUARY 1, 2020’’ and inserting ‘‘PRE-JANUARY 1, 2021’’;

(B) in paragraph (5)(A), by striking ‘‘January 1, 2020’’ and inserting ‘‘January 1, 2021’’.

(2) CONFORMING AMENDMENTS.—

(A) Section 168(k)(2)(A) is amended by striking subparagraph (E) and by redesignating subparagraph (C) as subparagraph (B).

(B) Paragraph (7) of section 280F(d) is amended by—

(i) in subparagraph (A), by striking ‘‘1988’’ and inserting ‘‘2018’’, and

(ii) in subparagraph (B)(iii), by striking ‘‘1987’’ and inserting ‘‘2017’’.

(C) REMOVAL OF COMPUTER EQUIPMENT FROM LISTED PROPERTY.—

(A) In general.—Section 280F(d)(4)(A) is amended by—

(i) by inserting ‘‘and’’ at the end of clause (iii),

(ii) by striking clause (iv), and

(iii) by redesignating clause (v) as clause (iv).

(B) CONFORMING AMENDMENT.—Section 280F(d)(4) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(C) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2017, in taxable years ending after such date.
was first placed in service.

inserting the following:

is amended by striking clauses (iii) and (iv) and

(B), by adding at the end the following new paragraph:

was first placed in service.

inserting the following:

is amended by striking clauses (iii) and (iv) and

(B), by adding at the end the following new paragraph:

was first placed in service.

inserting the following:

is amended by striking clauses (iii) and (iv) and

(B), by adding at the end the following new paragraph:
an accrual method of accounting, the all events test with respect to any item of gross income (or portion thereof) shall not be treated as met any later than when such item (or portion thereof) is taken into account as revenue in the applicable financial statement of the taxpayer.

(ii) such other financial statement as the Secretary may specify for purposes of this subsection.

(B) EXCEPTION.—This paragraph shall not apply to—

(i) a taxpayer which does not have a financial statement described in clause (i) or (ii) of subparagraph (A),

(ii) any item of gross income if all the events have occurred which fix the right to receive such income and the amount of such income can be determined with reasonable accuracy.

(C) COORDINATION WITH SPECIAL METHODS OF ACCOUNTING.—Paragraph (1) shall not apply with respect to any item of gross income for which the taxpayer uses a special method of accounting provided under any other provision of this chapter, other than any provision of part V of subchapter P (except as provided in clause (ii) of paragraph (1)(B)).

(3) APPLICABLE FINANCIAL STATEMENT.—For purposes of this subsection, the term 'applicable financial statement' means—

(A) a financial statement which is certified as being in accordance with generally accepted accounting principles and which is—

(i) a 10-K (or successor form), or annual statement to shareholders, required to be filed by the taxpayer with the United States Securities and Exchange Commission,

(ii) an audited financial statement of the taxpayer which is used for—

(I) (I) reporting to shareholders, partners, or other proprietors, or to beneficiaries, or

(II) any other substantial non-tax purpose, but only if there is no statement of the taxpayer described in clause (i), and

(iii) any other substantial non-tax purpose, but only if there is no statement of the taxpayer described in clause (i), or

(B) a financial statement which is made on the basis of international financial reporting standards and is filed by the taxpayer with an agency of a foreign government which is equivalent to the United States Securities and Exchange Commission which has reporting standards not less stringent than the standards required by such Commission, but only if there is no statement of the taxpayer described in subparagraph (A).

(C) a financial statement filed by the taxpayer with any other regulatory or governmental body specified by the Secretary, but only if there is no statement of the taxpayer described in subparagraph (A) or (B).

(4) ALLOCATION OF TRANSACTION PRICE.—For purposes of this subsection, in the case of a contract which contains multiple performance obligations, the allocation of the transaction price to each performance obligation shall be equal to the amount allocated to each performance obligation for purposes of including such item in revenue in the applicable financial statement of the taxpayer.

(5) GROUP OF ENTITIES.—For purposes of paragraph (1), if the financial results of a taxpayer are reported on the applicable financial statement (as defined in paragraph (3)) for a group of entities, each entity shall be treated as the applicable financial statement of the taxpayer.

(b) TREATMENT OF ADVANCE PAYMENTS.—Section 451, as amended by subsection (a), is amended by redesignating subsections (c) through (h) as subsections (d) through (k), respectively, and by inserting after subsection (b) the following new subsection:

(TREATMENT OF ADVANCE PAYMENTS.—)(1) IN GENERAL.—A taxpayer which computes taxable income under an election made under paragraph (1)(B) shall include any advance payment in gross income for such taxable year, or

(B) if the taxpayer elects the application of this subparagraph with respect to any items of gross income of such taxable year which such advance payment belongs, the taxpayer shall—

(i) to the extent that any portion of such advance payment shall be included in gross income in the applicable financial statement of the taxpayer described in clause (i) or (ii),

(ii) include in the remaining portion of such advance payment in gross income in the taxable year following the taxable year in which such payment is received.

(2) ELECTRONIC.—(A) IN GENERAL.—Except as otherwise provided in this paragraph, the election under paragraph (1)(B) shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary, by the close of the taxable year, to revoke such election. For purposes of this title, the computation of taxable income under an election made under paragraph (1)(B) shall be treated as a method of accounting.

(B) TAXPAYERS CEASING TO EXIST.—Except as otherwise provided by the Secretary, the election under paragraph (1)(B) shall not apply with respect to—

(i) any entity described by the taxpayer during a taxable year if such taxpayer ceases to exist during or (with the close of) such taxable year,

(4) ADVANCE PAYMENT.—For purposes of this subsection—

(A) IN GENERAL.—The term 'advance payment' means any payment—

(i) the full inclusion of which in the gross income of the taxpayer for the taxable year of receipt is a permissible method of accounting under this subsection (determined without regard to this subsection),

(ii) any portion of which is included in revenue by the taxpayer in a financial statement described in clause (i) or (ii) of subsection (b)(1)(A) for a subsequent taxable year, and

(iii) which is for goods, services, or such other items as may be identified by the Secretary for purposes of this clause.

(B) EXCLUSIONS.—Except as otherwise provided by the Secretary, such term shall not include—

(i) rent,

(ii) insurance premiums governed by subchapter L,

(iii) payments with respect to financial instruments,

(iv) payments with respect to warranty or guarantee contracts under which a third party is the primary obligor,

(v) payments subject to section 871(a), 881, 1441, or 1442,

(vi) payments in property to which section 83 applies, and

(vii) any other payment identified by the Secretary for purposes of this subparagraph.

(C) RECEIPT.—(A) FOR PURPOSES OF THIS SUBSECTION, RECEIPTS INCLUDE PAYMENTS RECEIVED BY THE TAXPAYER IF IT IS ACTUALLY OR CONSTRUCTIVELY RECEIVED, OR IF IT IS DUE AND PAYABLE TO THE TAXPAYER.

(B) ALLOCATION OF TRANSACTION PRICE.—For purposes of this subsection, rules similar to subsection (b)(4) shall apply.

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

(d) COORDINATION WITH SECTION 481.—(1) IN GENERAL.—The qualified change in method of accounting for the taxpayer’s first taxable year beginning after December 31, 2017—

(A) such change shall be treated as initiated by the taxpayer, and

(B) such change shall be treated as made with the consent of the Secretary of the Treasury.

(2) QUALIFIED CHANGE IN METHOD OF ACCOUNTING.—For purposes of this subsection, the term ‘qualified change in method of accounting’ includes any change in method of accounting which—

(A) is required by the amendments made by this section,

(B) was prohibited under the Internal Revenue Code of 1986 prior to such amendments and is permitted under such Code after such amendments.

(e) SPECIAL RULES FOR ORIGINAL ISSUE DISCOUNT.—Notwithstanding subsection (c), in the case of income from a debt instrument having an issue date described in—

(1) the amendments made by this section shall apply to taxable years beginning after December 31, 2018, and

(2) the period for taking into account any adjustments under section 481 by reason of a qualified change in method of accounting (as defined in subsection (d)) is determined.

PART IV—BUSINESS-RELATED EXCLUSIONS AND DEDUCTIONS

SEC. 13301. LIMITATION ON DEDUCTION FOR INTEREST.

(a) IN GENERAL.—Section 163(i) is amended to read as follows:

“(i) LIMITATION ON BUSINESS INTEREST.—(1) IN GENERAL.—The amount allowed as a deduction for any taxable year for business interest shall not exceed the sum of—

(A) the business interest income of such taxpayer for such taxable year,

(B) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus

(C) the floor plan financing interest of such taxpayer for such taxable year.

The amount determined under subparagraph (B) shall be determined without regard to—

(1) the exclusion for certain small businesses,

(2) carryforward of disallowed business interest.

—The amount of any business interest not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as business interest paid or accrued in the succeeding taxable year.

(3) EXCLUSION FOR CERTAIN SMALL BUSINESSES.—In the case of any taxpayer other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 446(a)(2) which meets the gross receipts test of section 446(b) for any taxable year, paragraph (1) shall not apply to such taxpayer for such taxable year.

The amount of any business interest which is not allocated or treated as a partnership, the gross receipts test of section 446(c) shall be applied in the same manner as if such taxpayer were a corporation or partnership.

(4) APPLICATION TO PARTNERSHIPS, etc.—(A) IN GENERAL.—In the case of any partnership—

(i) this subsection shall be applied at the partnership level and any deduction for business interest shall be taken into account in determining the non-separately stated taxable income of each partner, and

(ii) the adjusted taxable income of each partner shall be determined without regard to such partner’s distributive share of any items of income, gain, deduction, or loss of such partnership, and

(iii) such share shall be increased by such partner’s distributive share of such partnership’s excess taxable income.

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For purposes of clause (ii)(I), a partner’s distributive share of partnership excess taxable income shall be determined in the same manner as the partner’s distributive share of nonseparately stated items of the partnership.

(B) SPECIAL RULES FOR CARRYFORWARDS.—

(1) IN GENERAL.—The amount of any business interest not allowed as a deduction to a partnership for any taxable year shall not be treated as business interest paid or accrued by a partner in the next succeeding taxable year.

(2) EXCEPTION.—(A) In general.—The amount of any business interest not allowed as a deduction to a partnership for any taxable year shall not be treated as business interest paid or accrued by the partner in the next succeeding taxable year in which the partner is allocated excess taxable income from such partnership, but only to the extent of such excess taxable income.

(3) SECURITIES EXCLUDED.—In determining the extent of such excess taxable income, and the amount which bears the same ratio to the excess taxable income of the partnership, bears to the gross income of the taxpayer for the taxable year and all preceding taxable years has been treated as business interest paid or accrued by the partnership.

(ii) TREATMENT OF EXCESS BUSINESS INTEREST ALLOCATED TO PARTNERS.—If a partner is allocated any excess business interest from a partnership under clause (i) for any taxable year—

(1) such excess business interest shall be treated as business interest paid or accrued by the partner in the next succeeding taxable year in which the partner is allocated excess taxable income from such partnership, but only to the extent of such excess taxable income.

(2) any portion of such excess business interest remaining after the application of subclause (I) shall, subject to the limitations of subclause (II), be treated as business interest paid or accrued in succeeding taxable years.

For purposes of applying this paragraph, excess taxable income allocated to a partner in a partnership for any taxable year shall be taken into account under paragraph (1)(A) with respect to any business interest other than excess business interest from the partnership until all such excess business interest for such taxable year and all preceding taxable years has been treated as paid or accrued under clause (ii).

section (d).

(iii) THE ADJUSTMENTS.—

(1) IN GENERAL.—The adjusted basis of a partner in a partnership interest shall be reduced (but not below zero) by the amount of excess business interest allocated to the partner under clause (i)(II).

(B) ELECTING REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term ‘electing real property trade or business’ means any trade or business which is described in section 1245(1)(C) and which makes an election under this subparagraph. Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

(3) ELECTING FARMING BUSINESS.—For purposes of this paragraph, the term ‘electing farming business’ means

(1) a farming business (as defined in section 261A(e)(4)) which makes an election under this subparagraph, or

(2) any trade or business of a specified agricultural or horticultural cooperative (as defined in section 199A(g)(2)) with respect to which the cooperative makes an election under this subparagraph.

Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

(4) ELECTING TRADE OR BUSINESS.—For purposes of this subsection, the term ‘adjutiable taxable income’ means the taxable income of the taxpayer—

(1) computed without regard to—

(i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business,

(ii) any business interest or business interest income,

(iii) the amount of any net operating loss deduction under section 172, and

(iv) any deduction allowed under section 191, and

(v) in the case of taxable years beginning before January 1, 2022, any deduction allowable for depreciation, amortization, or depletion, and

(B) computed with such other adjustments as provided by the Secretary.

(5) FLOOR PLAN FINANCING INTEREST DEDUCTION.—

(A) IN GENERAL.—The term ‘floor plan financing interest deduction’ means—

(1) used in connection with the acquisition of motor vehicles sold for sale or lease, and

(2) secured by the inventory so acquired.

(C) MOTOR VEHICLE.—The term ‘motor vehicle’ means a motor vehicle that is any of the following:

(i) Any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road.

(ii) A boat.

(iii) Farm machinery or equipment.

(D) CROSS REFERENCES.—

(A) For requirement that an electing real property trade or business use the alternative depreciation system, see section 168(g)(1)(G).

(B) For requirement that an electing farming business use the alternative depreciation system, see section 168(g)(1)(G).

SEC. 13302. MODIFICATION OF NET OPERATING LOSS DEDUCTION.

(A) LIMITATION ON DEDUCTION.—

(i) IN GENERAL.—Section 172(a) is amended to read as follows:

‘‘(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

(1) the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, or

(2) 10 percent of the excess of the adjusted taxable income of the taxpayer—

(III) the amount of any net operating loss carryback; and

(II) the amount of any net operating loss deduction for depreciation, amortization, or depletion, and

(B) computed with such other adjustments as provided by the Secretary.

(2) ELECTING REAL PROPERTY TRADE OR BUSINESS.—The term ‘pre-change loss’ shall include any carryover of disallowed interest described in section 163(h)(2) with respect to any taxable year after the date of distribution or transfer.

(2) APPLICATION OF LIMITATION.—Section 172(a) is amended by adding at the end the following new paragraph:

‘‘(2) APPLICATION OF LIMITATION.—Section 172(a) is amended by adding at the end the following new paragraph:

‘‘(3) APPLICATION TO CARRYFORWARD OF DISALLOWED BUSINESS INTEREST.—The carryover of disallowed business interest described in section 163(h)(2) to taxable years ending after the date of distribution or transfer.

‘‘(4) ELECTIVE EFFECTIVE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.''

SEC. 13303. MODIFICATION OF NONRECOGNITION PROVISIONS.

(A) IN GENERAL.—Section 1031(e)(2) is amended by inserting ‘‘and’’ before the period at the end of subparagraph (B) and inserting ‘‘;’’ after the first period at the end of subparagraph (C) and inserting ‘‘and’’ after the second period at the end of subparagraph (D).

(B) INCOME.—The term ‘‘real estate investment trust taxable income’’ means—

(1) the amount described in section 857(b)(2) but without regard to the deduction for dividends paid (as defined in section 382(d)), and

(2) the amount of any net operating loss carryback.'
(1) IN GENERAL.—Section 172(b)(1)(A) is amended—
(A) by striking “shall be a net operating loss carryback to each of the 2 taxable years” in clause (B) and inserting “except as otherwise provided in this paragraph, shall not be a net operating loss carryback to any taxable year”, and
(B) by striking “to each of the 20 taxable years” in clause (ii) and inserting “to each taxable year”;

(2) CONFORMING AMENDMENT.—Section 172(b)(1) is amended by striking subparagraphs (B) through (F).

(c) TREATMENT OF FARMING LOSSES.—
(1) CARRIAGE.—Section 172(b)(1), as amended by subsection (b)(2), is amended by adding at the end the following new subparagraph:

“(B) For purposes of paragraphs (3) and (4) as paragraphs (2) and (3) of section 172(b)(1), the term ‘farming losses’ means the lesser of—

“(1) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) are taken into account, or

“(2) the amount of the net operating loss for such taxable year.”.

(2) CONFORMING AMENDMENTS.—
(A) Section 263A(e)(4) is amended by striking “and (C)” and inserting “as defined in section 263A(e)(4)” after “are farming businesses”.

(2) COORDINATION WITH PARAGRAPH (2).—For purposes of applying paragraph (2), a farming loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(iv) ELECTION.—Any taxpayer entitled to a 2-year carryback under clause (i) from any loss year may elect not to have such clause apply to such loss year. Such election shall be made on or before the date of enactment of the Tax Cuts and Jobs Act (as defined in section 172(f)) after “as defined in section 172(f)”.

(d) TREATMENT OF CERTAIN INSURANCE LOSSES.—
(1) TREATMENT OF CARRYFORWARDS AND CARRYBACKS.—Section 172(b)(1), as amended by subsections (b)(2) and (c)(1), is amended by adding at the end the following new subparagraph:

“(B) For purposes of paragraphs (3) and (4) as paragraphs (2) and (3) of section 172(b)(1), the term ‘farming losses’ means the lesser of—

“(1) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) are taken into account, or

“(2) the amount of the net operating loss for such taxable year.”.

(2) CONFORMING AMENDMENTS.—
(A) Section 263A(e)(2) is amended by striking “and (C)” and inserting “as defined in section 263A(e)(4)” after “are farming businesses”.

(b) ONLY 50 PERCENT OF EXPENSES FOR MEALS PROVIDED ON OR NEAR BUSINESS PREMISES ALLOWED AS DEDUCTION.—Paragraph (2) of section 274(n), as amended by subsection (a), is amended—

(A) by striking subparagraph (B),

(B) by redesignating subparagraphs (C) and (D) as subparagraphs (C) and (D), respectively,

(C) by striking “in paragraph (2)” in the last sentence and inserting “in paragraph (C)”.

(2) E XEMPTION FROM LIMITATION .—Section 274(n)(1) is amended to read as follows:

“(1) IN GENERAL.—The amount allowable as a deduction under this chapter for any expense for food or beverages, other than the amount described in section 112, shall not exceed 50 percent of the amount of such expense which would (but for this paragraph) be allowable as a deduction under this chapter.

(c) CARRYOVERS AND CARRYBACKS.—The amendments made by subsections (b), (c), and (d) shall apply to losses arising in taxable years ending after December 31, 2017.

SEC. 13303. LIKE-KIND EXCHANGES OF REAL PROPERTY.

(a) IN GENERAL.—Section 1031(a)(1) is amended by striking “property” each place it appears and inserting “real property”;

(b) CONFORMING AMENDMENTS.—
(1)(A) Paragraph (2) of section 1031(a) is amended to read as follows:

“(2) EXCEPTION FOR REAL PROPERTY HELD FOR SALE.—This subsection shall not apply to any exchange of real property held primarily for sale.”.

(B) Section 1031 is amended by striking subsection (i);

(2) Section 1031 is amended by striking subsection (i).

(3) Section 1031, as amended by paragraph (2), is amended by inserting after subsection (a) the following new subsection:

“(e) APPLICATION TO CERTAIN PARTNERSHIPS.—For purposes of this section, in a partnership which has in effect a valid election under section 751(a) to be excluded from the application of all of subchapter K to be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.”.

(4) Section 1031(h) is amended to read as follows:

“(h) SPECIAL RULES FOR FOREIGN REAL PROPERTY.—Real property located in the United States and real property located outside the United States are not property of a like kind.”.

(5) The heading of section 1031 is amended by striking “PROPERTY” and inserting “REAL PROPERTY”;

(6) The table of sections for part III of subchapter O of chapter 1 is amended by striking the item relating to section 1031 and inserting the following new item:

“Sec. 1031. Exchange of real property held for productive use or investment.”.

(d) EFFECTIVE DATE.—
(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this section shall apply to exchanges completed after December 31, 2017.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any exchange if—

(A) the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017, or

(B) the property received by the taxpayer in the exchange is received on or before December 31, 2017.

SEC. 13304. LIMITATION ON DEDUCTION BY EMPLOYERS OF EXPENSES FOR FRINGE BENEFITS.

(a) NO DEDUCTION ALLOWED FOR ENTERTAINMENT EXPENSES.—

(1) IN GENERAL.—Section 274(n) is amended—

(A) in paragraph (1)(A), by striking “unusual” and all that follows through “trade or business”,

(B) by striking the flush sentence at the end of paragraph (1), and

(C) by striking paragraph (2)(C).

(2) CONFORMING AMENDMENTS.—

(A) Section 274(n) is amended—

(i) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and

(ii) in the flush text following paragraph (3) (as so redesignated)—

(I) by striking “, entertainment, amusement, recreation, or use of the facility or property,” in the first sentence,”

(II) by striking “(D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift”,

(III) by inserting “(D) the business relationship to the taxpayer of persons receiving the benefit”,

(III) in section 274(n)(1) is amended by striking subsection (i),

(IV) in “entertainment, amusement, or recreation” in the heading of section 274(n)(1), and

(V) in the heading of section 274(n)(1), by striking “AND ENTERTAINMENT” in the heading.

(B) Section 274(n) is amended by striking as follows:

“(1) IN GENERAL.—The amount allowable as a deduction under this chapter for any expense for food or beverages, other than the amount described in section 112, shall not exceed 50 percent of the amount of such expense which would (but for this paragraph) be allowable as a deduction under this chapter.”.

(C) Section 274(n)(1) is amended—

(i) in subparagraph (B), by striking “in the case of an expense for food or beverages,”,

(ii) by striking subparagraph (C) and redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively,

(iii) by striking “of subparagraph (E)” the last sentence and inserting “of subparagraph (D)” and

(iv) by striking “in subparagraph (D)” in the last sentence and inserting “in subparagraph (C)”.

(F) Clause (iv) of section 707(b)(3)(A) is amended to read as follows:

“(iv) a professional athlete who is temporarily in the United States to compete in a sports event—

“(I) which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) and exempt from tax under section 501(a),

“(II) all of the net proceeds of which are contributed to such organization, and

“(III) which utilizes volunteers for substantially all of the work performed in carrying out such event.”.

(B) ONLY 50 PERCENT OF EXPENSES FOR MEALS PROVIDED ON OR NEAR BUSINESS PREMISES ALLOWED AS DEDUCTION.—Paragraph (2) of section 274(n), as amended by subsection (a), is amended—

(A) by striking subparagraph (B),

(B) by redesignating subparagraphs (C) and (D) as subparagraphs (C) and (D), respectively,

(C) by striking “in subparagraph (E)” the last sentence and inserting “in subparagraph (D)” and

(D) by striking “in subparagraph (D)” in the last sentence and inserting “in subparagraph (C)”.

(2) CARRYOVERS AND CARRYBACKS.—The amendments made by subsection (a) are effective as follows:

(A) in the heading, by striking “or RECREATION” and inserting “OR QUALIFIED TRANSPORTATION FRINGES”, and

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

“(4) QUALIFIED TRANSPORTATION FRINGES.—

“‘No deduction shall be allowed under this chapter for the expense of a qualified transportation fringe (as defined in section 132(f)) provided to an employee of the taxpayer.’,” and

(2) by inserting after subsection (k) the following new subsection:

“(b) TRANSPORTATION AND COMMUTING BENEFITS.—

(1) IN GENERAL.—No deduction shall be allowed under this chapter for any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of the taxpayer in connection with travel between the taxpayer’s residence and place of employment, except as necessary for ensuring the safety of the employee.”.
“(2) EXCEPTION.—In the case of any qualified bicycle commuting reimbursement (as described in section 132(f)(5)(F)), this subsection shall not apply for any amounts paid or incurred after December 31, 2017, if redetermined before December 31, 2017, by the Secretary of the Treasury.”

(2) ELLIMINATION OF DEDUCTION FOR MEALS PROVIDED AT CONVENIENCE OF EMPLOYER.—Section 274, as amended by subsection (a), is amended—

(1) by redesignating subsection (o) as subsection (p), and

(2) by inserting after subsection (n) the following new subsection:

“(o) MEALS PROVIDED AT CONVENIENCE OF EMPLOYER.—No deduction shall be allowed under this chapter for—

“(1) any expense for the operation of a facility described in section 132(c)(2), and any expense for food or beverages, including under subsection 132(c)(1), associated with such facility, or

“(2) any expense for meals described in section 119(a).”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts incurred or paid after December 31, 2017.

(2) EFFECTIVE DATE FOR ELIMINATION OF DEDUCTION FOR MEALS PROVIDED AT CONVENIENCE OF EMPLOYER.—Subsection (d) shall apply to amounts incurred or paid after December 31, 2025.

SEC. 13305. REPEAL OF DEDUCTION FOR INCOME TAX ON DOMESTIC PRODUCTION ACTIVITIES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by striking section 199 (and by striking the item relating to such section in the table of sections for such part).

(b) CONFORMING AMENDMENTS.—

(1) Section 1221(b)(2)(A), 222(b)(2)(C), 246(b)(1), and 468(c)(3)(F)(iii) are each amended by striking “1993.”

(2) Section 170(b)(2)(D), as amended by subtitle A, is amended by striking clause (iv), and by redesigning clauses (v) and (vi) as clauses (iv) and (v).

(3) Section 172(d) is amended by striking paragraph (7).

(4) Section 613(a), as amended by section 1101, is amended by striking “and without the deduction under section 199”.

(5) Section 613A(d)(1), as amended by section 1101, is amended by redesigning subparagraphs (A), (B), (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively.

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

SEC. 13306. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Subsection (f) of section 162 is amended to read as follows:

“(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

“(1) GENERAL.—Except as provided in the following paragraphs of this subsection, no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

“(2) EXCEPTION FOR AMOUNTS Constituting RESTITUTION OR PAID TO COMPLY WITH LAW.—

“(A) IN GENERAL.—(i) Notwithstanding any other provision of law, any amount paid or incurred to comply with law shall—

“(I) constitute restitution (including remediating of property) for damage or harm which was or may be caused by the violation of any law or the potential violation of any law, or

“(II) is paid to come into compliance with any law which was violated or otherwise involved in the investigation or inquiry described in paragraph (1),

“(B) To the extent provided in regulations, any nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(q)(7)).

“(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

(b) REPORTING OF DEDUCTIBLE AMOUNTS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 650W the following new item:

“SEC. 650X. Information with respect to certain fines, penalties, and other amounts.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendments shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

SEC. 13307. DENIAL OF DEDUCTION FOR SETTLEMENTS SUBJECT TO NONDISCLOSURE AGREEMENTS PAID IN CONNECTION WITH SEXUAL HARASSMENT OR SEXUAL ABUSE.

(a) DENIAL OF DEDUCTION.—Section 162 is amended by redesignating subdivision (q) as subsection (r) and by inserting after such subsection (s) the following new subsection:

“(s) PAYMENTS RELATED TO SEXUAL HARASSMENT OR SEXUAL ABUSE.—No deduction shall be allowed under this chapter for—

“(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or

“(2) attorney’s fees related to such a settlement or payment.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act.

SEC. 13308. REPEAL OF DEDUCTION FOR LOCAL LOBBYING EXPENSES.

(a) IN GENERAL.—Section 162(e) is amended by striking paragraphs (2) and (7) and by redesignating paragraphs (3), (4), (5), (6), and (8) as paragraphs (2), (3), (4), (5), and (6), respectively.
(b) **CONFORMING AMENDMENT.—**Section 6013(a)(6)(B)(ii) is amended by striking ‘‘section 162(o)(5)(B)(ii)’’ and inserting ‘‘section 162(o)(4)(B)(ii)’’.

(c) **EFFECTIVE DATE.—**The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act.

**SEC. 13300. RECHARACTERIZATION OF CERTAIN GAINS IN THE CASE OF PARTNER- SHIP INTERESTS HELD IN CONNECTION WITH PERFORMANCE OF INVESTMENT SERVICES.**

(a) **IN GENERAL.—**Part IV of subchapter O of chapter 1 is amended—

(1) by redesignating section 1061 as section 1062, and

(2) by inserting after section 1060 the following new section:

**SEC. 1061. PARTNERSHIP INTERESTS HELD IN CONNECTION WITH PERFORMANCE OF SERVICES.**

“(a) **IN GENERAL.—**If one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of—

(1) the taxpayer’s net long-term capital gain with respect to such interests for such taxable year, over

(2) the taxpayer’s net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of section 1222 by substituting ‘‘3 years’’ for ‘‘1 year’’, shall be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 83(b).

(b) **SPECIAL RULE.—**To the extent provided by the Secretary, subsection (a) shall not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors.

(c) **APPLICABLE PARTNERSHIP INTEREST.—**For purposes of this section,

(1) **IN GENERAL.—**Except as provided in this paragraph or paragraph (4), the term ‘‘applicable partnership interest’’ means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. The previous sentence shall not apply to an interest held by a person who is employed by another entity that is conducting a trade or business (other than an applicable trade or business) and only provides services to such other entity.

(2) **APPLICABLE TRADE OR BUSINESS.—**The term ‘‘applicable trade or business’’ means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

(A) raising or returning capital, and

(B) either—

(i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or

(ii) developing specified assets.

(3) **SPECIFIED ASSET.—**The term ‘‘specified asset’’ means securities (as defined in section 475(c)(2)) without regard to the last sentence thereof, as so defined in section 475(e)(2), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, in a partnership to the extent of the partnership’s proportionate interest in any of the foregoing.

(4) **EXCEPTIONS.—**The term ‘‘applicable partnership interest’’ shall not include—

(A) any interest in a partnership directly or indirectly held by a corporation, or

(B) any interest in the partnership which provides the taxpayer with a right to share in partnership capital commensurate with—

(i) the amount of capital contributed (determined at the time of receipt of such partnership interest), or

(ii) the value of such interest subject to tax under section 83 upon the receipt or vesting of such interest.

(5) **THIRD PARTY INVESTOR.—**The term ‘‘third party investor’’ means any person who—

(A) holds an interest in the partnership which does not constitute property held in connection with an applicable trade or business; and

(B) is not (and has not been) actively engaged, and is (and was) not related to a person so engaged, in (directly or indirectly) providing substantial services described in paragraph (1) for such partnership or any applicable trade or business.

(d) **TRANSFER OF APPLICABLE PARTNERSHIP INTEREST TO RELATED PERSON.—**

(1) **IN GENERAL.—**If a taxpayer transfers any applicable partnership interest, directly or indirectly, to a person related to the taxpayer, the taxpayer shall include in gross income (as short term capital gain) the excess (if any) of—

(A) so much of the taxpayer’s long-term capital gains with respect to such interest for such taxable year attributable to the sale or exchange of any asset held for not more than 3 years as is allocable to such interest; over

(B) any amount treated as short term capital gain under subsection (a) with respect to the transfer of such interest.

(2) **RELATED PERSON.—**For purposes of this paragraph, a person is related to the taxpayer if—

(A) the person is a member of the taxpayer’s family within the meaning of section 318(a)(1), or

(B) the person performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which or for which the taxpayer performed a service.

(e) **REPORTING.—**The Secretary shall require such reporting (at the time and in the manner prescribed by the Secretary) as is necessary to carry out the purposes of this section.

(f) **REGULATORY AUTHORITY.—**The Secretary shall—

(1) prescribe such regulations or other guidance as is necessary for determining whether any contribution constitutes a contribution in aid of construction., and

(2) provide for the purposes of this section.

**SEC. 13310. PROHIBITION ON CASH, GIFT CARDS, AND OTHER TANGIBLE PERSONAL PROPERTY AS EMPLOYEE ACHIEVEMENT AWARDS.**

(a) **IN GENERAL.—**Subparagraph (A) of section 274(o)(3) is amended by—

(1) by striking ‘‘The term’’ and inserting the following:

“(1) **IN GENERAL.—**The term’’,

(2) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II), and (III), respectively, and clauses (iv) and (v), as subclauses (IV) and (V), respectively, and

(3) by adding at the end the following new clause:

**(II) TANGIBLE PERSONAL PROPERTY.—**For purposes of clause (i), the term ‘‘tangible personal property’’ shall not include—

(A) cash, cash equivalents, gift cards, gift coupons, gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items pre-selected or pre-approved by the employer), and

(B) (i) vacations, meals, lodging, tickets to the ator or sporting events, stocks, bonds, other securities, and other similar items.

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

**SEC. 13311. ELIMINATION OF DEDUCTION FOR LIVING EXPENSES INCURRED BY MEMBERS OF CONGRESS.**

(a) **IN GENERAL.—**Subsection (a) of section 162 is amended by—

(1) by striking ‘‘in excess of $3,000’’, and

(2) by striking ‘‘by a person’’ and inserting ‘‘by the taxpayer’’.

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

**SEC. 13312. CERTAIN CONTRIBUTIONS BY GOVERNMENT ENTITIES NOT TREATED AS CONTRIBUTIONS TO CAPITAL.**

(a) **IN GENERAL.—**Section 118 is amended—

(1) by striking subsections (b), (c), and (d), and

(2) by redesignating subsection (e) as subsection (d), and

(3) by inserting after subsection (a) the following new subsections:

**(B) EXCEPTIONS.—**For purposes of subsection (a), the term ‘‘contribution to the capital of the taxpayer’’ does not include—

**(1) any contribution in aid of construction or any other contribution as a customer or potential customer, and

**(2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such).**

**(c) REGULATIONS.—**The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including regulations or other guidance for determining whether any contribution constitutes a contribution in aid of construction.

(b) **EFFECTIVE DATE.—**

**(1) IN GENERAL.—**Except as provided in paragraph (2), the amendments made by this section shall apply to contributions made after the date of enactment of this Act.

**(2) EXCEPTION.—**The amendments made by this section shall not apply to any contribution, made after the date of enactment of this Act by a governmental entity, which is made pursuant to a public development plan that has been approved prior to such date by a governmental entity.

**SEC. 13313. REPEAL OF ROLLOVER OF PUBLICLY TRADED SECURITIES GAIN INTO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.**

(a) **IN GENERAL.—**Part III of subchapter O of chapter 1 is amended by striking section 1044 (and by striking the item relating to such section in the table of sections of such part).

(b) **CONFORMING AMENDMENTS.—**Section 1046(a)(23) is amended—

**(1) by striking ‘‘1044,’’ and

**(2) by striking ‘‘1044(d),’’.

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

**SEC. 13314. CERTAIN SELF-CREATED PROPERTY NOT TREATED AS A CAPITAL ASSET.**

(a) **PATENTS, ETC.—**Section 1221(a)(3) is amended by inserting ‘‘a patent, invention, model or design (whether or not patented), a secret formula or process, and (b) **CONFORMING AMENDMENT.—**Section 1231(b)(1)(C) is amended by inserting a ‘‘patent, invention, model or design (whether or not patented), a secret formula or process, and (c) **EFFECTIVE DATE.—**The amendments made by this section shall apply to dispositions after December 31, 2017.

**PART V—BUSINESS CREDITS**

**SEC. 13401. MODIFICATION OF ORGAN DRUG CREDIT.**

(a) **CREDIT RATE.—**Subsection (a) of section 45C is amended by striking ‘‘50 percent’’ and inserting ‘‘25 percent’’.

(b) **ELECTION OF REDUCED CREDIT.—**Subsection (b) of section 280C is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

**(3) ELECTION OF REDUCED CREDIT,—**
(A) In general.—In the case of any taxable year for which an election is made under this paragraph—

(i) paragraphs (1) and (2) shall not apply, and

(ii) the amount of the credit under section 45C(a) shall be the amount determined under subparagraph (B).

(B) Required of reduced credit.—The amount of credit determined under this subparagraph for any taxable year shall be the amount equal to the excess of—

(i) the amount of credit determined under section 45C(a) without regard to this paragraph, over

(ii) the product of—

(I) the amount described in clause (i), and

(II) the maximum rate of tax under section 11(b).

(C) Election.—An election under this paragraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary shall prescribe. Such an election, once made, shall be irrevocable.

Sec. 13402. Rehabilitation credit limited to certified historic structures.

(a) In general.—Section (a) of section 47 is amended to read as follows:

"(a) General rule.—

(1) In general.—For purposes of section 47, for any taxable year during the 5-year period beginning in the taxable year in which a qualified rehabilitated building is placed in service, the amount of any rehabilitated expenditures with respect to any such building is a part-time employee, an amount of annual paid family and medical leave, and

(2) any realized from the sale of any tax shelter.

(ii) The term ‘qualified rehabilitation expenditures’ means—

A non-tolerated or leased by the taxpayer during the period applicable under clause (i) of section 47(c)(1)(B), and

(b) in paragraph (2)(B), by amending clause (ii) to read as follows—

(iii) in the case of any employee who is not paid on an hourly wage rate, the wages of such employee shall be prorated to an hourly wage rate under regulations established by the Secretary.

(3) Maximum amount of leave subject to credit.—The amount of family and medical leave that may be taken into account with respect to any employee under subsection (a) for any taxable year shall not exceed 12 weeks.

(4) Applicable percentage.—For purposes of paragraph (1), the term ‘applicable percentage’ means 12.5 percent increased (but not above 25 percent) by 0.25 percentage points for each 5 percent the rate of payment (as described under subsection (c)(1)(B)) exceeds 50 percent.

(b) Limitation.—

(1) In general.—The credit allowed under subsection (a) with respect to any employee for any taxable year shall not exceed an amount equal to the product of the normal hourly wage rate of such employee for each hour (or fraction thereof) of actual services performed for the employer and the number of hours (or fraction thereof), for which family and medical leave is taken.

(2) Non-hourly wage rate.—For purposes of paragraphs (1) and (2), the rate of payment for any employee who is not paid on an hourly wage rate, the wages of such employee shall be prorated to an hourly wage rate under regulations established by the Secretary.

(3) Maximum amount of leave subject to credit.—The amount of family and medical leave that may be taken into account with respect to any employee under subsection (a) for any taxable year shall not exceed 12 weeks.

(4) Applicable percentage.—For purposes of paragraph (1), the term ‘applicable percentage’ means 12.5 percent increased (but not above 25 percent) by 0.25 percentage points for each 5 percent the rate of payment (as described under subsection (c)(1)(B)) exceeds 50 percent.

(c) Exclusion.—Except as provided in paragraph (2), for purposes of this section, the terms ‘family and medical leave’ means leave for any 1 or more of the purposes referred to in paragraph (1), that paid leave shall not be considered to be family and medical leave under paragraph (1).

(3) Definitions.—In this subsection, the terms ‘vacation leave’, ‘personal leave’, and ‘medical or sick leave’ mean those 3 types of leave, within the meaning of section 512(a)(2) of that Act.

(5) Determinations made by Secretary of Treasury.—For purposes of this section, any determination as to whether an employer or an employee satisfies the applicable requirements for an eligible employer (as described in subsection (c) or qualifying employee (as described in subsection (d)) shall be made by the Secretary based on such information, to be provided by the employer, as the Secretary determines to be necessary or appropriate.

(6) Wages.—For purposes of this section, the term ‘wages’ has the meaning given such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). Such term shall not include any amount taken into account for purposes of determining any other credit allowed under this subpart.

(7) Elections to have credit not apply.—

(1) In general.—A taxpayer may elect to have this section not apply for any taxable year.

(B) Added employer; added employee.—For purposes of this paragraph—

(i) Added employer.—The term ‘added employer’ means an employer who is not paid on an hourly wage rate, the wages of such employee shall be prorated to an hourly wage rate under regulations established by the Secretary.

(ii) Added employee.—The term ‘added employee’ means an employer (determined with regard to this subpart or not covered by that title I, who offers paid family and medical leave to added employees.

(c) Aggregation rule.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single employer.

(d) Treatment of benefits mandated or provided by any state or local government.—For purposes of this section, any leave which is paid by a State or local government or required by State or local law shall not be taken into account in determining the amount of paid family and medical leave provided by the employer.

(5) No inference.—Nothing in this subsection shall be construed as an application to a taxpayer or any employee to any penalty, liability, or other consequence (other than ineligibility for the credit allowed by reason of subsection (a) or recapturing the benefit of such credit) for failure to comply with the requirements of this section.

(4) Qualifying employees.—For purposes of this section, the term ‘qualifying employee’ means any employee (as defined in section 3(e) of the Fair Labor Standards Act of 1938, as amended) who—

(1) has been employed by the employer for 1 year or more, and

(2) for the preceding year, had compensation not in excess of an amount equal to 60 percent of the amount applicable for such year under clause (i) of section 414(q)(1)(B).

(5) Family and medical leave.—

(1) In general.—

(a) Family and medical leave.—

(i) In general.—For purposes of this section,

(II) the amount described in clause (i), and

(III) the maximum amount regulated by such time.

(3) Aggregation rule.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single employer.

(2) Exclusion.—Except as provided in paragraph (2), for purposes of this section, the terms ‘family and medical leave’ means leave for any 1 or more of the purposes referred to in paragraph (1), that paid leave shall not be considered to be family and medical leave under paragraph (1).

(3) Definitions.—In this subsection, the terms ‘vacation leave’, ‘personal leave’, and ‘medical or sick leave’ mean those 3 types of leave, within the meaning of section 512(a)(2) of that Act.

(5) Determinations made by Secretary of Treasury.—For purposes of this section, any determination as to whether an employer or an employee satisfies the applicable requirements for an eligible employer (as described in subsection (c) or qualifying employee (as described in subsection (d)) shall be made by the Secretary based on such information, to be provided by the employer, as the Secretary determines to be necessary or appropriate.

(6) Wages.—For purposes of this section, the term ‘wages’ has the meaning given such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). Such term shall not include any amount taken into account for purposes of determining any other credit allowed under this subpart.

(7) Elections to have credit not apply.—

(1) In general.—A taxpayer may elect to have this section not apply for any taxable year.

(2) Other rules.—Rules similar to the rules of paragraphs (2) and (3) of section 51(1) shall apply for purposes of this subsection.
(i) TERMINATION.—This section shall not apply to wages paid in taxable years beginning after December 31, 2019.

(b) CREDIT PART OF GENERAL BUSINESS CRED.—Section 36B(a) is amended by striking “plus” at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting “plus”, and by adding at the end the following new paragraph:

“(37) in the case of an eligible employer (as defined in section 45S(c)), the paid family and medical leave credit determined under section 45S(a).”

(c) CREDIT ALLOWED AGAINST AMT.—Subsection (B) of section 38(c)(4) is amended by redesignating clauses (i) through (xi) as clauses (i) through (xii) respectively, and by adding at the end the following new clause:

“(xiii) the credit determined under section 45S.”

(d) CONFORMING AMENDMENTS.—

(1) DENIAL OF DOUBLE BENEFIT.—Section 2804(c) is amended by inserting “45S(a)”, after “45P(a)”."

(2) ELECTION TO HAVE CREDIT NOT APPLY.—Section 6501(w) is amended by inserting “45S(b),”.

(3) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new entry:

“Sec. 45S. Employer credit for paid family and medical leave.”

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

SEC. 13404. REPEAL OF TAX CREDIT BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 is amended by striking subparts H, I, and J and by striking the items relating to such subparts in the table of sections for such part.

(b) PAYMENTS TO EESIUERS.—Subchapter B of section 65 is amended by striking section 6431 (and by striking the item relating to such section in the table of sections for such subchapter).

(c) CONFORMING AMENDMENTS.—Subsection (a) of section 4631 is amended by striking “and”, and “and” and inserting “or” and “or”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 2017.

PART VI—PROVISIONS RELATED TO SPECIFIC ENTITIES AND INDUSTRIES

SEC. 13501. TREATMENT OF GAIN OR LOSS OF FOREIGN PERSONS FROM SALE OR EXCHANGE OF INTERESTS IN PARTNERSHIPS ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES.

(a) AMOUNT TREATED AS EFFECTIVELY CONNECTED.—

(1) IN GENERAL.—Section 864(c) is amended by adding at the end the following:

“(e) GAIN OR LOSS OF FOREIGN PERSONS FROM SALE OR EXCHANGE OF CERTAIN PARTNERSHIP INTERESTS.

“(A) IN GENERAL.—Notwithstanding any other provision of this subtitle, if a nonresident alien individual or foreign corporation owns, directs or indirectly, an interest in a partnership which is engaged in any trade or business within the United States, gain or loss on the sale or exchange of all (or any portion of) such interest shall be treated as effectively connected with the conduct of such trade or business to the extent such gain or loss does not exceed the amount determined under subparagraph (B).

“(B) AMOUNT TREATED AS EFFECTIVELY CONNECTED.—For purposes of subparagraph (A), the amount treated as effectively connected with the conduct of such trade or business shall be determined under the following:

“(i) in the case of a sale, change in the sale or exchange of the partnership interest, is—

“(I) the portion of the partner’s distributive share of the amount of gain which would have been effectively connected with the conduct of a trade or business within the United States if the partnership had sold all of its assets at their fair market value as of the date of the sale or change of such interest, or

“(II) zero if no gain on such deemed sale would have been so effectively connected, and

“(ii) in the case of any loss on the sale or change of the partnership interest, is—

“(I) the portion of the partner’s distributive share of the amount of loss on the deemed sale described in clause (ui) which would have been so effectively connected, or

“(II) zero if no loss on such deemed sale would have been so effectively connected.

“(2) EFFECTIVE DATE.—The amendments made by this section shall apply to sales, exchanges, and dispositions on or after December 31, 2017.

SEC. 13502. MODIFY DEFINITION OF SUBSTANTIAL BUILT-IN LOSS IN THE CASE OF TRANSFER OF PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (1) of section 743(d) is amended to read as follows:

“(1) IN GENERAL.—Except as provided in this subsection, if any portion of the gain (if any) on any disposition of an interest in a partnership would be treated under section 864(c)(6) as effectively connected with the conduct of a trade or business within the United States, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

“(2) EXCEPTION IF NONFOREIGN AFFIDAVIT FURNISHED.—

“(A) IN GENERAL.—No person shall be required to deduct and withhold any amount under paragraph (1) with respect to any disposition if the transferee furnishes to the transferee an affidavit by the transferee stating, under penalty of perjury, that to the best of the transferee’s knowledge as such rules apply with respect to the disposition of a United States real property interest under such section.

“(B) RULES FOR AGENTS.—The Secretary may prescribe rules for the conduct of a trade or business with the United States.

“(C) EFFECTIVE DATES.—

“(1) IN GENERAL.—No person shall be required to deduct and withhold any amount under paragraph (1) with respect to any disposition if the transferee fails to furnish a copy of such affidavit or statement to the Secretary and the transferee fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

“(2) RULES FOR AGENTS.—The rules of section 1445(d) shall apply to a transferor’s agent or transferee’s agent under such section.

“(3) AUTHORITY OF SECRETARY TO PRESCRIBE REDUCED AMOUNT.—At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed under this title with respect to gain treated under section 864(c)(8) as effectively connected with the conduct of a trade or business with the United States.

“(4) PARTNERSHIP TO WITHHOLD AMOUNTS NOT WITHHELD BY THE TRANSFEREE.—If a transferee fails to withhold any amount required to be withheld under paragraph (1) the partnership shall be required to deduct and withhold from distributions to the transferee a tax in an amount equal to the amount the transferee failed to withhold (plus interest under this title on such amount).

“(5) DEFINITIONS.—Any term used in this subsection is which is also used under section 1445 shall have the same meaning as when used in such section.

“(6) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from the provisions of this subsection.

“(e) EFFECTIVE DATES.—

“(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to sales, exchanges, and dispositions on or after December 31, 2017.

“(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to sales, exchanges, and dispositions on or after November 27, 2017.

SEC. 13503. CHARITABLE CONTRIBUTIONS AND FOREIGN TAXES TAKEN INTO ACCOUNT IN DETERMINING LIMITATION ON ALLOWANCE OF PARTNER’S SHARE OF LOSS.

(a) IN GENERAL.—Section 704(b) is amended by striking “A partner’s distributive share” and inserting the following:

“(1) IN GENERAL.—A partner’s distributive share.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of partnership interests after December 31, 2017.
(A) shall not apply to the extent of the partner’s contribution of property whose fair market value exceeds its adjusted basis, subparagraph (A) shall not apply to the extent of the partner’s distributive share of such excess.

(b) CONFORMING AMENDMENT.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 2017.

SECT. 13504. REPEAL OF TECHNICAL TERMINATION OF PARTNERSHIPS.

(a) IN GENERAL.—Paragraph (1) of section 708(b) is amended—

(1) by striking “,” or” at the end of subparagraph (a), and all that follows and inserting a period, and

(2) by striking “only if”—and all that follows through “no part of any business” and inserting the following: “only if no part of any business”.

(b) CONFORMING AMENDMENT.—

(1) Section 168(c)(7)(B) is amended by striking the second sentence.

(2) Section 743(e) is amended by striking paragraph (4) and redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6).

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

Subtitles for Insurers

SECT. 13511. NET OPERATING LOSSES OF LIFE INSURANCE COMPANIES.

(a) IN GENERAL.—Section 805(b) is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(b) CONFORMING AMENDMENTS.—

(1) Part I of subchapter L of chapter 1 is amended by striking section 410 (and by striking the item relating to such section in the table of sections for such part).

(2) Part III of subchapter L of chapter 1 is amended by striking section 844 (and by striking the item relating to such section in the table of sections for such part).

(3) Section 831(b) is amended by striking “except as provided in section 844,”

(4) Section 831(e) is amended by striking paragraph (5),

(5) Section 805(a) is amended by striking paragraph (5),

(6) Section 805(b)(2)(A)(ii) is amended to read as follows: “(ii) the deduction allowed under section 172;”

(7) Section 805(a) is amended by striking paragraph (4),

(8) Section 805(b)(2)(A)(ii) is amended to read as follows:

“(i) any net operating loss carryback to the taxable year under section 172;”

(9) Section 806(a) is amended by striking paragraph (5),

(10) Section 806(b)(2)(A)(ii) is amended to read as follows:

“(a) the amount of the item at the close of the taxable year, computed on the old basis, and (b) the amount of the item at the close of the taxable year, computed on the old basis, as is attributable to contracts issued before the taxable year shall be taken into account under section 481 as adjustments attributable to a change in method of accounting initiated by the taxpayer and made with the consent of the Secretary.”

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

SECT. 13513. ADJUSTMENT FOR CHANGE IN METHOD OF ACCOUNTING.

(a) IN GENERAL.—Paragraph (1) of section 807(f) is amended to read as follows:

“(1) TREATMENT AS CHANGE IN METHOD OF ACCOUNTING.—If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

“(A) the amount of the item at the close of the taxable year, computed on the old basis, and

“(B) the amount of the item at the close of the taxable year, computed on the old basis, as is attributable to contracts issued before the taxable year shall be taken into account under section 481 as adjustments attributable to a change in method of accounting initiated by the taxpayer and made with the consent of the Secretary.”

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

SECT. 13514. SPECIAL RULE FOR DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNTS.

(a) IN GENERAL.—Subpart D of part I of subchapter L of chapter 1 is amended by striking section 815 (and by striking the item relating to such section in the table of sections for such part).

(b) CONFORMING AMENDMENT.—Section 801 is amended by striking subparagraph (c).

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

(d) PHASED INCLUSION OF REMAINING BALANCE OF POLICYHOLDERS SURPLUS ACCOUNTS.—In the case of stock life insurance companies, which have a balance (determined as of the close of such company’s last taxable year beginning before January 1, 2010) in an existing policyholders surplus account (as defined in section 815 of the Internal Revenue Code of 1986, as in effect before its repeal), the tax imposed by section 801 of such Code for the first 8 taxable years beginning after December 31, 2017, shall be the amount which would be imposed by such section for such year on the sum of—

(1) 8 percent of the life insurance company taxable income for such year (within the meaning of such section 801 but not less than zero), plus

(2) 1⁄8 of such balance.

SECT. 13515. MODIFICATION OF PRORATION RULES FOR PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 832(b)(5)(B) is amended—

(1) by striking “15 percent” and inserting “the applicable percentage”, and

(2) by inserting at the end the following new sentence: “For purposes of this subparagraph, the applicable percentage is 5.25 percent divided by the highest rate in effect under section 11(b).”

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

SECT. 13516. REPEAL OF SPECIAL ESTIMATED TAX PAYMENTS.

(a) IN GENERAL.—Part III of subchapter L of chapter 1 is amended by striking section 847 (and by striking the item relating to such section in the table of sections for such part).

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

SECT. 13517. COMPUTATION OF LIFE INSURANCE TAX RESERVES.

(a) IN GENERAL.—

(1) APPROPRIATE RATE OF INTEREST.—The second sentence of section 807(c) is amended to read as follows: “For purposes of paragraph (3), the appropriate rate of interest is the highest rate or rates permitted to be used to discount the obligations by the National Association of Insurance Commissioners as of the date the reserve is determined.”.

(2) METHOD OF COMPUTING RESERVES.—Section 807(d) is amended—

(A) by striking paragraphs (1), (2), (4), and (5),

(B) by redesigning paragraph (6) as paragraph (4), and

(C) by inserting before paragraph (3) the following new paragraphs:

“(1) DETERMINATION OF RESERVE.—

(a) IN GENERAL.—For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract (other than a contract to which subparagraph (B) applies) shall be the greater of—

(i) the net surrender value of such contract, or

(ii) 92.81 percent of the reserve determined under paragraph (2).”

“(B) VARIABLE CONTRACTS.—For purposes of this part (other than section 816), the amount of the life insurance reserves for a variable contract shall be equal to the sum of—

(i) the greater of—

(1) the net surrender value of such contract, or

(2) the portion of the reserve that is separately accounted for under section 817, plus

(ii) 92.81 percent of the excess (if any) of the reserve determined under paragraph (2) over the amount in clause (i).

“(C) STATUTORY CAP.—In no event shall the reserves determined under subparagraphs (A) or (B) for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (4)).”

“(D) NO DOUBLE COUNTING.—In no event shall any amount or item be taken into account more than once in determining any reserve under this subchapter.”

“(E) ACCOUNT OF RESERVE.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined by
using the tax reserve method applicable to such contract.

(D) by striking "(other than a qualified long-term care insurance contract, as defined in section 7707B(a)(9) for any year after December 31, 2017)" and inserting "the term 'prevailing commissioners' standard rates' means the most recent commissioners' standard rates prescribed by the National Association of Insurance Commissioners which covers each contract as of the date the reserve is determined";

(E) by striking "(as of the date of issuance) in paragraph (3)(A)(i)(I) and inserting "as of the date the reserve is determined";

(F) by striking "as of the date of issuance" in paragraph (3)(A)(i)(II) and inserting "as of the date the reserve is determined";

(G) by striking "in effect on the date of the issuance of the contract" in paragraph (3)(B)(i) and inserting "applicable to the contract and in effect as of the date the reserve is determined";

(H) by striking "in effect on the date of the issuance of the contract" in paragraph (3)(B)(ii) and inserting "applicable to the contract and in effect as of the date the reserve is determined";

(3) SPECIAL RULES.—Section 807(e) is amended—

(A) by striking paragraphs (2) and (5),

(B) by redesigning paragraphs (3), (4), (6), and (7) as paragraphs (2), (3), (4), and (5), respectively,

(C) by amending paragraph (2) (as so redesignated) to read as follows: "(2) QUALIFIED SUPPLEMENTAL BENEFITS.—

(A) QUALIFIED SUPPLEMENTAL BENEFITS TREATED SEPARATELY.—For purposes of this part, the amount of life insurance reserves available to fund such benefit shall be computed separately as though such benefit were under a separate contract.

(B) QUALIFIED SUPPLEMENTAL BENEFIT.—For purposes of this paragraph, the term 'qualified supplemental benefit' means any supplemental benefit prescribed in subparagraph (C) thereof: and

(i) there is a separately identified premium or charge for such benefit, and

(ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(C) SUPPLEMENTAL BENEFITS.—For purposes of this paragraph, the supplemental benefits described in this subparagraph are—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) Guaranteed nonsmoker,

(iv) disability waiver benefit, or

(v) other benefit prescribed by regulations, which is supplemental to a contract for which there is a reserve described in subsection (c), and

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

(4) REPORTING RULES.—The Secretary shall require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balance and closing balance of each reserve with respect to the method of computing reserves for purposes of determining income.

(5) DEFINITION OF LIFE INSURANCE CONTRACT.—Section 7702 is amended—

(A) by striking clause (i) of subsection (c)(3)(B) and inserting the following:

(i) reasonable mortality charges which meet the requirements prescribed in regulations to be promulgated by the Secretary or that do not exceed the mortality charges specified in the prevailing commissioners' standard tables as defined in subsection (f)(10), and

(B) by adding at the end of subsection (f) the following new paragraph:

(10) PREVAILING COMMISSIONERS' STANDARD TABLES.—For purposes of subsection (c)(3)(B)(i), the term 'prevailing commissioners' standard tables' means the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States where the contract was issued. If the prevailing commissioners' standard tables as of the beginning of any calendar year (referred to in this Act as the 'year of change') are different from the prevailing commissioners' standard tables as of the beginning of the preceding calendar year, the prevailing commissioners' standard tables shall be determined with respect to such contract as of the close of the 3-year period beginning on the first day of the year of change.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 806 is amended by adding at the end the following:

"(g) PREVAILING STATE ASSUMED INTEREST RATE.—For purposes of this subchapter—

(1) IN GENERAL.—The term 'prevailing State assumed interest rate' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State Effective rates for reserves shall not be taken into account.

(2) WHEN RATE DETERMINED.—The prevailing State assumed interest rate with respect to any contract shall be deemed as of the beginning of the calendar year in which the contract was issued.''.

(2) Paragraph (d) of section 811 is amended by striking "the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807" and inserting "the interest rate in effect under section 808(a)".

(3) Subparagraph (A) of paragraph (5) of section 814 is amended by striking "$1,000,000" and inserting "$5,000,000".

(4) Paragraph (3)(A)(ii) of section 811 is amended by striking "the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807" and inserting "the interest rate in effect under section 808(a)".

(5) Subparagraph (B) of paragraph 814(k)(5) is amended by striking "$100" and inserting "$500".

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

2. Sec. 817A(a)(2) is amended by striking "1.75 percent" and inserting "2.45 percent".

3. Sec. 817A(a)(2) is amended by striking "1.75 percent" and inserting "2.05 percent".

4. Sec. 817A(a)(2) is amended by striking "1.75 percent" and inserting "9.2 percent".

5. Sec. 817A(a)(2) is amended by striking "1.75 percent" and inserting "9.2 percent".

6. CONFORMING AMENDMENTS.—Section 817A(a)(2) is amended by striking "120-month" and inserting "180-month".

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

(2) TRANSITION RULE.—Specified policy acquisition expenses first required to be capitalized in a taxable year beginning before January 1, 2018, will continue to be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

2. Sec. 8135. TAX REPORTING FOR LIFE SETTLEMENT TRANSACTIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 64 of subtitle A of title 26 is amended by striking at the end the following new section:

"SEC. 6605(f). RETURNS RELATING TO CERTAIN LIFE INSURANCE CONTRACT TRANSAGCTIONS. 

(a) REQUIREMENT OF REPORTING OF CERTAIN PAYMENTS.—

(A) IN GENERAL.—Every person who acquires a life insurance contract or any interest in a life insurance contract in a reportable policy sale during any taxable year shall make a return for such taxable year and in such manner as the Secretary shall prescribe" setting forth:

(A) the name, address, and TIN of such person,

(B) the name, address, and TIN of each recipient of payment in the reportable policy sale,

(C) the date of such sale,

(D) the name of the issuer of the life insurance contract sold and the policy number of such contract, and

(E) the amount of each payment.

(2) STATEMENT TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subparagraph (A), in making such return, shall furnish to each person whose name is required to be set forth in such return a written statement showing—
of chapter 61, as amended by section 13306, is amended by inserting after the item relating to section 6509X the following new item: ‘‘Sec. 6505Y. Returns relating to certain life insurance contracts transactions.’’. (c) CONFORMING AMENDMENTS.—
(1) Subsection (d) of section 6724 is amended—
(A) by striking ‘‘or’’ at the end of clause (xvi) of paragraph (1)(D), by striking ‘‘and’’ at the end of clause (xvii) of paragraph (2) and inserting ‘‘or’’, and by inserting after such clause (xvii) the following new clause:
(xviii) returns relating to certain life insurance contract transactions, and, and
(B) by striking ‘‘or’’ at the end of subparagraph (B) of section 6509Y (relating to returns relating to certain life insurance contract transactions),
(2) Section 6047 is amended—
(A) by redesignating subsection (g) as subsection (f),
(B) by inserting after subparagraph (i) the following new subparagraph:
(g) INFORMATION RELATING TO LIFE INSURANCE CONTRACT TRANSACTIONS.—This section shall not apply to any information which is required to be reported under section 6505Y, as amended, and as redesignated, the following new paragraph:
(1) the date of each such payment,
(2) the name, address, and TIN of the seller making such payment,
(3) the name, address, and TIN of each recipient of such return with respect to each seller whose name is required to be set forth in such return,
(4) the gross amount of such each payment, and
(5) the amount of losses which would have been treated as paid in the 7th, 8th, and 9th years after the accident year.
SEC. 13521. CLARIFICATION OF TAX BASIS OF LIFE INSURANCE CONTRACTS.
(a) CLARIFICATION WITH RESPECT TO ADJUSTMENTS.—(1) reportable death benefits (as defined in section 6506Y(d)(2) of the Internal Revenue Code of 1986 as added by subsection (a) after December 31, 2017, and
(2) by adding at the end of subsection (h), as so redesignated, the following new paragraph:
(4) For provisions requiring reporting of information relating to certain life insurance contract transactions, see section 6505Y.
(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns made after December 31, 2017.
SEC. 13522. EXCEPTION TO TRANSFER FOR VALUABLE CONSIDERATION RULES.
(a) IN GENERAL.—Subsection (a) of section 101 is amended by inserting after paragraph (2) the following new paragraph:
(3) the unpaid losses as defined in sections 808(c) and 808(a)(1) of such Code at the end of the preceding taxable year, and
(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers entered into after August 23, 2009.
SEC. 13523. MODIFICATION OF DISCOUNTING RULES FOR LOSS PAYMENT PATTERNS.
(a) MODIFICATION OF RATE OF INTEREST USED TO DISCOUNT UNPAID LOSSES.—(1) Section 846(c) is amended by striking paragraphs (2) and (3) of such section and inserting in lieu thereof the following:
(1) 3-YEAR LOSS PAYMENT PATTERN.—In the case of any line of business not described in subparagraph (A)(ii), losses paid after the 1st year following the accident year shall be treated as paid in the 1st year following the accident year.
(ii) 10-YEAR LOSS PAYMENT PATTERN.—In the case of any line of business described in subparagraph (A)(ii), losses paid after the 1st year following the accident year shall be treated as paid in the 1st year following the accident year.
(b) CONFORMING AMENDMENT.—(1) Paragraph (1) of section 6047 is amended by striking subparagraphs (B) through (G) and inserting the following new subparagraph:
(B) TREATMENT OF CERTAIN LOSSES.—
(i) tax or other carrying charges described in section 286;
(ii) interest described in section 173 (relating to circulation expenditures),
(iii) taxes or other carrying charges described in section 286;
or
(iv) expenses described in section 280(i)(6) (relating to certain life insurance contract transactions, see section 6505Y.
(c) E XCEPTION TO VALUABLE CONSIDERATION RULES FOR COMMERCIAL TRANSFERS.—(A) IN GENERAL.—The second sentence of paragraph (2) shall not apply in the case of a transfer of a life insurance contract, or any interest therein, which is a reportable policy sale.
(B) REPORTABLE POLICY SALE.—For purposes of this paragraph, the term ‘‘reportable policy sale’’ means a transfer of a life insurance contract, direct or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured under such life insurance contract.
(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers entered into after December 31, 2017.
SEC. 13524. MODIFICATION OF DISCOUNTING RULES FOR PROPERTY AND CASUALTY INSURANCE COMPANIES.
(a) MODIFICATION OF RATE OF INTEREST USED TO DISCOUNT UNPAID LOSSES.—(1) Section 846(c) is amended by striking paragraphs (2) and (3) of such section and inserting in lieu thereof the following:
(2) the unpaid losses as defined in sections 808(c) and 808(a)(1) of such Code at the end of the preceding taxable year, and
(b) CONFORMING AMENDMENT.—(1) Paragraph (1) of section 6047 is amended by striking paragraphs (2) and (3) of such section and inserting in lieu thereof the following:
(2) the unpaid losses as defined in sections 808(c) and 808(a)(1) of such Code at the end of the preceding taxable year, and
(b) E XCEPTION TO VALUABLE CONSIDERATION RULES FOR COMMERCIAL TRANSFERS.—(A) IN GENERAL.—The second sentence of paragraph (2) shall not apply in the case of a transfer of a life insurance contract, or any interest therein, which is a reportable policy sale.
(B) REPORTABLE POLICY SALE.—For purposes of this paragraph, the term ‘‘reportable policy sale’’ means a transfer of a life insurance contract, direct or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured under such life insurance contract.
(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers entered into after December 31, 2017.
SEC. 13525. MODIFICATION OF DISCOUNTING RULES FOR PROPERTY AND CASUALTY INSURANCE COMPANIES.
(a) MODIFICATION OF RATE OF INTEREST USED TO DISCOUNT UNPAID LOSSES.—(1) Section 846(c) is amended by striking paragraphs (2) and (3) of such section and inserting in lieu thereof the following:
(2) the unpaid losses as defined in sections 808(c) and 808(a)(1) of such Code at the end of the preceding taxable year, and
(b) CONFORMING AMENDMENT.—(1) Paragraph (1) of section 6047 is amended by striking paragraphs (2) and (3) of such section and inserting in lieu thereof the following:
(2) the unpaid losses as defined in sections 808(c) and 808(a)(1) of such Code at the end of the preceding taxable year, and
(b) E XCEPTION TO VALUABLE CONSIDERATION RULES FOR COMMERCIAL TRANSFERS.—(A) IN GENERAL.—The second sentence of paragraph (2) shall not apply in the case of a transfer of a life insurance contract, or any interest therein, which is a reportable policy sale.
(B) REPORTABLE POLICY SALE.—For purposes of this paragraph, the term ‘‘reportable policy sale’’ means a transfer of a life insurance contract, direct or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured under such life insurance contract.
(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers entered into after December 31, 2017.
SEC. 13526. MODIFICATION OF DISCOUNTING RULES FOR PROPERTY AND CASUALTY INSURANCE COMPANIES.
(a) MODIFICATION OF RATE OF INTEREST USED TO DISCOUNT UNPAID LOSSES.—(1) Section 846(c) is amended by striking paragraphs (2) and (3) of such section and inserting in lieu thereof the following:
(2) the unpaid losses as defined in sections 808(c) and 808(a)(1) of such Code at the end of the preceding taxable year, and
(b) CONFORMING AMENDMENT.—(1) Paragraph (1) of section 6047 is amended by striking paragraphs (2) and (3) of such section and inserting in lieu thereof the following:
Section 13541. Expansion of Qualifying Beneficiaries of an Electing Small Business Trust.

(a) No Look-Through Adjusting Eligibility Purposes.—Section 1361(c)(2)(B)(vii) is amended by adding at the end the following new sentence: “This clause shall not apply for purposes of section 1120(c)(3)(E).”

(b) Effective Date.—The amendment made by this section shall take effect on January 1, 2018.


(a) In General.—Section 641(c)(2) is amended by inserting after subparagraph (D) the following new subparagraph: “(E)(i) Section 642(c) shall not apply.”

(iii) For purposes of section 170(b)(1)(G), adjusted gross income shall be computed in the same manner as in the case of an individual, except that the deductions for costs which are paid or incurred in connection with the administration of the trust and which would not have been incurred if the property were not held in such trust shall be treated as allowable in arriving at adjusted gross income.”

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

Section 13543. Modification of Treatment of S Corporation Conversions to C Corporations.

(a) Adjustments Attributable to Conversion from S Corporation to C Corporation.—Section 861 is amended by adding at the end the following new subsection:

“(2) in subparagraph (B)—

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

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

Section 13601. Add subsection 164(m)(3) to section 164(m).

(a) IN GENERAL.—Paragraph (4) of section 162(m) is amended by striking subparagraphs (B) and (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (B), (C), (D), and (E), respectively.

(b) Conforming Amendments.—

(1) Paragraphs (5)(E) and (6)(D) of section 162(m) are each amended by striking “subparagraph” and inserting “subparagraph”.

(2) Paragraphs (5)(G) and (6)(G) of section 162(m) are each amended by striking “(F)” and inserting “(D)” and inserting “(E)”.

Section 13602. Excise Tax on Excess Tax-Exempt Organization Executive Compensation.

(a) In General.—Subchapter D of chapter 42 is amended by adding at the end the following new section:

“§13602. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION.

(a) In General.—Subchapter D of chapter 42 is amended by adding at the end the following new section:

“(1) IN GENERAL.—Paragraph (4) of section 162(m) is amended by striking subparagraphs (B) and (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (B), (C), (D), and (E), respectively.

(2) CONFORMING AMENDMENTS.—

(1) Paragraphs (5)(E) and (6)(D) of section 162(m) are each amended by striking “subparagraph” and inserting “subparagraph”.

(2) Paragraphs (5)(G) and (6)(G) of section 162(m) are each amended by striking “(F)” and inserting “(D)” and inserting “(E)”.

(3) APPLICABLE PERCENTAGE.—For purposes of this section, the term ‘applicable percentage’ means, with respect to any taxpayer for any taxable year, the ratio (expressed as a percentage but not greater than 100 percent) which—

(a) the excess of—

(1) the total consolidated assets of such taxpayer (determined as of the close of such taxable year), over

(2) $10,000,000,000.

(3) IN GENERAL.—No deduction shall be allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer.

(3) EXCEPTION FOR SMALL INSTITUTIONS.—

Parabola (1) shall not apply to any taxpayer for any taxable year if the total consolidated assets of such taxpayer (determined as of the close of such taxable year) do not exceed $10,000,000,000.

(4) FDIC PREMIUM.—For purposes of this section, the term ‘FDIC premium’ means any assessment imposed under section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)).

(5) TOTAL CONSOLIDATED ASSETS.—For purposes of this section, the term ‘total consolidated assets’ means a total consolidated asset amount under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365).

(6) AGGREGATION RULE.—

(A) Member of Expanded Group.—Members of an expanded affiliated group shall be treated as a single taxpayer for purposes of applying this subsection.

(B) EXPANDED AFFILIATED GROUP.—

(i) In General.—For purposes of this paragraph, the term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

(I) by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears, and (II) without regard to paragraphs (2) and (3) of section 1504(b).

(II) CONTROL OF NON-CORPORATE ENTITIES.—

(A) Partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 564(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this clause).”.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

Section 13532. Repeal of Advance Refunding Bonds.

(a) In General.—Paragraph (1) of section 1504(a) is amended by striking “as part of an issue described in paragraph (2), (3), or (4),” and inserting “to advance refund bond.”

(b) Conforming Amendments.—

(1) Section 1504(a) is amended by striking paragraphs (2), (3), (4), and (6) and by redesignating paragraphs (5) and (7) as paragraphs (2) and (3).

(2) Section 148(f)(4)(C) is amended by striking clause (iv) and by redesignating clauses (v) to (xvi) as clauses (iv) to (xv).

(c) Effective Date.—The amendments made by this section shall apply to advance refunding bonds issued after December 31, 2017.

Subpart D—S Corporations

Section 13544. Reduction in Limitation on Excessive Employee Remuneration.

(a) Repeal of Performance-Based Compensation and Conversion Exceptions for Limitation on Excessive Employee Remuneration.

(1) IN GENERAL.—Paragraph (4) of section 162 is amended by striking subparagraphs (B) and (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (B), (C), (D), and (E), respectively.

(2) CONFORMING AMENDMENTS.—

(1) Paragraphs (5)(E) and (6)(D) of section 162 are each amended by striking “subparagraph” and inserting “subparagraph”.

(2) Paragraphs (5)(G) and (6)(G) of section 162 are each amended by striking “(F)” and inserting “(D)” and inserting “(E)”.

(3) MODIFICATION OF DEFINITION OF COVERED EMPLOYEES.—Paragraph (3) of section 162(m) is amended—

(1) in subparagraph (A), by striking “as of the close of the taxable year such employee is the chief executive officer of the taxpayer or is” and inserting “such employee is the principal executive officer or principal financial officer of the taxpayer or was”;

(2) in subparagraph (B)—

(A) by striking “4” and inserting “3”, and

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

“Such term shall include any employee who would be described in subparagraph (B) if the reference described in such subparagraph were required as so described.”;

(3) SPECIAL RULE FOR REMUNERATION PAID TO BENEFICIARIES, ETC.—Remuneration shall not fail to be applicable employee remuneration merely because it is includible in the income of, or paid to, a person other than the covered employee, including after the death of the covered employee.”;

(4) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2017.

(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to remuneration which is provided pursuant to a written binding contract which was in effect on November 2, 2017, and which was not modified in any material respect on or after such date.

Section 13602. Excise Tax on Excess Tax-Exempt Organization Executive Compensation.

(a) In General.—Subchapter D of chapter 42 is amended by adding at the end the following new section:


(a) In General.—Subchapter D of chapter 42 is amended by adding at the end the following new section:
"SEC. 4960. TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION.

(a) TAX IMPOSED.—There is hereby imposed a tax equal to the product of the rate of tax under subsection (a)(3) and the sum of—

(1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of $1,000,000, plus

(2) any excess parachute payment paid by such an organization to any covered employee. For purposes of the preceding sentence, remuneration shall be treated as paid when there is no substantial risk of forfeiture (within the meaning of section 457(h)(3)(B)) of the rights to such remuneration.

(b) LIABILITY FOR TAX.—The employer shall be liable for the tax imposed under subsection (a).

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

(1) APPLICABLE TAX-EXEMPT ORGANIZATION.—The term ‘applicable tax-exempt organization’ means any organization which for the taxable year—

(A) is exempt from taxation under section 501(a),

(B) is a farmers’ cooperative organization described in section 521(b)(1),

(C) has income excluded from taxation under section 512(a),

(D) is a political organization described in section 527(e)(1).

(2) COVERED EMPLOYEE.—For purposes of this section, the term ‘covered employee’ means any employee (including any former employee) of an applicable tax-exempt organization if the employee—

(A) is one of the 5 highest compensated employees of the organization for the taxable year,

(B) was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

(3) REMUNERATION.—For purposes of this section—

(A) IN GENERAL.—The term ‘remuneration’ means wages (as defined in section 3401(a)), except that such term shall not include any designated Roth contribution (as defined in section 402A(c)) and shall include amounts required to be included in gross income under section 457(f).

(B) EXCEPTION FOR REMUNERATION FOR MEDICAL SERVICES.—The term ‘remuneration’ shall not include the portion of any remuneration paid to a licensed medical professional (including a veterinarian) to the extent that such remuneration is for the performance of medical or veterinary services by such professional.

(4) REMUNERATION FROM RELATED ORGANIZATIONS.—

(A) IN GENERAL.—Remuneration of a covered employee by an applicable tax-exempt organization shall include any remuneration paid with respect to employment of such employee by any related tax-exempt entity.

(B) RELATED ORGANIZATIONS.—A person or governmental entity shall be treated as related to an applicable tax-exempt organization if such person or entity—

(i) controls, or is controlled by, the organization,

(ii) is controlled by one or more persons which control the organization,

(iii) is a supported organization (as defined in section 509(a)(3)) during the taxable year with respect to the organization,

(iv) is a supporting organization described in section 509(a)(3) during the taxable year with respect to the organization, or

(v) in the case of an organization which is a voluntary employees’ beneficiary association described in section 501(c)(9), establishes, maintains, or makes contributions to such voluntary employees’ beneficiary association.

(C) LIABILITY FOR TAX.—In any case in which remuneration from more than one employer is taken into account under this paragraph in determining the tax imposed by subsection (a), each such employer shall be liable for such tax in an amount which bears the same ratio to the tax determined under such subsection (a) with respect to such remuneration as—

(i) the amount of remuneration paid by such employer with respect to such employee, bears to

(ii) the amount of remuneration paid by all such employers to such employee.

(5) EXCESS PARACHUTE PAYMENT.—For purposes of determining the tax imposed by subsection (a)(2) (A) IN GENERAL.—The term ‘excess parachute payment’ means an amount equal to the excess of any payment (other than any payment which is includible in the gross income of the covered employee under section 183(a)) over the portion of the base amount allocated to such payment.

(B) PARACHUTE PAYMENT.—The term ‘parachute payment’ means any payment in the nature of compensation to—

(i) a covered employee if—

(1) such payment is contingent on the employee’s separation from employment with the employer, and

(2) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such covered employee is—

(A) described in section 280G(b)(5) (relating to payments described in section 403(b) or a plan described in section 457(b),

(B) to a licensed medical professional (including a veterinarian) to the extent that such payment is for the performance of medical or veterinary services by such professional, or

(C) to an individual who is not a highly compensated employee as defined in section 414(q).

(D) BASE AMOUNT.—Rules similar to the rules of 280G(b)(3) shall apply for purposes of determining the base amount.

(E) PROPERTY TRANSFERS; PRESENT VALUE.—Rules similar to the rules of paragraphs (3) and (4) of section 280G(d) shall apply.

(F) COORDINATION WITH DEDUCTION LIMITATION.—Remuneration the deduction for which is not allowed by reason of section 162(m) shall not be taken into account for purposes of this section.

(G) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to prevent avoidance of the tax under this section, including regulations to prevent avoidance of such tax through any other manner than as an employee or by providing compensation through a pass-through or other entity to avoid such tax.

(H) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 42 is amended by adding at the end the following new item:

‘Sec. 4960. Tax on excess tax-exempt organization executive compensation.’

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

SEC. 13603. TREATMENT OF QUALIFIED EQUITY GRANTS.

(a) IN GENERAL.—Section 83 is amended by adding at the end the following new subsection:

‘(I) QUALIFIED EQUITY GRANTS.—

(1) IN GENERAL.—For purposes of this sub-title—

(A) TIMING OF INCLUSION.—If qualified stock is transferred to a qualified employee who exercises an option with respect to such stock under this subsection, subsection (a) shall be applied by including the amount determined under such subsection with respect to such stock in the income of the qualified employee for the taxable year determined under subparagraph (B) in lieu of the taxable year described in subsection (a).

(B) TAXABLE YEAR DETERMINED.—The taxable year determined under this subparagraph is the taxable year of the employee which includes the earliest of—

(i) the date such qualified stock becomes transferable (including, solely for purposes of this clause, becoming transferable to the employee),

(ii) the date the employee first becomes an excluded employee,

(iii) the date on which any stock of the corporation which issued the qualified stock becomes readily tradable on an established securities market (as determined by the Secretary, but not including any market unless such market is maintained by the Secretary for purposes of a provision of this title other than this subsection),

(iv) the date that is 5 years after the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, or

(’v) the date on which the employee revokes (at such time and in such manner as the Secretary provides) the election under this subsection with respect to such stock.

(2) ELIGIBLE CORPORATION.—For purposes of subparagraph (A)(i)—

(A) IN GENERAL.—The term ‘eligible corporation’ means, with respect to any calendar year, any corporation if—

(i) no stock of such corporation (or any predecessor of such corporation) is readily tradable on an established securities market (as determined under paragraph (1)(B)(iii) during any preceding calendar year, and

(ii) such corporation has a written plan under which, in such calendar year, not less than 80 percent of all employees who provide services to such corporation in the United States (or any possession of the United States) are granted stock options, or are granted restricted stock units, with the same rights and privileges to receive qualified stock solely because the number of shares available to all employees is not equal in amount, so long as the number of shares available to employees is the same as rights and privileges with respect to the settlement of a restricted stock unit.

(B) LIMITATION.—The term ‘qualified stock’ shall not include any stock which the employee may sell to, or otherwise receive cash in lieu of stock from, the corporation at the time that the rights of the employee in such stock first become transferable or not subject to a substantial risk of forfeiture.

(3) ELIGIBLE CORPORATIONS.—For purposes of paragraph (1)(B) (I)—

(I) funds, (II) during a calendar year in which such corporation was an eligible corporation.

(II) LIMITATION.—The term ‘qualified stock’ shall not include any stock which the employee may sell to, or otherwise receive cash in lieu of stock from, the corporation at the time that the rights of the employee in such stock first become transferable or not subject to a substantial risk of forfeiture.

(3) ELIGIBLE CORPORATIONS.—For purposes of paragraph (1)(B)(II) —

(I) as modified to—

(II) in connection with the exercise of an option,

(III) in settlement of a restricted stock unit, and

(IV) in any option or restricted stock unit was granted by the corporation.

(IV) IN GENERAL.—The term ‘eligibility corporation’ means, with respect to any calendar year, any corporation if—

(I) no stock of such corporation (or any predecessor of such corporation) is readily tradable on an established securities market (as determined under paragraph (1)(B)(III) during any preceding calendar year, and

(II) such corporation has a written plan under which, in such calendar year, not less than 80 percent of all employees who provide services to such corporation in the United States (or any possession of the United States) are granted stock options, or are granted restricted stock units, with the same rights and privileges to receive qualified stock solely because the number of shares available to all employees is not equal in amount, so long as the number of shares available to employees is the same as rights and privileges with respect to the settlement of a restricted stock unit.

(II) SAME RIGHTS AND PRIVILEGES.—For purposes of clause (I) (II) (I)—

(I) as modified to—

(II) in the case where the option or restricted stock unit was granted to an employee who is not a highly compensated employee of the corporation, and

(III) during any calendar year in which such corporation was an eligible corporation.

(III) RIGHTS AND PRIVILEGES WITH RESPECT TO THE SETTLEMENT OF A RESTRICTED STOCK UNIT.—For purposes of this clause, the number of shares available to each employee is more than a de minimis amount, so long as the number of shares available to each employee is the same as rights and privileges with respect to the settlement of a restricted stock unit.

(4) ELIGIBLE CORPORATIONS.—For purposes of clause (I)(II) (III) (II)—

(I) as modified to—

(II) so long as the number of shares available to each employee is the same as rights and privileges with respect to the settlement of a restricted stock unit.

(III) as modified to—

(II) so long as the number of shares available to each employee is the same as rights and privileges with respect to the settlement of a restricted stock unit.
ed as deferral stock for purposes of subparagraph (B)(iii) if such individual (immediately after such purchase) holds any deferral stock with respect to which an election has been in effect for a longer period than the election with respect to the stock so purchased.

(iii) PURCHASE OF ALL OUTSTANDING DEFERRAL STOCK.—In the case of any qualified employee, the requirements of subparagraphs (I) and (II) of subparagraph (B)(iii) shall be treated as met if the stock so purchased includes all of the corporation's outstanding deferral stock.

(iv) REPORTING.—Any corporation which has purchased outstanding deferral stock as of the beginning of any calendar year and which purchases any of its outstanding stock during such calendar year for a taxable year in which, or which, such calendar year ends the total dollar amount of its outstanding stock so purchased during such calendar year and such other information as the Secretary requires for purposes of administering this paragraph.

(v) CONTROLLED GROUPS.—For purposes of this subsection, all persons treated as a single employer under section 414(b) shall be treated as 1 corporation.

(c) NOTICE REQUIREMENT.—Any corporation which transfers qualified stock to a qualified employee shall, at the time that (or a reasonable period before) an amount attributable to such stock (that this paragraph) is includible in the gross income of such employee—

(A) certify to such employee that such stock is qualified stock, and

(B) notify the employee—

(i) that the employee may be eligible to elect to defer income on such stock under this subsection, and

(ii) that, if the employee makes such an election—

(I) the amount of income recognized at the end of the deferral period will be subject to withholding under section 3401(b) at the rate determined under section 3401(i) at the rate determined under section 3402(i), and

(II) the amount of such income recognized at the end of the deferral period will be subject to withholding under section 3401(b) at the rate determined under section 3402(i), and

(III) the responsibilities of the employee (as determined by the Secretary under paragraph (3)(A)(ii)) with respect to such withholding.

(7) RESTRICTED STOCK UNITS.—This section (other than this subsection), including any election under subsection (a) (b), shall not apply to restricted stock units.

(b) WITHHOLDING.—

(1) TIME OF WITHHOLDING.—Section 3401 is amended by adding at the end the following new subsection:

(8) Qualified stock for which an election is in effect under section 83(i).—For purposes of paragraph (6), a qualified stock (as defined in section 83(i)(2)) with respect to which an election is made under section 83(i) shall be treated as if the election were made with respect to stock received in connection with the exercise of such option.

(9) Employee stock purchase plans.—Section 422 is amended by adding at the end the following new subsection:

(10) Treatment of qualified stock.—An arrangement under which an employee may receive qualified stock (as defined in section 83(i)(2)) shall not be treated as a nonqualified deferred compensation plan with respect to such employee solely because of such employee's election, or ability to make an election, to defer recognition of income under section 83(i).

(11) Information reporting.—Section 6051(a) is amended by striking "and" at the end of paragraph (14)(B), by striking the period at the end of paragraph (15) and inserting a comma, and by striking paragraph (15) and inserting after paragraph (15) the following new paragraphs:

(12) the aggregate amount of income which is being deferred pursuant to elections under section 83(i), determined as of the close of the calendar year.

(e) Penalty for failure of employer to provide notice of tax consequences.—Section 6662 is amended by adding at the end the following new subsection:

(f) Effective dates.—

(1) In general.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to stock attributable to options exercised, or restricted stock units settled, after December 31, 2017.

(2) Requirement to provide notice.—The amendments made by subsection (e) shall apply to failures after December 31, 2017.

(g) Transition rule.—Until such time as the Secretary (for the Secretary's delegate) issues regulations or other guidance for purposes of implementing the requirements of paragraph (2)(C)(ii)(III) of section 83(i) of the Internal Revenue Code of 1986 (as added by this section), or the requirements of paragraph (6) of such section, a corporation shall be treated as being in concurrent in calendar years when such purchase is made under subsection (b).

(iv) Special rule for calendar years before 2018.—In the case of any calendar year beginning before January 1, 2018, clause (i)(II) shall be applied without regard to whether the rights of the employee in such stock are transferable or are subject to a substantial risk of forfeiture, which with respect to the qualified stock are the same.

(3) Qualified employee; excluded employee.—For purposes of this subsection:

(A) the term "qualified employee" means any individual who—

(i) is not an excluded employee, and

(ii) agrees in the election made under this subsection that the requirements of such plan are determined by the Secretary to be necessary to ensure that the withholding requirements of the corporation under subsection 24 with respect to the qualified stock are met.

(B) Excluded employee.—The term "excluded employee" means any individual acting in such a capacity, or

(ii) the chief financial officer of such corporation or an individual acting in such a capacity, or

(iii) who bears a relationship described in subsection (b)(1)(B)(i) to any individual described in subsection (b)(1)(B)(ii) or (B)(iii), or

(iv) any individual of the 4 highest compensated officers of such corporation for the taxable year, or was one of the 4 highest compensated officers of such corporation for any of the 10 preceding taxable years, determined with respect to each such taxable year on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (as such rules are in effect at the time of such purchase).

(4) Election.—

(A) Time for making election.—An election with respect to qualified stock shall be made under this subsection no later than 30 days after the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, which ever occurs earlier, and shall be made in a manner similar to the manner in which an election is made under subsection (b).

(B) Failure to make election.—No election may be made under this section with respect to any qualified stock if—

(i) the qualified employee has made an election under subsection (b) with respect to such qualified stock,

(ii) any stock of the corporation which issued the qualified stock is readily tradable on an established securities market (as determined under paragraph (1)(B)(ii)) at any time before the election is made, or

(iii) such corporation purchased any of its outstanding stock in the calendar year preceding the calendar year which includes the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, unless—

(I) not less than 25 percent of the total dollar amount of the stock so purchased is deferral stock, and

(II) the determination of which individuals from whom deferral stock is purchased is made on a reasonable basis.

(5) Definitions and special rules related to limitation on stock redemptions.—

(i) Deferral stock.—For purposes of this paragraph, the term "deferral stock" means stock with respect to which an election is in effect under this subsection.

(ii) Deferral stock with respect to any individual not taken into account if individual owns stock with longer deferral period.—Stock purchased by a corporation from any individual shall not be treated as deferral stock for purposes of subparagraph (B)(iii) if such individual (immediately after such purchase) holds any deferral stock with respect to which an election has been in effect for a longer period than the election with respect to the stock so purchased.

(iii) Purchase of all outstanding deferral stock.—In the case of any qualified employee, the requirements of subparagraphs (I) and (II) of subparagraph (B)(iii) shall be treated as met if the stock so purchased includes all of the corporation's outstanding deferral stock.

(iv) Reporting.—Any corporation which has purchased outstanding deferral stock as of the beginning of any calendar year and which purchases any of its outstanding stock during such calendar year for a taxable year in which, or which, such calendar year ends the total dollar amount of its outstanding stock so purchased during such calendar year and such other information as the Secretary requires for purposes of administering this paragraph.

(v) Controlled groups.—For purposes of this subsection, all persons treated as a single employer under section 414(b) shall be treated as 1 corporation.

(6) Notice requirement.—Any corporation which transfers qualified stock to a qualified employee shall, at the time that (or a reasonable period before) an amount attributable to such stock (that this paragraph) is includible in the gross income of such employee—

(A) certify to such employee that such stock is qualified stock, and

(B) notify the employee—

(i) that the employee may be eligible to elect to defer income on such stock under this subsection, and

(ii) that, if the employee makes such an election—

(I) the amount of income recognized at the end of the deferral period will be subject to withholding under section 3401(b) at the rate determined under section 3402(i), and

(II) the amount of such income recognized at the end of the deferral period will be subject to withholding under section 3401(b) at the rate determined under section 3402(i), and

(III) the responsibilities of the employee (as determined by the Secretary under paragraph (3)(A)(ii)) with respect to such withholding.

(7) Restricted stock units.—This section (other than this subsection), including any election under subsection (a) (b), shall not apply to restricted stock units.

(b) Withholding.—

(1) Time of withholding.—Section 3401 is amended by adding at the end the following new subsection:

(8) Qualified stock for which an election is in effect under section 83(i).—For purposes of paragraph (6), a qualified stock (as defined in section 83(i)(2)) with respect to which an election is made under section 83(i) shall be treated as if the election were made with respect to stock received in connection with the exercise of such option.

(9) Employee stock purchase plans.—Section 422 is amended by adding at the end the following new subsection:

(10) Treatment of qualified stock.—An arrangement under which an employee may receive qualified stock (as defined in section 83(i)(2)) shall not be treated as a nonqualified deferred compensation plan with respect to such employee solely because of such employee's election, or ability to make an election, to defer recognition of income under section 83(i).

(11) Information reporting.—Section 6051(a) is amended by striking "and" at the end of paragraph (14)(B), by striking the period at the end of paragraph (15) and inserting a comma, and by striking paragraph (15) and inserting after paragraph (15) the following new paragraphs:

(12) the aggregate amount of income which is being deferred pursuant to elections under section 83(i), determined as of the close of the calendar year.

(e) Penalty for failure of employer to provide notice of tax consequences.—Section 6662 is amended by adding at the end the following new subsection:

(f) Effective dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock attributable to options exercised, or restricted stock units settled, after December 31, 2017.

(2) Requirement to provide notice.—The amendments made by subsection (e) shall apply to failures after December 31, 2017.

(g) Transition rule.—Until such time as the Secretary (for the Secretary's delegate) issues regulations or other guidance for purposes of implementing the requirements of paragraph (2)(C)(ii)(III) of section 83(i) of the Internal Revenue Code of 1986 (as added by this section), or the requirements of paragraph (6) of such section, a corporation shall be treated as being in concurrent in calendar years when such purchase is made under subsection (b).
compliance with such requirements (respectively) if such corporation complies with a reason-

able good faith interpretation of such require-

ments.

SEC. 13604. INCREASE IN EXCISE TAX RATE FOR STOCK COMPENSATION OF INVESTORS IN EXPATRIATED CORPORATIONS.

(a) IN GENERAL.—Section 4966(a)(1) is amended by striking "$1,071,000" and inserting "$1,071,010." (b) EFFECTIVE DATE.—The amendment made by this section shall apply to corporations first becoming expatriated corporations (as defined in section 4963 of the Internal Revenue Code of 1986) after the date of enactment of this Act.

Subpart B—Retirement Plans

SEC. 13611. REPEAL OF SPECIAL RULE PERMITTED BY CHARACTERIZATION OF ROTH CONVERSIONS.

(a) IN GENERAL.—Section 408A(d)(6)(B) is amended by adding at the end the following new clause:

"(iv) CONVERSIONS.—Subparagraph (A) shall not apply in the case of a qualified rollover con-

tribution to which subsection (d)(5) applies (includ-

ing by reason of subparagraph (C) there-

of).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years begin-

ning on or after December 31, 2017.

SEC. 13612. MODIFICATION OF RULES APPLICABLE TO LENGTH OF SERVICE AWARD PLANS.

(a) MAXIMUM DEFERRAL AMOUNT.—Clause (ii) of section 457(e)(11)(B) is amended by striking "$3,000" and inserting "$6,000".

(b) COST OF LIVING ADJUSTMENT.—Subpara-

graph (B) of section 457(e)(11) is amended by adding at the end the following:

"(iii) COST OF LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2017, the Secretary shall adjust the $6,000 amount under clause (ii) at the same time and in the same manner as under section 415(d), ex-

cept that the base period shall be the calendar quarter beginning July 1, 2016, and any increase under this paragraph that is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(c) APPLICATION OF LIMITATION ON ACCRU-

ALS.—Subparagraph (B) of section 457(e)(11), as amended by subsection (b), is amended by add-

ing at the end the following:

"(iv) SPECIAL RULE FOR APPLICATION OF LIMIT-

ATION ON ACCRUABLES FOR CERTAIN PLANS.—In the case of a plan described in subparagraph (A)(ii) which has a benefit plan formula for the purposes of this paragraph (as defined in section 414(i)), the limitation under clause (ii) shall apply to the actuarial present value of the aggregate amount of length of service attributable to the service of any employee during the period during which such employee is credited with service.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years begin-

ning after December 31, 2017.

SEC. 13613. EXTENDED ROLLOVER PERIOD FOR PLAN LOAN OFFSET AMOUNTS.

(a) IN GENERAL.—Paragraph (3) of section 402(c) is amended by adding at the end the follow-

ing new subparagraph:

"(C) ROLLOVER OF CERTAIN PLAN LOAN OFFSET AMOUNTS.—

"(1) IN GENERAL.—In the case of a qualified plan loan offset amount, paragraph (1) shall not apply to any transfer of such amount made after the date due (including extensions) for filing the tax return for the taxable year to which such amount is treated as distributed from a qualified employer plan.

"(ii) QUALIFIED PLAN LOAN OFFSET AMOUNT.—For purposes of this subparagraph, the term ‘qualified plan loan offset amount’ means a plan loan offset amount which is treated as dis-

distributed from a plan to a participant or beneficiary solely by reason of—

"(I) the termination of the qualified employer plan, or

"(II) the failure to meet the repayment terms of the loan from such plan because of the sever-

ance from employment of the participant.

"(iii) PLAN LOAN OFFSET AMOUNT.—For pur-

poses of clause (ii), the term ‘plan loan offset amount’ means the amount by which the par-

ticipant’s accrued benefit under the plan is re-

duced in order to repay a loan from the plan.

"(iv) LIMITATIONS.—Section 402(c) shall not apply to any plan loan offset amount unless such plan loan offset amount relates to a loan to which section 72(f)(1) does not apply by rea-

son of section 72(f)(2).

"(v) QUALIFIED EMPLOYER PLAN.—For pur-

poses of this subsection, the term ‘qualified em-

ployer plan’ has the meaning given such term by section 72(f)(4).

(b) CONFORMING AMENDMENTS.—Section 402(c)(3) is amended—

(1) by striking "TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT" in the heading and inserting "TIME LIMIT ON TRANSFERS", and

(2) by striking "(B)" in subparagraph (A) and inserting "subparagraphs (B) and (C)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan loan offset amounts which are treated as distributed in taxable years beginning after December 31, 2017.

PART VIII—EXEMPT ORGANIZATIONS

SEC. 13701. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES.

(a) IN GENERAL.—Chapter 42 is amended by adding at the end the following new chapter:

"Subchapter H—Excise Tax Based on Investment Income of Private Colleges and Universities

"Sec. 4968. Excise tax based on investment in-

come of private colleges and universities.

"Sec. 4968A. Excise tax based on investment in-

come of private colleges and universities.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years begin-

ning after December 31, 2017.

SEC. 13702. UNRELATED BUSINESS TAXABLE INCOME SEPARATELY COMPUTED FOR EACH TRADE OR BUSINESS ACTIVITY.

(a) IN GENERAL.—Subsection (a) of section 512 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR ORGANIZATION WITH MORE THAN 1 UNRELATED TRADE OR BUSINESS.—

In the case of any organization with more than 1 unrelated trade or business—

"(A) unrelated business taxable income, includ-

ing for purposes of determining any net oper-

ating loss deduction, shall be computed sepa-

rately with respect to each such trade or busi-

ness and without regard to subsection (b)(12),

"(B) the unrelated business taxable income of such organization shall be the sum of the unre-

lated business taxable income so computed with respect to each such trade or business, less a specific deduction under subsection (b)(12), and

"(C) for purposes of subparagraph (B), unrelated business taxable income with respect to any such trade or business shall not be less than zero.

"(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except to the extent pro-

vided in paragraph (2), the amendment made by this section shall apply to taxable years begin-

ning after December 31, 2017.

(2) CARRYOVERS OF NET OPERATING LOSSES.—If an organization has a net operating loss carryforward ending before January 1, 2018, is carried over to a taxable year beginning on or after such date—

(A) subparagraph (A) of section 512(a)(6) of the Internal Revenue Code of 1986, as added by this Act, shall not apply to such net operating loss, and

(B) the unrelated business taxable income of the organization, after the application of sub-

paragraph (B) of such section, shall be reduced by the amount of such net operating loss.
SEC. 13703. UNRELATED BUSINESS TAXABLE INCOME INCREASED BY AMOUNT OF CERTAIN FRINGE BENEFIT EXPENSES, FOR WHICH DEDUCTION IS DISALLOWED.

(a) In General.—Section 512(a), as amended by this section, is amended by adding at the end the following new paragraph:

“(7) INCREASE IN UNRELATED BUSINESS TAXABLE INCOME BY DISALLOWED FRINGE.—Unrelated business taxable income of an organization shall be increased by any amount for which a deduction is not allowable under this chapter by reason of section 274 and which is paid or incurred for such purpose by such organization for any qualified transportation fringe (as defined in section 132(f)), any parking facility used in connection with qualified parking (as defined in section 132(f)), or any on-premises athletic facility (as defined in section 132(j)(4)(B)). The preceding sentence shall not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business which is regularly carried on by the organization. The Secretary shall issue such regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking facilities or for athletic facilities.

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

SEC. 13704. AMOUNTS PAID IN EXCHANGE FOR COLLEGE ATHLETIC EVENT SEATING RIGHTS.

(a) In General.—Section 170(f)(8) is amended—

(1) by redesignating paragraph (4) as paragraph (5), and

(2) by striking after paragraph (3) the following:

“(4) EXEMPTION FOR AGING PROCESS OF BEER, WINE, AND DISTILLED SPIRITS.

(A) IN GENERAL.—For purposes of this subparagraph, the production period shall not include the aging period for——

(i) wine (as described in section 502(a)), or

(ii) distilled spirits (as defined in section 502(a)(6)), except such spirits that are unfit for use for such purpose, as determined by the Secretary.

(B) TERMINATION.—This paragraph shall not apply to interest costs paid or accrued after December 31, 2019.

(b) Transitional Amendment.—Paragraph (5)(B)(ii) of section 252A(f), as redesignated by this section, is amended by inserting “except as provided in paragraph (4),” before “‘on ending the date’.”

(c) Effective Date.—The amendments made by this section shall apply to interest costs paid or accrued in calendar years beginning after December 31, 2017.

SEC. 13802. REDUCTION OF RATE OF EXCISE TAX ON BEER.

(a) In General.—Paragraph (1) of section 5051(a) is amended to add as follows:

“(1) In General.—

(A) IMPOSITION OF TAX.—A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be the amount determined under this paragraph.

(B) Rate.—Except as provided in subparagraph (C), the rate of tax shall be $18 per barrel on any barrel of beer which clause (i) does not apply.

(C) Special Rule.—In the case of beer removed after December 31, 2017, and before January 1, 2020, the rate of tax shall be——

(i) $16 on the first 6,000,000 barrels of beer—

(1) brewed by the breuer and removed during the calendar year for consumption or sale, or

(2) imported into the United States during the calendar year, and

(ii) $18 on any barrels of beer to which clause (i) does not apply.

(D) Barrels Pursuant to the Purposes of this Section.—For purposes of paragraphs (1) and (2), the barrels shall be determined as provided under this paragraph.

(b) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2017.

SEC. 13705. REPEAL OF SUBSTANTIATION EXCEPTION FOR CONTRIBUTIONS REPORTED BY DONEE.

(a) In General.—Section 170(f)(8) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(b) Effective Date.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2017.

SEC. 13706. OTHER PROVISIONS.

(a) In General.—Section 170(f)(8) is amended—

(1) in the heading, by striking “$7 A BARREL’,’” and the last sentence, and inserting the following:

“Beer may be removed after December 31, 2017, and before January 1, 2020, under the following circumstances:

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of a controlled group (as defined in section 5061) the 6,000,000 barrel quantity specified in paragraph (1)(C)(i) shall be increased by any amount for which a deduction is allowable for such purpose by such organization for any qualified transportation fringe (as defined in section 132(f)), any parking facility used in connection with qualified parking (as defined in section 132(f)), or any on-premises athletic facility (as defined in section 132(j)(4)(B)). The preceding sentence shall not apply to the extent the amount paid or incurred is directly connected with an unrelated trade or business which is regularly carried on by the organization. The Secretary shall issue such regulations or other guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking facilities or for athletic facilities.

(B) APPLICATION OF REDUCED TAX RATE FOR FOREIGN MANUFACTURERS AND IMPORTERS.—Subsection (a) of section 5051(a) is amended—

(1) in subparagraph (C)(i)(II) of paragraph (1), as amended by subsection (a), by inserting “but only if the importer is an electing importer under paragraph (4) and the barrels have been assigned to the importer pursuant to such paragraph” after “during the calendar year”, and

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

“(4) REDUCED TAX RATE FOR FOREIGN MANUFACTURERS AND IMPORTERS.—

(A) IN GENERAL.—In the case of any barrels of beer which have been brewed or produced outside of the United States and imported into the United States, the rate of tax applicable under clause (i) of paragraph (1)(C) (referred to in this paragraph as the ‘reduced tax rate’) may be assigned by the breuer (provided that the breuer makes an election described in subparagraph (B)(ii)) to any electing importer, such assignment to be determined by the Secretary by regulations established under subparagraph (B).

(B) ASSIGNMENT.—The Secretary shall, through such rules or procedures as are determined appropriate, establish procedures for assignment of the reduced tax rate provided under this paragraph, which shall include at a minimum——

(i) a limitation to ensure that the number of barrels of beer for which the reduced tax rate has been assigned by a breuer——

(D) Barrels Pursuant to the Purposes of this Section.—For purposes of paragraphs (1) and (2), the barrels shall be determined as provided under this paragraph:

”

(b) Effective Date.—The amendments made by this section shall apply to beer removed after December 31, 2017.

SEC. 13803. TRANSFER OF BEER BETWEEN BONDED FACILITIES.

(a) In General.—Section 5414 is amended—

(1) by striking “Beer may be removed” and inserting “(a) In General—Beer may be removed”, and

(2) by adding at the end the following:

“(b) Transfer of Beer Between Bonded Facilities.—(1) In General.—Beer may be removed from one bonded brewery to another bonded brewery, without payment of tax, and may be mingled
with beer at the receiving brewery, subject to such conditions, including payment of the tax, and in such containers, as the Secretary by regulations shall prescribe, which shall include—

(A) any removal from one brewery to another brewery belonging to the same brewer,

(B) any removal from a brewery owned by one corporation to a brewery owned by another corporation by such corporation.

(C) any removal from one brewery to another brewery, whenever—

(i) the proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and

(ii) the transferee has diverted itself of all interest in the beer so transferred and the transferee has accepted responsibility for payment of the tax.

(2) TRANSFER OF LIABILITY FOR TAX.—For purposes of paragraph (1)(C), such relief from liability shall be effective from the time of removal from the transferee’s bonded premises, or from the time of divestment of interest, whichever is later.

(b) REMOVAL FROM BREWERY BY PIPELINE.—Section 5412 is amended by inserting “pursuant to section 5414 or” before “by pipeline”.

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

SEC. 13804. REDUCED RATE OF EXCISE TAX ON CERTAIN WINE.

(a) IN GENERAL.—Paragraph 5041(c) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RULE FOR 2018 AND 2019.—(A) IN GENERAL.—In the case of wine removed after December 31, 2017, and before January 1, 2020, paragraphs (1) and (2) shall not apply and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit and there shall be allowed as a credit.

(b) CONTROLLED GROUP AND SINGLE TAXPAYER RULES.—Paragraph (4) of section 5041(c) is amended by striking “section 5031(a)(2)(B)” and inserting “section 5031(a)(2)(B)(i)”. 

(c) ALLOWANCE OF CREDIT FOR FOREIGN MANUFACTURERS AND IMPORTERS.—Subsection (c) of section 5041, as amended by subsection (a), is amended—

(1) in subparagraph (B) of paragraph (8), by inserting “but only if the importer is an electing importer under paragraph (9) and the wine gallons of such wine are not assigned to the importer pursuant to such paragraph” after “the United States during the calendar year”, and

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

“(9) ALLOWANCE OF CREDIT FOR FOREIGN MANUFACTURERS AND IMPORTERS.—(A) IN GENERAL.—In the case of any wine gallons of wine which have been produced outside the United States and imported into the United States, the credit allowable under paragraph (8) shall be—

(i) 6.2 cents each place it appears in such subsection.

(ii) ‘tax credit’ may be assigned by the person who produced such wine (referred to in this paragraph as the ‘foreign producer’), provided that such person makes an election described in subparagraph (B)(ii), to any importing importer of such wine gallons pursuant to the requirements established by the Secretary under subparagraph (B).

(B) ASSESSMENT.—The Secretary shall, through such rules, regulations, and procedures as are determined necessary, establish procedures for assignment of the tax credit provided under this paragraph, which shall include—

(i) a limitation to ensure that the number of wine gallons of wine for which the tax credit has been assigned by a foreign manufacturer—

(1) to any importer does not exceed the number of wine gallons of wine produced by such foreign producer during the calendar year which were imported into the United States by such importer, and

(ii) to all importers does not exceed the 750,000 wine gallons of wine to which the tax credit applies,

(iii) procedures that allow the election of a foreign producer to assign and an importer to receive the tax credit provided under this paragraph,

(iv) requirements that the foreign producer provide any information as the Secretary determines necessary for purposes of carrying out this paragraph, and

(v) procedures that allow for revocation of eligibility of the foreign producer and the importer from the tax credit provided under this paragraph in the case of any erroneous or fraudulent information provided under clause (iii) which the Secretary deems to be material to qualifying for such credit.

(C) CONTROLLED GROUP.—For purposes of this section, any importer making an election described in subparagraph (B)(ii) shall be deemed to be a member of the controlled group of the foreign producer, as described under paragraph (4).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to wine removed after December 31, 2017.

SEC. 13805. ADJUSTMENT OF ALCOHOL CONTENT LEVELS AND APPLICATION OF EXCISE TAX RATES.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 5041(b) are each amended by inserting “16 percent in the case of wine removed after December 31, 2017, and before January 1, 2020” after “14 percent”. 

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

SEC. 13806. DEFINITION OF MEAD AND LOW ALCOHOL BY VOLUME.

(a) IN GENERAL.—Section 5001 is amended—

(1) in subsection (a), by striking “Still wines” and inserting “(A) MEAD.—For purposes of this section, the term ‘mead’ means a wine—

(i) which contains no fruit product or fruit flavoring other than grape, and

(ii) which contains less than 8.5 percent alcohol by volume.

(B) LOW ALCOHOL BY VOLUME.—For purposes of this section, the term ‘low alcohol by volume’ means a wine—

(iii) which contains a fruit product or fruit flavoring, and

(iv) which contains less than 5.5 percent alcohol by volume.

(b) CONTROLLED GROUP.—Section 5001 is amended by striking “section 5001(a)(1)” and inserting “section 5001(a)(1) of section 5001, determined as if subsection (c)(1) of such section did not apply”.

(c) APPLICATION OF REDUCED TAX RATE FOR FOREIGN MANUFACTURERS AND IMPORTERS.—
Part III of subchapter B of chapter 1 is amended by inserting after section 140 the following new section:

"SEC. 139G. ASSIGNMENTS TO ALASKA NATIVE SETTLEMENT TRUSTS.—

(a) IN GENERAL.—In the case of a Native Corporation, gross income shall not include the value of any payments that would otherwise be made, or treated as being made, to such Native Corporation pursuant to, or as required by, any provision of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), including any payment that shall be made to a Village Corporation pursuant to section 7(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(j)), provided that any such payments—

(1) are assigned in writing to a Settlement Trust, and

(2) were not received by such Native Corporation prior to the assignment described in paragraph (1).

(b) INCLUSION IN GROSS INCOME.—In the case of a Settlement Trust which has been assigned payments described in subsection (a), gross income shall include such payments when received by such Settlement Trust pursuant to the assignment and shall have the same character as if such payments were received by the Native Corporation.

(c) AMOUNT AND SCOPE OF ASSIGNMENT.—

(1) IN GENERAL.—For purposes of this section, the term ‘reduced tax rate’ means—

(A) the rate of tax applicable under section 5212 (other than subparagraph (B)(ii)) to any electing importer of such proof gallons pursuant to the requirements established by the Secretary under subparagraph (B),

(B) the rate of tax applicable under this paragraph as the ‘reduced tax rate’ may be assigned by the Secretary deems to be material to ensuring that the number of proof gallons of distilled spirits for which the reduced tax rate is applied—

(i) to any importer that does not exceed the number of proof gallons produced by such operation during the calendar year which were imported into the United States by such importer, and

(ii) to all importers that do not exceed the 22,230,000 proof gallons of distilled spirits to which the reduced tax rate applies.

(2) PROCEDURE.—For purposes of this section, the terms ‘reduced tax rate’ and ‘reduced tax rate provided under this paragraph’ have the same meaning given such terms under section 140.

(d) INCLUSION IN GROSS INCOME.—In the case of a Settlement Trust which has been assigned payments described in subsection (a), gross income shall include such payments when received by such Settlement Trust pursuant to the assignment and shall have the same character as if such payments were received by the Native Corporation.

(e) PROHIBITION ON DEDUCTION.—Notwithstanding section 6662(2), in the case of a Native Corporation which claims a deduction under this section for any taxable year, the amount of the payment described in paragraph (1) shall be treated as a contribution made by such Native Corporation to a Settlement Trust (regardless of whether an election under section 646 is in effect for such Settlement Trust) for which the Native Corporation has made an annual election under subsection (f) of section 39 of the Alaska Native Claims Settlement Act (43 U.S.C. 1626e).

(f) LIMITATION AND CARRYOVER.—

(1) IN GENERAL.—Subject to paragraph (2), the deduction allowed under subsection (a) for any taxable year shall not exceed the taxable income (as determined without regard to such deduction) of the Native Corporation for the taxable year in which the contribution was made.

(2) CARRYOVER.—If the aggregate amount of contributions described in subsection (a) for any taxable year exceeds the limitation under paragraph (1), such excess shall be treated as a contribution described in subsection (a) in each of the 15 succeeding years in order of time.

(g) ELECTION BY SETTLEMENT TRUST TO DEFER INCOME RECOGNITION.—

(1) IN GENERAL.—In the case of a contribution which consists of property other than cash, the Native Corporation may treat such contribution as a contribution of property if it elects to treat such property as if held in a Settlement Trust under section 7(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(j)).

(2) TREATMENT.—In the case of property described in paragraph (1), any income or gain realized on the sale or exchange of such property shall be treated as—

(A) the amount of the income or gain as is equal to or less than the amount of income which would be included in income at the time of contribution under subsection (f)(3) but for the taxpayer’s election under this subsection, ordinary income, and

(B) for any amounts of the income or gain which are in excess of the amount of income which would be included in income at the time of contribution under subsection (f)(3) but for the taxpayer’s election under this subsection, long-term capital gain.
Subchapter Z—Opportunity Zones

Sec. 14002-1. Designation.

Sec. 14002-2. Special rules for capital gains invested in opportunity zones.

(a) QUALIFIED OPPORTUNITY ZONE DEFINED.—For purposes of this subchapter, the term ‘qualified opportunity zone’ means a popular Native settlement trust or qualified low-income community that is designated as a qualified opportunity zone.

(b) DESIGNATION.—For purposes of subsection (a), a population census tract that is a low-income community is designated as a qualified opportunity zone if—

(1) not later than the end of the determination period, the chief executive officer of the State in which the tract is located—

(i) designates the tract for designation as a qualified opportunity zone, and

(ii) notifies the Secretary in writing of such designation, and

(2) EXTENSION OF PERIODS.—A chief executive officer of a State may request that the Secretary extend either the consideration period, or both (determined without regard to this subparagraph), for an additional 30 days.

(c) OTHER DEFINITIONS.—For purposes of this subsection—

(1) LOW-INCOME COMMUNITIES.—The term ‘low-income community’ has the same meaning as when used in section 45D(c).

(2) DEFINITION OF PERIODS.—

(A) CONSIDERATION PERIOD.—The term ‘consideration period’ means the 30-year period beginning on the date on which the Secretary receives notice under subsection (b)(1)(A)(ii), as extended under subsection (b)(2).

(B) DETERMINATION PERIOD.—The term ‘determination period’ means the 90-day period beginning on the date of the enactment of the Tax Cuts and Jobs Act, as extended under subsection (b)(2).

(3) STATE.—For purposes of this section, the term ‘State’ includes any possession of the United States.

(d) NUMBER OF DESIGNATIONS.—

(1) IN GENERAL.—Except as provided by paragraph (2), the number of population census tracts in a State that may be designated as qualified opportunity zones under this section may not exceed 25 percent of the number of low-income communities in the State as designated under paragraph (2).

(2) EXCEPTION.—If the number of low-income communities in a State is less than 100, then a total of 25 of such tracts may be designated as qualified opportunity zones.

(e) DESIGNATION OF TRACTS CONTIGUOUS WITH LOW-INCOME COMMUNITIES.—

(1) IN GENERAL.—A population census tract that is not a low-income community may be designated as a qualified opportunity zone under this section if—

(A) the tract is contiguous with the low-income community that is designated as a qualified opportunity zone under this section if—

(B) the median family income of the tract does not exceed 125 percent of the median family income of the low-income community with which the tract is contiguous.

(2) LIMITATION.—Not more than 5 percent of the population census tracts designated in a State as qualified opportunity zones may be designated under paragraph (1).

(f) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—A designation as a qualified opportunity zone shall remain in effect for the period beginning on the date of the designation and ending on the close of the 10th calendar year beginning on or after such date of designation.

Sec. 14002-2. SPECIAL RULES FOR CAPITAL GAINS INVESTED IN OPPORTUNITY ZONES.

(a) IN GENERAL.—
“(1) TREATMENT OF GAINS.—In the case of gain from the sale to, or exchange with, an un-related person of any property held by the taxpayer, at the election of the taxpayer—

(A) in the case of any property held by the taxpayer for at least 5 years, the basis in the property shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(B) IN GENERAL.—The term ‘qualified opportunity zone business property’ means the proceeds from the sale of property acquired by a taxpayer during the taxable year in which the investment in the qualified opportunity zone business property is made, including investments made through the purchase of stock in a qualified opportunity zone business, including units of a qualified opportunity zone business in a qualified opportunity zone business investment fund, and real property held by the fund as measured—

(i) in the case of property acquired by the taxpayer after December 31, 2026, the qualified opportunity zone business property’s basis shall be zero.

(ii) during substantially all of the taxable year in which the property is held by the fund, and

(iii) during substantially all of the taxable year of the fund, and

(B) DEFERRAL OF GAIN INVESTED IN OPPORTUNITY ZONE PROPERTY—

(1) YEAR OF INCLUSION.—Gain to which subsection (a)(1)(B) applies shall be included in income in the taxable year which includes the earlier of—

(A) the date on which such investment is held, or

(B) December 31, 2026.

(2) AMOUNT INCLUDIBLE.—

(A) IN GENERAL.—The amount of gain included in gross income under subsection (a)(1)(B) shall be the lesser of—

(i) the amount of gain recognized with respect to such property, and

(ii) the fair market value of such property at the time such property is sold or exchanged, or

(B) with respect to any sale or exchange after December 31, 2026.

(3) INVESTMENTS HELD FOR 5 YEARS.—In the case of any investment held by the taxpayer for at least 5 years, the basis of such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(4) INVESTMENTS HELD FOR 7 YEARS.—In the case of any investment held by the taxpayer for at least 7 years, the basis of such investment shall be increased by an amount equal to 15 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(5) SPECIAL RULE FOR INVESTMENTS HELD FOR AT LEAST 10 YEARS.—In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this clause, the basis of such investment shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

(6) QUALIFIED OPPORTUNITY FUND.—For purposes of this section—

(A) IN GENERAL.—The term ‘qualified opportunity zone property’ means property which is—

(i) qualified opportunity zone stock,

(ii) qualified opportunity zone partnership interest, or

(iii) qualified opportunity zone business property.

(B) QUALIFIED OPPORTUNITY ZONE FUND.—

(I) IN GENERAL.—Except as provided in clause (ii), the term ‘qualified opportunity zone fund’ means any stock in a domestic corporation if—

(I) such stock is acquired by the qualified opportunity zone fund on or after January 1, 2017, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

(II) at the time such stock was acquired, such stock was a qualified opportunity zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a qualified opportunity zone business), and

(III) during substantially all of the qualified opportunity fund’s holding period for such stock, such corporation qualified as a qualified opportunity zone business.

(II) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(C) QUALIFIED OPPORTUNITY ZONE PARTNERSHIP INTEREST.—The term ‘qualified opportunity zone partnership interest’ means any capital or profits interest in a qualified opportunity zone partnership if—

(I) such interest is acquired by the qualified opportunity zone fund after December 31, 2017, from the partnership solely in exchange for cash,

(II) during substantially all of the tax- 

(C) QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY.—

(I) IN GENERAL.—The term ‘qualified opportunity zone business property’ means tangible property used in a trade or business of the qualified opportunity zone business if—

(I) such property was acquired by the qualified opportunity fund by purchase (as defined in section 179(d)(2)) after December 31, 2017,

(II) the original use of such property in the qualified opportunity zone business commences with the qualified opportunity fund or the qualified opportunity fund substantially improves the property, and

(III) during substantially all of the qualified opportunity fund’s holding period for such property, substantially all of the use of such property was in a qualified opportunity zone business.

(D) QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY.—

(I) IN GENERAL.—The term ‘qualified opportunity zone business property’ means tangible property used in a trade or business of the qualified opportunity zone business if—

(I) such property was acquired by the qualified opportunity fund by purchase (as defined in section 179(d)(2)) after December 31, 2017,

(II) the original use of such property in the qualified opportunity zone business commences with the qualified opportunity fund or the qualified opportunity fund substantially improves the property, and

(III) during substantially all of the qualified opportunity fund’s holding period for such property, substantially all of the use of such property was in a qualified opportunity zone business.

(iv) INVESTMENTS HELD FOR 7 YEARS.—In the case of any investment held by the taxpayer for at least 7 years, the basis of such investment shall be increased by an amount equal to 15 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(v) INVESTMENTS HELD FOR 5 YEARS.—In the case of any investment held by the taxpayer for at least 5 years, the basis of such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(vi) INVESTMENTS HELD FOR 5 YEARS.—In the case of any investment held by the taxpayer for at least 5 years, the basis of such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(vii) SPECIAL RULE FOR INVESTMENTS HELD FOR AT LEAST 10 YEARS.—In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this clause, the basis of such property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

(d) QUALIFIED OPPORTUNITY FUND.—For purposes of this section—

(A) IN GENERAL.—The term ‘qualified opportunity fund’ means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property, determined by the average of the percentages of qualified opportunity zone property held in the fund as measured—

(i) on the last day of the first 6-month period of the taxable year of the fund, and

(ii) on the last day of the taxable year of the fund.

(B) QUALIFIED OPPORTUNITY ZONE PROPERTY.—

(A) IN GENERAL.—The term ‘qualified opportunity zone property’ means property which is—

(i) qualified opportunity zone stock,

(ii) qualified opportunity zone partnership interest, or

(iii) qualified opportunity zone business property.

(B) B ASIS ADJUSTMENTS.—Section 1016(a) is applied by

(i) a separate investment consisting of other amounts, and

(ii) in the case of paragraphs (a), (b), and (c) only to the investment described in subparagraph (A)(i).

(C) RELATED PERSONS.—For purposes of this section, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), determined by substituting ‘20 percent’ for ‘50 percent’ each place it occurs in such sections.

(2) DECEDENTS.—In the case of a decedent, amounts recognized under this section shall, if not properly includable in the gross income of the decedent, be includable in gross income as provided by section 691.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(A) rules for the certification of qualified opportunity funds for the purposes of this section,

(B) rules to ensure a qualified opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified opportunity zone stock and qualified opportunity zone business property, and

(C) rules to prevent unfair advantage.

(4) FAILURE OF QUALIFIED OPPORTUNITY FUND TO MAINTAIN INVESTMENT STANDARD.—

(A) IN GENERAL.—If a qualified opportunity fund fails to meet the 90-percent requirement of subsection (c)(1), the qualified opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of—

(i) the excess of—

(I) the amount equal to 90 percent of its aggregate assets, over

(ii) the aggregate amount of qualified opportunity zone property held by the fund, multiplied by

(iii) the underpayment rate established under section 6621(a)(2) for such month.

(B) SPECIAL RULE FOR PARTNERSHIPS.—In the case that the qualified opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be taken into account proportionately as part of the distributive share of each partner of the partnership.

(C) PENALTY CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.”
paragraph (37) and inserting "and", and by inserting after paragraph (37) the following:

"(38) to the extent provided in subsections (b)(2) and (c) of section 1400Z-2."

(3) EFFECTIVE DATE. The table of subchapters for chapter 1 is amended by adding at the end the following new item:

"SUBCHAPTER Z. OPPORTUNITY ZONES."

(d) EFFECTIVE DATE.—The amendments made by this Act shall be effective on the date of enactment of this Act.


PART I—OUTBOUND TRANSACTIONS

Subpart A—Establishment of Participation Exception System for Taxation of Foreign Income

SEC. 14101. DEDUCTION FOR FOREIGN-SOURCE PORTION OF DIVIDENDS RECEIVED BY DOMESTIC CORPORATIONS FROM SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.

(a) In General.—Part VIII of subchapter B of chapter 1 is amended by inserting after section 245 the following new section:

"SEC. 245A. DEDUCTION FOR FOREIGN-SOURCE PORTION OF DIVIDENDS RECEIVED BY DOMESTIC CORPORATIONS FROM SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.

(1) In General.—In the case of any dividend received from a specified 10-percent owned foreign corporation by a domestic corporation which is a United States shareholder with respect to such foreign corporation, there shall be allowed as a deduction an amount equal to the foreign-source portion of such dividend.

(2) Foreign-Source Portion.—

(A) Specified 10-percent owned foreign corporation. —For purposes of this section—

"(1) (A) 1-YEAR HOLDING PERIOD REQUIREMENT.—Section 1248 is amended by adding at the end the following new subsection:

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

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

(3) DEDUCTION IS ALLOWED UNDER SECTION 245A.—For purposes of subsection (a), in the case of a domestic corporation which is a United States shareholder with respect to a specified 10-percent owned foreign corporation—

(A) the foreign-source portion of any dividend received from such foreign corporation, and

(B) any deductions properly allocable or apportioned to—

"(i) income (other than amounts includable under section 951(a)(1) or 951(a)(2)) with respect to stock of such specified 10-percent owned foreign corporation

(ii) stock to the extent income with respect to such stock is other than amounts includable under section 951(a)(1) or 951(a)(2). Any term which is used in section 245A and in this paragraph shall have the same meaning for purposes of this paragraph as when used in such section.

(c) FOREIGN-SOURCE PORTION.—For purposes of this section—

"(1) In General.—The foreign-source portion of any dividend from a specified 10-percent owned foreign corporation is an amount which bears the same ratio to such dividend as—

(A) the undistributed foreign earnings of the specified 10-percent owned foreign corporation bears to

"(2) by adding at the end the following new paragraph:

"(3) DEDUCTION IS ALLOWED UNDER SECTION 245A.—For purposes of subsection (a), in the case of a domestic corporation which is a United States shareholder with respect to a specified 10-percent owned foreign corporation—

(A) the foreign-source portion of any dividend received from such foreign corporation, and

(B) any deductions properly allocable or apportioned to—

"(i) income (other than amounts includable under section 951(a)(1) or 951(a)(2)) with respect to stock of such specified 10-percent owned foreign corporation

(ii) stock to the extent income with respect to such stock is other than amounts includable under section 951(a)(1) or 951(a)(2). Any term which is used in section 245A and in this paragraph shall have the same meaning for purposes of this paragraph as when used in such section.

(e) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 951 is amended by striking "subpart" and inserting "part".

(2) Subsection (a) of section 957 is amended by striking "subpart" in the matter preceding paragraph (1) and inserting "part".

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

SEC. 14102. SPECIAL RULES RELATING TO SALES OR TRANSFERS INVOLVING SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.

(a) SALES BY UNITED STATES PERSONS OF STOCK.—

(1) In General.—Section 1248 is amended by redesignating subsection (i) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(l) coordination with dividends received deduction.—In the case of the sale or exchange by a domestic corporation of stock in a foreign corporation held for 1 year or more, any amount received by the domestic corporation which is treated as a dividend by reason of this section shall be treated as a dividend for purposes of section 1245.

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

(b) BASIS IN SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATION REDUCED BY NONTAXED PORTION OF DIVIDEND FOR PURPOSES OF DETERMINING LOSSES.—In general—

(1) In General.—Section 961 is amended by adding at the end the following new subsection:
Section 911. Certain Foreign Branch Losses Transferred to Specified 10-Percent Owned Foreign Corporations

Section 911 is amended—

(a) IN GENERAL.—If a domestic corporation reacquired as a specified 10-percent owned foreign corporation (as defined in section 245A) a specified 10-percent owned foreign corporation (as defined in section 245A) in a taxable year, solely for purposes of determining loss on any disposition of stock of such corporation in such taxable year for any subsequent taxable year, the basis of such domestic corporation in such stock shall be reduced (but not below zero) by the amount of any deduction allowable to such domestic corporation under section 245A with respect to such stock except to the extent such basis was reduced under section 1059 by reason of a dividend for which a deduction was allowable.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distributions made after December 31, 2017.

Section 915. Sale by a CFC of a Lower Tier CFC

Section 964(e) is amended by adding at the end the following new paragraph:

"(k) TRANSFERRED LOSS AMOUNT.—For purposes of this section, the term ‘transferred loss amount’ means, with respect to any transfer of substantially all of the assets of a foreign branch, the lesser of—

(1) the sum of—

(A) which were incurred by the foreign branch after December 31, 2017, and before the transfer, and

(B) with respect to which a deduction was allowed to the taxpayer, over

(2) the sum of—

(A) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and

(B) any amount which is recognized under section 904(f)(3) on account of the transfer.

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

Section 367. Exception Under Section 367

Section 367(a) is amended by adding after paragraph (3) and (4), respectively:

"(5) EXPENDITURES.—In the case of a taxpayer which transfers substantially all of the assets of a foreign branch to which the transfer is made, and stock in the specified 10-percent owned foreign corporation to which the transfer is made, and stock in the specified 10-percent owned foreign corporation to which the transfer is made, and

(6) REDUCTION IN AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS OF SPECIFIED FOREIGN CORPORATIONS WITH DEFICITS IN EARNINGS AND PROFITS

"(i) IN GENERAL.—In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 851(a)(1) by reason of subsection (a) as of such United States shareholder’s pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced by the amount of such United States shareholder’s aggregate foreign E&P deficit which is allocable under paragraph (2) to such deferred foreign income corporation.

"(ii) ALLOCATION OF AGGREGATE FOREIGN E&P DEFICITS.—The aggregate foreign E&P deficit of any United States shareholder shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as —

(A) such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, bears to

(B) the aggregate of such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, as of such shareholder, bears to

the aggregate of such shareholder’s pro rata share of the specified E&P deficits of the deferred foreign income corporations of such shareholder,

or

the amount determined under paragraph (2)(II).

"(ii) ALLOCATION OF DEFICIT.—If the amount described in clause (i)(II) is less than the amount described in clause (i)(I), then the shareholder shall designate, in such form and manner as the Secretary determines—

(1) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to the taxpayer, and

(2) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to which such taxpayer is a United States shareholder, if, as of November 2, 2017—

(A) such specified foreign corporation has a deficit in post-1986 earnings and profits before the enactment of the Tax Cuts and Jobs Act (to a specified 10-percent owned foreign corporation which begins before January 1, 2018, the subpart F income of such foreign corporation (as otherwise determined for such tax years beginning after December 31, 2017 and before the enactment of section 952) shall be increased by the greater of—

(1) the accumulated post-1986 deferred foreign income of such corporation determined as of January 2, 2018,

(2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017,

(3) REDUCTION IN AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS OF SPECIFIED FOREIGN CORPORATIONS WITH DEFICITS IN EARNINGS AND PROFITS

"(i) IN GENERAL.—In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 851(a)(1) by reason of subsection (a) as of such United States shareholder’s pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced by the amount of such United States shareholder’s aggregate foreign E&P deficit which is allocable under paragraph (2) to such deferred foreign income corporation.

"(ii) ALLOCATION OF AGGREGATE FOREIGN E&P DEFICITS.—The aggregate foreign E&P deficit of any United States shareholder shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as —

(A) such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, bears to

(B) the aggregate of such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, as of such shareholder, bears to

the aggregate of such shareholder’s pro rata share of the specified E&P deficits of the deferred foreign income corporations of such shareholder,

or

the amount determined under paragraph (2)(II).

"(ii) ALLOCATION OF DEFICIT.—If the amount described in clause (i)(II) is less than the amount described in clause (i)(I), then the shareholder shall designate, in such form and manner as the Secretary determines—

(1) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to the taxpayer, and

(2) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to which such taxpayer is a United States shareholder, if, as of November 2, 2017—

(A) such specified foreign corporation has a deficit in post-1986 earnings and profits before the enactment of the Tax Cuts and Jobs Act (to a specified 10-percent owned foreign corporation which begins before January 1, 2018, the subpart F income of such foreign corporation (as otherwise determined for such tax years beginning after December 31, 2017 and before the enactment of section 952) shall be increased by the greater of—

(1) the accumulated post-1986 deferred foreign income of such corporation determined as of January 2, 2018,

(2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017,

(3) REDUCTION IN AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS OF SPECIFIED FOREIGN CORPORATIONS WITH DEFICITS IN EARNINGS AND PROFITS

"(i) IN GENERAL.—In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 851(a)(1) by reason of subsection (a) as of such United States shareholder’s pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced by the amount of such United States shareholder’s aggregate foreign E&P deficit which is allocable under paragraph (2) to such deferred foreign income corporation.

"(ii) ALLOCATION OF AGGREGATE FOREIGN E&P DEFICITS.—The aggregate foreign E&P deficit of any United States shareholder shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as —

(A) such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, bears to

(B) the aggregate of such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, as of such shareholder, bears to

the aggregate of such shareholder’s pro rata share of the specified E&P deficits of the deferred foreign income corporations of such shareholder,

or

the amount determined under paragraph (2)(II).

"(ii) ALLOCATION OF DEFICIT.—If the amount described in clause (i)(II) is less than the amount described in clause (i)(I), then the shareholder shall designate, in such form and manner as the Secretary determines—

(1) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to the taxpayer, and

(2) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to which such taxpayer is a United States shareholder, if, as of November 2, 2017—

(A) such specified foreign corporation has a deficit in post-1986 earnings and profits before the enactment of the Tax Cuts and Jobs Act (to a specified 10-percent owned foreign corporation which begins before January 1, 2018, the subpart F income of such foreign corporation (as otherwise determined for such tax years beginning after December 31, 2017 and before the enactment of section 952) shall be increased by the greater of—

(1) the accumulated post-1986 deferred foreign income of such corporation determined as of January 2, 2018,

(2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017,
E&P deficit foreign corporation, the amount of the deficit referred to in subparagraph (B).

(2) TREATMENT OF EARNINGS AND PROFITS IN FUTURE YEARS.—

(A) REDUCED EARNINGS AND PROFITS TREATED AS PREVIOUSLY TAXED INCOME WHEN DISTRIBUTED.—For purposes of applying section 959 in any taxable year beginning with the taxable year described in subsection (a), with respect to any United States shareholder of a deferred foreign income corporation, an amount equal to such shareholder’s reduction under paragraph (1) which is allocated to such deferred foreign income corporation under this subsection shall be treated as an amount which was included in the group’s E&P net deficit shareholder under section 951(a).

(B) E&P DEFICITS.—For purposes of this title, with respect to any taxable year beginning with the taxable year described in subsection (a), United States shareholder’s pro rata share of the earnings and profits of any E&P deficit foreign corporation under this subsection shall be increased by the amount of the specified E&P deficit of such corporation taken into account by such shareholder under paragraph (1), and, for purposes of section 952, such increase shall be attributable to the same activity to which the deficit so taken into account was attributable.

(3) NETTING AMONG UNITED STATES SHAREHOLDERS IN SAME AFFILIATED GROUP.—

(A) IN GENERAL.—In the case of any affiliated group which includes at least one E&P net surplus shareholder and one E&P net deficit shareholder, such deficit shareholder bears to the same extent the burden of deficit so taken into account attributable to the same activity to which the deficit so taken into account was attributable.

(B) E&P NET SURPLUS SHAREHOLDER.—For purposes of this paragraph, the term ‘E&P net surplus shareholder’ means any United States shareholder which would (determined without regard to this paragraph) be taken into account in calculating the group’s E&P net deficit shareholder under section 951(a).

(C) E&P NET DEFICIT SHAREHOLDER.—For purposes of this paragraph, the term ‘E&P net deficit shareholder’ means any United States shareholder if—

(i) the aggregate foreign E&P deficit with respect to such foreign corporation (as defined in paragraph (3)(A) without regard to clause (i)(II)) thereof,

(ii) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a),

(B) E&P NET DEFICITS.—For purposes of this paragraph, the term ‘E&P net deficit shareholder’ means any United States shareholder if—

(i) the aggregate foreign E&P deficit with respect to such foreign corporation (as defined in paragraph (3)(A) without regard to clause (i)(II)) thereof,

(ii) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a).

(D) AGGREGATE UNUSED E&P DEFICIT.—For purposes of this paragraph—

(i) IN GENERAL.—The term ‘aggregate unused E&P deficit’ means, with respect to any affilated group, the lesser of—

(II) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a),

(B) E&P NET DEFICITS.—For purposes of this paragraph, the term ‘aggregate unused E&P deficit’ means—

(i) the sum of the excesses described in subparagraph (C), determined with respect to each E&P net deficit shareholder in such group, or

(ii) the amount determined under subparagraph (E)(ii).

(2) REDUCTION WITH RESPECT TO E&P NET DEFICITS OF SUBCHARGERS WHICH ARE NOT WHOLLY OWNED BY THE AFFILIATED GROUP.—If the group ownership percentage of any E&P net deficit shareholder is less than 100 percent, the amount of the decrease described in subparagraph (C)(ii) which is taken into account under clause (i)(II) with respect to such E&P net deficit shareholder shall be such group ownership percentage of such amount.

(E) APPLICABLE SHARE.—For purposes of this paragraph, the term ‘applicable share’, means, with respect to any E&P net surplus shareholder, the percentage of such United States shareholder determined as of the close of the last taxable year of such specified foreign corporation which begins before January 1, 2018, or

(iii) one half of the sum of—

(II) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a),

(ii) the aggregate described in clause (i) determined with respect to each taxable year of such specified foreign corporation which begins before November 2, 2017, plus

(II) the amount described in subparagraph (A)(ii).

The amount determined under subsection (a) by such shareholder to which section 15 applies, the highest rate of tax under section 11 before the close of the last taxable year of such United States shareholder determined as of the close of the taxable year of such specified foreign corporation which begins before January 1, 2018, or

(iii) one half of the sum of—

(II) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a),

(ii) the aggregate described in clause (i) determined with respect to each taxable year of such specified foreign corporation which begins before November 2, 2017, plus

(II) the amount described in subparagraph (A)(ii) as determined consistent with the rules of section 462.

(D) PREVENTION OF DOUBLE COUNTING.—Cash positions of a specified foreign corporation described in clause (ii), (iii)(I), or (iii)(IV) of subparagraph (B) shall not be taken into account by a United States shareholder under subparagraph (A) to the extent that such United States shareholder demonstrates to the satisfaction of the Secretary that such amount is taken into account by such shareholder with respect to another specified foreign corporation.

(E) CASH POSITIONS OF CERTAIN NON-CORPORATE ENTITIES TAKEN INTO ACCOUNT.—An entity (other than a corporation) shall be treated as a specified foreign corporation of a United States shareholder for purposes of determining such United States shareholder’s aggregate foreign cash position if any interest in such entity is held by a specified foreign corporation of such United States shareholder (determined after application of this subsection) which would have been a specified foreign corporation of such United States shareholder if such entity were a foreign corporation.

(F) ANTI-ABUSE.—If the Secretary determines that a principal purpose of any transaction was to reduce the aggregate foreign cash position taken into account under this subsection, such transaction shall be disregarded for purposes of this subsection.

(G) DEFERRED FOREIGN INCOME CORPORATION: ACCUMULATED POST-1986 DEFERRED FOREIGN INCOME.—For purposes of this section—

(1) DEFERRED FOREIGN INCOME CORPORATION.—The term ‘deferred foreign income corporation’ means, with respect to any United States shareholder, any specified foreign corporation of such United States shareholder which has accumulated post-1986 deferred foreign income means the post-1986 earnings and profits subject to the extent such earnings—

(2) ACCUMULATED POST-1986 DEFERRED FOREIGN INCOME.—The term ‘accumulated post-1986 deferred foreign income’ means the post-1986 earnings and profits subject to the extent such earnings—

(3) IN GENERAL.—The term ‘deferred foreign income’ means the income which is attributable to income of the specified foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under section 884.CHAPTER 3

(B) IN THE CASE OF A CORPORATION.—In the case of any corporation—

(1) IN GENERAL.—In the case of a corporation—

(II) the amount determined under clause (i) with respect to all E&P net surplus shareholders in such group.

(F) GROUP OWNERSHIP PERCENTAGE.—For purposes of this paragraph, the term ‘group ownership percentage’ means, with respect to any United States shareholder in any affiliated group, the percentage of the value of the stock of such United States shareholder which is held by other includible corporations in such affiliated group. Notwithstanding the preceding sentence, the group ownership percentage of the parent to which a member of a group is 100 percent.

Any term used in this subparagraph which is also used in section 1504 shall have the same meaning as when used in that section.

(2) AGGREGATE UNUSED E&P DEFICIT.—For purposes of this paragraph—

(i) IN GENERAL.—The term ‘aggregate unused E&P deficit’ means—

(II) the aggregate described in clause (i) determined with respect to each taxable year of such specified foreign corporation which precedes the taxable year referred to in subsection (a).
the gross income of a United States shareholder under section 959.

To the extent provided in regulations or other guidance prescribed by the Secretary, in the case of a controlled foreign corporation which has shareholders which are not United States shareholders, accumulated post-1986 deferred foreign income shall be appropriately reduced by amounts which would be described in subparagraph (B) if such shareholders were United States shareholders.

(3) Denial of deduction.—No deduction shall be allowed under this chapter for any tax which credit is not allowed under section 901 by reason of subparagraph (1) (determined with respect to the taxpayer as having elected the benefits of part III of subchapter N).

(4) Coordination with section 958.—With respect to the taxes paid as taxed or accrued by a domestic corporation with respect to amounts which are includible in gross income of such domestic corporation, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as—

(A) the excess of—

(i)(i) the amounts which are includible in gross income of such domestic corporation by reason of this section, over

(ii) the deduction allowable under subsection (c) with respect to such amounts, bears to

(B) such amounts.

(5) Election.—Any election under paragraph (1) shall be made not later than the due date for the tax for the taxable year described in subsection (a) and shall be made in such manner as the Secretary, in his discretion and in conformity with the rules and regulations, or to fraud with intent to evade tax.

(6) Net tax liability under this section.—The net tax liability under this section with respect to any United States shareholder is the excess (if any) of—

(A) such taxpayer's net income tax for the taxable year in which such income is includible in the gross income of such United States shareholder under section 951(a)(1) by reason of this section, over

(B) such taxpayer's net income tax for such taxable year determined.

(7) Without regard to this section, and without regard to any deduction properly attributable to a dividend received by such United States shareholder from any deferred foreign income corporation.

Specified foreign corporations are corporations which are passive foreign investment companies (as defined in section 1297) or any corporation which is a passive foreign investment company solely for purposes of taking into account the income of such foreign corporation for purposes of determining whether an accumulation of such foreign corporation is a controlled foreign corporation.

(d) Specified foreign corporations.—For purposes of section 951 and 961, a foreign corporation described in paragraph (1)(B) shall be treated as a controlled foreign corporation for purposes of taking into account the income of such foreign corporation for purposes of determining for purposes of determining whether an accumulation of such foreign corporation is a controlled foreign corporation.

(e) Specified foreign corporation.—For purposes of this section, the term 'specified foreign corporation' means—

(A) any controlled foreign corporation, and

(B) any foreign corporation with respect to which the Secretary determines that such corporation is a United States shareholder.

(f) Determination of pro rata share.—In general.—For purposes of this section, the determination of any United States shareholder, the terms 'applicable percentage' means the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) taking into account the income of such foreign corporation (computed in accordance with sections 78(a) and 958) which is includible in gross income of such shareholder for purposes of sections 78 and 958, and by only taking into account periods beginning after December 31, 1986, and determined as—

(A) as of the date referred to in paragraph (1) or (2) of subsection (a), whichever is applicable with respect to such foreign corporation, and

(B) as of December 31, 1986, and determined as a pro rata share of earnings and profits of the foreign corporation.

(g) Disallowance of foreign tax credit, etc.—In general.—No credit shall be allowed under section 960 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowable under section 986, and—

(A) shall not be treated as income exempt from tax purposes for purposes of determining whether an adjustment or indemnification account under section 1382(a) is includible in the income of a United States shareholder under section 893(a)(1) by reason of subsection (a) which is equal to the deduction allowable under paragraph (1) in case of so much of the taxpayer's net tax liability under this section which would be determined under such section in 8 installments of the following amounts:

(B) the excess of—

(i)(i) the amount to which subsection (c)(1)(A) applies, divided by

(ii) the sum described in subparagraph (A)(ii) of paragraph (1).

(2) Applicable percentage.—For purposes of this section, the term 'applicable percentage' means the amount expressed as a percentage of such pro rata share of earnings and profits of the foreign corporation.

(A) 0.557 multiplied by the ratio of—

(i) the amount to which subsection (c)(1)(B) applies, plus

(ii) the sum of such excess plus the amount to which subsection (c)(1)(B) applies, plus

(B) 0.557 multiplied by the ratio of—

(i) the amount to which subsection (c)(1)(B) applies, divided by

(ii) the sum described in subparagraph (A)(ii).

(3) Denial of deduction.—No deduction shall be allowed under this chapter for any tax which credit is not allowed under section 901 by reason of subparagraph (1) (determined with respect to the taxpayer as having elected the benefits of part III of subchapter N).

(4) Coordination with section 958.—With respect to the taxes paid as taxed or accrued by a domestic corporation with respect to amounts which are includible in gross income of such domestic corporation, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as—

(A) the excess of—

(i)(i) the amounts which are includible in gross income of such domestic corporation by reason of this section, over

(ii) the deduction allowable under subsection (c) with respect to such amounts, bears to

(B) such amounts.

(5) Election.—Any election under paragraph (1) shall be made not later than the due date for the tax for the taxable year described in subsection (a) and shall be made in such manner as the Secretary, in his discretion and in conformity with the rules and regulations, or to fraud with intent to evade tax.

(6) Net tax liability under this section.—The net tax liability under this section with respect to any United States shareholder is the excess (if any) of—

(A) such taxpayer's net income tax for the taxable year in which such income is includible in the gross income of such United States shareholder under section 951(a)(1) by reason of this section, over

(B) such taxpayer's net income tax for such taxable year determined.

(7) Without regard to this section, and without regard to any deduction properly attributable to a dividend received by such United States shareholder from any deferred foreign income corporation.

(8) Net tax liability—The net tax liability means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.

Special rules for S corporation shareholders.—

(1) In general.—In the case of any S corporation which is a United States shareholder of a deferred foreign income corporation, each shareholder of such S corporation may elect to defer payment of such shareholder's net tax liability under this section with respect to such S corporation until the shareholder's taxable year which includes the triggering event with respect to such S corporation and the shareholder's taxable year which includes such triggering event.

(a) Electing S corporations—In the case of a corporation which is an S corporation solely for purposes of taking into account the income of such S corporation for purposes of determining whether an accumulation of such foreign corporation is a controlled foreign corporation, each shareholder of such S corporation may elect to defer payment of such shareholder's net tax liability under this section with respect to such S corporation until the shareholder's taxable year which includes such triggering event.

(b) Net S corporation tax liability—The 'net S corporation tax liability' means the regular tax liability as reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.
“(B) an election under subsection (h) with respect to such liability shall be treated as timely made if made not later than the due date for the return of tax for the taxable year in which the triggering event with respect to such liability occurred,

“(C) the first installment under subsection (h) with respect to such liability shall be paid not later than the due date for the return of tax for the taxable year in which the triggering event occurred (but determined without regard to any extension of time for filing the return), and

“(D) the triggering event with respect to any net tax liability is described in paragraph (2)(A)(ii), an election under subsection (h) with respect to such liability may be made only with the consent of the Secretary.

“(2) JOINT AND SEVERAL LIABILITY OF S CORPORATION.—If any shareholder of an S corporation elects to defer payment under paragraph (1), such S corporation shall be jointly and severally liable for such payment and any penalty, addition to tax, or additional amount attributable thereto.

“(3) EXTENSION OF LIMITATION ON COLLECTION.—Any limitation on the time period for the collection of a liability deferred under this subsection shall not be treated as beginning before the due date for the return of the tax for such taxable year with respect to such liability.

“(4) ANNUAL REPORTING OF NET TAX LIABILITY.—(A) IN GENERAL.—Any shareholder of an S corporation which makes an election under paragraph (1) shall report the amount of such shareholder’s deferred net tax liability on the shareholder’s return for the taxable year in which such election is made and on the return of tax for each taxable year thereafter until such amount has been fully assessed on such return.

“(B) DEFERRED NET TAX LIABILITY.—For purposes of this paragraph, the term ‘deferred net tax liability’ means, with respect to any taxable year, the net tax liability of a foreign partnership for a taxable year for which such election is made and on the return of tax for each taxable year thereafter until such amount has been fully assessed on such return.

“(C) REPORTING TO SHAREHOLDERS.—(i) In general.—For purposes of this subsection, the term ‘deferred net tax liability’ shall be treated as a liability of the shareholder under section 6038 if the election described in paragraph (1) is in effect for the taxable year with respect to such liability.

“(ii) Treatment of deferred tax liability incurred through section 1244.—(I) In general.—If a deduction is allowed under section 1244 relating to a stock or other property which is held by a United States shareholder of an S corporation and the sale or exchange of such property occurs during the taxable year in which the deduction allowed under section 1244 would have been included in gross income, for purposes of subsection (h), the amount of such sale or exchange that is included in the gross income of such shareholder shall be treated as income from sources outside the United States in the same manner as if such shareholder held such property directly.

“(III) Treatment of income from specified foreign tax credits.—If a deduction is allowed under section 1244 relating to a stock or other property which is held by a United States shareholder of an S corporation and the sale or exchange of such property occurs during the taxable year in which the deduction allowed under section 1244 would have been included in gross income, for purposes of subsection (h), the amount of such sale or exchange that is included in the gross income of such shareholder shall be treated as income from sources outside the United States in the same manner as if such shareholder held such property directly.

“(B) ELECTION NOT TO APPLY NET OPERATING LOSS DEDUCTION.—(i) IN GENERAL.—If a United States shareholder of a controlled foreign corporation defers the inclusion of income described in paragraph (A) of section 951 in the case of any regulated investment company or the case of any mutual fund, the deferred inclusion shall be treated as income from sources outside the United States in the same manner as if such shareholder held such property directly.

“(ii) ENTERPRISE BUSINESS INCOME.—If an election under subsection (l)(2)(B) is in effect with respect to any taxable year, such election shall not be taken into account in determining the amount of the net operating loss deduction under section 172 of such shareholder for such taxable year.

“(C) ELECTION IN APPLICABILITY.—(i) IN GENERAL.—Each person who is a United States shareholder of a controlled foreign corporation shall make an election under subsection (l)(2)(B) in the case of any regulated investment company or the case of any mutual fund, and, in the case of any other enterprise business income described in paragraph (A)(1) of section 951 for which such person is the owner of such enterprise business income, such election shall be treated as income from sources outside the United States in the same manner as if such person held such enterprise business income directly.

“SEC. 965A. GLOBAL INTANGIBLE LOW-TAXED INCOME INCLUSION FOR UNITED STATES SHAREHOLDERS.

“(a) IN GENERAL.—(i) In general.—Each United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder’s global intangible low-taxed income for such taxable year.

“(ii) Global intangible low-taxed income.—(I) In general.—‘Global intangible low-taxed income’ means, with respect to any such United States shareholder—

“(II) Regulations.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section, including—

“(I) regulations or other guidance to provide appropriate basis adjustments, and

“(II) regulations or other guidance to prevent the deferral of the income of a controlled foreign corporation described in paragraph (A)(1) of section 951 by a United States shareholder by reason of the provisions of subsection (h), including—

“(A) the tax imposed by this chapter shall be paid by the domestic corporation under section 7874(b).

“(B) if the real estate investment trust elects to defer to a domestic corporation under section 7874(b), the tax imposed by this chapter shall not be treated as beginning before the due date for filing the return of tax for the taxable year in which the amount described in subparagraph (A) is treated as a dividends under section 856.

“(C) any amount required to be taken into account under section 951(a)(1) by reason of a liquidation or sale of substantially all the assets of the foreign corporation, or any similar event, then any amount not yet included in gross income as of the day before the date of the event and the unpaid portion of any tax liability with respect to such inclusion shall be due on the date which is 30 days after the date of the event (or in the case of a title 11 or similar case, the date before the petition is filed).

“(3) ELECTION NOT TO APPLY NET OPERATING LOSS DEDUCTION.—(i) IN GENERAL.—If a United States shareholder of a deferred foreign income corporation defers the inclusion of income described in subsection (a) of the Tax Cuts and Jobs Act (with respect to any controlled foreign corporation during such period),—

“(II) the tax imposed by this chapter shall be treated as beginning before the due date for filing the return of tax for the taxable year in which the amount described in paragraph (2) shall not be taken into account—

“(B) if the real estate investment trust elects to defer to a domestic corporation under section 7874(b), the tax imposed by this chapter shall not be treated as beginning before the due date for filing the return of tax for the taxable year in which the amount described in subparagraph (A) is treated as a dividends under section 856.

“(D) any amount required to be taken into account under section 951(a)(1) by reason of a liquidation or sale of substantially all the assets of the foreign corporation, or any similar event, then any amount not yet included in gross income as of the day before the date of the event and the unpaid portion of any tax liability with respect to such inclusion shall be due on the date which is 30 days after the date of the event (or in the case of a title 11 or similar case, the date before the petition is filed).

“(ii) ACCELERATION OF INCLUSION.—If there is a triggering event with respect to such liability occurring in the case of an United States shareholder of any controlled foreign corporation which first becomes a United States shareholder by reason of this section is allocated to each such aggregate amount shall be allocated to such taxable year.

“(E) any amount included in gross income (for purposes of the computation of real estate investment trust taxable income under section 857(b), be included in gross income as follows—

“(ii) 8 percent of such amount in the case of any such aggregate amount included in gross income in the 1st taxable year following such period.

“(iii) 15 percent of such amount in the case of any such aggregate amount included in gross income in the 2nd taxable year following such period.

“(iv) 20 percent of such amount in the case of any such aggregate amount included in gross income in the 3rd taxable year following such period.

“(F) RULES FOR TRUSTS ELECTING DEFERRED INCLUSION.—(i) ELECTION.—Any election under paragraph (C) shall be made not later than the due date for the return for the taxable year in which such inclusion is treated as having occurred.

“(ii) REGULATIONS OR OTHER GUIDANCE.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by inserting the following:

“Subpart B—Rules Related to Passive and Mobile Income

“CHAPTER 1—TAXATION OF FOREIGN- Derived Intangible Income and Global Intangible Low-Taxed Income

“SEC. 14961. CURRENT YEAR INCLUSION OF GLOBAL INTANGIBLE LOW-TAXED INCOME BY UNITED STATES SHAREHOLDERS.

“(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 is amended by inserting the following after section 951:

“SEC. 951A. GLOBAL INTANGIBLE LOW-TAXED INCOME INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

“(a) IN GENERAL.—Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder’s global intangible low-taxed income for such taxable year.

“(B) global intangible low-taxed income.—(I) In general.—The term ‘global intangible low-taxed income’ means, with respect to any such United States shareholder—
United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) such shareholder’s net CFC tested income attributable to such foreign corporation (determined for each taxable year of such United States shareholder) over

(B) the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining the shareholder’s pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(C) such shareholder’s net deemed tangible property, means, with respect to any United States shareholder, for any taxable year, the excess of—

(1) the aggregate of such shareholder’s pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year (determined for each taxable year of such United States shareholder) over

(2) the aggregate of such shareholder’s pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for any taxable year of such United States shareholder for which the share of such foreign corporation’s distributive share of the aggregate of the partnership’s qualified business asset investment in the same manner that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property.

(2) DUAL USE PROPERTY.—In the case of property used both in the production of tested income and income which is not tested income, such property shall be treated as specified tangible property in the same proportion that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property.

(3) TANGIBLE PROPERTY.—For purposes of this subsection, if a controlled foreign corporation any pro rata amount from which is taken into account in determining the shareholder’s pro rata share of the qualified business asset investment of such corporation is—

(A) used in the trade or business of the corporation, and

(B) a type with respect to which a deduction is allowable under section 167.

(2) TANGIBLE PROPERTY.—(A) The term ‘specified tangible property’ means, except as provided in subparagraph (B), any tangible property used in the production of tested income.

(B) DUAL USE PROPERTY.—In the case of property used both in the production of tested income and income which is not tested income, such property shall be treated as specified tangible property in the same proportion that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property.

(3) DETERMINATION OF ADJUSTED BASIS.—For purposes of this subsection, notwithstanding any provision of section 936(c)(3) (or to which section 936(c)(3) is applied as a result of the enactment of this section, the adjusted basis of any property shall be determined—

(A) by using the alternative depreciation system under section 168(g), and

(B) by allocating the depreciation deduction with respect to such property ratably to each day during the taxable year for which the property is treated as being with respect to such property.

(2) TANGIBLE PROPERTY.—For purposes of this subsection, if a controlled foreign corporation holds an interest in a partnership at the time of the enactment of this section or as of the close of such taxable year, the adjusted basis of such property shall be determined as if such property were contributed to such partnership as a partnership asset at the time such partnership was formed and such property was used in the business of such partnership (determined for each taxable year of such partnership).
“(3) TESTED FOREIGN INCOME TAXES.—For purposes of paragraph (1), the term ‘tested foreign income taxes’ means, with respect to any domestic corporation which is a United States shareholder of a controlled foreign corporation, the foreign income taxes paid or accrued by such foreign corporation which are properly attributable to the tested income of such foreign corporation (as determined by account by such domestic corporation under section 951A).”.

(2) APPLICATION OF FOREIGN TAX CREDIT LIMITATION.—

(A) SEPARATE BASKET FOR GLOBAL INTANGIBLE LOW-TAXED INCOME.—Section 904(d)(1) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

“(A) any amount includible in gross income under section 951A (other than passive category income).”.

(B) EXCLUSION FROM GENERAL CATEGORY INCOME.—Section 904(d)(2)(A)(i) is amended by inserting “income described in paragraph (1)(A)” and before “passive category income”.

(C) NO CARRYOVER OR CARRYBACK OF EXCESS TAXES.—Section 904(c) is amended by adding at the end the following new subparagraph:

“(b) Taxable years of foreign corporations.—In the case of a taxable year beginning after December 31, 2017, the term ‘taxable year’, for purposes of this section, includes any taxable year of any foreign corporation ending in such year.”

(D) EFFECTIVE DATE.—The amendments made by this section shall—

(1) apply to taxable years of foreign corporations ending in, or beginning after, December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end;

SEC. 250. FOREIGN-DERIVED INTANGIBLE INCOME AND GLOBAL INTANGIBLE LOW-TAXED INCOME.

(a) IN GENERAL.—Part VIII of subchapter B of chapter 1 of title 26 of the United States Code is amended by inserting after the section number of section 951A the following new section:

“Sec. 951A. Global intangible low-taxed income included in gross income of United States shareholders."

(b) CONFORMING AMENDMENTS.—

(1) Section 172(d), as amended by this Act, is amended by adding after “‘available for credit or refund’” the following new paragraph:

“(B) ‘United States person’ means any individual, corporation, partnership, trust, estate, and other entity under United States jurisdiction.”

(2) Section 233(a)(3)(E) is amended by adding “and section 7875(a)” after “section 7874”.}

“6202. DEDUCTION FOR FOREIGN-DERIVED INTANGIBLE INCOME AND GLOBAL INTANGIBLE LOW-TAXED INCOME.

(a) IN GENERAL.—Part VIII of subchapter B of chapter 1 of title 26 of the United States Code is amended by adding after the section number of section 951A the following new section:

“Sec. 951A. Global intangible low-taxed income included in gross income of United States shareholders."

(b) CONFORMING AMENDMENTS.—

(1) Section 172(d), as amended by this Act, is amended by adding after “‘available for credit or refund’” the following new paragraph:

“(B) ‘United States person’ means any individual, corporation, partnership, trust, estate, and other entity under United States jurisdiction.”

(2) Section 233(a)(3)(E) is amended by adding “and section 7875(a)” after “section 7874”.

“6203. DEDUCTION FOR FOREIGN-DERIVED INTANGIBLE INCOME AND GLOBAL INTANGIBLE LOW-TAXED INCOME.

(a) IN GENERAL.—Part VIII of subchapter B of chapter 1 of title 26 of the United States Code is amended by adding after the section number of section 951A the following new section:

“Sec. 951A. Global intangible low-taxed income included in gross income of United States shareholders."

(b) CONFORMING AMENDMENTS.—

(1) Section 172(d), as amended by this Act, is amended by adding after “‘available for credit or refund’” the following new paragraph:

“(B) ‘United States person’ means any individual, corporation, partnership, trust, estate, and other entity under United States jurisdiction.”

(2) Section 233(a)(3)(E) is amended by adding “and section 7875(a)” after “section 7874”.

“6204. DEDUCTION FOR FOREIGN-DERIVED INTANGIBLE INCOME AND GLOBAL INTANGIBLE LOW-TAXED INCOME.

(a) IN GENERAL.—Part VIII of subchapter B of chapter 1 of title 26 of the United States Code is amended by adding after the section number of section 951A the following new section:

“Sec. 951A. Global intangible low-taxed income included in gross income of United States shareholders."

(b) CONFORMING AMENDMENTS.—

(1) Section 172(d), as amended by this Act, is amended by adding after “‘available for credit or refund’” the following new paragraph:

“(B) ‘United States person’ means any individual, corporation, partnership, trust, estate, and other entity under United States jurisdiction.”

(2) Section 233(a)(3)(E) is amended by adding “and section 7875(a)” after “section 7874”.
(b) by striking "and subsection (a) and (b) of section 245" the second place it appears and inserting "subsection (a) and (b) of section 245, and 250.

(3) in section 469(f)(3)(F) is amended by striking "and 222, and 250".

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

"Sec. 256. Foreign-derived intangible income and global intangible low-taxed income.".

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

CHAPTER 2—OTHER MODIFICATIONS OF SUBPART F PROVISIONS

SEC. 14211. ELIMINATION OF INCLUSION OF FOREIGN BASE COMPANY OIL RELATED INCOME.

(a) REPEAL.—Subsection (a) of section 954 is amended—

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

(2) by striking the comma at the end of paragraph (3) and inserting a period, and

(3) by striking paragraph (5).

(b) CONFORMING AMENDMENTS.—

(1) Section 952(c)(1)(B)(iii) is amended by striking "(1) and redesignating subclauses (II) through (V) as subclauses (I) through (IV), respectively.

(2) Section 954(b) is amended—

(A) by striking the second sentence of paragraph (4),

(B) by striking "the foreign base company services income, and the foreign base company oil related income" in paragraph (5) and inserting "and the foreign base company services income", and

(C) by striking paragraph (6).

(3) Section 954 is amended by striking subsection (g).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 14212. REPEAL OF INCLUSION BASED ON WITHDRAWAL OF PREVIOUSLY EXCLUDED SUBPART F INCOME FROM OTHER INVESTMENT.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 is amended by striking section 955.

(b) CONFORMING AMENDMENTS.—

(1) Section 955(a)(1)(A) is amended to read as follows:

"(A) his pro rata share (determined under paragraph (2)) of the corporation’s subpart F income for such year, and"

(2) Section 955(b) is amended by striking "section 951(a)(1)(A)" in the flush language at the end and inserting "section 951(a)(1)(A)

(3) Section 952(c)(1)(B)(i) is amended by striking "section 951(a)(1)(A)" and inserting "section 951(a)(1)(A)

(4) Section 953(c)(1)(C) is amended by striking "section 951(a)(1)(A)" and inserting "section 951(a)(1)(A)

(b) Section 954(a) is amended by striking paragraph (4).

(2) by striking clause (vi) and inserting the following:

"(vi) any goodwill, going concern value, or workforce in place (including its composition and terms and conditions (contractual or otherwise) of its employment); or"

(3) by striking the flush language after clause (vii), as added by paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

CHAPTER 3—PREVENTION OF BASE EROSION

SEC. 14221. LIMITATIONS ON INCOME SHIFTING THROUGH INTANGIBLE PROPERTY TRANSFERS.

(a) DEFINITION OF INTANGIBLE ASSET.—Section 936(h)(3)(B) is amended—

(1) by striking "or" at the end of clause (1),

(2) by striking clause (vi) and inserting the following:

"(vi) any goodwill, going concern value, or workforce in place (including its composition and terms and conditions (contractual or otherwise) of its employment); or"

(3) by striking the flush language after clause (vii), as added by paragraph (2).

(b) CLARIFICATION OF ALLOWABLE VALUATION METHODS.—

(1) FOREIGN CORPORATIONS.—Section 936(h)(2) is amended by striking at the end the following new subparagraph:

"(D) REGULATORY AUTHORITY.—For purposes of the last sentence of subparagraph (A), the Secretary shall require—

(i) the valuation of transfers of intangible property, including intangible property transferred with other property or services, on an aggregate basis, or

(ii) the valuation of such a transfer on the basis of the realistic alternatives to such a transfer,

if the Secretary determines that such basis is the most reliable means of valuation of such transfers.

(2) ALLOCATION AMONG TAXPAYERS.—Section 482 is amended by striking at the end the following:

"For purposes of this section, the Secretary shall require the valuation of transfers of intangible property (including intangible property transferred with other property or services) on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer determines that such basis is the most reliable means of valuation of such transfers.

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

NO INERENCE.—Nothing in the amendment made by subsection (a) shall be construed to create any inference with respect to the application of section 936(b)(3) of the Internal Revenue Code of 1986, or the authority of the Secretary of the Treasury to provide regulations for such application, with respect to taxable years beginning before January 1, 2018.

SEC. 14222. CERTAIN RELATED PARTY AMOUNTS PAID OR ACCRUED IN HYBRID TRANSACTIONS OR WITH HYBRID ENTITIES.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 is amended by inserting after section 267 the following:

"SEC. 267A. CERTAIN RELATED PARTY AMOUNTS PAID OR ACCRUED IN HYBRID TRANSACTIONS OR WITH HYBRID ENTITIES.

(1) DISQUALIFIED RELATED PARTY AMOUNT.—The term “disqualified related party amount” means any interest or royalty paid or accrued to a related party to the extent that—

(A) such amount is not included in the income of such related party under the tax law of the country of which such related party is a resident for tax purposes or is subject to tax, or

(B) such related party is allowed a deduction with respect to such amount under the tax law of such country.

Such term shall not include any payment to the extent such payment is included in the gross income of a United States shareholder under section 951(a).

(2) RELATED PARTY.—The term ‘related party’ means a related person as defined in section 951(a), except that such term shall be applied with respect to the person making the payment described in paragraph (1) in lieu of the controlled foreign corporation otherwise referred to in such section.

(c) HYBRID TRANSACTION.—For purposes of this section, the term ‘hybrid transaction’ means any transaction, series of transactions, agreement, or instrument one or more payments with respect to which are treated as interest or royalties for purposes of this chapter and which are not so treated for purposes the tax law of the foreign country of which the recipient of such payment is resident for tax purposes or is subject to tax.

(d) HYBRID ENTITY.—For purposes of this section, the term ‘hybrid entity’ means any entity which is either—

(1) treated as fiscally transparent for purposes of this chapter but not so treated for purposes of such taxing law of such foreign country or the entity is resident for tax purposes or is subject to tax, or

(2) treated as fiscally transparent for purposes of such tax law but not so treated for purposes of this chapter.

(c) REGULATIONS.—The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance providing for—

(1) rules for treating certain conduit arrangements which involve a hybrid transaction or a hybrid entity as subject to subsection (a),
(2) rules for the application of this section to branches or domestic entities,
(3) rules for treating certain structured transactions as subject to subsection (a),
(4) rules for treating a tax preference as an exclusion from income for purposes of applying subsection (b)(1) if such tax preference has the effect of reducing the generally applicable statutory rate by 25 percent or more,
(5) rules for treating the entire amount of interest or royalty paid or accrued to a related party as a disqualified related party amount if such amount is subject to a participation exemption system or other system which provides for the exclusion or deduction of a substantial portion of such amount,
(6) rules for determining the tax residence of a foreign entity if the entity is otherwise considered a resident of more than one country or of no country,
(7) exceptions from subsection (a) with respect to—
(“A) cases in which the disqualified related party amount is taxed under the laws of a foreign country other than the country of which the related party is resident for tax purposes, and
(B) other cases which the Secretary determines do not present a risk of eroding the Federal tax base,
(8) requirements for record keeping and information reporting in addition to any requirements imposed by section 6004A."
(2) CONFORMING AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by striking "appears in the item relating to section 267 the following new item:"
"Sec. 267A. Certain related party amounts paid or accrued in hybrid transactions or with hybrid entities."
(3) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 14223. SHAREHOLDERS OF SURROGATE FOREIGN CORPORATIONS NOT ELIGIBLE FOR REDUCED RATE ON DIVIDENDS.
(a) IN GENERAL.—Section 1(h)(11)(C)(iii) is amended—
(1) by striking "shall not include any foreign corporation" and inserting "shall not include—"
(“A) any foreign corporation," (2) by striking the period at the end and inserting "and," and—
(3) by adding at the end the following new subclause:
"(III) a corporation which first becomes a surrogate foreign corporation (as defined in section 878(a)(2)(B) after the date of the enactment of this Act)."
(b) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends received after the date of the enactment of this Act.

Subpart C—Modifications Related to Foreign Tax Credit System
SEC. 14301. REPEAL OF SECTION 902 INDIRECT FOREIGN TAX CREDITS; DETERMINATION OF SECTION 960 CREDIT ON CURRENT YEAR BASIS.
(a) REPEAL OF SECTION 902 INDIRECT FOREIGN TAX CREDITS.—Subpart A of part III of subchapter N of chapter 1 is amended by striking section 902.
(b) DETERMINATION OF SECTION 960 CREDIT ON CURRENT YEAR BASIS.—Section 960, as amended by section 14231, is amended—
(1) by striking subsection (c), by redesignating subsection (b) as subsection (c), and by striking all that precedes subsection (c) (as so redesignated) and inserting the following:
"SEC. 960. DEEMED PAID CREDIT FOR SUBPART F INCLUSIONS.
(“A) IN GENERAL.—For purposes of subpart A of this chapter, it is in the gross income of a domestic corporation any item of income under section 951(a)(1) with respect to any controlled foreign corporation with respect to which such domestic corporation is a United States shareholder, such domestic corporation shall be deemed to have paid so much of such foreign corporation’s foreign income taxes as are properly attributable to such item of income.
(2) SPECIAL RULES FOR DISTRIBUTIONS FROM PRIORLY TAXED EARNINGS AND PROFITS.—For purposes of paragraph (1)—
(“A) IN GENERAL.—If any portion of a distribution from a controlled foreign corporation to a domestic corporation which is a United States shareholder with respect to such controlled foreign corporation is excluded from gross income under section 959(a), such domestic corporation shall be deemed to have paid so much of such foreign corporation’s foreign income taxes as—
(A) are properly attributable to such portion, and
(B) have not been deemed to have been paid by such domestic corporation under this section for the taxable year or any prior taxable year.
(“B) TURKISH CONTROLLED FOREIGN CORPORATIONS.—If section 959(b) applies to any portion of a distribution from a controlled foreign corporation to another controlled foreign corporation, such controlled foreign corporation shall be deemed to have paid so much of such other controlled foreign corporation’s foreign income taxes as—
(A) are properly attributable to such portion, and
(B) have not been deemed to have been paid by a domestic corporation under this section for the taxable year or any prior taxable year.
(“C) NONCONTROLLED 10-PERCENT OWNED FOREIGN CORPORATION.—The term ‘noncontrolled 10-percent owned foreign corporation’ means any foreign corporation which is—
(1) treated under section 959 as a noncontrolled 10-percent owned foreign corporation (as defined in section 245A(h)), or
(“D) TURKISH CONTROLLED FOREIGN CORPORATIONS.—If section 959(b) applies to any portion of a distribution from a controlled foreign corporation to another controlled foreign corporation, such controlled foreign corporation shall be deemed to have paid so much of such other controlled foreign corporation’s foreign income taxes as—
(A) are properly attributable to such portion, and
(B) have not been deemed to have been paid by a domestic corporation under this section for the taxable year or any prior taxable year.
(“E) FOREIGN INCOME TAXES.—The term ‘foreign income taxes’ means any income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States or to any foreign country or possession of any foreign country with respect to a controlled foreign corporation.
(“F) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section."
(c) CONFORMING AMENDMENTS.—
(1) Section 78 is amended to read as follows:
"SEC. 78. GROSS UP FOR DEEMED PAID FOREIGN TAX CREDIT.
"If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N of chapter 1 relating to any taxable year, an amount equal to the taxes deemed to be paid by such corporation under subsections (a), (b), and (d) of section 960 (determined without regard to subsection (d)(1)) for such taxable year shall be treated for purposes of this title of such taxes as—
(A) any foreign corporation which is a specified 10-percent owned foreign corporation (as defined in section 245A(h)), or
(B) a passive foreign investment company (as defined in section 1297(a)) with respect to which such tax preference satisfies the requirements of section 902(a)(1), (2), and (4), the requirements of section 902(b),
A controlled foreign corporation shall not be treated as a noncontrolled 10-percent owned foreign corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation. Any reference to section 902 in this clause shall be treated as a reference to such section as in effect before its repeal."
(2) by striking "noncontrolled section 902 corporation" in clause (ii) and inserting "noncontrolled 10-percent owned foreign corporation" in clause (ii), and
(3) by striking "noncontrolled section 902 corporation" in clause (ii) and inserting "noncontrolled 10-percent owned foreign corporation" in clause (ii).

SEC. 14304. TREATMENT OF FOREIGN TAXES.—
(1) general.—Section 865(h)(1)(B) is amended by striking "902, 907, and inserting "907.
(2) sections.—Section 901(a) is amended by striking "sections 902 and 907" and inserting "section 960.
(3) section.—Section 901(e)(2) is amended by striking "but is not limited to—" and all that follows through "that portion" and inserting "but is not limited to that portion.
(4) section.—Section 901(f) is amended by striking "sections 902 and 960" and inserting "section 960 only.
(5) section.—Section 901(f)(1) is amended by striking "902 or 960".
(6) section.—Section 901(f)(2) is amended by striking "902 or 960".
(7) section.—Section 901(m)(1)(B) is amended to read as follows:
"(B) in the case of a foreign income tax paid by a foreign corporation, shall not be taken into account for purposes of section 960."
(8) sections.—Section 904(d)(2)(E) is amended—
(A) by adding clause (i) to read as follows:
"(I) noncontrolled 10-percent owned foreign corporation.—The term ‘noncontrolled 10-percent owned foreign corporation’ means any foreign corporation which is—
(1) treated under section 959 as a noncontrolled 10-percent owned foreign corporation (as defined in section 245A(h)), or
(II) a passive foreign investment company (as defined in section 1297(a)(3)) with respect to which such tax preference satisfies the requirements of section 902(a)(1), (2), and (4), the requirements of section 902(b),
A controlled foreign corporation shall not be treated as a noncontrolled 10-percent owned foreign corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation. Any reference to section 902 in this clause shall be treated as a reference to such section as in effect before its repeal."
(9) sections.—Section 904(d)(6)(A) is amended by striking "902, 907," and inserting "907, 909, and 960, and inserting "sections 907 and 960."
(10) section.—Section 904(h)(10)(A) is amended by striking "sections 902, 907, and 960" and inserting "sections 907 and 960."
(11) sections.—Section 904(h)(10)(C) is amended by striking "sections 902 and 960" and inserting "sections 907 and 960."
(12) sections.—Section 905(c)(1) is amended by striking "sections 902, 907, and 960" and inserting "sections 907 and 960."
(13) section.—Section 905(c)(4) is amended to read as follows:
"(K) CROSS REFERENCES.—For increase of limitation under subchapter A for taxes paid with respect to amounts received which were included in the gross income of a foreign corporation for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(c)."
(14) section.—Section 905(c)(11) is amended by striking the last sentence.
(15) section.—Section 905(c)(2)(B)(ii) is amended to read as follows:
"(ii) shall be taken into account for the taxable year to which such taxes relate, and"
(16) section.—Section 905(e)(1)(B) is amended by striking "or accrued during the taxable year."
(17) section.—Section 905(e)(4) is amended by striking paragraphs (4) and (5).
(18) section.—Section 905(h)(2)(B) is amended by striking "902 or 960.
(19) section.—Section 907(c)(3)(A) is amended—
(A) by striking subparagraph (A) and inserting the following: ”

"(A) interest, to the extent the category of income of such interest is determined under section 902(b)(1),".

(B) by striking “section 906(a)” in subparagraph (B) and inserting “section 960”.

(C) by inserting (as defined in section 245A(b) without regard to paragraph (2) thereof)”.

(D) by striking “section 902 corporations” in the heading thereof and inserting “SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS”.

(E) by amending section 909(d) by inserting “Except as provided in section 960(a)(3), any” and inserting “Any”.

(F) by amending section 909(e) by inserting “section 960(c)”.

(G) by inserting at the end of section 917 the following new section:

(3) SPECIFIC RULES.

(ii) the credits allowed under this chapter against such regular tax liability, over

(i) the sum of—

(A) the credit allowed under section 38 for the taxable year which is properly allocable to the research credit determined under section 41(a), plus

(B) the credits allowed under section 38 for the taxable year which is properly allocable to the investment credit determined under section 42.

(3) INCORPORATION OF SPECIFIED RULES.

II. FOREIGN BRANCH INCOME.

(a) GENERAL.—For purposes of this section—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the term ‘base erosion minimum tax amount’ means, with respect to any applicable taxpayer for any taxable year, the amount equal to

(A) an amount equal to 10 percent (5 percent in the case of taxable years beginning in calendar year 2028) of the modified taxable income of such taxpayer for the taxable year, over

(B) an amount equal to the regular tax liability (as defined in section 26(b)) of the taxpayer for the taxable year, reduced (but not below zero) by the excess (if any) of—

(i) the credits allowed under this chapter against such regular tax liability, over

(ii) the sum of—

(A) the credit allowed under section 38 for the taxable year which is properly allocable to the energy credit determined under section 45(a), and

(B) the credits allowed under section 38 for the taxable year which is properly allocable to the investment credit determined under section 42.

(2) MODIFICATIONS FOR TAXABLE YEARS BEGINNING AFTER 2028.—In the case of any taxable year beginning after December 31, 2025, the regular tax liability (as defined in section 26(b)) of an applicable taxpayer for any taxable year which is properly allocable to any other section 38 credits does not in excess of 50 percent of the lesser of the amount of such credits or the base erosion minimum tax amount (determined without regard to this subclause).

(3) INCREASED RATE FOR CERTAIN BANKS AND SECURITIES DEALERS.—

(A) IN GENERAL.—In the case of a taxpayer described in subparagraph (B) who is an applicable taxpayer for any taxable year, the percentage otherwise in effect under paragraphs (1) and (2)(A) shall each be increased by one percentage point.

(B) TAXPAYER DESCRIBED.—A taxpayer is described in this subparagraph if such taxpayer is a member of a financial services group defined in section 1504(a)(11) which includes—

(i) a bank (as defined in section 581), or


(4) APPLICABLE SECTION 38 CREDITS.—For purposes of subparagraph (B) of section 1503(b)(1), the term ‘applicable section 38 credits’ means the credits allowed under section 38 for the taxable year which is properly allocable to—

(A) the renewable energy production credit determined under section 42(a), and

(B) the energy credit determined under section 42, but only to the extent properly allocable to the renewable energy production credit determined under section 42.

(C) MODIFIED TAXABLE INCOME.—For purposes of this section—

(1) IN GENERAL.—The term ‘modified taxable income’ means the taxable income of the taxpayer for the taxable year, determined without regard to—

(A) any base erosion tax benefit with respect to any base erosion payment, or

(B) the base erosion tax benefit of any net operating loss deduction allowed under section 172 for the taxable year,
(2) BASE EROSION TAX BENEFIT.—
   (A) IN GENERAL.—The term ‘base erosion tax benefit’ means—
   (i) any deduction described in subsection (d)(1) or (d)(2) allocated under this chapter for the taxable year with respect to any base erosion payment,
   (ii) in the case of a base erosion payment described in subsection (d)(2), any deduction allowed under this chapter for the taxable year for depreciation (or amortization in lieu of depreciation) with respect to the property acquired with such payment,
   (iii) in the case of a base erosion payment described in subsection (d)(3),—
      (I) any reduction under section 1701(a)(1) or 1701(b) in the gross amount of premiums and other consideration for insurance contracts during the taxable year for premiums paid for reinsurance, and
      (II) any deduction under section 822(b)(4)(A) from the amount of gross premiums written on insurance contracts during the taxable year for premiums paid for reinsurance, and
   (iv) in the case of a base erosion payment described in subsection (d)(4), any reduction in gross receipts with respect to such payment in computing gross income of the taxpayer for the taxable year for purposes of this chapter.
   (B) TAX BENEFITS DISREGARDED IF TAX WITHHELD ON BASE EROSION PAYMENT.—
      (i) In general.—Except as provided in clause (ii), any base erosion tax benefit attributable to any base erosion payment—
         (I) on which tax is imposed by section 871 or 881, and
         (II) with respect to which tax has been deducted and withheld under section 1441 or 1442, shall not be taken into account in computing modified taxable income under paragraph (1)(A) or the base erosion percentage under paragraph (4).
      (ii) Exception.—The amount not taken into account in computing modified taxable income by reason of clause (i) shall be reduced under rules similar to the rules under section 163(j)(5)(B) (as in effect before the date of the enactment of the Tax Cuts and Jobs Act).
   (3) SPECIAL RULES FOR DETERMINING INTEREST FOR WHICH DEDUCTION ALLOWED.—For purposes of applying paragraph (1), in the case of a taxpayer to which section 163(j) applies for the taxable year, the reduction in the amount of interest for which a deduction is allowed by reason of section 163(j) shall be treated as allowable first to interest paid or accrued to persons who are not related parties with respect to the taxpayer and then to such related parties.
   (4) BASE EROSION PERCENTAGE.—For purposes of paragraph (1)(B)—
      (A) IN GENERAL.—The term ‘base erosion percentage’ means, with respect to any taxable year, any taxpayer—
         (i) the aggregate amount of basic erosion tax benefits of the taxpayer for the taxable year, by
            (I) the sum of—
               (i) the aggregate amount of the deductions (including deductions described in clauses (i) and (ii) of paragraph (2)(A)) allowable to the taxpayer under this chapter for the taxable year,
               (ii) the base erosion tax benefits described in clauses (iii) and (iv) of paragraph (2)(A) allowable to the taxpayer for the taxable year,
            (B) CERTAIN ITEMS NOT TAKEN INTO ACCOUNT.—The amount under subparagraph (A)(ii) shall be determined by not taking into account—
               (i) any deduction allowed under section 172, 264A, or 250 for the taxable year,
               (ii) any deduction for amounts paid or accrued for the construction or acquisition of property which are taken into account in determining income which is effectively connected with the conduct of a trade or business within the United States shall be treated as a deduction for payments which are not otherwise deductible for purposes of this section,
               (iii) any deduction for qualified derivative payments which are not treated as a base erosion payment if described in subsection (d)(4), and
            (D) BASE EROSION PAYMENT.—For purposes of this section—
               (I) IN GENERAL.—The term ‘base erosion payment’ means any amount paid or accrued by the taxpayer to a foreign person which is a related party of the taxpayer with respect to which a deduction is allowable under this chapter.
               (II) PURCHASE OF DEPRECIABLE PROPERTY.—Such term shall also include any amount paid or accrued by the taxpayer to a foreign person which is a related party of the taxpayer in connection with the acquisition by the taxpayer from such person of property of a character subject to the allowance for depreciation (or amortization in lieu of depreciation).
               (III) REINSURANCE PAYMENTS.—Such term shall also include any premium or other consideration paid or accrued by the taxpayer to a foreign person with respect to any reinsurance payments which are taken into account under sections 803(a)(1)(B) or 822(b)(4)(A).
               (IV) CERTAIN PAYMENTS TO EXPATRIATED ENTITIES.—
                  (A) IN GENERAL.—Such term shall also include any payment made by a taxpayer with respect to a person described in subparagraph (B) which results in the reduction of the gross receipts of the taxpayer.
                  (B) Person described in subparagraph (A).—A person is described in this subparagraph if such person is a—
                     (I) surrogate foreign corporation, or
                     (II) foreign person which is a related party to the taxpayer as of January 1, 2018, who was first treated as a surrogate foreign corporation on or after September 11, 2017, or
                     (III) foreign person which is a member of the same expanded affiliated group as the surrogate foreign corporation.
               (C) DEFINITIONS.—For purposes of this paragraph—
                  (1) SUBSIDIARY FOREIGN CORPORATION.—The term ‘subsidiary foreign corporation’ has the meaning given such term by section 7874(a)(2)(B) but does not include a foreign corporation treated as a domestic corporation under section 7871(b).
                  (2) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ has the meaning given such term by section 7874(c)(1).
               (5) EXCEPTION FOR CERTAIN AMOUNTS WITH RESPECT TO SERVICES.—Paragraph (1) shall not apply to any amount paid or accrued by a taxpayer for services if—
                  (A) such services are services which meet the requirements for eligibility for use of the services cost method under section 402 (determined without regard to the requirement that the services not contribute significantly to fundamental risks of business success or failure), and
                  (B) such services do not exceed the total services cost with no markup component.
               (6) APPLICABLE TAXPAYER.—For purposes of this section—
                  (A) IN GENERAL.—The term ‘applicable taxpayer’ means, with respect to any taxable year, a taxpayer—
                     (I) which is a corporation other than a regulated investment company, a real estate investment trust, or an S corporation,
                     (II) the average annual gross receipts of which for the 3-taxable year period ending with the preceding taxable year are at least $500,000,000, and
                     (III) the base erosion percentage (as determined under subsection (c)(4)) of which for the taxable year is 3 percent (2 percent in the case of a taxpayer described in subsection (b)(3)(B) or higher).
                  (B) PERSON DESCRIBED IN PARAGRAPH (A)(III).—A person is described in paragraph (A)(III) if—
                     (i) which is a foreign person, the preceding sentence shall not apply to the gross receipts of any United States person which are aggregated with the gross receipts by reason of paragraph (3),
                     (ii) other rules made applicable—Rules similar to the rules of subparagraphs (B), (C), and (D) of section 48(c)(3) shall apply in determining gross receipts for purposes of this section,
                  (C) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) of section 52 shall be treated as 1 person for purposes of this section, and subsection (c)(4), except that in applying section 1563 for purposes of section 52, the exception for foreign corporations under section 1563(b)(2)(C) shall be disregarded.
               (7) RELATED PARTY.—For purposes of this section—
                  (A) ANY 25 PERCENT OWNER.—Any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or any 25 percent owner of the taxpayer,
                  (B) 25 PERCENT OWNER.—The term ‘25 percent owner’ means any person who owns 25 percent or higher.
                  (C) IN GENERAL.—The term ‘related party’ means, with respect to any applicable taxpayer—
                     (i) any 25 percent owner of the taxpayer,
                     (ii) any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or any 25 percent owner of the taxpayer,
                     (iii) any other person who is related (within the meaning of section 482) to the taxpayer,
                  (D) 25-PERCENT OWNER.—The term ‘25 percent owner’ means any person who owns 25 percent or higher.
               (8) SECTION 318 TO APPLY.—Section 318 shall apply for purposes of paragraphs (1) and (2), except that—
                  (A) ‘10 percent’ shall be substituted for ‘50 percent’ in section 318(a)(2)(C), and
                  (B) subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.
               (9) EXCEPTION FOR CERTAIN PAYMENTS MADE IN THE ORDINARY COURSE OF TRADE OR BUSINESS.—For purposes of this section—
                  (A) IN GENERAL.—Except as provided in paragraph (3), any qualified derivative payment shall not be treated as a base erosion payment.
                  (B) QUALIFIED DERIVATIVE PAYMENT.—In general.—The term ‘qualified derivative payment’ means any payment made by a taxpayer pursuant to a derivative with respect to which—
                     (i) recognizes gain or loss as if such derivative were sold for its fair market value on the last business day of the taxable year (and such additional times as the Secretary may prescribe in the title or the taxpayer’s method of accounting),
                     (ii) treats any gain or loss so recognized as ordinary, and
                     (iii) treats the character of all items of income, deduction, gain, or loss with respect to a payment pursuant to the derivative as ordinary.
                  (C) REPORTING REQUIREMENTS.—Payments shall be treated as qualified derivative payments under subparagraph (A) for any taxable year unless the taxpayer includes in the information report required to be reported under section 6043A(b)(2) with respect to such taxable year such information as is necessary to identify the payments to be so treated and such other information as the Secretary may determine necessary to carry out the provisions of this subsection.
               (10) EXCEPTIONS FOR PAYMENTS OTHERWISE TREATED AS BASE EROSION PAYMENTS.—This subsection shall not apply with respect to any of a derivative if—
                  (A) the payment would be treated as a base erosion payment if it were not made pursuant to a derivative, including any interest, royalty, or service payment, or
                  (B) in the case of a contract which has derivative characteristics the payment is properly allocable to the nonderivative component.
Such term shall not include any insurance, annuity, or reinsurance contract issued by an insurance company to which chapter L applies (or issued by any foreign corporation to which such chapter would apply if such foreign corporation were a domestic corporation).

**REGULATIONS.**—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section, including regulations—

(1) providing for such adjustments to the applicable apportionments as are necessary to prevent the avoidance of the purposes of this section, including through—

(A) the use of unrelated persons, conduit transactions, or other intermediaries, or

(B) transactions or arrangements designed, in whole or in part—

(i) to characterize payments otherwise subject to this section as payments not subject to this section, or

(ii) to substitute payments not subject to this section for payments otherwise subject to this section and

(2) for the application of subsection (g), including rules to prevent the avoidance of the exceptions described in paragraphs (g)(1) and (g)(2).

(b) REPORTING REQUIREMENTS AND PENALTIES—

(1) IN GENERAL.—Subsection (b) of section 6038A is amended as follows:

(2) REQUIRED INFORMATION.—

(3) IN GENERAL.—For purposes of subsection (a), the information described in this subsection is such information as the Secretary prescribes by regulations relating to—

(A) the name, principal place of business, nature of business, and country or countries in which organized or resident, of each person which

(i) is a related party to the reporting corporation,

(ii) had any transaction with the reporting corporation during its taxable year,

(B) the manner in which the reporting corporation is related to each person referred to in subparagraph (A), and

(C) transactions between the reporting corporation and each foreign person which is a related party to the reporting corporation.

(2) ADDITIONAL INFORMATION REGARDING BASE EROSION PAYMENTS.—For purposes of subsection (b), the information described in this subsection shall also include—

(A) such information as the Secretary determines necessary to determine the base erosion minimum tax amount, base erosion payments, and basis of similar instruments for purposes of section 959 for the taxable year, and

(B) such other information as the Secretary determines necessary to carry out such section. For purposes of this paragraph, any term used in this paragraph which is also used in section 959 shall have the same meaning as when used in such section.

(2) INCREASE IN PENALTY.—Paragraphs (1) and (2) of section 6038A(d) are each amended by striking "$10,000" and inserting "$25,000".

(c) DISALLOWANCE OF CREDITS AGAINST BASE EROSION TAX.—Paragraph (2) of section 26(b) is amended by inserting after subparagraph (A) the following new subparagraph:

(2) SECTION 959 (RELATING TO BASE EROSION AND ANTI-ABUSE TAXES).

**CONFORMING AMENDMENTS.**—

(1) The table of parts for chapter 1 of part VI is amended by adding after the item relating to part VII the following new item:

**PART VII. BASE EROSION AND ANTI-ABUSE TAXES.**

(2) Paragraph (1) of section 822(a), as amended by this Act, is amended by inserting "or 954A." after "section 11."

(3) Subparagraph (A) of section 6525(c)(1), as amended by section 13001, is amended to read as follows:

(A) the sum of—

(i) the tax imposed by section 11, or subchapter L of chapter 1, whichever is applicable, plus

(ii) the tax imposed by section 954A, over 14 percent of Subpart G section 6555(g)(1), as amended by sections 12001 and 13001, is amended by striking "plus" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

(iii) the tax imposed by section 954A, plus.

(B) Subparagraphs (A)(i) and (B)(ii) of section 6555(c)(1), as amended by sections 12001 and 13001, are each amended by inserting "and modified taxable income" after "taxable income".

(C) Subparagraph (B) of section 6555(e)(2) is amended by adding at the end the following new clause:

(iii) MODIFIED TAXABLE INCOME.—The term "modified taxable income" has the meaning given such term by section 954C(1).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to base erosion payments (as defined in section 6555(g)(1) of the Internal Revenue Code of 1986, as added by this section) paid or accrued in taxable years beginning after December 31, 2020.

**APPENDIX III. OTHER PROVISIONS**

SEC. 14501. RESTRICTION ON INSURANCE BUSINESS EXCEPTION TO PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) IN GENERAL.—Section 1297(b)(2)(B) is amended to read as follows:

(2) derived in the active conduct of an insurance business by a qualifying insurance corporation (as defined in subsection (f)).

(b) QUALIFYING INSURANCE CORPORATION DEFINED.—Section 1297 is amended by adding at the end the following new subsection:

(f) QUALIFYING INSURANCE CORPORATION.—For purposes of subsection (b)(2)(B)—

(1) IN GENERAL.—The term "qualifying insurance corporation" means, with respect to any taxable year, a foreign corporation—

(A) which would be subject to tax under subchapter L if such corporation were a domestic corporation, and

(B) the applicable insurance liabilities of which constitute more than 25 percent of its total assets, determined on the basis of such liabilities and assets as reported on the corporation's applicable financial statement for the last year ending with or within the taxable year.

(2) ALTERNATIVE FACTS AND CIRCUMSTANCES TEST FOR CERTAIN CORPORATIONS.——If a corporation (as defined in subsection (f)) is a qualified foreign insurance corporation under paragraph (1) solely because the percentage determined under paragraph (1)(B) is 25 percent or less, a United States person that owns stock in such corporation may elect to treat such stock as stock of a qualifying insurance corporation if—

(1) such percentage so determined for the corporation is at least 10 percent, and

(2) under regulations provided by the Secretary, based on the applicable facts and circumstances—

(i) the corporation is predominantly engaged in an insurance business, and

(ii) such failure is due solely to run-off-related or rating-related circumstances involving such insurance business.

(3) APPLICABLE INSURANCE LIABILITIES.—For purposes of this subsection—

(A) the term "applicable insurance liabilities" means, with respect to any life or property and casualty insurance business—

(i) losses and loss adjustment expenses; and

(ii) reserves (other than deficiency, contingency, or unearned premium reserves) for life and health insurance risks and life and health insurance claims with respect to contracts providing coverage for mortality or morbidity risks.

(B) LIMITATIONS ON AMOUNT OF LIABILITIES.—Any amount determined under clause (i) or (ii) of subparagraph (A) shall not exceed the lesser of such amount—

(i) as reported to the applicable insurance regulatory body in its annual financial statement described in paragraph (4)(A) (or, if less, the amount required by applicable law or regulation), or

(ii) determined under regulations prescribed by the Secretary.

(4) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

(A) APPLICABLE FINANCIAL STATEMENT.—The term "applicable financial statement" means a statement for financial reporting purposes under section 11.

(i) is made on the basis of generally accepted accounting principles,

(ii) is made on the basis of international financial reporting standards, and

(iii) except as otherwise provided by the Secretary, in regulations, contains no statement that meets the requirements of clause (i), or

(B) APPLICABLE INSURANCE REGULATORY BODY.—The term "applicable insurance regulatory body" means, with respect to any insurance business, the entity that has the power to license, authorize, or regulate such business and to which the statement described in subparagraph (A) is provided.

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

**SEC. 14502. RETAIL OF FAIR MARKET VALUE METHOD OF INTEREST EXPENSE APPORTIONMENT**

(a) IN GENERAL.—Paragraph (2) of section 8604 is amended to read as follows:

(2) GROSS INCOME AND FAIR MARKET VALUE METHODS MAY NOT BE USED FOR INTEREST.—All allocations and apportionments of interest expense shall be determined using the adjusted bases of assets rather than on the basis of the fair market value of the assets or gross income.

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

**TITLE II**

**SEC. 20001. OIL AND GAS PROGRAM**

(a) DEFINITIONS.—In this title—

(1) COASTAL PLAIN.—The term "Coastal Plain" means the area identified as the 1002 Area on the plates prepared by the United States Geological Survey entitled "ANWR Map—Plate 1" and "ANWR Map—Plate 2", dated October 24, 2017, and on file with the United States
The House recedes from its disagreement with the Senate at the conference on the dis- 
agreeing votes of the two Houses on the amendment to the Senate bill, and the Senate 
accordingly agrees to the amendment with amendments, except for clerical corrections, 
conforming changes made necessary by agreements reached by 
the conferences, and minor drafting and clari-
fying changes.

TITe I
INDIVIDUAL TAxPrOVisIONS
A. Reduction and Simplification of Individual Income Tax Rates (sec. 1001 of the House 
bill, sec. 11001 of the Senate amendment, and sec. 1 of the Code)

PRESENT LAW
In general
To determine regular tax liability, an indi-
vidual taxpayer generally must apply the tax 
rate schedules (or tax the tables) to his or 
her regular taxable income. The rate sched-
ules are broken into several ranges of in-
come, known as income brackets, and the 
margin al tax rates increase as a taxpayer’s 
income increases.

Tax rate schedules
Separate rate schedules apply based on an 
individual’s filing status. For 2017, the reg-
ular individual income tax rate schedules are as fol-
ows:

<table>
<thead>
<tr>
<th>Income Bracket</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $9,275</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $9,275 but not over $39,475</td>
<td>Incremental 15% of the excess over $9,275</td>
</tr>
<tr>
<td>Over $39,475 but not over $74,200</td>
<td>Incremental 25% of the excess over $39,475</td>
</tr>
<tr>
<td>Over $74,200 but not over $141,300</td>
<td>Incremental 28% of the excess over $74,200</td>
</tr>
<tr>
<td>Over $141,300 but not over $213,450</td>
<td>Incremental 33% of the excess over $141,300</td>
</tr>
<tr>
<td>Over $213,450 but not over $311,350</td>
<td>Incremental 35% of the excess over $213,450</td>
</tr>
<tr>
<td>Over $311,350 but not over $405,925</td>
<td>Incremental 39% of the excess over $311,350</td>
</tr>
<tr>
<td>Over $405,925 but not over $600,000</td>
<td>Incremental 39.6% of the excess over $405,925</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Heads of Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $11,550</td>
</tr>
<tr>
<td>Over $11,550 but not over $35,950</td>
</tr>
<tr>
<td>Over $35,950 but not over $81,800</td>
</tr>
<tr>
<td>Over $81,800 but not over $141,300</td>
</tr>
<tr>
<td>Over $141,300 but not over $208,350</td>
</tr>
<tr>
<td>Over $208,350 but not over $275,500</td>
</tr>
<tr>
<td>Over $275,500 but not over $311,350</td>
</tr>
<tr>
<td>Over $311,350 but not over $405,925</td>
</tr>
<tr>
<td>Over $405,925 but not over $600,000</td>
</tr>
</tbody>
</table>

Married Individuals Filing Joint Returns and Surviving Spouses
<table>
<thead>
<tr>
<th>Income Bracket</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $18,650</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $18,650 but not over $55,850</td>
<td>Incremental 16.5% of the excess over $18,650</td>
</tr>
<tr>
<td>Over $55,850 but not over $103,600</td>
<td>Incremental 28% of the excess over $55,850</td>
</tr>
<tr>
<td>Over $103,600 but not over $153,100</td>
<td>Incremental 33% of the excess over $103,600</td>
</tr>
<tr>
<td>Over $153,100 but not over $233,350</td>
<td>Incremental 35% of the excess over $153,100</td>
</tr>
<tr>
<td>Over $233,350 but not over $311,350</td>
<td>Incremental 39% of the excess over $233,350</td>
</tr>
<tr>
<td>Over $311,350 but not over $405,925</td>
<td>Incremental 39% of the excess over $311,350</td>
</tr>
<tr>
<td>Over $405,925 but not over $600,000</td>
<td>Incremental 39.6% of the excess over $405,925</td>
</tr>
</tbody>
</table>

Married Individuals Filing Separate Returns
<table>
<thead>
<tr>
<th>Income Bracket</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $9,325</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $9,325 but not over $37,950</td>
<td>Incremental 16.5% of the excess over $9,325</td>
</tr>
<tr>
<td>Over $37,950 but not over $64,200</td>
<td>Incremental 28% of the excess over $37,950</td>
</tr>
<tr>
<td>Over $64,200 but not over $103,100</td>
<td>Incremental 33% of the excess over $64,200</td>
</tr>
<tr>
<td>Over $103,100 but not over $153,100</td>
<td>Incremental 35% of the excess over $103,100</td>
</tr>
<tr>
<td>Over $153,100 but not over $208,350</td>
<td>Incremental 39% of the excess over $153,100</td>
</tr>
<tr>
<td>Over $208,350 but not over $275,500</td>
<td>Incremental 39% of the excess over $208,350</td>
</tr>
<tr>
<td>Over $275,500 but not over $311,350</td>
<td>Incremental 39.6% of the excess over $275,500</td>
</tr>
</tbody>
</table>

Married Individuals Filing Joint Returns and Surviving Spouses
<table>
<thead>
<tr>
<th>Income Bracket</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $11,550</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $11,550 but not over $35,950</td>
<td>Incremental 16.5% of the excess over $11,550</td>
</tr>
<tr>
<td>Over $35,950 but not over $55,850</td>
<td>Incremental 28% of the excess over $35,950</td>
</tr>
<tr>
<td>Over $55,850 but not over $81,800</td>
<td>Incremental 33% of the excess over $55,850</td>
</tr>
<tr>
<td>Over $81,800 but not over $103,600</td>
<td>Incremental 35% of the excess over $81,800</td>
</tr>
<tr>
<td>Over $103,600 but not over $153,100</td>
<td>Incremental 39% of the excess over $103,600</td>
</tr>
<tr>
<td>Over $153,100 but not over $208,350</td>
<td>Incremental 39% of the excess over $153,100</td>
</tr>
<tr>
<td>Over $208,350 but not over $275,500</td>
<td>Incremental 39.6% of the excess over $208,350</td>
</tr>
</tbody>
</table>

Unearned income of children

Special rules (generally referred to as the "kiddie tax") apply to the net unearned income of certain children. Generally, the kiddie tax applies if (1) the child has not reached the age of 19 by the close of the taxable year, or the child is a full-time student under the age of 24, and either of the child's parents files a joint return, or (2) the child has reached the age of 19 but has not attained the age of 24 and the child's unearned income exceeds $2,100 (for 2017); and (3) the child does not file a joint return. The kiddie tax applies regardless of whether the child's unearned income is derived from passive or nonpassive sources. The kiddie tax is imposed on the child's unearned income and then applying the parent's tax rates if the parent's tax rates are higher than the child's. If the parent is married, the联合纳税人 whichever benefits the children more, irrespective of whether the parents' tax rates are the same or not. If the child's unearned income is more than $2,100, it is taxed at the parent's tax rate. A child's "net unearned income" is the difference between the income (adjusted for any capital gains or losses) and the deductions allowed. The net unearned income is subject to the tax.

Under these rules, the net unearned income of a child (for 2017, unearned income over $2,100) is taxed at the parents' tax rates if the parent's tax rates are higher than the child's. The remaining of a child's taxable income (i.e., earned income, plus unearned income up to $2,100 (for 2017), less the child's standard deduction) is taxed at the child's rates, regardless of whether the child is subject to the kiddie tax.

The "allocable parental tax" is the hypothetical income in the case of an individual, estate, or trust, that may be paid by a regulated investment company (RIC) or a real estate investment trust (REIT) for any taxable year to which the qualified dividend income received by the RIC or the REIT is less than 95 percent of the RIC's or the REIT's adjusted net capital gain for the year. The term "qualified dividend income" refers to the tax treatment of dividends from qualified dividend income for purposes of determining the amount of deductible investment interest only if the shareholder elects to treat the dividend as not eligible for the reduced rates.

In general, the tax on the child's income with regard to the kiddie tax provisions.

Under certain circumstances, a parent may elect to report a child's unearned income on the parent's return. Capital gains rates

In general

In the case of an individual, estate, or trust, any adjusted net capital gain which otherwise would be taxed at the 15- or 20-percent rate at rates over $2,100 (for 2017), plus (b) the greater of (1) the minimum standard deduction amount or (2) the amount of these taxes for the previous taxable year. The kiddie tax is imposed on the child's unearned income which includes gains and losses from the sale or exchange of capital assets, including collectibles, commodities, and certain securities. The kiddie tax applies to the extent that the taxpayer disposes of the asset. The threshold amount is $250,000 in the case of a joint return or surviving spouse, $125,000 in the case of a single individual filing a separate return, and $200,000 in the case of any other individual.

Definitions

Net capital gain

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. The tax is a 10 percent tax on the amount of gain that the individual treats as investment income for purposes of determining the amount of deductible investment interest until a taxpayer disposes of the asset. The tax is 3.8 percent of the lesser of net investment income in the case of an individual, estate, or trust. In the case of an individual, the tax is 3.8 percent of the lesser of net investment income, which includes gains and losses from the sale or exchange of capital assets, (1) the maximum standard deduction allowed to dependents ($1,050 for 2017), (2) the sum of (1) the minimum standard deduction, (3) the lesser of (a) such minimum standard deduction or (b) the amount of these taxes for the previous taxable year, (2) the greater of (1) the minimum standard deduction or (2) the amount of these taxes for the previous taxable year, (4) the amount of these taxes for the previous taxable year, (5) certain U.S. publications, (6) certain commodity derivative financial instruments, (7) hedging transactions, and (8) business supplies. In addition, the net gain from the disposition of certain property held primarily for sale to customers is treated as ordinary income. Gain or loss is treated as ordinary income for purposes of determining the amount of investment interest income for purposes of determining the investment interest limitation under section 163(d).

Adjusted net capital gain

The "adjusted net capital gain" of an individual is the gross capital gain reduced (but not below zero) by the amount of the 28-percent rate gain and the unrecaptured section 1250 gain. The net long-term capital gain is reduced by the amount of gain that the individual treats as investment income for purposes of determining the investment interest limitation under section 163(d).

Adjusted net capital gain is increased by the amount of qualified dividend income. A dividend is the distribution of property made by a corporation out of its after-tax earnings and profits. Qualified dividends generally includes dividends received from domestic corporations and qualified foreign corporations. The term "qualified foreign corporation" includes a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States or any treaty with respect to stock that is readily tradable on an established securities market in the United States.

If a shareholder does not hold a share of stock for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date (as measured under section 246(c)), dividends received on the stock are not eligible for the reduced rates. Also, the reduced rates are not available for dividends to a corporation that is required to make related payments with respect to positions in substantially similar or related property.

Dividends received from a corporation that is a passive foreign investment company (as defined in section 1297) in either the taxable year of the distribution, or the preceding taxable year, are not qualified dividends. A dividend is treated as investment income for purposes of determining the amount of deductible investment interest only if the shareholder elects to treat the dividend as not eligible for the reduced rates.

The amount of dividends qualifying for reduced rates that may be paid by a regulated investment company or a real estate investment trust for any taxable year in which the qualified dividend income received by the RIC is less than 95 percent of its gross income (as specially computed) may not exceed the sum of (1) the qualified dividend income of the RIC for the taxable year and (2) the amount of earnings and profits accumulated in a non-RIC taxable year that were distributed by the RIC during the taxable year.

The amount of qualified dividend income that may be paid to a regulated investment trust ("REIT") for any taxable year may not exceed the sum of (1) the qualified dividend income of the REIT for the taxable year, (2) the amount that would be attributable to long-term capital gains and losses from the sale or exchange of collectibles (as defined in section 408(m) without regard to paragraph (3) thereof) and the amount of gain treated as investment income for purposes of determining the investment interest limitation under section 163(d).

The term "28-percent rate gain" means the excess of the sum of the amount of net gain attributable to long-term capital gains and losses from the sale or exchange of collectibles (as defined in section 408(m) without regard to paragraph (3) thereof) and the amount of gain treated as investment income for purposes of determining the investment interest limitation under section 163(d) over the sum of (1) the adjusted net capital gain for the taxable year and (2) the amount of qualified dividend income received by the taxpayer during the taxable year.
out at a rate of 6 percent for taxpayers whose AGI is in excess of these amounts. Thus, in the case of a married taxpayer filing a joint return, if AGI is in excess of $1,200,000 (a bracketed amount of $90,000) phases out over an income range of $410,000. The phaseout thresholds are indexed for inflation.

Simplification of tax on unearned income of children

The provision simplifies the “kiddie tax” by effectively applying ordinary and capital gains rates and tax brackets to estates of the net unearned income of a child. Thus, as under present law, taxable income attributable to earned income is taxed according to an unmarried taxpayers’ brackets and rates. Taxable income attributable to net unearned income is taxed according to the brackets applicable to trusts and estates, this amount for married taxpayers filing joint returns, and income taxed at preferential rates. Thus, under the provision, the child’s tax is unaffected by the tax situation of the child’s parent or the unearned income of a child.

Maximum rates on capital gains and qualified dividends

The provision generally retains the present-law maximum rates on net capital gain. The breakpoints between the zero- and 15-percent rates (“15-percent breakpoint”) and the 15- and 20-percent rates (“20-percent breakpoint”) are based on the same amounts as the breakpoints under present law, except the breakpoints are indexed using the C–CPI–U in taxable years beginning after 2017. Thus, for 2018, the 15-percent breakpoint is $77,200 for joint returns and surviving spouses (one-half of this amount for married taxpayers filing separately). $51,700 for heads of household, $34,800 for estates and trusts, and $38,600 for other unmarried individuals.

The 20-percent breakpoint is $479,000 for joint returns and surviving spouses (one-half of this amount for married taxpayers filing separately), $452,400 for heads of household, $32,700 for estates and trusts, and $425,800 for other unmarried individuals.

Prior law, which uses a measure of the CPI-U, the new inflation adjustment uses the C–CPI–U.

The provision’s rate structure does not apply to taxable years beginning after December 31, 2025.

Temporary simplification of tax on unearned income of children

The Senate amendment follows the House bill in applying ordinary and capital gains rates applicable to trusts and estates to the net unearned income of a child, but does not apply these changes to taxable years beginning after December 31, 2025.

Maximum rates on capital gains and qualified dividends

The Senate amendment follows the House bill and generally retains the present-law maximum rates on net capital gain and qualified dividends.

Paid preparer due diligence requirement for head of household status

The Senate amendment directs the Secretary of the Treasury to promulgate due diligence requirements for paid preparers in determining eligibility for a taxpayer to file a tax return attributable to trust and estate income.

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

CONFERENCE AGREEMENT

The conference agreement temporarily rephrases the existing rate structure with a new rate structure.
<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Income Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 to $9,525</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>$9,526 to $19,050</td>
<td>$935 plus 12% of the excess over $9,525</td>
</tr>
<tr>
<td>$19,051 to $37,650</td>
<td>$935 plus 22% of the excess over $19,050</td>
</tr>
<tr>
<td>$37,651 to $82,500</td>
<td>$18,700 plus 24% of the excess over $37,650</td>
</tr>
<tr>
<td>$82,501 to $157,500</td>
<td>$36,400 plus 24% of the excess over $82,500</td>
</tr>
<tr>
<td>$157,501 to $300,000</td>
<td>$75,500 plus 32% of the excess over $157,500</td>
</tr>
<tr>
<td>$300,001 to $400,000</td>
<td>$120,000 plus 35% of the excess over $300,000</td>
</tr>
<tr>
<td>$400,001 to $500,000</td>
<td>$157,500 plus 39% of the excess over $400,000</td>
</tr>
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<td>$500,001 to $600,000</td>
<td>$200,000 plus 38% of the excess over $500,000</td>
</tr>
<tr>
<td>$600,001 to $750,000</td>
<td>$280,500 plus 38% of the excess over $600,000</td>
</tr>
<tr>
<td>$750,001 to $1,000,000</td>
<td>$375,000 plus 39% of the excess over $750,000</td>
</tr>
<tr>
<td>$1,000,001 to $2,000,000</td>
<td>$500,000 plus 39% of the excess over $1,000,000</td>
</tr>
<tr>
<td>$2,000,001 to $3,000,000</td>
<td>$625,000 plus 39% of the excess over $2,000,000</td>
</tr>
<tr>
<td>$3,000,001 to $5,000,000</td>
<td>$1,000,000 plus 39% of the excess over $3,000,000</td>
</tr>
<tr>
<td>$5,000,001 to $10,000,000</td>
<td>$1,500,000 plus 39% of the excess over $5,000,000</td>
</tr>
<tr>
<td>$10,000,001 to $30,000,000</td>
<td>$5,000,000 plus 38% of the excess over $10,000,000</td>
</tr>
</tbody>
</table>

The provision's rate structure does not apply to taxable years beginning after December 31, 2025.

The conference agreement does not follow the House bill in phasing out the benefit of the 12-percent bracket for taxpayers with adjusted gross income in excess of $1,000,000 ($2,000,000 in the case of married taxpayers filing jointly).

The conference agreement follows the House bill and generally retains present-law maximum rates on net capital gains and qualified dividends.

The conference agreement follows the House bill in simplifying the tax on the unearned income of children. This provision does not apply to taxable years beginning after December 31, 2025.

The conference agreement follows the Senate amendment and directs the Secretary of the Treasury to promulgate due diligence requirements for paid preparers in determining eligibility for a taxpayer to file as head of household.

**Effective date.**—The provision applies to taxable years beginning after December 31, 2017.
that: (i) such individual and his spouse, at the close of the taxable year, had the same household as their home; (ii) the individual’s spouse does not make a separate return; and (iii) neither the individual nor his spouse is a dependent of another taxpayer who has income (other than earned income) in excess of $500 (indexed for inflation).

The Senate amendment makes the enhanced deduction for qualified disability trusts.

Under the provision, the Secretary of the Treasury is to develop rules to determine the amount of any such deduction to be withheld by employers from a taxpayer’s wages.

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

SENATE AMENDMENT

The Senate amendment suspends the deduction for personal exemptions.10

The Senate amendment makes the House bill in modifying the requirements for those who are required to file a tax return.

The provision does not apply to taxable years beginning after December 31, 2016.

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

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment and suspends the deduction for personal exemptions. The suspension does not apply to taxable years beginning after December 31, 2016.

The conference agreement generally follows the House bill in modifying the withholding rules to reflect that taxpayers no longer claim personal exemptions under the conference agreement.

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

The conference agreement generally follows the House bill in modifying the withholding rules to reflect that taxpayers no longer claim personal exemptions under the conference agreement.

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

The conference agreement generally follows the House bill in modifying the withholding rules to reflect that taxpayers no longer claim personal exemptions under the conference agreement.

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

The Senate amendment generally follows the House bill.19

The provision requiring C–CPI–U indexing after 2017 is permanent. Thus, after certain temporary tax parameters sunset, such as bracket thresholds and the increased basic standard deduction, with the C–CPI–U in tax years beginning after December 31, 2017.

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

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

B. Treatment of Business Income of Individuals, Trusts, and Estates

1. Deduction for qualified business income (sec. 199A, the House bill, sec. 11011 of the Senate amendment, and sec. 199A of the Code)

PRESENT LAW

Individual income tax rates

To determine regular tax liability, an individual taxpayer generally must apply the tax rate schedules (or the tax tables) to his or her regular taxable income. The rate schedules are broken into several ranges of income, known as brackets, and the marginal tax rate increases as a taxpayer’s income increases. Separate rate schedules apply based on an individual’s filing status (i.e., single, head of household, married filing jointly, or married filing separately).

For 2017, the regular individual income tax rate schedule provides rates of 10, 15, 25, 28, 33, 35, and 39.6 percent.

Partnerships

Partnerships generally are treated for Federal income tax purposes as pass-through entities. Individuals, Trusts, and Estates are subject to tax on their share of the partnership’s income.

Items of income (including taxable net income), gain, loss, deduction, and credit of the partnership are taken into account by a partner in computing his or her share of the tax liability (based on the partnership’s method of accounting and regardless of whether the income is distributed to the partners).23 A partner’s share of deductions, losses, or credits generally is limited to the partner’s adjusted basis in its partnership interest.24 Losses not allowed as a result of that limitation generally are carried forward to the next year. A partner’s adjusted basis in the partnership interest generally equals the sum of (1) the partner’s capital contributions to the partnership, (2) the partner’s distributive share of losses allowed as a deduction and certain non deductible expenditures, and (2) any partner’s distributive share of losses allowed as a deduction and certain non deductible expenditures.25

Partnerships may allocate items of income, gain, loss, deduction, and credit among the partners, provided the allocations have substantial economic effect.26 In general, an allocation has substantial economic effect to the extent the partner to which the allocation is made receives the economic benefit or bears the economic burden of such allocation.27 Generally, allocations substantially affect the dollar amounts to be received by the partners from the partnership independent of tax consequences.28

Under present law, a publicly traded partnership generally is treated as a corporation for Federal tax purposes.29 For this purpose, "publicly traded partnership" is defined as a publicly traded Master Limited Partnership, a publicly traded Real Estate Investment Trust, or a publicly traded limited liability company.30

Among the inflation-indexed tax parameters that are adjusted for inflation to protect taxpayers from the effects of rising prices, Most of the adjustments are based on annual changes in the level of the Consumer Price Index for All Urban Consumers (‘‘C–CPI–U’’).31 The CPI–U, like the CPI–U, is a measure of the average change over time in prices paid by urban consumers. It is developed and published by the Department of Labor, but differs from the CPI–U in accounting for the ability of individuals to alter their consumption patterns in response to relative price changes. The C–CPI–U accomplishes this by allowing for consumer substitution between item categories in the market basket of consumer goods and services that make up the index, while the CPI–U only allows for modest substitution within item categories.

Under the provision, indexed parameters in the Code switch from CPI–U indexing to C–CPI–U indexing going forward in taxable years beginning after December 31, 2017. Therefore, in the case of any existing tax parameters that are not reset for 2018, the provision indexes parameters as if CPI–U applies through 2017 and C–CPI–U applies for years thereafter.

Tax parameters with cost-of-living adjustment base years of 2016 and later are indexed solely with C–CPI–U. Therefore, tax values that are based for 2018 are indexed by the C–CPI–U in taxable years beginning after December 31, 2017.

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

10 The provision also clarifies that, for purposes of taxable years in which the personal exemption is reduced to zero, this should not alter the operation of those provisions of the Code which refer to a taxpayer (or the conference agreement with respect to whom a taxpayer is allowed a deduction) under section 151. Thus, for instance, sec. 260(a) allows a credit against tax with respect to each qualifying child of the taxpayer for which the taxpayer is allowed a deduction under section 151. A qualifying child under section 151(b)(1) (who is not eligible for the credit, notwithstanding that the deduction under section 151(b) has been reduced to zero).

11 Generally, calendar year values for cost of living by using the percentage by which the price index for the preceding calendar year exceeds the price index for a base calendar year. Sec. 1(f).

12 The Senate Amendment indexes all tax values that are temporarily reset for 2018, including the increased standard deduction for C–CPI–U in taxable years beginning after December 31, 2018.
a publicly traded partnership means any partnership if interests in the partnership are traded on an established securities market or interests in the partnership are readily tradable on a secondary market (or the substantial equivalent thereof). A
An exception from corporate treatment is provided for certain publicly traded partnerships, 90 percent or more of whose gross income is qualifying income.31

S corporations
For Federal income tax purposes, an S corporation (often not subject to partnership levels, the corporate level.32 Items of income (including tax-exempt income), gain, loss, deduction, and credit of the S corporation are taken into account by the S corporation shareholders in computing their income tax liabilities (based on the S corporation’s method of accounting and regardless of whether the item is not subject to tax). A shareholder’s deduction for corporate losses is limited to the sum of the shareholder’s adjusted basis in its S corporation stock and the indebtedness of the S corporation to such shareholder. Losses not allowed as a result of that limitation generally are carried forward to the next year. A shareholder’s pro rata share of an S corporation stock generally equals the sum of (1) the shareholder’s capital contributions to the S corporation and (2) the shareholder’s pro rata share of corporate losses, less (1) the shareholder’s pro rata share of losses allowed as a deduction and certain nondeductible expenditures, and (2) any S corporation distributions to the shareholder.33

In general, an S corporation shareholder is not subject to tax on corporate distributions unless the distributions exceed the shareholder’s basis in the stock of the corporation.34

Elected S corporation status
To be eligible to elect S corporation status, a corporation may not have more than 100 shareholders and may not have more than one class of stock. Only individuals, trusts, and certain tax-exempt organizations, and certain trusts and estates are permitted shareholders of an S corporation.35

Sold proprietors
Unlike a C corporation, partnership, or S corporation, a business conducted as a sole proprietorship is not treated as an entity separate from the business owner36 for Federal income tax purposes.37 Rather, the business owner is taxed directly on business income, and files Schedule C (sole proprietors generally), Schedule K-1 (partnership and royalty income), or Schedule P (income with his or her individual tax return. Furthermore, transfer of a sole proprietorship is treated as a transfer of each individual asset of the business.38 Nonetheless, a sole proprietorship is treated as an entity separate from its owner for employment tax purposes,39 for certain excise taxes, and certain information reporting requirements.39

HOUSE BILL
Qualified business income of an individual from a partnership, S corporation, or sole proprietorship (other than any portion that is a capital gain or loss) is treated as net business income from an active business activity, reduced by carryover business losses and by certain net business losses from the current year, as determined under the provision.

Determination of rate
25-percent rate
The provision provides that an individual’s tax is reduced to reflect a maximum rate of 25 percent qualified business income. Qualified business income includes the capital percentage, generally 30 percent, of net business income. The percentage differs in the case of specified service activities or in the case of a taxpayer election to prove out the case of a taxpayer election to prove out the provision.

Taxable income (reduced by net capital gain) of the taxpayer and the capital percentage from the marketing of any mineral or natural resource (including, fertilizer, geothermal energy, and timber), industrial by-products, and the extraction or storage of certain fuel mixtures, alternative fuel, alcohol fuel, or biodiesel fuel. It also includes income from commodities (not described in section 1221(a)(1)) or futures, options, or forward contracts with respect to such commodities (including foreign currency transactions of a commodity pool) where a principal activity of the partnership is the buying and selling of such commodities. Net business income includes income from any trade or business activity, including service activities, that involves the conduct of any trade or business over his or her net business income over the four highest brackets. Qualified active business income includes income from any active business activity over his or her net business income.

Qualified business income of an individual (married filing jointly) has $70,000 of qualified active business income and $40,000 of other income, resulting in taxable income of $100,000. The sum of 25 percent of the qualified active business income is subject to tax at nine percent.

The provision provides that a 25-percent tax rate applies generally to dividends received from a real estate investment trust (other than any portion that is a capital gain dividend or a qualified dividend), and applies generally to dividends that are includable in gross income from certain cooperatives.

Nine-percent rate
A special rule provides a reduced tax rate of 11, 10, or nine percent in the case of an individual’s qualified active business income below an indexed threshold of $75,000 (in the case of a joint return or a surviving spouse) (the “nine-percent bracket threshold amount”). The indexed $75,000 threshold is three quarters of that amount for individuals filing as head of household and half that amount for other individuals filing as married filing separately. The reduced rate is phase in. The reduced rate is 11 percent (that is, one percentage point below the 12 percent rate) for taxable years beginning in 2018 and 2019, and is 10 percent (that is, two percentage points below the 12 percent rate) for taxable years beginning in 2020 and 2021. The reduced rate is nine percent (that is, three percentage points below the 12 percent rate).

For example, assume that in 2022, an individual (married filing jointly) has $70,000 of qualified active business income and $40,000 of other income, resulting in taxable income of $100,000. The sum of qualified active business income is subject to tax at nine percent.

The reduced rate is phased in. The reduced rate is 11 percent (that is, one percentage point below the 12 percent rate) for taxable years beginning in 2021, and is 10 percent (that is, two percentage points below the 12 percent rate) for taxable years beginning in 2022 and thereafter the reduced rate is nine percent (that is, three percentage points below the 12 percent rate). The reduced tax rate applies to the least of the amounts, the tax on qualified active business income, (2) tax income reduced by net capital gain, (3) nine-percent bracket threshold amount (described above). Qualified active business income for a taxable year means the excess of the taxpayer’s net business income from any active business activity over his or her net business loss from any active business activity. An active business activity is an activity that involves the conduct of any trade or business that is not a passive activity for purposes of paragraph (2) and (6) of section 469 (that is, generally, the taxpayer materials or services in the trade or business activity. Qualified active business income includes income from any trade or business activity, including service businesses.

Phase out applies to the amount subject to the 11-, 10-, or nine-percent rate. The amount taxed at one of these rates is reduced by the excess of taxable income over an indexed applicable threshold amount, $150,000 in the case of married individuals filing jointly. The applicable threshold amount is three quarters of that amount for individuals filing as head of household and half that amount for other individuals.

For example, assume that in 2022, an individual (married filing jointly) has $70,000 of qualified active business income and $40,000 of other income, resulting in taxable income of $100,000. The sum of qualified active business income is subject to tax at nine percent.

Alternatively, assume that in 2022, another individual has $160,000 of qualified active business income and $140,000 of other income, resulting in taxable income of $170,000. The excess of the taxpayer’s $170,000 taxable income over the $150,000 applicable threshold amount is $20,000. Taking into account the phaseout, this $20,000 amount reduces the $75,000 amount that, absent the phaseout, would be subject to the nine-percent rate, reducing the benefit of the nine-percent rate for $20,000 of the taxpayer’s qualified active business income. The effect is that $55,000 is subject to the nine percent rate.

Qualified business income
Qualified business income is defined as the sum of business property income derived from any passive business activity plus the capital percentage of net business income derived from any active business activity, reduced by 100 percent of any net business loss derived from any passive business activity, 30 percent (except as otherwise provided under rules for determining the capital percentage, below), or any carryover business loss determined for the preceding taxable year. Qualified business income does not include income from a business activity that exceeds these percentages.
Net business income or loss

To determine qualified business income requires a calculation of net business income or loss from each of an individual’s passive business and active business activities. Net business income or loss is determined at the activity level, that is, separately for each business activity.

Net business income or loss is determined by appropriately netting items of income, gain, deduction and loss with respect to the business activity. The determination takes into account items that would be included in income with respect to the business activity, but the amount affects the determination of taxable income for the year. For example, if in a taxable year, a business activity has 100 of ordinary business income, and it makes an expenditure of $25 that is required to be capitalized and amortized over 5 years under applicable tax rules, the net business income is $100 minus 5 ($25 per year for 5 years), or $95. The net business income is not reduced by the entire amount of the capital expenditure, only by the amount deductible in determining taxable income for the year.

Net business income or loss includes the amounts received by the individual taxpayer as wages, director’s fees, guaranteed payments and amounts received from a partnership other than in the individual’s capacity as a partner, that are properly attributable to a business activity. Amounts taken into account as an item of income with respect to the business activity. For example, if an individual shareholder of an S corporation engaged in a business activity is paid wages or director’s fees by the S corporation, the amount of wages or director’s fees is included in determining net business income or loss with respect to the business activity. This rule is intended to ensure that the amount eligible for the 25-percent tax rate is not erroneously reduced because of compensation paid separately (or treated as separate) from the individual’s distributive share of pass-through income.

Net business income or loss does not include specified investment-related income, deductions, or loss. Specifically, net business income does not include (1) any item taken into account in determining net long-term capital gain or net long-term capital loss, (2) dividends, income equivalent to a dividend, or paid-up capital dividends, (3) interest income and income equivalent to interest, other than that which is properly allocable to a trade or business, (4) the excess of gain over cost or other basis amounts received from financial commodities transactions, other than those entered into in the normal course of the trade or business or with respect to stock in trade or property held primarily for sale to customers in the ordinary course of the trade or business, property used in the trade or business, or supplies regularly used or consumed in the trade or business, (5) payments (or other transactions) for foreign currency losses from section 988 transactions, other than transactions directly related to the business needs of the business activity, (6) certain activities and certain principal contracts, other than clearly identified hedging transactions that are treated as ordinary (i.e., not treated as capital losses), and (7) any amount received from an annuity that is not used in the trade or business of the business activity. Net business income does not include any item of deduction or loss properly allocable to such income.

Carryover business loss

The carryover business loss from the preceding taxable year reduces qualified business income for the taxable year. The carryover business loss is the excess of (1) the sum of 100 percent of any net business loss described above from any active business activity, or (2) the sum of (a) 30 percent (except as otherwise provided under rules determining the capital percentage below) of any net business loss from a specified service activity for the preceding taxable year, over (b) 30 percent of any net business loss from a specified service activity for the preceding taxable year. The capital percentage is the percentage of net business income derived from any active business activity. There is no time limit on carryover business losses, paid wages or director’s fees by the S corporation engaged in a business activity is carried forward.

Example: If an individual shareholder of an S corporation, the amount of wages or director’s fees by the S corporation engaged in a business activity is paid wages or director’s fees by the S corporation, the amount of wages or director’s fees is included in determining net business income or loss with respect to the business activity. This rule is intended to ensure that the amount eligible for the 25-percent tax rate is not erroneously reduced because of compensation paid separately (or treated as separate) from the individual’s distributive share of pass-through income.

Net business income or loss includes the amounts received by the individual taxpayer as wages, director’s fees, guaranteed payments and amounts received from a partnership other than in the individual’s capacity as a partner, that are properly attributable to a business activity. Amounts taken into account as an item of income with respect to the business activity. For example, if an individual shareholder of an S corporation engaged in a business activity is paid wages or director’s fees by the S corporation, the amount of wages or director’s fees is included in determining net business income or loss with respect to the business activity. This rule is intended to ensure that the amount eligible for the 25-percent tax rate is not erroneously reduced because of compensation paid separately (or treated as separate) from the individual’s distributive share of pass-through income.

Increased percentage for capital-intensive business activities—A taxpayer may elect the application of an increased percentage with respect to any active business activity other than a specified service activity (described below). The election applies for the taxable year it is made and each of the next four taxable years. The election is made no later than the due date (including extensions) of the return for the taxable year made, and is irrevocable. The percentage under the election is the election’s percentage (described below) for the five taxable years of the election.

Specified service activities.—In the case of an active business activity that is a specified service activity, generally the capital percentage is 0 and the percentage of any net business loss from the specified service activity that is taken into account as qualified business income is 0 percent.

A specified service activity involves the conduct of any trade or business activity involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees, or investing, trading, or dealing in securities, partnerships interests, or commodities. For this purpose a security and a commodity have the meanings provided in this provision for the relevant facts and circumstances in the case of specified services activities that would be treated as a single employer under broad related party rules of present law.

A passive business activity generally has the same meaning as a passive activity under the present-law passive loss rules. However, for this purpose, a passive business activity is not defined to exclude a working interest in any oil or gas property that the taxpayer holds directly or through an entity that does not limit the taxpayer’s liability. Rather, whether the taxpayer materially participates in the activity is relevant. Further, for this purpose, a passive business activity does not include an activity in connection with a trade or business or in connection with the production of income. An activity is an activity that involves the conduct of any trade or business and that is not a passive activity. For example, if an individual has a partnership interest in a manufacturing business and materially participates in the manufacturing business, it is considered an active business activity of the individual.

Net business income subject to Federal income tax at a rate no higher than 25 percent.

In general, the capital percentage is 30 percent, except as provided in the case of applicability of an increased percentage for capital-intensive business activities, in the case of specified service activities, and in the case of application of the rule for capital-intensive specified service activities.

The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage. The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage. The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage. The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage. The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage. The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage. The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage. The capital percentage is reduced if the portion of net business income represented by qualified business activity is less than 75% of the capital percentage.

Carryover business loss

The carryover business loss from the preceding taxable year reduces qualified business income for the taxable year. The carryover business loss is the excess of the sum of (1) the sum of 100 percent of any net business loss described above from any active business activity, or (2) the sum of (a) 25 percent of any net business loss from a specified service activity for the preceding taxable year, over (b) 25 percent of any net business loss from a specified service activity for the preceding taxable year.
specified return on capital for any active business activity is determined by multiplying a deemed rate of return, the short-term AFR plus 7 percentage points, times the asset balance. The activity for the taxable year, and reducing the product by interest expense deducted with respect to the activity for the taxable year. The asset balance for the purpose is the adjusted basis of property used in connection with the activity as of the end of the taxable year, but without taking account of basis adjustments for bonus, depreciation, or amortization under section 179. In the case of an active business activity conducted through a partnership or S corporation, the taxpayer takes into account his distributive share of the asset balance of the partnership’s or S corporation’s property used in connection with the activity. Regulatory authority is provided to ensure that in determining asset balance, no amount is taken into account for more than one activity.

Effective date.—The provision is effective for taxable years beginning after December 31, 2017. A transition rule provides that for fiscal year taxpayers whose taxable year includes December 31, 2017, a proportional benefit of section 448(b) under the taxable year is allowed for the period beginning January 1, 2018, and ending on the day before the beginning of the taxable year beginning after December 31, 2017.

SENATE AMENDMENT

In general

For taxable years beginning after December 31, 2017 and before January 1, 2026, an individual taxpayer generally may deduct 23 percent of the net business income from qualified business income and loss. A disallowance of the deduction for services rendered with respect to qualified business income means the net amount of income, gain, deduction, and loss only to the extent that they are effectively connected with a trade or business within the United States. In the case of a taxpayer who is an individual with otherwise qualified business income from sources within the United States, the net income is taxable under section 1 (income tax rates for individuals) for the taxable year, and reducing the product by interest expense deducted with respect to the activity for the taxable year. The asset balance for the purpose is the adjusted basis of property used in connection with the activity as of the end of the taxable year, but without taking account of basis adjustments for bonus, depreciation, or amortization under section 179. In the case of an active business activity conducted through a partnership or S corporation, the taxpayer takes into account his distributive share of the asset balance of the partnership’s or S corporation’s property used in connection with the activity. Regulatory authority is provided to ensure that in determining asset balance, no amount is taken into account for more than one activity.

Effective date.—The provision is effective for taxable years beginning after December 31, 2017. A transition rule provides that for fiscal year taxpayers whose taxable year includes December 31, 2017, a proportional benefit of section 448(b) under the taxable year is allowed for the period beginning January 1, 2018, and ending on the day before the beginning of the taxable year beginning after December 31, 2017.

Qualified business income

Qualified business income is determined for each qualified trade or business of the taxpayer. For any taxable year, qualified business income is the net amount of items of income, gain, deduction, and loss with respect to the qualified trade or business of the taxpayer. The determination of qualified trade or business income includes the activity for the taxable year, as well as the items of income, gain, deduction, and loss taken into account these items only to the extent included or allowed in the determination of taxable income for the year. For example, if in a taxable year, a qualified business has $100,000 of ordinary income from inventory sales, and makes an expenditure of $25,000 that is required to be capitalized, then $75,000 of the qualified business income is $100,000 minus $50,000 (current-year ordinary amortization deduction). A specified service trade or business means any trade or business that has a qualified business loss for the current taxable year, any deduction allowed in a subsequent year is reduced (but not below zero) by 23 percent of any carryover qualified business loss. This provision is applied to qualified business A and a qualified business loss of $50,000 from qualified business B in Year 1. The result is a deduction for Year 1 and a carryover qualified business loss of $30,000 to Year 2. In Year 2, Taxpayer has qualified business income of $20,000 from qualified business A and qualified business income of $50,000 from qualified business B. To determine the deduction for Year 2, Taxpayer reduces the 23 percent deductible amount by his share of qualified business income of $70,000 from qualified businesses A and B by 23 percent of the $30,000 carryover qualified business loss.

Domestic businesses

Items are treated as qualified items of income, gain, deduction, and loss only to the extent that they are effectively connected with a trade or business within the United States. In the case of a taxpayer who is an individual with otherwise qualified business income from sources within the United States, the net income is taxable under section 1 (income tax rates for individuals) for the taxable year, and reducing the product by interest expense deducted with respect to the activity for the taxable year. The asset balance for the purpose is the adjusted basis of property used in connection with the activity as of the end of the taxable year, but without taking account of basis adjustments for bonus, depreciation, or amortization under section 179. In the case of an active business activity conducted through a partnership or S corporation, the taxpayer takes into account his distributive share of the asset balance of the partnership’s or S corporation’s property used in connection with the activity. Regulatory authority is provided to ensure that in determining asset balance, no amount is taken into account for more than one activity.

Effective date.—The provision is effective for taxable years beginning after December 31, 2017. A transition rule provides that for fiscal year taxpayers whose taxable year includes December 31, 2017, a proportional benefit of section 448(b) under the taxable year is allowed for the period beginning January 1, 2018, and ending on the day before the beginning of the taxable year beginning after December 31, 2017.

Qualified trade or business

A qualified trade or business means any trade or business other than a qualified service trade or business and other than the trade or business of being an employee.

Qualified service trade or business

A qualified service trade or business means any trade or business involving the performance of services in the fields of health, law, accounting, architecture, engineering, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, including investing and investment management, trading of securities, partnerships interests, or commodities, and any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees. For this purpose a security and a commodity have the meanings provided in the rules for the mark-to-market accounting method for dealers in securities (sections 475(c)(2) and 475(e)(2), respectively).

Phase-in of specified service business limitation

The exclusion from the definition of a qualified business for specified service trades or businesses phases in for a taxpayer with taxable income in excess of a threshold amount. The threshold amount is $250,000 (43 percent of that amount, in the case of a joint return) for taxable years beginning after December 31, 2017 and before January 1, 2026, an individual taxpayer generally may deduct 25 percent of the net business income from qualified business B. A limited partnership or syndicate that is not a specified service trade or business for purposes of the similar list of services in section 448(d)(4), and is not a trade or business for purposes of section 448(d)(4), of the net business income from qualified business B. A limited partnership or syndicate that is not a qualified trade or business for purposes of the similar list of services in section 448(d)(4), and is not a trade or business for purposes of section 448(d)(4), of the net business income from qualified business B.

Reasonable compensation and guaranteed payments

Qualified business income does not include any amount paid by an S corporation that is treated as reasonable compensation to the taxpayer. Similarly, qualified business income does not include any guaranteed payment for services performed with respect to the trade or business, and to the extent provided in regulations, does not include any amount paid or incurred by a partnership with respect to an individual’s qualified business income, and loss only to the extent that they are effectively connected with a trade or business within the United States. In the case of a taxpayer who is an individual with otherwise qualified business income from sources within the United States, the net income is taxable under section 1 (income tax rates for individuals) for the taxable year, and reducing the product by interest expense deducted with respect to the activity for the taxable year. The asset balance for the purpose is the adjusted basis of property used in connection with the activity as of the end of the taxable year, but without taking account of basis adjustments for bonus, depreciation, or amortization under section 179. In the case of an active business activity conducted through a partnership or S corporation, the taxpayer takes into account his distributive share of the asset balance of the partnership’s or S corporation’s property used in connection with the activity. Regulatory authority is provided to ensure that in determining asset balance, no amount is taken into account for more than one activity.

Effective date.—The provision is effective for taxable years beginning after December 31, 2017. A transition rule provides that for fiscal year taxpayers whose taxable year includes December 31, 2017, a proportional benefit of section 448(b) under the taxable year is allowed for the period beginning January 1, 2018, and ending on the day before the beginning of the taxable year beginning after December 31, 2017.
the case of a joint return). For a taxpayer with taxable income within the phase-in range, the exclusion applies as follows.

In computing the qualified business income attributable to a specified trade or business, the taxpayer takes into account only the applicable percentage of qualified items of income, gain, deduction, or loss attributable to W-2 wages. The applicable percentage with respect to any taxable year is 100 percent reduced by the percentage equal to the ratio of the excess of the taxpayer's W-2 wages over the threshold amount bears to $50,000 ($100,000 in the case of a joint return).

For example, if a taxpayer has taxable income of $200,000, of which $200,000 is attributable to an accounting sole proprietorship after paying wages of $100,000 to employees. Taxpayer has an applicable percentage of 40 percent.47 In determining includible qualified business income, Taxpayer takes into account 40 percent of $200,000, or $80,000. In determining the includible W-2 wages, Taxpayer takes into account 40 percent of $100,000, or $40,000. Taxpayer calculates the deduction by taking the lesser of 23 percent of $90,000 ($18,400) or 50 percent of $40,000 ($20,000). Taxpayer takes a deduction of $14,000. Thus, Tentative deductible amount for a qualified trade or business is $80,000 minus $14,000 = $66,000.

Tentative deductible amount for a qualified trade or business

In general

For each qualified trade or business, the taxpayer determines the deductible amount by applying the applicable percentage, equal to the lesser of 23 percent of the qualified business income with respect to such trade or business or 50 percent of the W-2 wages with respect to such business (the "wage limit"). However, if the taxpayer's taxable income is below the threshold amount, the deductible amount for each qualified trade or business is equal to 23 percent of the qualified business income with respect to each respective trade or business.

W-2 wages

W-2 wages are the total wages paid by the business that are treated as W-2 wages for a taxable year. Taxpayer takes into account W-2 wages only with respect to the taxpayer's trade or business conducted in Puerto Rico. Taxpayer takes into account W-2 wages, including any tax withheld from such wages, as wages paid by the business. Taxpayer cannot exclude from W-2 wages wages of $100,000 to employees. Taxpayer takes into account 40 percent of $100,000, or $40,000. Taxpayer calculates the deduction by taking the lesser of 23 percent of $90,000 ($18,400) or 50 percent of $40,000 ($20,000). Taxpayer takes a deduction of $14,000. Thus, the total deductible amount for a qualified trade or business is $80,000 minus $14,000 = $66,000.

Qualified cooperative dividends

For taxable years beginning after December 31, 2018 but not after December 31, 2025, a deduction is allowed to any specified agricultural or horticultural cooperative with respect to any such cooperative's taxable income in excess of the threshold amount. A specified agricultural or horticultural cooperative is an organization described in section 1381(a) that is engaged in manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or the marketing of agricultural or horticultural products that its patrons have so manufactured, produced, grown, or extracted, or (c) the provision of supplies, equipment, or services to farmers or organizations described in the foregoing.

Special rules and definitions

For purposes of the provision, taxable income is determined without regard to the deduction allowed under this provision.

In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. Each partner or shareholder takes into account the partner's allocable share of each qualified item of income, gain, deduction, and loss, and is treated as having W-2 wages equal to the partner's allocable share of W-2 wages of the partnership. The partner's allocable share of W-2 wages is required to be determined in the same manner as the partner's share of W-2 wages expenses. For example, if a partner is allocated a deductible amount of 10 percent of wages paid by the partnership to employees for the taxable year, the partner is required to be allocated 10 percent of the W-2 wages of the partnership for purposes of calculating the wage limit under this deduction. Similarly, the rules of section 83 apply to the partnership in taking into account the shareholder's pro rata share of each qualified item of income, gain, deduction, and loss, and is treated as having W-2 wages equal to the shareholder's allocable share of W-2 wages of the S corporation.

Qualified business income is determined without regard to any adjustments prescribed under the rules of the alternative minimum tax. For example, a deduction does not apply to a trust or estate.
The deduction under the provision is allowed only for Federal income tax purposes. For purposes of determining a substantial underpayment of income tax under the accuracy-of-return provision, a substantial underpayment exists if the amount of the understatement exceeds the greater of five percent (not 10 percent) of the tax required to be shown on the return or $5,000.

Authority is provided to promulgate regulations needed to carry out the purposes of the provision, including regulations requiring, or restricting, the allocation of items of income, gain, loss, or deduction, or of wages under the provision. In addition, regulatory authority is provided to address reporting requirements under the provision, and the application of the provision in the case of tiered entities. The party under audit does not apply to taxable years beginning after December 31, 2025.

Additional examples

The following examples provide a comprehensive illustration of the provision.

Example 1

H and W file a joint return on which they report taxable income of $520,000 (determined without regard to this provision). H is a partner in a qualified trade or business that is not a specified service business ("qualified business A"). W has a sole proprietorship qualified trade or business that is a specified service business ("qualified business B"). H and W also received $10,000 in qualified REIT dividends for the taxable year.

H's allocable share of qualified business income from qualified business A is $300,000, such that 23 percent of the qualified business income with respect to the business is $69,000. H's allocable share of wages paid by qualified business A is $100,000, such that 50 percent of the wages paid with respect to the business is $50,000. As H and W's taxable income is above the threshold amount for a joint return, the wage limit does not apply to qualified business A. H's deductible amount for qualified business A is $34,500.

W's allocable share of qualified business income loss is $40,000, such that 23 percent of the qualified business loss with respect to the business is $9,200. W's deductible amount for qualified business loss is $4,000.

Example 2

H and W file a joint return on which they report taxable income of $150,000 (determined without regard to this provision). H has a sole proprietorship qualified trade or business that is not a specified service business ("qualified business A"). W is a partner in a qualified trade or business that is a specified service business ("qualified business B"). H and W have a carryover qualified business loss of $50,000.

H's qualified business income from qualified business A is $150,000, such that 23 percent of the qualified business income with respect to the business is $34,500. As H and W's taxable income is above the threshold amount for a joint return, the wage limit does not apply to qualified business A. H's deductible amount for qualified business A is $34,500.

W's allocable share of qualified business loss is $40,000, such that 23 percent of the qualified business loss with respect to the business is $9,200. W's deductible amount for qualified business loss is $4,000.

Wages and capital

The conference agreement provides that the conference agreement follows the Senate 2021 amendment, which modifies the provision for determining the threshold amount applicable to taxpayers with taxable incomes in excess of $150,000, respectively. H and W's taxable income for the year ($520,000), their combined qualified business income ($34,500), and their combined capital interest ($65,200) is $65,200.

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

CONFERENCES AGREEMENT

The conference agreement follows the Senate amendment with modifications.

Deduction percentage

Under the conference agreement, the percentage of the deduction allowable under the provision is 25 percent (not 23 percent).

Threshold

The conference agreement reduces the threshold amount above which both the limitation on specified service businesses and the wage limit are phased in. Under the conference agreement, the threshold amount is $11,500.

Limitation based on W-2 wages and capital

The conference agreement modifies the wage limit applicable to taxpayers with taxable income above the threshold amount to provide a limit based either on wages paid or on wages paid plus a capital element. Under the conference agreement, the limitation is the greater of (a) 50 percent of the W-2 wages paid with respect to qualified trade or business, or (b) the sum of 25 percent of the W-2 wages with respect to the qualified trade or business plus 2.5 percent of the unadjusted basis, immediately after acquisition, of all qualified property.

For purposes of the provision, qualified property means tangible property that is a character subject to depreciation that is held by, and available for use in, the qualified trade or business at the close of the taxable year, and which is used in the production of qualified business income, and for which the depreciable period has not ended before the close of the taxable year. The depreciable period with respect to qualified property of a taxpayer means the period beginning on the date the property is first placed in service by the taxpayer and ending on (a) the date 10 years after that date, or (b) the last day of the last full year in the applicable recovery period that would apply to the property under section 168 (without regard to section 168(g)).

For example, a taxpayer (who is subject to the limitation) does business as a sole proprietorship conducting a widget-making business. The business buys a widget-making machine for $100,000 and places it in service in 2020. The business has no employees in 2020. The limitation in 2020 is the greater of (a) 50 percent of W-2 wages, or (b) the sum of 25 percent of W-2 wages ($30,000) plus 2.5 percent of the unadjusted basis of the machine immediately after its acquisition: $100,000 × 0.025 = $2,500. The amount of the limitation on the taxpayer's deduction is $2,500.

Example of property that is sold, for example, the property is no longer available for use in the trade or business and is not taken into account in determining the limitation. The Secretary is required to provide guidance for applying the limitation in cases of a short taxable year of the taxpayer acquired, or disposed of, the property of, the carryover of a trade or business or the major portion of a separate unit of a trade or business during the year. The Secretary is required to provide guidance under section 179(d) to address acquisitions of property from a related party, as well as in a sale-leaseback or other transaction as needed to carry out the purposes of the provision and to provide anti-abuse rules, including under the limitation based on W-2 wages and capital. The Secretary shall provide guidance rules under section 179(d) to address acquisitions of property from a related party, as well as in a sale-leaseback or other transaction as needed to carry out the purposes of the provision and to provide anti-abuse rules, including under the limitation based on W-2 wages and capital.

Qualified service trade or business

The conference agreement modifies the definition of a specified service trade or business in several respects. The definition is modified to exclude engineering and architecture services, and to take into account the reputation or skill of owners. A specified service trade or business means any trade or business that provides the performance of services in the fields of health, law, consulting, athletics, financial services, brokerage services, or any trade or business whose principal purpose, or a significant purpose, of which is the reputation or skill of one or more of its employees or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interests, or commodities. For this purpose, the phrase "investment management trading, or dealing in securities,..." includes the meanings provided in the rules for the mark-to-market accounting method for dealers in securities (sections 475(c)(2) and 475).
to the sum of (a) the lesser of the combined qualified business income amount for the taxable year or an amount equal to 20 percent of the excess of taxpayer's taxable income (reduced by net capital gain) over the lesser of 20 percent of qualified cooperative dividends, plus (b) the lesser of 20 percent of qualified cooperative dividends and taxable income (reduced by net capital gain) over the sum of the deductible amounts determined for each qualified trade or business carried on by the taxpayer and 20 percent of the taxpayer's qualified REIT dividends and qualified publicly traded partnership neship income. The deductible amount for each qualified trade or business is the lesser of (a) 20 percent of the taxpayer's qualified business income with respect to the trade or business, or (b) the greater of 50 percent of the W–2 wages with respect to the trade or business or the sum of 25 percent of the W–2 wages paid by the cooperative with respect to its trade or business plus 2.5 percent of the unadjusted basis immediately after acquisition, of all qualified properties.

Deduction against taxable income

The conference agreement clarifies that the 20-percent deduction is not allowed in computing adjusted gross income, and instead is allowed as a deduction reducing taxable income. Thus, for example, the provision does not affect limitations based on adjusted gross income. Similarly the conference agreement clarifies that the deduction is available to both non-itemizers and itemizers.

Treatment of agricultural and horticultural cooperatives

For taxable years beginning after December 31, 2017 but not after December 31, 2025, a deduction is allowed to any specified agricultural or horticultural cooperative equal to the lesser of (a) 20 percent of the cooper ate's taxable income for the taxable year or (b) the greater of 50 percent of the W–2 wages paid by the cooperative with respect to its trade or business or the sum of 25 percent of the W–2 wages of the cooperative with respect to its trade or business plus 2.5 percent of the unadjusted basis immediately after acquisition of such property by the cooperative.

A specified agricultural or horticultural cooperative is a combination to which subsection T applies that is engaged in (a) the manufacturing, production, growth, or extraction in whole or in part of any agricultural or horticultural product that its patrons have so manufactured, produced, grown, or extracted, or (c) the provision of supplies, equipment, or services to farmers or organizations engaged in the foregoing.

Treatments of trusts and estates

The conference agreement provides that trusts and estates are eligible for the 20-percent deduction under the provision. Rules similar to the rules under present-law section 199 (as in effect on December 1, 2017) apply for apportioning between fiduciaries and beneficiaries any W–2 wages and unadjusted basis of qualified properties under the limitation based on W–2 wages and capital.

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

C. Simplification and Reform of Family and Individual Tax Credits

1. Enhancement of child tax credit and new family credit (sec. 1101 of the House bill, sec. 11022 of the Senate amendment, and sec. 24 of the present law)

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. A child who is a nonresident of the United States cannot be a qualifying child.

The aggregate amount of child credits that may be claimed by all individuals filing joint returns 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 adjusted gross income (“AGI”) 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 AGI 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 both the regular tax and the alternative minimum tax ("AMT").

Po the child credit exceeds the taxpayer's liability, the taxpayer is eligible for a refundable credit equal to 15 percent of earned income in excess of $3,000.71 The refundable credit is limited to $1,000 times the number of qualifying children under the age of 17 claimed on the return.

The provision temporarily increases the child tax credit to $2,000 per qualifying child. Additionally, the age limit for a qualifying child is temporarily increased to 18, such that a taxpayer may claim the credit with respect to any qualifying child under the age 18. This increase in the age limit expires for taxable years after December 31, 2024.

The credit is further modified to temporarily provide for a $500 nonrefundable credit for qualifying dependents other than qualifying children. The provision generally retains the present-law definition of dependent.

Under the temporary provision, beginning in 2018, the threshold at which the credit begins to phase out is increased to $500,000 for all taxpayers. These amounts are not indexed for inflation.

The provision temporarily lowers the earned income threshold for the nonrefundable childhood tax credit to $2,500. As under present law, the maximum amount refundable may not exceed $1,000 per qualifying child. Under the provision, this $1,000 threshold is indexed for inflation with a base year of 2017, rounding up to the nearest $100 (such that the threshold is $1,100 in 2018). A temporary rule permits taxpayers to file amended returns for which the above-described changes are in effect, in order to receive the refundable portion of the child tax credit, a taxpayer must include a Social Security number for each qualifying child for whom the credit is claimed on the return.

The temporary provision (other than the increase in the age limit, which expires one year earlier) expires for taxable years beginning after December 31, 2025.

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

71Defined in sec. 1(h).
The conference agreement temporarily increases the child tax credit to $2,000 per qualifying child. The credit is further modified to temporarily provide for a $500 non-refundable credit for non-qualifying dependents other than qualifying children. The provision generally retains the present-law definition of dependent.

Under the conference agreement, the maximum amount refundable may not exceed $1,400 per qualifying child.73 Additionally, the conference agreement provides that, in order to receive the child tax credit (i.e., both the refundable and non-refundable portion), a taxpayer must include a Social Security number qualifying child for whom the credit is claimed on the tax return. For these purposes, a Social Security number must be issued before the due date for the filing of the return for the taxable year. This requirement does not apply to a non-child dependent for whom the $500 non-refundable credit is claimed.74

Further, the conference agreement retains the present-law age limit for a qualifying child. Thus, a qualifying child is an individual who has not attained age 17 during the taxable year.

Finally, the conference agreement modifies the adjusted gross income phaseout thresholds. Under the conference agreement, the credit is phased out for taxpayers with adjusted gross income in excess of $400,000 (in the case of married taxpayers filing a joint return) and $200,000 (for all other taxpayers). These phaseout thresholds are not indexed for inflation. As was the case with the Senate amendment, tax years beginning after December 31, 2025.

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

2. Credit for the elderly and permanently disabled (sec. 1102(a) of the House bill and sec. 22 of the Code)

PRESENT LAW

Certain taxpayers who are over the age of 65 or retired on account of permanent and total disability may claim a nonrefundable credit. The maximum credit is 15 percent of the first $5,000 of adjusted gross income (or fraction thereof) of both spouses qualified.75 Thus, the maximum credit amounts are $750 and $1,125, respectively.

The credit base is reduced by one half of the amount by which the taxpayer’s adjusted gross income exceeds $7,500 if the taxpayer is married and files a joint return, or $5,000 if the taxpayer is married and files a separate return.77 Thus, the credit base is phased down to zero when adjusted gross income exceeds $17,500 for an unmarried person, $20,000 for a married couple filing a joint return where only one spouse qualifies for the credit, $25,000 for a joint return where both spouses qualify, and $12,500 for a married person filing a separate return.

Additionally, the credit base is reduced by certain items of income otherwise exempt from tax: (1) benefits under Title II of the Social Security Act; (2) retirement benefits under the Railroad Retirement Act of 1974; (3) disability benefits paid by the Veterans Administration, except for benefits payable on account of personal injuries or sickness resulting from active service in the Armed Forces; and (4) other than qualifying dependents other than qualifying children. The provision generally retains the present-law definition of dependent.

Under the conference agreement, the maximum amount refundable may not exceed $1,400 per qualifying child.73 Additionally, the conference agreement provides that, in order to receive the child tax credit (i.e., both the refundable and non-refundable portion), a taxpayer must include a Social Security number qualifying child for whom the credit is claimed on the tax return. For these purposes, a Social Security number must be issued before the due date for the filing of the return for the taxable year. This requirement does not apply to a non-child dependent for whom the $500 non-refundable credit is claimed.74

Further, the conference agreement retains the present-law age limit for a qualifying child. Thus, a qualifying child is an individual who has not attained age 17 during the taxable year.

Finally, the conference agreement modifies the adjusted gross income phaseout thresholds. Under the conference agreement, the credit is phased out for taxpayers with adjusted gross income in excess of $400,000 (in the case of married taxpayers filing a joint return) and $200,000 (for all other taxpayers). These phaseout thresholds are not indexed for inflation. As was the case with the Senate amendment, tax years beginning after December 31, 2025.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

3. Refundable credit for plug-in electric drive motor vehicles (sec. 1103(c) of the House bill and sec. 30D of the Code)

PRESENT LAW

A credit is available for new four-wheeled vehicles (excluding low speed vehicles and vehicles weighing 14,000 pounds or more) propelled by a battery with at least 4 kilowatt-hours of electricity that can be charged from an external source. The base credit is $2,500 plus $417 for each kilowatt-hour of additional battery capacity in excess of 4 kilowatt-hours (for a maximum credit of $7,500). Qualified vehicles are subject to a 200,000 vehicle-per-manufacturer limitation. Once the limitation has been reached the credit is phased down over four calendar quarters.

The provision repeals the credit for plug-in electric drive motor vehicles.

Effective date.—The provision is effective for vehicles placed in service in taxable years beginning after December 31, 2017.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

4. Term of credit for interest on certain home mortgages (sec. 1102(b) of the House bill and sec. 25 of the Code)

PRESENT LAW

Qualified governmental units can elect to exchange all or a portion of their qualified mortgage bond authority for authority to issue mortgage credit certificates (“MCCs”).78 MCCs entitle homebuyers to a nonrefundable credit in the amount of a specified percentage of interest paid on mortgage loans on their principal residences. The tax credit provided by the MCC may be carried forward three years. Once issued, an MCC generally remains in effect as long as the residence being financed is the certificate-reipient’s principal residence. MCCs generally are subject to the same eligibility and targeted area requirements as qualified mortgage bonds.82

The conference agreement temporarily increases the child tax credit to $2,000 per qualifying child. The credit is further modified to temporarily provide for a $500 non-refundable credit for non-qualifying dependents other than qualifying children. The provision generally retains the present-law definition of dependent.

Under the conference agreement, the maximum amount refundable may not exceed $1,400 per qualifying child.73 Additionally, the conference agreement provides that, in order to receive the child tax credit (i.e., both the refundable and non-refundable portion), a taxpayer must include a Social Security number qualifying child for whom the credit is claimed on the tax return. For these purposes, a Social Security number must be issued before the due date for the filing of the return for the taxable year. This requirement does not apply to a non-child dependent for whom the $500 non-refundable credit is claimed.74

Further, the conference agreement retains the present-law age limit for a qualifying child. Thus, a qualifying child is an individual who has not attained age 17 during the taxable year.

Finally, the conference agreement modifies the adjusted gross income phaseout thresholds. Under the conference agreement, the credit is phased out for taxpayers with adjusted gross income in excess of $400,000 (in the case of married taxpayers filing a joint return) and $200,000 (for all other taxpayers). These phaseout thresholds are not indexed for inflation. As was the case with the Senate amendment, tax years beginning after December 31, 2025.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not contain the House bill provision.

5. Modification of taxpayer identification number required for claiming child tax credit, earned income credit, and American Opportunity credit (sec. 1103 of the House bill, sec. 11022 of the Senate amendment and secs. 24, 25A and 32 of the Code)

PRESENT LAW

Earned income credit

Low and moderate-income taxpayers may be eligible for the refundable earned income credit (“EIC”). Eligibility for the EIC is based on the taxpayer’s earned income, adjusted gross income, investment income, filing status, and work status in the United States. The amount of the EIC is based on the presence and number of qualifying children in the worker’s family, as well as on adjusted gross income and earned income.

The earned income credit generally equals a specified percentage of earned income up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phase-out range. For taxpayers with earned income (or adjusted gross income (“AGI”)), if greater, in excess of the beginning of the phase-out range, the maximum EIC amount is reduced by the phase-out rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phase-out range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phase-out range, no credit is allowed.

An individual is not eligible for the EIC if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $3,540 (for 2017). This threshold is indexed for inflation. Disqualified income is the sum of: (1) interest (taxable and tax-exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gain net income; and (5) net passive income (if greater than zero) that is not self-employment income.

The EIC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer’s Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment.

Child tax credit

An individual may claim a tax credit of $1,000 for each qualifying child under the age of 17. A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.

The aggregate amount of allowable child credits is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable aggregate child tax credit (“CTC”) amount is reduced by $50 for each $1,000 (or fraction thereof) of

75 Sec. 22(a).
76 Sec. 22(b).
77 Sec. 22(c).
78 Sec. 22(d).
79 Sec. 22(e).
80 Sec. 30D.
81 Sec. 22(f).
82 Sec. 22(g).
83 Sec. 143.
84 Sec. 30D.
modified adjusted gross income (‘‘modified AGI’’) 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 AGI includes certain otherwise excludable income[86] earned by U.S. citizens or residents living and working in the U.S. territory.

The child tax credit is allowable against both the regular tax and the alternative minimum tax (‘‘AMT’’). To the extent the credit exceeds the taxpayer’s AMT liability, the taxpayer is eligible for a refundable credit (the ‘‘additional child tax credit’’) equal to 15 percent of earned income in excess of $3,000 (the ‘‘earned income’’ formula).

Families with three or more qualifying 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 this formula, the additional child tax credit equals the amount by which the taxpayer’s Social Security taxes exceed the taxpayer’s EIC.[87]

American Opportunity credit[88]

The American Opportunity credit provides individuals who have a tax credit of up to $2,500 per eligible student per year for qualified tuition and related expenses (including course materials) paid for each of the first four years of the student’s post-secondary education in a degree or certificate program.

The credit rate is 100 percent on the first $2,000 of qualified tuition and related expenses and 25 percent on the next $2,000 of qualified tuition and related expenses.

The American Opportunity credit is phased out ratably for taxpayers with modified AGI between $180,000 and $200,000 ($160,000 and $180,000 for married taxpayers filing a joint return). The credit may be claimed against the student to whom the tuition and related expenses are paid.[89]

The child tax credit is allowable against the following credits:

- the earned income credit
- the American Opportunity credit
- the American Opportunity credit for individuals with three or more qualifying children
- the child tax credit
- the dependent care credit
- the credit for adoption expenses
- the credit for the elderly or the disabled
- the credit for alternative minimum tax (AMT) preference items
- the credit for any other tax-creditable item

For purposes of the child tax credit, a dependent of a nonresident alien or a nonresident alien visa holder is eligible for the CTC if the taxpayer is a U.S. citizen or resident alien filing as a U.S. citizen or resident alien taxpayer with a Social Security number that is valid for employment in the United States in order to receive the $300 credit for dependents other than qualifying children, assuming such child otherwise qualified as a dependent of the taxpayer.[90]

The conference agreement does not contain the House bill provision.91

6. Procedures to reduce improper claims of earned income credit (sec. 1104 of the House bill and new secs. 32(c)(2)(B)(vii) and 6011(o) of the Code)

PRESENT LAW

Earned income credit

Low- and moderate-income workers may be eligible for the refundable earned income credit (‘‘EIC’’). Eligibility for the EIC is based on earned income, adjusted gross income (‘‘AGI’’), investment income, filing status, number of children, and immigration and work status in the United States. The maximum amount of the EIC varies over a certain income range and then diminishes to zero over a specified phaseout range. The EIC is refundable credit meaning that the amount of the credit exceeds the taxpayer’s Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment. The EIC generally equals a specified percentage of earned income up to a maximum dollar amount. Earned income is the sum of earned income compensation and gross income (generally the amount reported in Box 1 of Form W–2, Wage and Tax Statement, discussed below) plus net earnings from self-employment taxable income.85

Employment taxes and quarterly reporting by employers

Employment taxes include employer and employee taxes on employee wages under the Federal Insurance Contributions Act (‘‘FICA’’) and income taxes required to be withheld by employers from employee wages (‘‘income tax withholding’’).86 Income tax withholding rates vary depending on the amount of wages paid, the length of the pay roll period, and the number of withholding allowances claimed by the employee. Employers are required also to withhold the employee share of FICA tax from employee wages. For these purposes, wages are defined

86 See description of sec. 1102 of the conference agreement for a description of modifications with respect to the taxpayer identification number requirements pertaining to the child tax credit.

87 See sec. 3101 through 3128 (FICA) and 3401 through 3404 (income tax withholding). Employment taxes also include taxes under the Railroad Retirement Act, secs. 3201 through 3291, and tax under the Federal Unemployment Taxes Act (‘‘FUTA’’), secs. 3301 through 3311. Sections 3301 through 3311 provide special employment tax rules.
broadly to include all remuneration, subject to exceptions specifically provided in the relevant statutory provisions.

Employers generally submit quarterly reports to the IRS. Employer’s Quarterly Federal Tax Return, showing the number of employees to whom wages were paid during the quarter, the total wages paid to employers. FICA taxes (employer and employee) on the wages, and total income tax withheld from the wages. 90 In addition, by January 31 after the end of a calendar year, an employer must provide each employee with Form W-2. Wage and Tax Statement, showing the total wages paid to the employee during the calendar year and certain other information. The information contained on each employee’s W-2 is also provided to the IRS, accompanied by Form W-3, Transmittal of Wage and Tax Statements, showing the total number of Forms W-2 and aggregate information for all employees, such as aggregate wages reported on Forms W-2. IRS then compares the W-3 wage totals to the Form 941 (or Form 944) wage totals.

HOUSE BILL
Modification of the definition of “earned income.”

The provision modifies the definition of “earned income.” To claim all allowable deductions in computing net earnings from self-employment for EIC purposes.

Quarterly reporting of wages by employers.

The provision modifies employer reporting requirements associated with the deduction and withholding of certain employment taxes on wages. Under the provision, employers must report, along with the aggregated wages and employment taxes collected on Form 941 or Form 944, the name and address of each employee and the amount of reportable wages received by each of those employees.

Effective date.—Modification of the definition of “earned income.”

The provision applies to taxable years ending after the date of enactment.

Effective date.—Quarterly reporting of wages by employers.

The provision applies to taxable years ending after the date of enactment, subject to the authority of the Secretary to delay for such period as the Secretary determines to be reasonable to allow adequate time to modify or amend relevant rules and regulations to permit compliance with the additional reporting requirements.

SENATE AMENDMENT
No provision.

CONFERENCE AGREEMENT
The conference agreement does not include the House bill provision.

7. Certain income disallowed for purposes of the earned income credit (sec. 1105 of the House bill, new secs. 32(a) and 32(c)(2)(C) of the Code, and secs. 6051, 6052, 6041(a), and 6050(w) of the Code)

PRESENT LAW
Earned income credit.

Low- and moderate-income workers may be eligible for the refundable earned income credit (“EIC”). Eligibility for the EIC is based on earned income, adjusted gross income

aggregate payments made and contact information for the payor.116 The statement must be supplied to taxpayers by the payors by January 31 of the following calendar year. Payors generally must file the information returns with the IRS on or before January 31 of the year following the calendar year to which such returns relate.111 Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,112 to furnish payee statements,113 or to comply with other various reporting requirements.114 No penalty is imposed if the failure is due to reasonable cause.115 Any person who is required to file an information return, but who fails to do so on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the correct information return is filed and the correct payee statement is furnished.

Books or records.

Every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may prescribe.118 Whenever necessary, the Secretary may require any person, by notice served upon the person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not that person is liable for tax. Persons subject to income tax are required to keep books or records sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by the applicable tax return.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

CONVENEER AGREEMENT
The conference agreement does not include the House bill provision.
8. Limitation on losses for taxpayers other than corporations (sec. 11012 of the Senate amendment and sec. 461(l) of the Code)

PRESENT LAW

Loss limitation rules applicable to individuals

Passive loss rules

The passive loss rules limit deductions and credits from passive trade or business activities. The passive loss rules apply to individuals, estates, and certain trusts and corporations. A passive activity for this purpose is a trade or business activity in which the taxpayer owns an interest, but in which the taxpayer does not materially participate. A taxpayer is treated as materially participating in an activity only if the taxpayer is involved in the operation of the activity on a basis that is regular, continuous, and substantial. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be used to offset other income. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activity for the next taxable year. An excess farm loss is allowed in full when a taxpayer makes a taxable disposition of his entire interest in the passive activity to an unrelated person.

Excess farm loss rules

A limitation on excess farm losses applies to taxpayers other than C corporations. If a taxpayer other than a C corporation receives an applicable subsidy for the taxable year, the amount of the excess farm loss is not allowed for the taxable year, and is carried forward and treated as a deduction attributable to farming businesses over the aggregate of business income or gain attributable to farming businesses plus the threshold amount. The threshold amount is the greater of (1) $300,000 ($150,000 for married individuals filing separate returns) or (2) for the five-consecutive-year period preceding the taxable year, the excess of the aggregate gross income or gain attributable to farming businesses over the aggregate deductions attributable to the taxpayer’s farming businesses.

HOUSE BILL

No provision

SENATE AMENDMENT

For taxable years beginning after December 31, 2017 and before January 1, 2026, excess business losses of a taxpayer other than a corporation are not allowed for the taxable year. Excess business losses are carried forward and treated as part of the taxpayer’s net operating loss (“NOL”) carryforward in subsequent taxable years. Under the bill, NOL carryforwards generally are allowed for a taxable year up to the lesser of the carryover amount or 90 percent (80 percent for taxable years beginning after December 31, 2022) of taxable income determined without regard to the deduction for NOLs.

An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or business activities of the taxpayer (determined without regard to the limitation of the provision), over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount for a taxable year is $250,000 (or twice the otherwise applicable threshold amount in the case of a joint return). The threshold amount is indexed for inflation.

In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. A partner’s distributive share and each S corporation shareholder’s pro rata share of items of income, gain, deduction, or loss of the partnership or S corporation are taken into account in applying the limitation under the provision for the taxable year of the partner or S corporation shareholder. Regulatory authority is provided to apply the provision to any other passthrough entity to the extent necessary to carry out the purposes of the provision. Regulatory authority is also provided to require any additional reporting as the Secretary determines is appropriate to carry out the purposes of the provision.

The provision applies after the application of the passive loss rules.

For taxable years beginning after December 31, 2017 and before January 1, 2026, the present-law provision limiting to excess farm losses does not apply.

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

9. Reform of American opportunity tax credit and repeal of lifetime learning credit (sectional reporting of the House bill and sec. 25A of the Code)

PRESENT LAW

American Opportunity credit

The American Opportunity credit provides individuals with a tax credit of up to $2,500 per eligible student per year for qualified tuition and related expenses (including course materials) paid for each of the first four years of the student’s post-secondary education in a degree or certificate program. The credit rate is 100 percent on the first $2,000 of qualified tuition and related expenses, and 25 percent on the next $2,000 of qualified tuition and related expenses. The credit may not be claimed for more than four taxable years with respect to any student.

The American Opportunity credit is phased out ratably for taxpayers with modified AGI between $80,000 and $90,000 ($160,000 and $180,000 for married taxpayers filing a joint return). The credit may be claimed against a taxpayer’s AMT liability.

Forty percent of a taxpayer’s otherwise allowable modified credit is refundable. A refundable credit is a credit which, if the amount of the credit exceeds the taxpayer’s Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment.

A taxpayer may not claim the American Opportunity credit if the qualified tuition and related expenses for the enrollment or attendance of such student have been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year.

Lifelime learning credit

Individual taxpayers may be eligible to claim a nonrefundable credit, the Lifetime Learning credit, against Federal income taxes equal to 20 percent of qualified tuition and related expenses incurred during the taxable year on behalf of the taxpayer, the taxpayer’s spouse, or any dependents. Up to $10,000 of qualified tuition and related expenses per taxpayer return are eligible for the Lifetime Learning credit, i.e., the maximum credit per taxpayer return is $2,000.

In contrast to the American Opportunity credit, a taxpayer may claim the Lifetime Learning credit for an unlimited number of taxable years. Also in contrast to the American Opportunity credit, the maximum amount of the Lifetime Learning credit that may be claimed on a taxpayer’s return does not vary based on the number of students in the taxpayer’s family—that is, the American Opportunity credit is computed on a per-student basis while the Lifetime Learning credit is computed on a family-wide basis. The Lifetime Learning credit amount that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified AGI between $56,000 and $66,000 ($112,000 and $132,000 for married taxpayers filing a joint return) in 2017.

HOUSE BILL

The House bill modifies the American Opportunity credit by providing that a credit may be claimed with respect to a student for five taxable years (rather than four taxable years under present law). For a credit claimed with respect to the student’s fifth taxable year, the credit is half the value of the American Opportunity credit that is applicable to the first four taxable years. Additionally, the provision allows a student to claim the nonrefundable portion of the credit on behalf of the student’s family—that is, the American Opportunity credit is computed on a per-student basis while the Lifetime Learning credit is computed on a family-wide basis. The Lifetime Learning credit amount that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified AGI between $56,000 and $66,000 ($112,000 and $132,000 for married taxpayers filing a joint return) in 2017.

CONGRESSIONAL RECORD — HOUSE

The operation of this provision is as follows. Assume that a student enters college in the Fall of 2018, attending for eight consecutive semesters, such that the student graduates in the Spring of 2022. Assume that qualifying tuition and fees for each semester is in excess of $5,000. For each of taxable years 2018, 2019, 2020 and 2021, an individual claiming the credit on behalf of the student would be eligible for the maximum credit of $2,500 (of which $1,000 is refundable). For taxable year 2022, a taxpayer claiming the credit on behalf of the student is eligible for a $1,250 credit (of which $500 is refundable). Alternatively, if no credit were claimed with respect to the student in 2022, and the student were to decide to attend graduate school in the Fall of 2024, the student may claim the half-value fifth year credit ($1,250 ($500 refundable) for the first half-value year).

The provision repeals the lifetime learning credit.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

121 Sec. 461(j).

122 Regulations provide more detailed standards for material participation. See Treas. Reg. sec. 1.469-5 and —5T.

123 Sec. 469.

124 Sec. 25A(a)(2).

125 The provision also repeals the Hope credit, a precursor to the American Opportunity credit which since 2009 has been largely replaced in the Code by the American Opportunity credit.
10. Consolidation and modification of education savings accounts (Sec. 529 and 530 of the Code)

PRESENT LAW
Coverdell education savings accounts

A Coverdell education savings account is a trust or custodial account created exclusively for the purpose of paying for qualified higher education expenses of a named beneficiary.126 Annual contributions to Coverdell education savings accounts may not exceed $2,000 per designated beneficiary, or if made on account of a tax imposed by section 511.

The term qualified higher education expenses includes tuition, fees, books, supplies, and equipment required for the attendance of a designated beneficiary at an eligible educational institution, regardless of whether the beneficiary is enrolled at an eligible educational institution on a full-time, half-time, or less than half-time basis.127 Moreover, qualified higher education expenses include certain room and board expenses generally in connection with such enrollment and attendance of the beneficiary at an eligible educational institution.

Section 529 qualified tuition programs

A qualified tuition program is a program established and maintained by a State or agency, or by one or more educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits (or to make contributions to an account) for the benefit of the beneficiary of the Coverdell education savings account.130

In general

A qualified tuition program is a program established and maintained by a State or agency or instrumentality thereof, or by one or more educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to certain amounts of qualified higher education expenses of the beneficiary (a "prepaid tuition program"). Section 529 provides specified income tax and transfer rules for the treatment of accounts and contracts generally made by an account owner generally has control over the distribution of any balance remaining in a Coverdell education savings account. The per-

126 Sec. 530.
127 In general, Coverdell education savings accounts are subject to the unrelated business income tax imposed by section 511.
128 For purposes of this description, the term "account owner" generally refers to the beneficial owner of a Coverdell education savings account. Under the House bill, no new contributions are permitted into Coverdell savings accounts after December 31, 2017. However, rollovers of account balances from one Coverdell education savings account to another pre-existing Coverdell education savings account benefiting another beneficiary wise refer to the term "account owner," which is a commonly used term among qualified tuition programs.
remains permitted after this date. Additionally, the provision allows section 529 plans to receive rollover contributions from Coverdell education savings accounts.

The provision modifies section 529 plans to allow such plans to distribute not more than $10,000 in expenses for tuition incurred during the taxable year in connection with the enrollment or attendance of the designated beneficiary at a public, private or religious elementary or secondary school. This limitation applies on a per-student basis. Thus, under the provision, although an individual may be the designated beneficiary of multiple accounts, that individual may receive a maximum of $10,000 from tax-exempt funds, regardless of whether the funds are distributed from multiple accounts. Any excess distributions received by the individual would be treated as a distribution subject to tax under the general rules of section 529.

The provision also modifies section 529 plans to allow the plan’s distributions to be used for certain expenses, including books, supplies, and equipment, required for attendance in a registered apprenticeship program. Registered apprenticeship programs are apprenticeship programs registered and certified with the Secretary of Labor.

Finally, the provision specifies that nothing in this provision prevent an unborn child from qualifying as a designated beneficiary. For these purposes, an unborn child means a child in utero, and the term child in utero includes a member of the species homo sapiens, at any stage of development, who is carried in the womb.

Effective date.—The provision applies to contributions and distributions made after December 31, 2017.

SENATE AMENDMENT

The Senate amendment modifies section 529 plans to allow such plans to distribute not more than $10,000 in expenses for tuition incurred during the taxable year in connection with the enrollment or attendance of the designated beneficiary at a public, private or religious elementary or secondary school. This limitation applies on a per-student basis. Thus, under the provision, although an individual may be the designated beneficiary of multiple accounts, that individual may receive a maximum of $10,000 in distributions, regardless of whether the funds are distributed from multiple accounts. Any excess distributions received by the individual would be treated as a distribution subject to tax under the general rules of section 529.

The provision also modifies the definition of higher education expenses to include certain expenses incurred in connection with a home. Those expenses are (1) curricular and curricular materials; (2) books or other instructional materials; (3) online educational materials; (4) tuition for tutoring or online classes outside of the home (but only if the tutor or instructor is not related to the student); (5) dual enrollment in an institution of higher education, and (6) educational therapies for students with disabilities.

Effective date.—The provision applies to contributions and distributions made after December 31, 2017.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.


PRESENT LAW

Gross income generally includes the discharge of indebtedness of the taxpayer. Under an exception to this general rule, gross income does not include any amount from the forgiveness (in whole or in part) of certain student loans, provided that the forgiveness is contingent on the student’s working for a certain period of time in certain professions for any of a broad class of employers.

Student loans eligible for this special rule must be made to an individual to assist the individual in attending an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its education activities are regularly conducted. Loan proceeds may be used not only for tuition and required fees, but also to cover room and board expenses. The loan must be made by (1) the United States (or an instrumentality or agency thereof), (2) a State (or any political subdivision thereof), (3) certain tax-exempt public benefit corporations that contain in their name, or in any part of their name, the word "state," "state university," or "state public benefit corporation," (4) a hospital, or a health care facility conducting postgraduate training. The cost of attendance is reduced by any amount excluded from gross income under the exclusion for amounts received by the individual.

Under section 529, a student loan is excluded from gross income if the discharge was pursuant to the death or total and permanent disability of the student.

Additionally, the provision modifies the gross income exclusion for amounts received under the National Health Service Corps loan repayment program or certain State loan repayment programs to include any amount received by an individual under the Indian Health Service loan repayment program.

Effective date.—The provision applies to discharges of loans after, and amounts received after, December 31, 2017.

NATIVE AMENDMENT

The Senate amendment generally follows the House bill. However, the amendment does not contain the provision in the House bill excluding amounts received under the Indian Health Service loan repayment program.

Additionally, the Senate amendment does not apply to discharges of indebtedness occurring after December 31, 2025.

Effective date.—The provision is effective for discharges of indebtedness after December 31, 2025.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

12. Repeal of deduction for student loan interest (sec. 1204 of the House bill and sec. 221 of the Senate amendment)

PRESENT LAW

Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for interest on student loans, subject to a maximum annual deduction limit. Required payments of interest generally do not include voluntary payments, such as interest payments made during a period of loan forbearance. No deduction is allowed to an individual if that individual is claimed as a dependent on another taxpayer’s return for the taxable year.

A qualified education loan generally is defined as any indebtedness incurred solely to pay for the costs of attendance (including room and board) of the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred in attending on at least a half-time basis (1) eligible educational institutions, or (2) institutions offering internships or residency programs leading to a degree or certificate from an institution of higher education, a hospital, or a health care facility conducting postgraduate training. The cost of attendance is reduced by any amount excluded from gross income under the exclusions for qualified scholarships and tuition reductions, employer-provided educational assistance, interest earned on education savings bonds, qualified tuition programs, and Coverdell education savings accounts, as well as the amount excluded in other scholarships and similar payments.

133 Although the provision makes specific reference to the provisions of the Higher Education Act of 1965 that discharge William D. Ford Federal Direct Loan Program loans, Federal Family Education Loan Program loans, and Federal Perkins Loan Program loans, in the case of death and total and permanent disability, the provision also contains a catch-all reference to any amount discharged on account of death or total and permanent disability of the student, in addition to those specific statutory references.


135 Sec. 221.
Qualitative tuition reductions for certain education provided to employees (and their spouses and dependents) of certain educational organizations are excludible from gross income. The tuition reduction is subject to nondiscrimination rules. The exclusion generally applies below the graduate level, and to teaching and research assistants (and students at the graduate level), but does not apply to any amount received by a student that represents payment for teaching, research or other services by the student requisitioned as a condition for receiving the tuition reduction. Amounts that are excludible from gross income for income tax purposes are also excluded from wages for employment tax purposes.

HOUSE BILL

The provision repeals the deduction for employee tuition.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

13. Repeal of deduction for qualified tuition and related expenses (sec. 1204 of the House bill and sec. 222 of the Code)

PRESENT LAW

For taxable years beginning before January 1, 2017, 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. Qualified tuition includes tuition and fees required for the enrollment or attendance by 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. The expenses must be in connection with enrollment at an institution of higher education during the taxable year, or with an academic term 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 AGI for the taxable year does not exceed $60,000 ($120,000) in the case of a joint return), or $2,000 for other individuals whose AGI does not exceed $30,000 ($60,000) in the case of a joint return.

No deduction is allowed for an individual whose AGI exceeds the relevant AGI limitations, for a married individual who does not file a joint return, or for an individual with respect to whom a personal exemption may be claimed by another taxpayer for the taxable year. The deduction is not available for taxable years beginning after December 31, 2016.

HOUSE BILL

The provision repeals the deduction for qualified tuition and related expenses.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

14. Repeal of exclusion for qualified tuition reductions (sec. 1204 of the House bill and sec. 172(d)(7) of the Code)

PRESENT LAW

Qualified tuition reductions for certain education provided to employees (and their spouses and dependents) of certain educational organizations are excludible from gross income. The tuition reduction is subject to nondiscrimination rules. The exclusion generally applies below the graduate level, and to teaching and research assistants (and students at the graduate level), but does not apply to any amount received by a student that represents payment for teaching, research or other services by the student requisitioned as a condition for receiving the tuition reduction. Amounts that are excludible from gross income for income tax purposes are also excluded from wages for employment tax purposes.

HOUSE BILL

The provision repeals the exclusions from gross income and wages for qualified tuition reductions.

Effective date.—The provision applies to amounts paid or incurred after December 31, 2017.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

15. Repeal of exclusion for interest on United States savings bonds held for higher education expenses (sec. 1204 of the House bill and sec. 135 of the Code)

PRESENT LAW

Interest earned on a qualified United States savings bond, that is issued after 1989, is excludable from gross income if the proceeds of the bond upon redemption do not exceed qualified higher education expenses paid by the taxpayer during the taxable year. Qualified higher education expenses include tuition and fees (but not room and board expenses) required for the enrollment or attendance by the taxpayer, the taxpayer’s spouse, or a dependent of the taxpayer at certain eligible higher educational institutions. The amount of qualified higher education expenses (and related expenses) taken into account for purposes of the exclusion is reduced by the amount of such expenses taken into account in determining the Hope, AmeriCorps Opportunity, or Lifetime Learning credits claimed by any taxpayer, or taken into account in determining an exclusion from gross income for a distribution from a qualified tuition program, a qualified education savings account, with respect to a particular student for the taxable year.

The exclusion is phased out for certain higher-income taxpayers, determined by the taxpayer’s modified AGI during the year the bond is redeemed. For 2017, the exclusion is phased out for taxpayers with modified AGI between $77,000 and $80,150 ($117,250 and $147,250 for married taxpayers filing a joint return). To prevent taxpayers from effectively avoiding the income phaseout limitation through the purchase of bonds directly in the child’s name, the interest exclusion is available only with respect to U.S. Series EE savings bonds issued to taxpayers who are at least 24 years old.

HOUSE BILL

The provision repeals the exclusions from gross income and wages for educational assistance programs.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

16. Repeal of exclusion for educational assistance programs (sec. 1204 of the House bill and sec. 127 of the Code)

PRESENT LAW

Up to $5,250 annually of educational assistance provided by an employer to an employee is excludible from the employee’s gross income, provided that certain requirements are satisfied. Nondiscrimination rules apply and the educational assistance must be provided pursuant to a separate written plan of the employer. The exclusion applies to both graduate and undergraduate courses, and applies only with respect to education provided to the employee (i.e., it does not apply to education provided to the spouse or a child of the employee). Amounts that are excludible from gross income for income tax purposes are also excluded from wages for employment tax purposes.

For purposes of the exclusion, educational assistance means the payment by an employer of expenses incurred by or on behalf of the employee for education of the employee including, but not limited to, tuition, fees and related payments for books, supplies, and equipment. Educational assistance does not include (1) tools or supplies that may be retained by the employee after completion of a course, (2) meals, lodging, or travel, or (3) any education involving sports, games, or hobbies.

HOUSE BILL

The provision repeals the exclusions from gross income and wages for educational assistance programs.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

17. Rollovers between qualified tuition programs and qualified ABLE programs (sec. 1205 of the House bill, sec. 11025 of the Senate amendment and secs. 529 and 529A of the Code)

PRESENT LAW

Qualified ABLE programs

The Code provides for a tax-favored savings program intended to benefit disabled individuals, known as qualified ABLE programs. A qualified ABLE program is a program established and maintained by a State or agency or instrumentality thereof. A qualified ABLE program must meet the following conditions: (1) under the provisions of the program, contributions may be made to an account (an “ABLE account”), established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account; (2) the program must

146 Sec. 127(a).
147 The employer’s educational assistance program must not discriminate in favor of highly compensated employees, within the meaning of Sec. 414(q), only if such tuition reductions are available on substantially the same terms to each member of a group of employees in a defined plan or a rest or reasonable classification established by the employer, such that the benefit does not discriminate in favor of highly compensated employees.
148 Sec. 529A.
limit a designated beneficiary to one ABLE account; and (3) the program must meet certain other requirements discussed below. A qualified ABLE program is generally exempt from Federal income tax and any otherwise applicable tax on the taxes imposed on the unrelated business income of tax-exempt organizations.

A designated beneficiary must be an eligible individual (defined below) who established the ABLE program and who is designated at the commencement of participation in the qualified ABLE program as the beneficiary of amounts paid (or to be paid) into and from the program.

Contributions to an ABLE account must be made in cash and are not deductible for Federal income tax purposes. Except in the case of a contribution from another ABLE account, an ABLE account must provide that it may not receive aggregate contributions during a taxable year in excess of the amount under section 2503(b) of the Code (the annual gift tax exemption). For 2017, this is $14,000. Additionally, a qualified ABLE program must provide adequate safeguards to ensure that ABLE account contributions do not exceed the limit imposed on accounts under the qualified tuition programs described in section 529. Only a qualified ABLE program may allow any interest in the program (or any portion thereof) to be used as security for a loan.

Distributions from an ABLE account are generally includible in the distributee’s income to the extent consisting of earnings on the account. Distributions from an ABLE account are excludable from income to the extent that the total distribution does not exceed the qualified disability expenses of the designated beneficiary during the taxable year. If distributions from an ABLE account exceed the qualified disability expenses of the designated beneficiary, a prorata portion of the distribution is includable from Section 1091 of the Internal Revenue Code; that is includible in income is subject to an additional 10-percent tax unless the distribution is made after the death of the beneficiary. Distributions from an ABLE account may be rolled over without income tax liability to another ABLE account for the same beneficiary or another ABLE account for the designated beneficiary’s brother, sister, stepbrother or stepsister who is also an eligible individual.

Excess of the amount of an ABLE account established in a different ABLE program for purposes of transferring ABLE accounts, no more than one ABLE account may be established by a designated beneficiary. Thus, once an ABLE account has been established by a designated beneficiary, no account subsequently established by such beneficiary shall be treated as a separate ABLE account.

A contribution to an ABLE account is treated as a completed gift of a present interest to the designated beneficiary of the account. Such a contribution is entitled to the per-donee annual gift tax exclusion ($14,000 for 2017) and, to the extent of such exclusion, are exempt from the generation-skipping transfer tax (section 2601). A distribution from an ABLE account generally is not subject to gift tax or GST tax.

Eligible individuals

As described above, a qualified ABLE program may be established for eligible individuals with an eligible disability. Such programs are not entitled to be an ABLE account only if those accounts are established and owned by an eligible individual, such owner referred to as a designated beneficiary. For these purposes, an eligible individual is an individual either (1) for whom a disability certification has been filed with the Secretary for the taxable year, or (2) who is entitled to Social Security Disability Insurance benefits or SSI benefits based on blindness or disability, and such blindness or disability occurred before the individual attained age 26. A disability certification means a certification to the satisfaction of the Secretary, made by the eligible individual or the parent or guardian (if the individual is a minor) that the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and is expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind (within the meaning of section 102 of the Social Security Act). Such blindness or disability must have occurred before the date the individual attained age 26. Such certification must include a copy of the diagnosis of the individual’s impairment and be signed by a licensed physician.

Qualified disability expenses

As described above, the earnings on distributions from an ABLE account are excludable from income to the extent that total distributions do not exceed the qualified disability expenses of the designated beneficiary. For this purpose, qualified disability expenses include expenses incurred by the eligible individual’s blindness or disability which are made for the benefit of the designated beneficiary. Such expenses include the following: (a) housing expenses; (b) transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses; and expenses which are approved by the Secretary under regulations and consistent with the purposes of section 529A.

Transfer to State

In the event that the designated beneficiary dies, subject to any outstanding payments due qualified disability expenses incurred by the designated beneficiary, all amounts remaining in the deceased designated beneficiary’s ABLE account not in excess of the amount equal to the total medical assistance paid such individual under any State Medicaid plan established under title XIX of the Social Security Act shall be distributed to such State upon filing of a claim for payment by such State. Such re-paid amounts shall be net of any premiums paid by the account holder of the beneficiary to the State’s Medicaid Buy-In program.

Treatment of ABLE accounts under Federal law

Any amounts in an ABLE account, and any distribution for qualified disability expenses, shall be disregarded for purposes of determining eligibility to receive, or the amount of assistance or benefits received, by any Federal means-tested program. However, in the case of the SSI program, a distribution for housing expenses is not disregarded, nor are any amounts in an ABLE account in excess of $100,000. In the case that an individual’s ABLE account balance exceeds $100,000, such individual’s SSI benefits shall not be terminated, but instead shall be suspended until such time as the individual’s resources fall below $100,000. However, such suspension shall not apply for purposes of Medicaid eligibility.

H10008

CONGRESSIONAL RECORD — HOUSE

December 15, 2017

HOUSE BILL

The House bill allows for amounts from qualified tuition programs (also known as 529 plan contributions) to be rolled over into an ABLE account without penalty, provided that the ABLE account is owned by the designated beneficiary of that 529 plan, or a member of such designated beneficiary’s family. Such rolled-over amounts count towards the overall limitation on amounts that can be contributed to an ABLE account within a taxable year. Any amount rolled over that is in excess of this limitation shall be includable in the gross income of the distributee in a manner provided by section 72.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

18. Repeal of overall limitation on itemized deductions (sec. 1301 of the House bill, section 1301 of the Senate amendment, and sec. 68 of the Code)

PRESENT LAW

The total amount of most otherwise allowable itemized deductions (other than the deductions for medical expenses, investment interest and casualty, theft or gambling losses) is limited for certain upper-income taxpayers. All other limitations applicable to such deductions (such as the separate floors) are first applied and, then, the otherwise allowable total amount of itemized deductions is reduced by three percent of the amount by which the taxpayer’s adjusted gross income exceeds a threshold amount. For 2017, the threshold amounts are $241,500 for single taxpayers, $297,650 for heads of household, $313,800 for married couples filing jointly, and $156,900 for married taxpayers.

For these purposes, a member of the family means: with respect to any designated beneficiary, the taxpayer’s: (1) spouse; (2) child or descendant of a child; (3) brother, sister, stepbrother or stepsister; (4) father, mother or an other of either; (5) step-father or stepmother; (6) niece or nephew; (7) aunt or uncle; (8) in-law; (9) the spouse of any individual described in (2)-(8); and (10) any first cousin of the designated beneficiary.
taxpayers filing separately. These threshold amounts are indexed for inflation. The otherwise allowable itemized deductions may not be reduced by more than 80 percent by reason of the overall limit on itemized deductions.

HOUSE BILL

The House bill repeals the overall limit on itemized deductions. Effective date—The provision is effective for taxable years beginning after December 31, 2017.

SENATE AMENDMENT

The Senate amendment follows the House bill. Under the Senate amendment, the suspension of the overall limitation on itemized deductions does not apply to taxable years beginning after December 31, 2025.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

D. Simplification and Reform of Deductions and Exclusions

1. Modification of deduction for home mortgage interest (see sec. 1302 of the House Bill, see sec. 102 of the Senate amendment, and sec. 163(h) of the Code)

PRESENT LAW

As a general matter, personal interest is not deductible.160 Qualified residence interest is deductible to the extent it is allowed as an itemized deduction, subject to limitations.161 Qualified residence interest means interest paid or accrued during the taxable year on either acquisition indebtedness or home equity indebtedness. A qualified residence means the taxpayer’s principal residence and any other residence of the taxpayer selected to be a qualified residence. A qualified residence can be a house, condominium, cooperative, mobile home, house trailer, or boat.

Acquisition indebtedness

Acquisition indebtedness is indebtedness that is incurred in acquiring, constructing, or substantially improving a qualified residence of the taxpayer and which secures the residence. The maximum amount treated as acquisition indebtedness is $1 million ($500,000 in the case of a married person filing a separate return).

Acquisition indebtedness also includes indebtedness from the refinancing of other acquisition indebtedness but only to the extent of the amount (and term) of the refinanced indebtedness. For example, if a taxpayer incurs $200,000 of acquisition indebtedness to acquire a principal residence and pays down the debt to $150,000, the taxpayer’s acquisition indebtedness with respect to the residence cannot thereafter be increased above $150,000 (except by indebtedness incurred to substantially improve the residence).

Interest on acquisition indebtedness is allowable in computing alternative minimum taxable income. However, in the case of a second mortgage, the acquisition indebtedness may only be incurred with respect to a house, apartment, condominium, or a mobile home that is not used on a transient basis.

Home equity indebtedness

Home equity indebtedness is indebtedness (other than acquisition indebtedness) secured by a qualified residence.

The amount of home equity indebtedness may not exceed $500,000 ($250,000 in the case of a married individual filing a separate return) and may not exceed the fair market value of the residence reduced by the acquisition indebtedness.

160 Sec. 163(h)(1).
161 Sec. 163(h)(2)(D) and (h)(3).

Interest on home equity indebtedness is not deductible in computing alternative minimum taxable income.

Interest on qualifying home equity indebtedness (up to the amount of the principal residence indebtedness) is deductible if the proceeds of the indebtedness are used for, among other things, health care expenses or education expenses. For the purposes of this limitation, interest on any other personal expenses such as vacations, furniture, or automobiles. A taxpayer and a mortgage company can contract for the home equity indebtedness loan proceeds to be transposed to the taxpayer in a lump sum payment (e.g., a traditional mortgage), a series of payments (e.g., a reverse mortgage), or the lender may extend the borrower a line of credit up to a fixed limit over the term of the loan (e.g., a home equity line of credit).

Thus, the aggregate limitation on the total amount of a taxpayer’s acquisition indebtedness and home equity indebtedness with respect to a taxpayer’s principal residence and a second residence that may give rise to a deductible interest is $1,000,000 ($500,000, for married persons filing a separate return).

HOUSE BILL

The House bill modifies the home mortgage interest deduction in the following ways:

First, under the provision, only interest paid on indebtedness used to acquire, construct, or substantially improve the taxpayer’s principal residence may be included in the calculation of the deduction. Thus, under the provision, a taxpayer receives no deduction for interest paid on indebtedness used to acquire a second home.

Second, under the provision, a taxpayer may treat no more than $500,000 as principal residence indebtedness when the home equity indebtedness was incurred.

Thus, the aggregate limitation on the total amount of a taxpayer’s acquisition indebtedness and home equity indebtedness with respect to a principal residence is reduced to $1,000,000 ($500,000, for married persons filing a separate return).

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

SENATE AMENDMENT

The Senate amendment suspends the deduction for interest on home equity indebtedness. Effective date.—The provision is effective for taxable years beginning after December 31, 2017.

CONFERENCE AGREEMENT

The conference agreement provides that, in the case of taxable years beginning after December 31, 2017, and beginning before January 1, 2026, a taxpayer may treat no more than $500,000 as acquisition indebtedness ($375,000 in the case of married taxpayers filing separately). In the case of acquisition indebtedness incurred before December 15, 2017, the limitation is $1,000,000 ($500,000, for married taxpayers filing separately). For taxable years beginning after December 31, 2025, a taxpayer may treat up to $1,000,000 as acquisition indebtedness (sec. 1303 of the Senate amendment).

Additionally, the conference agreement suspends the deduction for interest on home equity indebtedness. Thus, for taxable years beginning after December 31, 2017, a taxpayer may not claim a deduction for interest on home equity indebtedness. The suspension ends for taxable years beginning after December 31, 2025.

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

2. Modification of deduction for taxes not paid or accrued in a trade or business (see sec. 204 of the House Bill, see sec. 104 of the Senate amendment, and sec. 164 of the Code)

PRESENT LAW

Individually are permitted a deduction for certain taxes paid or accrued, whether or not included in a taxpayer’s trade or business. These taxes are: (i) State and local real and personal property taxes;162 (ii) State and local personal property taxes;163 (iii) State, local, and foreign income, war profits, and excess profits taxes.164 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 for State and local income taxes.165

Property taxes may be allowed as a deduction in computing adjusted gross income if incurred in connection with property used in a trade or business; otherwise they are an itemized deduction. In the case of State and local income taxes, the deduction is an itemized deduction unless the taxpayer elects that the tax be imposed on profits from a trade or business.166 Individuals also are permitted a deduction for Federal and State generation skipping transfer tax ("GST tax") imposed on certain

162 The conference agreement provides that a taxpayer who has entered into a binding written contract before December 15, 2017 to close on the purchase of a principal residence before January 1, 2018, and who purchases such residence before April 1, 2018, shall be considered to incur acquisition indebtedness prior to December 15, 2017 under this provision.

163 Special rules apply in the case of indebtedness from refinancing existing acquisition indebtedness. For taxable years beginning after December 31, 2017, the $1,000,000 ($500,000 in the case of a married taxpayer filing separately) limitation continues to apply to any indebtedness incurred on or after November 2, 2017, to refinance qualified residence indebtedness incurred before that date to the extent the amount of the refinanced indebtedness does not exceed the amount of the refinanced indebtedness. Thus, the maximum dollar amount that may be treated as principal residence acquisition indebtedness will not decrease by reason of a refinancing.

164 Sec. 164(a)(1).

165 Sec. 164(a)(2).

166 Sec. 164(a)(3). A foreign tax credit, in lieu of a deduction, is allowable for foreign taxes if the tax payer so elects.

167 Sec. 164(b)(5).

income distributions that are included in the gross income of the distributee.\textsuperscript{169}

In determining a taxpayer's alternative minimum taxable income, no itemized deduction for property, income, or sales tax is allowed.\textsuperscript{170}

\textbf{HOUSE BILL}

Under the provision, in the case of an individual, as a general matter, State, local, and foreign property taxes and sales taxes are allowed as a deduction only when paid or accrued in carrying on a trade or business, or an activity described in section 212 as expenses for the production of income.\textsuperscript{171}

Thus, the provision allows only those deductions for State, local, and foreign property taxes, and sales taxes, that are deductible in computing income on an individual's Schedule C, Schedule E, or Schedule F on such individual's tax return. Thus, in instance, in the case of property taxes, an individual may deduct only if these taxes were imposed on business assets (such as residential rental property).

The provision contains an exception to the above-stated rule in the case of real property taxes. Under this exception, an individual may claim an itemized deduction of up to $10,000 ($5,000 for married taxpayer filing a separate return) for property taxes paid or accrued in the taxable year, in addition to any property taxes deducted in carrying on a trade or business activity described in section 212. Foreign real property taxes may not be deducted under this exception.

Under the provision, in the case of an individual, as a general matter, State, local, and foreign property taxes and sales taxes, that are deductible in computing income on an individual's Schedule C, Schedule E, or Schedule F on such individual's tax return. Thus, for instance, in the case of property taxes, an individual may deduct such items only if these taxes were imposed on business assets (such as residential rental property).

The provision contains an exception to the above-stated rule in the case of real property taxes. Under this exception, an individual may claim an itemized deduction of up to $10,000 ($5,000 for married taxpayer filing a separate return) for property taxes paid or accrued in carrying on a trade or business, or an activity described in section 212, and (ii) State and local income, war profits, and excess profits taxes not paid or accrued in carrying on a trade or business, or an activity described in section 212, and (ii) State and local income, war profits, and excess profits taxes (or sales taxes in lieu of income, etc., taxes) paid or accrued in the taxable year. Such property taxes may not be deducted under this provision.

The above rules apply to taxable years beginning after December 31, 2017, and beginning before January 1, 2026.

\textbf{Effective date.}—The provision is effective for taxable years beginning after December 31, 2017.

\textbf{SENATE AMENDMENT}

The Senate amendment follows the House bill. However, under the Senate amendment, the suspension of the deduction for State and local property taxes in taxable years beginning after December 31, 2025.

\textbf{Effective date.}—The provision is effective for taxable years beginning after December 31, 2017.

\textbf{CONFERENCE AGREEMENT}

The conference agreement provides that in the case of an individual,\textsuperscript{172} as a general matter, State, local, and foreign property taxes and State and local sales taxes are allowed as a deduction only when paid or accrued in carrying on a trade or business, or an activity described in section 212 (relating to expenses for the production of income).\textsuperscript{173} The conference agreement follows the Senate amendment.

The proposal does not modify the deductibility of GST\textsuperscript{174} tax imposed on certain income distributions. Additionally, taxes imposed at the entity level, such as a business tax imposed on pass-through entities, that are reflected in a partner's or S corporation shareholder's distributive or pro-rata share of income or loss on a Schedule K-1 (or similar form), will continue to reduce such partner's or shareowner's distributive or pro-rata share of income as described in section 6213 because such taxes are imposed on business assets (such as residential rental property).

Under the provision, in the case of an individual, as a general matter, State, local, and foreign property taxes and sales taxes are allowed as a deduction only if these taxes were imposed on business assets (such as residential rental property).

Under the provision, in the case of an individual, as a general matter, State, local, and foreign property taxes and sales taxes are allowed as a deduction only if these taxes were imposed on business assets (such as residential rental property).

The provision contains an exception to the above-stated rule. Under the provision a taxpayer may claim an itemized deduction of up to $10,000 ($5,000 for married taxpayer filing a separate return) for the aggregate of (i) State and local property taxes not paid or accrued in carrying on a trade or business, or an activity described in section 212, and (ii) State and local income, war profits, and excess profits taxes (or sales taxes in lieu of income, etc., taxes) paid or accrued in the taxable year. Such property taxes may not be deducted under this provision.

The above rules apply to taxable years beginning after December 31, 2017, and beginning before January 1, 2026.

\textbf{Effective date.}—The provision is effective for taxable years beginning after December 31, 2017, and beginning before January 1, 2026.

\textbf{PRESENT LAW}

A taxpayer may generally claim a deduction for any loss sustained during the taxable year in carrying on any trade or business, or an activity described in section 212. A loss is deductible only if the taxpayer's expenses incurred in the conduct of the trade or business were not deductible under section 162(a).

\textbf{HOUSE BILL}

The House bill repeals the deduction for personal casualty and theft losses (sec. 1304 of the House bill, sec. 11094 of the Senate amendment, and sec. 165 of the Code)

A taxpayer may generally claim a deduction for any loss sustained during the taxable year in carrying on any trade or business, or an activity described in section 212. A loss is deductible only if the taxpayer's expenses incurred in the conduct of the trade or business were not deductible under section 162(a).

\textbf{Present Law}

A taxpayer may generally claim a deduction for any loss sustained during the taxable year in carrying on any trade or business, or an activity described in section 212. A loss is deductible only if the taxpayer's expenses incurred in the conduct of the trade or business were not deductible under section 162(a).

\textbf{5. Modifications to the deduction for charitable contributions (sec. 1306 of the House bill, sec. 11023, 13705, and 13704 of the Senate amendment, and sec. 170 of the Code)}

\textbf{Present Law}

The Senate amendment temporarily modifies the deduction for personal casualty and theft losses. Under the provision, a taxpayer may claim a personal casualty loss (subject to limitations) from a disaster only if such loss was attributable to a disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The above-described limitation does not apply with respect to losses incurred after December 31, 2025.

\textbf{Effective date.}—The provision is effective for losses incurred in taxable years beginning after December 31, 2017.

\textbf{CONFERECE AGREEMENT}

The conference agreement follows the Senate amendment.

\textbf{4. Limitation on wagering losses (sec. 1305 of the House bill, sec. 11051 of the Senate amendment, and sec. 165 of the Code)}

\textbf{Present Law}

Loses sustained during the taxable year on wagering transactions are allowed as a deduction only to the extent of the gains during the taxable year from such transactions.

\textbf{HOUSE BILL}

The House bill clarifies the scope of "losses from wagering transactions" as that term is used in section 165(d). Under the provision, this term includes any deduction otherwise allowed under chapter 1 of the Code incurred in carrying on any wagering transaction.

The provision is intended to clarify that the limitation on losses from wagering transactions applies only to the actual costs of wagers incurred by an individual, but to other expenses incurred by the individual in connection with the conduct of that individual's gambling activity.\textsuperscript{176} The provision clarifies, for instance, an individual's otherwise deductible expenses in traveling to or from a casino are subject to the limitation under section 165(d).

\textbf{Effective date.}—The provision is effective for taxable years beginning after December 31, 2017.

\textbf{SENATE AMENDMENT}

The Senate amendment follows the House bill. However, the Senate amendment does not apply to taxable years beginning after December 31, 2025.

\textbf{CONFERECE AGREEMENT}

The conference agreement follows the Senate amendment.

\textbf{In general}

The Internal Revenue Code allows taxpayers to reduce their income tax liability by taking deductions for contributions to certain organizations, including charities, Federal, State, local, and Indian tribal governments, and certain other organizations.

To be deductible, a charitable contribution generally must meet several threshold requirements. First, the recipient of the transfer must be eligible to receive charitable contributions.\textsuperscript{177} The provision thus reverses the result reached by the Tax Court in Ronald A. Mus v. Commissioner, 189 F.3d 164 (3d Cir. 2001). In that case, the Court held that a taxpayer's expenses incurred in the conduct of the trade or business of gambling, other than the cost of wagers, were not deductible under section 162(a), and were thus deductible under section 162(a).

\textbf{Present Law}

The Internal Revenue Code allows taxpayers to reduce their income tax liability by taking deductions for contributions to certain organizations, including charities, Federal, State, local, and Indian tribal governments, and certain other organizations. To be deductible, a charitable contribution generally must meet several threshold requirements. First, the recipient of the transfer must be eligible to receive charitable contributions.
interest in property. For this purpose, an "in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization that has the effect of reserving to, or retaining in, such charitable organization, the use, possession, or enjoyment of the property." A gift of an undivided portion of a donor's entire interest in property generally is not treated as a nondeductible gift of a partial interest in property. For this purpose, an undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property. A gift generally is treated as a gift of an undivided portion of a donor's entire interest in property if the donee is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. Other exceptions to the partial interest rule are provided for, among other interests: (1) remainder interests in charitable remainder annuities, charitable remainder unitrusts, and pooled income funds; (2) present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property; (3) a remainder interest in a personal residence or farm; and (4) qualified conservation contributions.

Qualified conservation contributions

Qualified conservation contributions are not subject to the partial interest rule, which generally bars deductions for charitable contributions of partial interests in property. A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property (generally, a conservation easement). Qualified organizations include certain governmental units, public charities that obtain public support through tests, and certain supporting organizations. Conservation purposes include: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.

Percentage limits on charitable contributions

Individual taxpayers

Charitable contributions by individual taxpayers are limited to a specified percentage of the individual's contribution base. The contribution base is the taxpayer's adjusted gross income ("AGI") for a taxable year, disregarding any net operating loss carryback to the year under section 172.

<table>
<thead>
<tr>
<th>TABLE 3 — CHARITABLE CONTRIBUTION PERCENTAGE LIMITS FOR INDIVIDUAL TAXPAYERS</th>
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<tbody>
<tr>
<td>Public Charities, Private Operating Foundations, and Private Distributions Foundations</td>
</tr>
<tr>
<td>Nonoperating Private Foundations</td>
</tr>
</tbody>
</table>

| Ordinary Income Property for the 2016 Tax Year | 20% |
| Capital Gain Property for the 2016 Tax Year | 20% |

183 Treas. Reg. sec. 1.170A-7(b)(1).
184 Secs. 170(f)(3)(B)(iii) and 170(h).
185 Sec. 172.170A–7(b)(1).
186 Secs. 170(f)(3)(B)(iii) and 170(h).
187 Secs. 170(f)(3)(B)(iii) and 170(h).
188 Sec. 170(a)(1).
189 For example, as discussed in greater detail below, the value of time spent volunteering for a charitable organization is not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization are not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization are not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization are not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization are not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization are not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization are not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization are not deductible.
Corporate taxpayers

A corporation generally may deduct charitable contributions up to 10 percent of the corporation's taxable income for the year. For this purpose, taxable income is determined without regard to: (1) the charitable contributions deduction; (2) any net operating loss carryback to the taxable year; and (3) deductions for dividends received; (4) deductions for dividends paid on certain preferred stock of public utilities; and (5) any capital loss carryback to the taxable year. In general, the charitable contributions carried forward for up to five years. In general, contributions carried over from a prior year are tax-deductible at the 25 percent rate. Contributions made for the use of capital gain property, conservation contributions.194 In general, the 30 percent limitation may not apply to contributions made for the use of capital gain property contributed to charity.195 Contributions of capital gain property are increased 50 percent if the individual making the qualified contribution.

Charitable contributions of cash are deductible in the amount contributed, subject to the limitations described above. In addition, a taxpayer generally may deduct the full fair market value of long-term capital gain property contributed to charity.196 Contributions of tangible personal property that are generally deductible at fair market value if the use by the recipient organization is related to its tax-exempt purpose.

In certain other cases, however, section 170(e) limits the deductibility of the charitable contributions of inventory or other ordinary income property.197 Contributions of capital gain property are increased 50 percent if the individual making the qualified contribution.

For contributions of qualified appreciated stock, the above-described rule limits the value of property contributed to or for the use of a private nonoperating foundation to the lesser of: (1) the fair market value of the property; or (2) two times basis.201 To be eligible for the enhanced deduction, the fair market value of the contributed property must be at least 10 percent of the fair market value of the property.

To use the enhanced deduction provision, the taxpayer must establish that the fair market value of the donated item exceeds basis. A taxpayer engaged in a trade or business, which does not own a C corporation, is eligible to claim the enhanced deduction for certain donations of food inventory.200

Selected statutory rules for specific types of contributions

Special statutory rules limit the deductible value and impose enhanced reporting obligations on donors of charitable contributions of certain types of property, including vehicles, intellectual property, and clothing and household items. Each of these rules was enacted in response to concerns that some taxpayers did not accurately report the value of the property for purposes of claiming a charitable deduction.

Vehicle donations. Under present law, the amount of deduction for charitable contributions of vehicles (generally including automobiles, boats, and airplanes for which the charitable contribution exceeded the basis of the vehicle and the fair market value of the vehicle) depends upon the use of the vehicle by the donee organization. If the donee organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction may not exceed the gross proceeds received from the sale. In other situations, the fair market value deduction may be allowed.

Patents and other intellectual property. If a taxpayer contributes a patent or other intellectual property (other than certain copyrights or inventions) to a charitable organization, the taxpayer's initial charitable deduction is limited to the lesser of the donor's tax basis in the contributed property or the fair market value of the property.

Although the most charitable contributions of property are valued at fair market value or the donor's tax basis in the property, certain statutorily described contributions of appreciated property and other property qualify for an enhanced deduction valuation that exceeds the donor's tax basis in the property, but which is less than the fair market value of the property.

As discussed above, a taxpayer's deduction for charitable contributions of inventory property generally is limited to the taxpayer's basis (typically, cost) in the inventory, or if less, the fair market value of the property. For certain contributions of inventory, however, C corporations (but not other taxpayers) may claim an enhanced deduction equal to the lesser of: (1) the property's basis (i.e., basis plus one-half of fair market value in excess of basis) or (2) two times basis.202 To be eligible for the enhanced deduction, the fair market value of the contributed property must be at least 10 percent of the fair market value of the property. A contribution of qualified appreciated stock is stock that is capital gain property and for which (as of the date of the contribution) market quotations are readily available on an established securities market. A contribution of qualified appreciated stock is stock that is capital gain property and for which (as of the date of the contribution) market quotations are readily available on an established securities market. A contribution of qualified appreciated stock is stock that is capital gain property and for which (as of the date of the contribution) market quotations are readily available on an established securities market. A contribution of qualified appreciated stock is stock that is capital gain property and for which (as of the date of the contribution) market quotations are readily available on an established securities market.
addition, the taxpayer generally is permitted to deduct, as a charitable contribution, certain additional amounts in the year of contribution or in subsequent taxable years based on a certain percentage of the adjusted gross income received or accrued by the charitable donee with respect to the contributed intellectual property. For this purpose, qualified intellectual property includes certain intellectual property received or accrued by the donee that properly is allocable to the intellectual property itself (as opposed to the activity in which the intellectual property is used).

Clothing and household items.—Charitable contributions of clothing and household items are subject to the same deduction rules applicable to tangible personal property. If such contributed property is appreciated property in the hands of the taxpayer and is not used to further the donee’s exempt purpose, the deduction is limited to basis. In most situations, however, clothing and household items have a fair market value that is less than the taxpayer’s basis in the property. Because property with a fair market value less than basis generally is deductible at the property’s fair market value, taxpayers generally may deduct only the fair market value of most contributions of clothing or household items, regardless of the property being used for exempt or unrelated purposes by the donee organization. Furthermore, a special rule generally provides that no deduction is allowed for any contribution of clothing or a household item unless the item is in good used or better condition. The Secretary is authorized to deny a deduction for any contribution of clothing or a household item that has minimal monetary value, such as used socks and used undergarments. Notwithstanding the general rule, a charitable contribution of clothing or household items not in good used or better condition with a claimed value of more than $500 may be deducted if the taxpayer includes with the return a qualified appraisal with respect to the property.

Household items include furniture, furnishings, electronics, appliances, linens, and other similar items. Food, paintings, antiques, and other objects of art, jewelry and gems, and certain collections are excluded from the special rules described in the preceding paragraph.

College athletic seating rights.—In general, where a taxpayer receives or expects to receive a substantial return benefit for a payment made for the right to purchase or use an institution of higher education event, the right to purchase or use athletic event tickets or seating at an athletic event. Specifically, the taxpayer may treat 80 percent of the cost as a charitable contribution

The present-law rules allowing additional charitable contributions of noncash income were enacted as part of the American Jobs Creation Act of 2004, and are effective for contributions made after June 3, 2004. For a more detailed description of these rules, see Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 108th Congress (GPO, pp. 407-461, 2005).

As is discussed above, the charitable contribution substantiation rules generally require a qualified appraisal or a written acknowledgment of the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. In such cases, the recordkeeping requirements may not be met by maintaining other written records.

No charitable contribution deduction is allowed for a separate contribution of $250 or less that the donor obtains a contemporaneous written acknowledgment of the contribution from the charity indicating whether the charity provided any good or service in consideration for the charitiable contribution (a quid pro quo contribution) to the taxpayer in consideration for the contribution.

In addition, any charity receiving 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 include in 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 is deductible by which donee contributions can be accomplished.

Subsection 170(f)(8)(D) provides an exception to the contemporaneous written acknowledgment requirement described above. Under the exception, a contemporaneous written acknowledgment is required if the donee organization files a return, on such form and in accordance with such regulations as the IRS may prescribe, that includes the same amount and to attach an appraisal summary to the tax return.

Since October 2015, the IRS issued proposed regulations that, if finalized, would have implemented the section 170(f)(8)(D) exception to the contemporaneous written acknowledgment requirement. The proposed regulations provided that a return filed by a donee organization under section 170(f)(8)(D) must include the following information:

- The name and address of the donee organization;
- The name and address of the donor;
- The identification number of the donor; and
- The amount paid or accrued by the donor (as described in section 170(f)(8)(D)).

In addition, the return must be filed with the IRS and may not be used to solicit gifts or solicitations before February 28 of the year following the calendar year in which the contribution was made. Under the proposed regulations, a return would have been optional and would have been available solely at the discretion of the donee organization. The proposed regulations were withdrawn in February 2016.
Increased percentage limit for contributions of cash to public charities

The provision increases the income-based percentage limit described in section 170(b)(1)(A) for certain charitable contributions by an individual taxpayer of cash to public charities and certain other organizations from 50 percent to 60 percent.

Charitable mileage rate adjusted for inflation

The provision repeals the statutory charitable mileage rate and provides instead that the standard mileage rate used for determining the charitable contribution deduction shall be a rate which takes into account the variable costs of operating an automobile. The intent of the provision is to allow the IRS to determine, and make periodic adjustments to, the charitable standard mileage rate, taking into account the types of costs that are deductible under section 170 of the Code when operating a vehicle in connection with providing volunteer services (i.e., generally, the out-of-pocket operating expenses (including gasoline and oil) directly related to the use of the automobile for such purposes).

Denial of charitable deduction for college athletic event seating rights

The provision amends section 170(l) to provide that no charitable deduction shall be allowed for any amount described in paragraph 170(l)(2), generally, a payment to an institution of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event, as described in detail above.

Repeal of substantiation exception for certain contributions reported by the donee organization

The provision repeals the section 170(r)(9)(B) substantiation exception to the contemporaneous written acknowledgment requirement.

Effective date.—The provision is effective for contributions made in taxable years beginning after December 31, 2017.

 Senate Amendment

The Senate amendment includes three of the House bill’s four modifications to the present-law charitable contribution rules: (1) the increase in the percentage limit for charitable contributions of cash to public charities; (2) the denial of a charitable deduction for payments made in exchange for college athletic event seating rights; and (3) the repeal of the substantiation exception for certain contributions reported by the donee organization.

The Senate amendment does not include the provision from the House bill that allows the charitable standard mileage rate to be adjusted for inflation.

Effective date.—The provisions that increase the charitable contribution percentage limit and deny a deduction for stadium seating payments are effective for contributions made in taxable years beginning after December 31, 2017. The provision that repeals the substantiation exception for certain contributions reported by the donee organization is effective for contributions made in taxable years beginning after December 31, 2016.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Repeal of Certain Miscellaneous Itemized Deductions Subject to the Two-Percent Floor (sec. 1308 of the House bill, sec. 11028 of the Senate amendment, and secs. 62, 67 and 212 of the Code)

Present Law

Individuals may claim itemized deductions for certain miscellaneous expenses. Certain of these expenses are not deductible unless, in aggregate, they exceed two percent of the taxpayer’s adjusted gross income ("AGI"). The deductions described below are subject to the aggregate two-percent floor.

Expenses for the production or collection of income

Individuals may deduct all ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income. Present law and IRS guidance provide examples of items that may be deducted under this provision. This non-exhaustive list includes:

- Appraisal fees for a casualty loss or charitable contribution;
- Casualty and theft losses from property used in performing services as an employee;
- Clerical help and office rent in caring for investments;
- Depreciation on home computers used for investments;
- Excess deductions (including administrative expenses) allowed a beneficiary on termination of an estate or trust;
- Fees to collect interest and dividends;
- Hobby expenses, but generally not more than hobby income;
- Indirect miscellaneous deductions from pass-through entities;
- Investment fees and expenses;
- Loss on deposit in an insolvent or bankrupt financial institution;
- Loss on traditional IRAs or Roth IRAs, when amounts have been distributed;
- Repayment of income;
- Safe deposit box rental fees, except for storing jewelry and other personal effects;
- Service charges on dividend reinvestment plans; and
- Trustee's fees for an IRA, if separately billed and paid.

Tax preparation expenses

For regular income tax purposes, individuals are allowed an itemized deduction for expenses in connection with the determination of income. These expenses are defined as ordinary and necessary expenses paid or incurred in a taxable year: (1) for the production or collection of income; (2) for the management, conservation, or maintenance of property held for the production of income; or (3) in connection with the determination, collection, or refund of any tax.

Unreimbursed expenses attributable to the trade or business of being an employee

In general, unreimbursed business expenses incurred by an employee are deductible, but only as an itemized deduction and only to the extent that the expenses exceed two percent of adjusted gross income. Present law and IRS guidance provide examples of items that may be deducted under this provision. This non-exhaustive list includes:

- Business bad debt of an employee;
- Business liability insurance premiums;
- Damages paid to a former employer for breach of an employment contract;
- Depreciation on a computer a taxpayer’s employer requires him to use in his work;
- Dues to a chamber of commerce if membership helps the taxpayer perform his job;
- Dues to professional societies;
- Educator expenses; and
- Indirect miscellaneous deductions from pass-through entities.

7. Repeal of deduction for medical expenses (sec. 1308 of the House bill, sec. 11028 of the Senate amendment and sec. 215 of the Code)

Present Law

Individuals may claim an itemized deduction for unreimbursed medical expenses, but only to the extent that the expenses exceed two percent of adjusted gross income. For taxable years beginning before January 1,

222 Sec. 67(a).
223 Sec. 752(a).
224 Secs. 62, 67 and 212 of the Code.
227 Sec. 221.
228 Sec. 62(a)(1) and 67.
229 Sec. 752(a).
230 Sec. 213. The threshold was amended by the Patient Protection and Affordable Care Act (Pub. L. No. 111-148). For taxable years beginning before January 1, 2013, the threshold was 7.5 percent and 10 percent for alternative minimum tax ("AMT") purposes.
9. Repeal of deduction for moving expenses (sec. 1310 of the House bill, sec. 11050 of the Senate amendment, and sec. 217 of the Code)

**PRESENT LAW**

Individuals are permitted an above-the-line deduction for moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work. Such expenses are deductible only if the move meets certain conditions related to distance from the taxpayer’s previous residence and the taxpayer’s status as a full-time employee in the new location.

**Effective date.**—The provision is effective for taxable years beginning after December 31, 2017.

**CONFERENCE AGREEMENT**

The conference agreement follows the Senate amendment.

8. Repeal of deduction for alimony payments and inclusion in gross income (sec. 1309 of the House bill and secs. 61, 71, and 215 of the Code)

**PRESENT LAW**

Alimony and separate maintenance payments are deductible by the payor spouse and includible in income by the recipient spouse. Child support payments are not treated as alimony.

**HOUSE BILL**

Under the House bill, alimony and separate maintenance payments are not deductible by the payor spouse. The House bill repeals the Code provisions that specify that alimony and separate maintenance payments are included in income. Thus, the intent of the provision is to follow the rule of the United States Supreme Court’s holding in Gould v. Gould, in which the Court held that such payments are not income to the recipient. Income from such payments is taxed at the rates applicable to the payor spouse rather than the recipient spouse. The treatment of child support is not changed.

**Effective date.**—The provision is effective for any divorce or separation instrument executed after December 31, 2017, or for any divorce or separation instrument executed on or before December 31, 2017, and modified after that date, if the modification expressly provides that the amendments made by this section apply to such modification.

**CONFERENCE AMENDMENT**

The conference agreement generally follows the House bill. However, the conference agreement delays the effective date of the provision by one year. Thus, the conference agreement is effective for any divorce or separation instrument executed after December 31, 2018, or for any divorce or separation instrument executed on or before December 31, 2018, and modified after that date, if the modification expressly provides that the amendments made by this section apply to such modification.

**SENATE AMENDMENT**

The Senate amendment generally suspends the deduction for moving expenses for taxable years 2018 through 2025. However, during that suspension period, the provision retains the deduction for moving expenses and the rules providing for exclusions of amounts attributable to in-kind moving and storage expenses (and reimbursements or allowances for these expenses) for members of the Armed Forces (or their spouses or dependents) on active duty that move pursuant to a military order and incident to a permanent change of station. The suspension of the deduction for moving expenses does not apply to taxable years beginning after December 31, 2025.

**Effective date.**—The provision is effective for taxable years beginning after December 31, 2017.

236 Sec. 217(a).
237 Sec. 217(g).
238 Sec. 217(c)(2).
239 Sec. 131.
240 Archer MSAs were originally called medical savings accounts or MSAs, which is a tax-exempt trust or custodial account. Within limits, contributions to an Archer MSA are deductible in determining adjusted gross income. Distributions are includible in gross income for income tax purposes and wages for employment tax purposes if made by the employer of an individual.
An individual is generally eligible for an Archer MSA if the individual is covered by a high deductible health plan and no other health plan other than a plan that provides certain permitted insurance or permitted coverage. In addition, the individual either must be an employee of a small employer (generally an employer with 50 or fewer employees on average) that provides the high deductible health plan or must be self-employed or the spouse of a self-employed individual. The high deductible health plan is not provided by the employer of the individual or spouse.
For 2017, a high deductible health plan for purposes of Archer MSA eligibility is a health plan with an annual deductible of at least $3,350 and not more than $6,750 in the case of family coverage and at least $1,650 and not more than $3,300 in the case of self-only coverage. In addition, the maximum out-of-pocket expenses with respect to allowed costs must be no more than $4,500 in the case of family coverage and at least $4,500 for self-only coverage. Out-of-pocket expenses include deductibles, co-payments, and other amounts (other than premiums) that the individual must pay for covered benefits under the plan. A plan does not fail to qualify as a high deductible health plan if substantially all of the coverage under the plan is term-limited insurance or is coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.
The maximum annual contribution that can be made to an Archer MSA for a year is 60 percent of the Archer MSA eligibility. The Archer MSA eligibility is a health plan with an annual deductible of at least $3,350 and not more than $6,750 in the case of family coverage and at least $1,650 and not more than $3,300 in the case of self-only coverage. In addition, the maximum contribution can be made only if the individual is covered by the high deductible health plan for the full year.
Distributions from an Archer MSA for qualified medical expenses are not includible in gross income. Distributions not used for qualified medical expenses are includible in gross income and subject to an additional 20-percent tax unless an exception applies. A distribution from an Archer MSA may be rolled over on a nontaxable basis to another Archer MSA or to a health savings account and does not count against the contribution limits.
After 2007, no new contributions can be made to Archer MSAs except by or on behalf of

241 Archer MSAs were originally called medical savings accounts or MSAs.
242 The FICA exclusion is provided under IR3 Notics 96-53 (1996).
243 Sections 106(b) and 220 of the Code.
of individuals who previously had made Archer MSAs for taxable years beginning after December 31, 2017, are not deductible or excludable from gross income for income tax purposes and are excludable from wages for employment tax purposes if made by the employer of an individual, and distributions for qualified medical expenses are not includible in gross income. However, the rules for HSAs are in various aspects more favorable to the rules for Archer MSAs. For example, the availability of HSAs is not limited to employees of small employers or self-employed individuals and their spouses.

For 2017, a high deductible health plan for purposes of HSA eligibility is a health plan

that generally may contribute to a health savings account ("HSA"). A HSA is a tax-exempt trust or custodial account. HSAs provide similar tax-favored savings treatment as Archer MSAs. That is, within limits, contributions to HSAs are deductible in determining adjusted gross income if made by an individual and are excludable from gross income for income tax purposes and wages for employment tax purposes if made by the employer of an individual, and distributions for qualified medical expenses are not includible in gross income. However, the rules for HSAs are in various aspects more favorable to the rules for Archer MSAs. For example, the availability of HSAs is not limited to employees of small employers or self-employed individuals and their spouses.

For 2017, a high deductible health plan for purposes of HSA eligibility is a health plan with an annual deductible of at least $1,300 in the case of self-only coverage and at least $2,600 in the case of family coverage. In addition, the sum of the deductible and the maximum out-of-pocket expenses with respect to allowed costs must be no more than $6,550 in the case of self-only coverage and no more than $13,100 in the case of family coverage. A plan does not fail to qualify as a high deductible health plan for HSA purposes merely because it does not have a deductible for preventive care.

For 2017, the maximum aggregate annual contribution that can be made to an HSA is $3,400 in the case of self-only coverage and $6,750 in the case of family coverage. The annual contribution limits are increased by $1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as "catch-up contributions"). The maximum amount that an individual make contribute is reduced by the individual's contributions to the individual's Archer MSA and any excludable HSA contributions made by the individual's employer. In some cases, an individual may contribute the maximum HSA contribution, even if the individual is covered by the high deductible health plan for only part of the year. A distribution from an HSA may be rolled over on a nontaxable basis to another HSA and does not count against the contribution limits.

**Present Law**

The House bill repeals the present-law provisions allowing for above-the-line deductions for expenses of qualified performing artists, expenses of State or local government officials performing services on a fee basis, expenses of eligible educators, and expenses of eligible educational institutions. Effective date.—The provision is effective for taxable years beginning after December 31, 2017.

**Senate Amendment**

The Senate amendment temporarily increases the limit for the deduction of certain expenses of eligible educators, in determining adjusted gross income, to $500. Any deduction for expenses in excess of this amount (under present law generally a miscellaneous itemized deduction subject to the two-percent floor) is suspended. The provision does not apply to taxable years beginning after December 31, 2025.

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

**Conference Agreement**

The provision does not apply to taxable years beginning after December 31, 2017.

11. Denial of deduction for performing artists and certain officials; Modification of deduction for educator expenses (secs. 1312 of the House bill, sec. 11032 of the Senate amendment and secs. 62 of the Code)

**Present Law**

In general, unreimbursed business expenses incurred by an employee are deductible, but only as an itemized deduction and only to the extent they exceed two percent of adjusted gross income. However, in the case of certain employees and certain expenses, a deduction may be taken in determining adjusted gross income (referred to as an "above-the-line" deduction), including expenses of qualified performing artists, expenses of State or local government officials performing services on a fee basis, and expenses of eligible educators. Eligible educators are elementary or secondary school teachers, instructors, counselors, principals, or aides in a school for at least 900 hours during a school year. An eligible educator may take an "above-the-line" deduction for ordinary and necessary expenses incurred (1) by reason of participation in professional development courses related to the curriculum or students the educator teaches, or (2) in connection with books, supplies, computer and other equipment, and supplementary materials to be used in the classroom. The deduction may not exceed $250 (for 2017) in expenses, and is indexed for inflation.

**House Bill**

The House bill repeals the present-law provisions allowing for above-the-line deductions for expenses of qualified performing artists, expenses of State or local government officials performing services on a fee basis, and expenses of eligible educators, and expenses of eligible educational institutions. Effective date.—The provision is effective for taxable years beginning after December 31, 2017.

**Senate Amendment**

The Senate amendment temporarily increases the limit for the deduction of certain expenses of eligible educators, in determining adjusted gross income, to $500. Any deduction for expenses in excess of this amount (under present law generally a miscellaneous itemized deduction subject to the two-percent floor) is suspended. The provision does not apply to taxable years beginning after December 31, 2025.

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

**Conference Agreement**

The conference agreement does not include the House bill provision and retains the present-law above-the-line deduction and limit for certain expenses of eligible educators.

12. Suspension of exclusion for qualified bicycle commuting reimbursement (sec. 11048 of the Senate amendment and secs. 132(f) of the Code)

**Present Law**

Qualified bicycle commuting reimbursements of up to $20 per qualifying bicycle commuting month are excludable from an employee's gross income. A qualifying bicycle commuting month is any month during which the employee regularly uses the bicycle for a substantial part of the commute to or from place of employment and during which the employee does not receive transportation in a commuter highway vehicle, a transit pass, or other paid or unpaid commuting fringe benefit. Qualified reimbursements are any amount received from an employer during a 15-month period beginning with the first day of the calendar year as payment for reasonable expenses during a calendar year. Reasonable expenses are those incurred in a calendar year for the purchase of a bicycle and bicycle improvements, repairs, and insurance. If the bicycle is regularly used for travel between the employee's residence and place of employment.

Amounts that are excludable from gross income for income tax purposes are also excluded from wages for employment tax purposes.

**House Bill**

No provision.

**Senate Amendment**

The provision suspends the exclusion from gross income and wages for qualified bicycle commuting reimbursements. The exclusion does not apply to taxable years beginning after December 31, 2017 and before January 1, 2026.

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

**Conference Agreement**

The conference agreement follows the Senate amendment.
15. Sunset of exclusion for dependent care assistance programs (sec. 1404 of the House bill and sec. 129 of the Code)  

PRESENT LAW  

An exclusion from the gross income of an employee of up to $5,000 annually for employer-provided dependent care assistance is allowed if the assistance is provided pursuant to a separate written plan of an employer that does not discriminate in favor of highly compensated employees and meets certain other requirements. The amount excluded cannot exceed the earned income of the employee who is married, the lesser of the earned income of the employee or the earned income of the employee’s spouse. Amounts attributable to dependent care assistance that are excluded from gross income for income tax purposes are also excluded from wages for employment tax purposes.  

HOUSE BILL  

The provision repeals the deduction for qualified tuition and related expenses.  

Effective date.—The provision terminates the exclusions from gross income and wages for dependent care assistance programs for taxable years beginning after December 31, 2022.  

SENATE AMENDMENT  

No provision.  

CONFERENCE AGREEMENT  

The conference agreement does not include the House bill provision.  

16. Repeal of exclusion for qualified moving expense reimbursement (sec. 1405 of the House bill, sec. 11040 of the Senate amendment, and sec. 132(g) of the Code)  

PRESENT LAW  

Qualified moving expense reimbursements are excluded from an employee’s gross income, and any amount received (directly or indirectly) from an employer as payment for or (reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the employee. However, any such amount actually deducted by the individual is not eligible for this exclusion. Amounts that are excluded from gross income for income tax purposes are also excluded from wages for employment tax purposes.  

HOUSE BILL  

The provision repeals the exclusion from gross income and wages for qualified moving expense reimbursements except in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order.  

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

SENATE AMENDMENT  

The Senate amendment is the same as the House bill except that the exclusion does not apply to taxable years beginning after December 31, 2017 and before January 1, 2026.  

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

CONFERENCE AGREEMENT  

The conference agreement follows the Senate amendment.  

17. Repeal of exclusion for adoption assistance programs (sec. 1406 of the House bill and sec. 137 of the Code)  

PRESENT LAW  

An exclusion from an employee’s gross income is allowed for qualified adoption expenses paid or reimbursed by an employer, if such amounts are furnished pursuant to an adoption assistance program. For 2017, the maximum exclusion amount is $13,570, and is phased out ratably for taxpayers with modified adjusted gross income (“AGI”) above a certain amount. In 2017, the phase out range begins at modified AGI of $203,540, with no exclusion when modified AGI equals or exceeds $239,540. Modified AGI is the sum of the taxpayer’s AGI plus amounts excluded from income under sections 911, 931, and 933 (relating to the exclusion of income of U.S. citizens or residents living abroad; residents of Guam, American Samoa, Northern Mariana Islands and residents of Puerto Rico, respectively).  

House bill except that the exclusion does not apply to taxable years beginning after December 31, 2017.  

Effective date.—The provision is effective for taxable years beginning after December 31, 2017 and before January 1, 2026.  

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

CONFERENCE AGREEMENT  

The conference agreement follows the Senate amendment.  

No provision.
The conference agreement does not include the House bill provision.

E. Simplification and Reform of Savings, Pensions, Retirement

1. Repeal of special rule permitting recharacterization of IRA contributions (sec. 1501 of the House bill, sec. 13611 of the Senate amendment, and sec. 408A of the Code)

PRESENT LAW

Individual retirement arrangements

There are two basic types of individual retirement arrangements (‘‘IRAs’’) under present law: traditional IRAs, to which contributions may be made, and Roth IRAs, to which only nondeductible contributions may be made. The principal difference between these two types of IRAs is the timing of income tax inclusion.

An annual limit applies to contributions to IRAs. The contribution limit is coordinated so that contributions to both deductible and nondeductible contributions that can be contributed to all of an individual’s IRAs (both traditional and Roth) for a taxable year are the lesser of a certain dollar amount (determined by a formula) or the individual’s adjusted gross income (‘‘AGI’’). In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses is at least equal to the contributed amount. The dollar limit is increased annually (‘‘indexed’’) as needed to reflect increases in the cost of living.

An annual limit applies to contributions to IRAs. The contribution limit is coordinated so that contributions to both deductible and nondeductible contributions that can be contributed to all of an individual’s IRAs (both traditional and Roth) for a taxable year are the lesser of a certain dollar amount (determined by a formula) or the individual’s adjusted gross income (‘‘AGI’’). In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses is at least equal to the contributed amount. The dollar limit is increased annually (‘‘indexed’’) as needed to reflect increases in the cost of living. An individual who has attained age 50 before the end of the taxable year may also make catch-up contributions up to $1,000 to an IRA. The IRA catch-up contribution limit is not indexed.

Traditional IRAs

An individual may make deductible contributions to a traditional IRA up to the IRA contribution limit (reduced by any contributions to a separate IRA with employer sponsorship), and distributions from a designated Roth IRA (to be recharacterized as a contribution to the other type of IRA to which the individual cannot make a contribution) are treated as a single contract for purposes of determining the amount that is a return of contributions.

Separation of traditional and Roth IRA accounts

Contributions to traditional IRAs and to Roth IRAs must be segregated into separate IRAs, meaning arrangements with separate IRA documents. However, the conference agreement does not include a proposal that would allow an individual to establish multiple Roth IRAs, for example, Roth IRAs within a retirement plan, and the rules governing the separation of contributions and conversion contributions to a Roth IRA are not indexed.

Recharacterization of IRA contributions

Recharacterization of IRA contributions is generally disallowed. A contribution may be recharacterized as a contribution to the other type of IRA only if the contribution was not deductible and the IRA to which the contribution was made is treated as a traditional IRA. If a contribution is made to a Roth IRA, and the Roth IRA declines after the conversion, the individual may establish multiple Roth IRAs, for example, Roth IRAs within a retirement plan, and the rules governing the separation of contributions and conversion contributions to a Roth IRA are not indexed.

The conference agreement does not include a proposal that would allow an individual to establish multiple Roth IRAs, for example, Roth IRAs within a retirement plan, and the rules governing the separation of contributions and conversion contributions to a Roth IRA are not indexed.

Recharacterization of IRA contributions

If an individual makes a contribution to an IRA (traditional or Roth) for a taxable year, the individual is permitted to recharacterize the contribution as a contribution to the other type of IRA by making a trustee-to-trustee transfer to the other type of IRA before the due date for the individual’s income tax return for that year. In the case of a recharacterization, the contribution will be treated as having been made to the transferee IRA (and not the original, transferor IRA) as of the date of the original contribution. Both regular contributions and conversion contributions to a Roth IRA can be recharacterized as having been made to a traditional IRA.

The amount transferred in a recharacterization must be accompanied by any net income allocable to the contribution. In general, even if a recharacterization is accomplished by transferring a specific asset, net income is calculated as a pro rata portion of income on the entire account rather than income allocable to the specific asset transferred. However, when doing a Roth conversion of an amount for a year, an individual may establish multiple Roth IRAs, for example, Roth IRAs within a retirement plan, and the rules governing the separation of contributions and conversion contributions to a Roth IRA are not indexed.

The House bill repeals the special rule that allows a contribution to a traditional IRA (either traditional or Roth) to be recharacterized as a contribution to the other type of IRA. Thus, for example, under the proposal, the rules applying to the establishment of a Roth IRA during a taxable year can no longer be recharacterized as a contribution to a traditional IRA (thereby unwinding the conversion).

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

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment with a modification. Under the provision, the special rule that allows a contribution to one type of IRA to be recharacterized as a contribution to the other type of IRA does not apply to a contribution that is made to the IRA within a specified five-year period after the rollover.

265 Sec. 408A(a)(6).
267 Sec. 408A(a)(4)(b) and (4)(d).
268 Sec. 408A(a)(1).
270 Sec. 219(g).
272 Secs. 1501 of the House bill, sec. 13611 of the Senate amendment, and sec. 408A of the Code.
274 Secs. 219(a) and 408(o).
276 Sec. 408A(a)(3).
277 Sec. 408A(a)(4)(b) and (4)(d).
278 As in the case of a conversion of a contribution from a traditional IRA to a Roth IRA, the special recharacterization additional tax on early distributions applies for distributions from the Roth IRA within a specified five-year period after the rollover.
apply to a conversion contribution to a Roth IRA. Thus, recharacterization cannot be used to unwind a Roth conversion. However, recharacterization is still permitted with respect to other contributions. For example, if an individual may make a contribution for a year to a Roth IRA and, before the due date for the individual’s income tax return for that year, reclassify it as a contribution to a traditional IRA.\textsuperscript{277}

Effective date.—The provision is effective for plan years beginning after December 31, 2017.

\textbf{Senate Amendment}

No provision.

\textbf{Conference Agreement}

The conference agreement does not include the House bill provision or Senate amendment.


\textbf{Present Law}

Elective deferrals under a section 401(k) plan or a section 403(b) plan may not be distributed before the occurrence of one or more specified events, including financial hardship of the employee.\textsuperscript{280}

Applicable Treasury regulations provide that a distribution is made on account of hardship only if the distribution is made on the purposes of the rule allowing hardship distribution is made in the case of hardship.

The conference agreement does not include the House bill provision or Senate amendment.

\textbf{Effective Date}

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

\textbf{Senate Amendment}

No provision.

\textbf{Conference Agreement}

The conference agreement does not include the House bill provision.

4. Modification of rules relating to hardship withdrawals from cash or deferred arrangements (sec. 1103(c) of the Senate amendment, and sec. 401 of the Code)

\textbf{Present Law}

Amounts attributable to elective deferrals (including earnings thereon) under a section 401(k) plan generally may not be distributed before the earliest of the employee’s severance from employment, death, disability or attainment of age 59\frac{1}{2}, or termination of the plan.\textsuperscript{281}

Deferrals under a governmental section 457(b) plan are subject to in-service distribution restrictions similar to those applicable to elective deferrals under a section 401(k) plan, and, in some cases, other contributions to a section 401(k) plan are subject to similar restrictions.\textsuperscript{282}

Pension plans, that is, qualified defined benefit plans and money purchase pension plans, a type of qualified defined contribution plan, generally are permitted only after attainment of age 59\frac{1}{2} or termination of the plan.\textsuperscript{279}

In-service distributions of elective deferrals (and related earnings) under a section 401(k) plan generally are permitted only after attainment of age 59\frac{1}{2} or termination of the plan.\textsuperscript{280}

In-service distributions of elective deferrals (but not related earnings) are also permitted in the case of hardship. Elective deferrals under a section 403(b) plan are subject to in-service distribution restrictions similar to those applicable to elective deferrals under a section 401(k) plan, and, in some cases, other contributions to a section 401(k) plan are subject to similar restrictions.\textsuperscript{280}

House Bill

Under the House bill, the Secretary of the Treasury is directed to modify the applicable regulations within one year of the date of enactment to (1) require that an employee be prohibited from making elective deferrals and employee contributions for six months after the receipt of a hardship distribution is made for the distribution to be deemed necessary to satisfy an immediate and heavy financial need, and (2) make any other modifications necessary to carry out the purposes of the rule allowing hardship distributions from continuing to make elective deferrals and employee contributions.

\textbf{Effective Date}

The regulations as revised by the provision shall apply to plan years beginning after December 31, 2017.

\textbf{Senate Amendment}

No provision.

\textbf{Conference Agreement}

The conference agreement does not include the House bill provision.

5. Extended rollover period for the rollover of plan loan offset amounts in certain cases (sec. 1508 of the bill, sec. 13613 of the Senate amendment, and sec. 402 of the Code)

\textbf{Present Law}

Taxation of retirement plan distributions

A distribution from a tax-favored employer-sponsored retirement plan generally is includable in gross income, except in the case of a qualified distribution from a designated Roth account or to the extent the distribution is a recovery of basis under the plan or the distribution is contribut- ed to another such plan or an IRA (referred to as eligible retirement plans) in a tax-free rollover.\textsuperscript{285} In the case of a distribution from a retirement plan to an employee under age 59\frac{1}{2}, the distribution (other than a distribution from a governmental section 457(b) plan) is subject to a 10-percent early distribution tax unless an exception applies.\textsuperscript{286}

A distribution from a tax-favored employer-sponsored retirement plan that is an eligible rollover distribution may be rolled over to another such plan or IRA.\textsuperscript{283}

\textbf{Conference Agreement}

The conference agreement does not include the House bill provision or Senate amendment.

\textbf{Effective Date}

The provision is effective for plan years beginning after December 31, 2017.
rollover generally can be achieved by direct rollover (direct payment from the distributing plan to the recipient plan) or by contribut ing the distribution to the eligible retire ment plan before paying the amount to the employee. If an eligible rollover distribution is not directly rolled over to an eligible retirement plan, the taxable portion of the dis tribution generally is subject to mandatory 20-percent income tax withholding.290 Emp loyees who do not elect a direct rollover but who roll over distributions within 60 days of receipt also defer tax on the rollover amounts; however, the 20 percent withheld will remain taxable unless the employee sub stitutes funds within the 60-day period.

Plan loans

Employer-sponsored retirement plans may provide loans to employees. Unless the loan satisfies certain requirements in both form and operation, the amount of a retirement plan loan is a deemed distribution from the retirement plan, including that the terms of the loan require repayment in full over not more than five years (except for a loan specifically to purchase a home) and for level amortization of loan payments with pay ments sufficient to repay the loan not later than 60 days after the end of the fiscal year in which the loan is made. Thus, if an employee stops making payments on a loan before the loan is repaid, a deemed distribution of the outstanding loan balance generally occurs. A deemed distribution of an unpaid loan balance is generally taxed as though an actual distribution occurred, including being subject to a 10-percent early distribution tax. A deemed distribution is not eligible for rollover to another eligible retirement plan. A plan may also provide that, in certain circumstances (for example, if an employee terminates employment), an employee’s obligation to repay a loan is accelerated and, if the loan is not repaid, the loan is cancelled and the amount in the employee’s account balance is offset by the amount of the unpaid loan balance, referred to as a loan offset. A loan offset is treated as an actual distribution from the retirement plan to the employee and is generally taxed the same as a standard distribution from the retirement plan. The plan also must continue granting loans.291

In general

Qualified retirement plans are subject to nondiscrimination requirements, under which the group of employees covered by a plan (plan coverage), the benefits or contributions attributable to that plan coverage, and the average rates of contributions or benefits are designed to help ensure that qualified retirement plans are treated as separate plans to which the plan coverage requirements are applied separately, referred to as mandatory disaggregation. Specifically, the following, if provided under a plan, are treated as separate plans to which the plan coverage requirements are applied separately: (A) a portion of a defined contribution plan treated as separate plans to which the plan coverage requirements are applied separately, referred to as a qualified default investment alternative (QDIA); (B) a portion of an employee stock ownership plan (ESOP);295 (C) a portion consisting of employer matching contributions, the portion consisting of employer nonelective contributions, and the portion consisting of an employee stock ownership plan (ESOP).295 Subject to mandatory disaggregation, different qualified retirement plans may be segregated and tested together as a single plan, provided that they use the same plan year. The plan coverage requirements generally are also treated as the plan for purposes of applying the other nondiscrimination requirements.

A plan’s coverage is nondiscriminatory if the ratio percentage, as determined above, is 70 percent or greater. If a plan’s ratio percentage is less than 70 percent, the part of the test that is reasonable and established under objective business criteria and the plan’s ratio percentage must be at or above a level specified by the regulations depending on the percentage of nonhighly compensated employees in the plan’s employee workforce. In addition, the average benefit percentage test must be satisfied.

Under the average benefit percentage test, in general, the average rate of employer-provided nonelective contributions for all nonhighly compensated employees under all plans of the employer must be at least 70 percent of the average contribution or accumulation rate for the plan for purposes of applying the nonhighly compensated employee benefit and contribution rate test. Under section 401(k) plans, or defined contribution plans that provide for participants’ accounts to be converted to actuarially equivalent benefit accruals.

290 Elective deferrals are contributions that an employee elects to have made to a defined contribution plan that includes a qualified cash or deferred arrangement (referred to as “section 401(k) plan”) rather than receive the same amount as current compensation. Employer matching contributions are contributions made by an employer only if an employee makes elective deferrals after-tax or Roth elective deferrals (after-tax employer contributions). Under section 401(k)(5)(C), an ESOP is a defined contribution plan, or portion of a defined contribution plan, that is designed as an ESOP and is designed to invest primarily in employer stock.

291 See secs. 72(a)(3)–(5) and 410(b). Detailed rules are provided in Treas. Reg. secs. 1.401(a)(13)–1 through –13 and secs. 1.401(a)(24)–1 through –14 providing the nondiscrimination requirements, certain employees, such as those under age 21 or with less than a year of service, generally may be disregarded. In addition, employees of controlled groups and affiliated service groups under the aggregation rules of section 414(b), (c), and (e) (and (h) to the extent it is applied to plans described in section 414(m)), are treated as employed by a single employer.

292 See secs. 401(a)(3)–(5) and 410(b). At the election of the employer, employees who are highly compensated based on the amount of their compensation may be limited to employees who would exceed the top 20 percent of employees based on compensation.

H10020

CONGRESSIONAL RECORD — HOUSE

December 15, 2017

Whether plan coverage of employees is nondiscriminatory is determined by calculating a plan’s ratio percentage, that is, the ratio of the percentage of nonhighly compensated employees covered under the plan to the percentage of highly compensated employees covered. For certain portions of a defined contribution plan are treated as separate plans to which the plan coverage requirements are applied separately.
business, or portion of a business, or a similar transaction, a plan that satisfied the plan coverage requirements before the transaction is deemed to continue to satisfy them for a plan year ending during the transaction, provided coverage under the plan is not significantly changed during that period.

307 Nondiscriminatory contributions or benefit accruals

In general

There are three general approaches to testing the amount of benefits under qualified retirement plans: (1) design-based safe harbors under which the plan’s contribution or benefit accrual formula satisfies certain uniformity standards, (2) a general test, described below, and (3) cross-testing of equivalent contribution or benefit accruals. Employee elective deferrals and employer matching contributions under defined contribution plans are subject to special testing prescribed designs under which allocations may offer their employees a tax-deferred annuity plan (“section 403(b) plan”). The nondiscrimination requirements, other than the requirements applicable to elective deferrals, generally apply to section 403(b) plans of private tax-exempt organizations. For purposes of applying the nondiscrimination requirements to a section 403(b) plan, subject to mandatory disaggregation, a qualified retirement plan may be combined with the section 403(b) plan and treated as a single plan.309 However, a section 403(b) plan and qualified retirement plan may not be tested as a single plan for purposes of applying the nondiscrimination requirements to the qualified retirement plan.

Closed and frozen defined benefit plans

A defined benefit plan may be amended to limit participation in the plan to individuals who are employees as of a certain date. That is, employees hired after that date are not eligible to participate in the plan. Such a plan is sometimes referred to as a “closed” defined benefit plan (that is, closed to new entrants). In such a case, it is common for the employer to establish an aggregate equivalent benefit accrual basis, one of the following three threshold conditions must be met:

- The plan must be primarily defined benefit in character, that is, for more than fifty percent of the plan’s nonhighly compensated employees, the benefits a nonhighly compensated employee has an aggregate allocation rate (consisting of allocations under the defined contribution plan and equivalent allocations under the defined benefit plan) of (a) at least one-third of the highest aggregate allocation rate for any highly compensated employee, or (b) if less, at least five percent in the case of a highly nonhighly compensated employee’s rate up to 25 percent, increased by one percentage point for each five percentage point increment (or portion thereof) above 25 percent, subject to a maximum of 7.5 percent.

Benefits, rights, and features

Each benefit, right, or feature offered under the plan is to be made available to a group of employees that has a ratio percentage that satisfies the minimum coverage and nondiscriminatory amount requirements; or

- The plan meets the minimum aggregate allocation gateway, under which each nonhighly compensated employee has an aggregate allocation rate (consisting of allocations under the defined contribution plan and equivalent allocations under the defined benefit plan) of (a) at least one-third of the highest aggregate allocation rate for any nonhighly compensated employee, or (b) if less, at least five percent in the case of a highly nonhighly compensated employee’s rate up to 25 percent, increased by one percentage point for each five percentage point increment (or portion thereof) above 25 percent, subject to a maximum of 7.5 percent.

Multiple employer and related section 403(b) plans

A multiple-employer plan generally is a single plan maintained by two or more unrelated employers, that is, employers that are not treated as a single employer under the aggregation rules for related entities.303 The plan coverage and other nondiscrimination requirements are applied separately to the portions of a multiple-employer plan covering employees of each plan.

Certain tax-exempt charitable organizations may offer their employees a tax-deferred annuity plan ("section 403(b) plan").302 Secs. 403(b) and (m), the latter of which applies to educational institutions of State or local governments.303 Sec. 403(b). These plans are available to employees that are tax-exempt under section 403(b), as well as to educational institutions of State or local governments.

Closed or frozen defined benefit plans

In general

Under the House bill, nondiscrimination relief applies with respect to benefits, rights, and features for a closed class of participants ("closed class") and a defined benefit plan. In addition, the provision treats a closed or frozen applicable defined benefit plan as meeting the minimum participation requirements if the plan met the requirements as of the effective date of the plan amendment by which the plan was closed or frozen.

If a portion of an applicable defined benefit plan containing one or more defined contribution plans is spun off to another employer, and if the spun-off plan continues to satisfy any ongoing requirements applicable for the relevant relief provisions described below, the relevant provisions do not apply to the spun-off plan.

Benefits, rights, or features for a closed class

Under the provision, an applicable defined benefit plan that provides benefits, rights, and features to a closed class does not fail the plan coverage and other nondiscrimination requirements if the plan met the requirements as of the effective date of the plan amendment by which the plan was closed or frozen.

For purposes of requirement (1) above, the following special testing rules apply:

• In applying the plan coverage transition rule for business acquisitions, dispositions, and similar transactions, the closing of the class of participants is not treated as a significant change in coverage.

• Two or more plans do not fail to be eligible to be treated as a single plan solely by reason of having different plan years.

• Changes in employee population are disregarded to the extent attributable to individuals who become employees or cease to be employees, after the date the class is closed, by reason of the death of a participant, acquisition, divestiture, or similar event.

Benefit accruals for a closed class

Under the provision, an applicable defined benefit plan that provides benefits to a closed class may be aggregated, that is, treated as a single plan, and tested as a single plan against the special testing rules described below, the relevant provisions do not apply to the spun-off plan.

The plan satisfies the plan coverage and nondiscrimination requirements with regard to the relief under the provision, but taking into account the special testing rules described below, as of the date of which the class was closed, any plan amendment modifying the closed class or the benefits, rights, or features provided to the closed class does not discriminate in favor of highly compensated employees.

Under the provision, defined contribution plans that may be aggregated with an applicable defined benefit plan as a single plan include the portion of one or more defined contribution plans consisting of nonelective or matching contributions; any portion of the defined contribution plan consisting of elective deferrals must also be aggregated. In addition, the matching or nonelective contributions described above, in applying the plan coverage and nondiscrimination requirements, are treated in the same manner as nonelective contributions, including for purposes of permitted disparity.

Applicable defined benefit plan

An applicable defined benefit plan to which relief under the provision applies is a defined benefit plan under which the class was closed (or the plan frozen) before April 5, 2017, or a plan that satisfies the conditions:

(1) taking into account any predecessor plan, the plan has been in effect for at least five years as of the date the class is closed (or the plan is frozen) and (2) during the five-year period preceding that date, (a) for purposes of the relief provided with respect to benefits, rights, and features, the plan has not been a substantial increase in the coverage or value of the benefits, rights, or features, or (b) for purposes of the relief provided with respect to contributions, a closed class, or the minimum participation requirements, there has not been a substantial increase in the coverage or benefits under the plan.

Under the provision, a plan is treated as having a substantial increase in coverage or value of benefits, rights, or features only if, during the applicable five-year period, either the number of participants covered by the benefits, rights, or features on the date the period ends is 50 percent greater than the number on the first day of the period, or the benefit value as of the first day of the period began, or the benefits, rights, and features have been modified by one or more plan amendments in such a way that, as of the date the period ends, the benefit value, or coverage and benefits, provided to the closed class or the allocations, benefits, rights, and features provided to the make-whole class does not discriminate significantly in favor of highly compensated employees.

For purposes of (2)(b) above, a plan is treated as having had a substantial increase in coverage or value of benefits only if, during the applicable five-year period, the number of participants benefiting under the plan on the first day of the plan year in which the period began, or the average benefit provided to participants on the date the period ends is more than 50 percent greater than the average benefit provided on the first day of the five-year period, solely as a result of the amendments.

Other testing options available under present law are also available for this purpose.

Under the funding requirements applicable to defined benefit plans, target normal cost for a plan year (defined in section 430(b)(1)(A)(ii)) is generally the aggregate of the amount of the present value of the accrued benefit expected to be earned under the plan during the plan year plus the amount of plan-related expenses to be paid during the plan year directly attributable to the plan. Under the provision, in applying this average benefit rule to certain defined benefit plans maintained by cooperating organizations and referred to as CSEC plans (defined in section 414(y)), which are subject to different funding requirements, the CSEC plan's normal cost under section 430(b)(1)(A)(ii) is used instead of target normal cost.

308 This rule applies also for purposes applying the plan coverage and nondiscrimination requirements to an applicable defined benefit plan and one or more defined contribution plans under one plan were conformed to the benefit accrual basis with one or more defined contribution plans consisting of matching or nonelective contributions under a section 401(b). In applying these rules, a multiple-employer plan is treated as a single plan for purposes of applying the provisions separately covering the employees of each participating employer.

309 Other testing options available under present law are also available for this purpose.

399 This rule applies also for purposes applying the plan coverage and nondiscrimination requirements to an applicable defined benefit plan and one or more defined contribution plans under one plan were conformed to the benefit accrual basis with one or more defined contribution plans consisting of matching or nonelective contributions under a section 401(b). In applying these rules, a multiple-employer plan is treated as a single plan for purposes of applying the provisions separately covering the employees of each participating employer.
other defined contribution plans consisting of matching contributions, an ESOP, or matching or nonelective contributions under a section 403(b) plan. If the plan is aggregated with any other defined contribution plan consisting of matching contributions, any portion of the defined contribution plan consisting of elective deferrals must be aggregated. In addition, the matching contributions are treated in the same manner as nonelective contributions, including for purposes of permitted disparity.

Under the provision, “make-whole contributions” generally means nonelective contributions for each employee in the make-whole class that are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits that the employee would have received under the defined benefit plan and any other plan or qualified cash or deferred arrangement under a section 401(k) plan if no change had been made to such defined benefit plan and other plan or arrangement.311 However, under a special rule, in the case of a defined contribution plan that provides benefits, rights, or features provided to a closed class of participants (or whose accruals under a defined benefit plan have been reduced or eliminated, the plan will remain subject to the nondiscrimination requirements solely by reason of the composition of the closed class, or the benefits, rights, or features provided to the closed class, unless the plan satisfies the make-whole provision described above in the case of benefits, rights, or features to a closed class of participants before that date. In addition, a plan may not fail to satisfy the relevant relief for the relevant relief described above as long as the relevant relief for the plan, also not to be aggregated. In addition, the make-whole plan otherwise meet the requirements described above but for the fact that the make-whole contributions under the defined contribution plan are made in whole or in part through matching contributions.

If a portion of a defined contribution plan eligible for relief under the provision is spun off to a new plan, and if the spun-off plan continues to satisfy any ongoing requirements applicable for the relevant relief as described above, the relevant relief for the spun-off plan will continue with respect to the other employer.

Effective date.—The provision is generally effective on the date of enactment.312 However, if the plan sponsor's intention to create the make-whole class is a defined benefit plan, the limit applies to the aggregate amount of length of service awards accruing for a bona fide volunteer (or their beneficiaries) on account of qualified services performed by the volunteers. For this purpose, qualified services consist of firefighting and fire prevention services, emergency medical services, and ambulance services. An individual is treated as a bona fide volunteer for this purpose if the only compensation received by the individual for performing qualified services is in the form of (1) reimbursement or a reasonable allowance for reasonable expenses incurred in the performance of such services by volunteers, or (2) reasonable benefits (including length of service awards and nominal fees for the services, customarily paid in connection with the performance of such services by volunteers). The exception applies only if the aggregate amount of length of service awards accruing for a bona fide volunteer with respect to any year of service does not exceed $3,000.

No provision.

SENATE AMENDMENT

The Senate amendment increases the aggregate amount of length of service awards that may accrue for a bona fide volunteer with respect to any year of service to $6,000 and adjusts that amount in $500 increments to reflect changes in cost-of-living for years after the first year the provision is effective.

In addition, unless, upon the date of enactment, if the plan is a defined benefit plan, the limit applies to the actuarial present value of the aggregate amount of length of service awards accruing for a bona fide volunteer. Actuarial present value is to be calculated using reasonable actuarial assumptions and methods, assuming payment will be made under the most valuable form of payment under the plan with payment commencing at the later of the earliest age at which unreduced benefits are payable under the plan or the participant's age at the time of the calculation.

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

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

F. Modifications to Estate, Gift, and Generation-Skipping Transfer Taxes

PRESENT LAW

In general

A gift tax is imposed on certain lifetime transfers, and an estate tax is imposed on certain transfers at death. A generation-skipping transfer tax generally is imposed on transfers, either directly or in trust or similar arrangement, to a “skip person” (i.e., a beneficiary in a generation more than one generation younger than that of the transferor). Transfers subject to the generation-skipping transfer tax include direct skips, taxable terminations, and taxable distributions.

Income tax rules determine the recipient’s tax basis in property received from a decedent or by gift. Gifts and bequests generally are excluded from the recipient’s gross income.313 Common features of the estate, gift and generation-skipping transfer taxes

Unified credit.—A unified credit is available with respect to taxable transfers by gift and at death.314 The unified credit offsets taxes, computed using the applicable estate and gift tax rates, on a specified amount of transfers, referred to as the applicable exclusion amount, or exemption amount. The exemption amount was set at $5 million for 2011 and is indexed for inflation for later years.315 For 2017, the inflation-indexed exemption amount is $5.49 million.316 Exemption used during life to offset taxable gifts is not available and the amount that remains at death to offset the value of a decedent’s estate. An election is available under which the transfer tax exempted by a decedent may be used by the decedent’s surviving spouse (exemption portability).

Common tax rate table.—A common tax-rate table was set at a top marginal tax rate of 40 percent is used to compute gift tax and estate tax. The 40-percent rate applies to transfers in excess of $1 million (to the extent not exempted). Because the exemption amount currently shields the first $5.49 million in gifts and bequests from tax, transfers in excess of the exemption amount generally are subject to tax at the highest marginal rate (40 percent).

Generation-skipping transfer tax exemption and rate.—The generation-skipping transfer tax is a separate tax that can apply in addition to either the gift tax or the estate tax. The tax rate and exemption amount for generation-skipping transfer tax purposes, however, is set by separate tax rules. Generation-skipping transfer tax is imposed using a flat rate equal to the highest estate tax rate (40 percent). Tax is imposed on transfers in excess of the generation-skipping transfer tax exemption amount in effect for the year of the transfer. The generation-skipping transfer tax exemption amount for a given year is equal to the estate tax exemption amount in effect for that year (currently $5.49 million).

Transfers between spouses.—A 100-percent marital deduction generally is permitted for the value of property transferred between spouses. However, transfers of qualified terminable interest property also are eligible for the marital deduction. Qualified terminable interest property is property: (1) that passes from the decedent, (2) in which the surviving spouse has a “qualifying income interest for life,” and (3) to which an election under these rules applies. A qualifying income interest for life exists if: (1) the surviving spouse is entitled to all the income

313 Sec. 102.
314 Sec. 101.
315 Sec. 1221. For 2011 and later years, the gift and estate taxes were reunified, meaning that the gift tax exemption amount was increased to equal the estate tax exemption amount.
316 For 2017, the $5.49 million exemption amount results in a unified credit of $2,141,800, after applying the applicable rates set forth in section 2631(c).
317 Secs. 2056 and 2523.
from the property (payable annually or at more frequent intervals) or has the right to use the property during the spouse's life, and (2) no person has the power to appoint any part of the property to any person other than the surviving spouse.

A marital deduction generally is denied for property passing to a surviving spouse who is not a citizen or resident of the United States.289 A charitable deduction is permitted, however, for property passing to a qualified domestic trust of which the noncitizen surviving spouse is a beneficiary. A qualified domestic trust is a trust that has as its trustee at least one U.S. citizen or U.S. corporation. No corpus may be distributed from a qualified domestic trust of which the noncitizen surviving spouse is a beneficiary without withholding any estate tax imposed on the distribution.

Tax is imposed on (1) any distribution from a qualified domestic trust before the date of the death of the noncitizen surviving spouse and (2) the value of the property remaining in a qualified domestic trust on the date of the death of the noncitizen surviving spouse. The tax is computed as an additional estate tax on the estate of the first spouse to die.289

Contributions to section 501(c)(3) charitable organizations and certain other organizations may be deducted from the value of a gift or from the value of the assets in an estate for Federal gift or estate tax purposes.290 The effect of the deduction generally is to remove the full fair market value of assets transferred to charity from the estate tax base, unless the income tax charitable deduction, there are no percentage limits on the deductible amount. For estate tax purposes, the charitable deduction is limited to the value of the transferred property that is required to be included in the gross estate.291 A charitable contribution of a partial interest in property, such as a remainder or future interest, generally is not deductible for gift or estate tax purposes.290

The estate tax Overview

The Code imposes a tax on the transfer of the taxable estate of a decedent who is a citizen or resident of the United States.293 The taxable estate is determined by deducting from a decedent's gross estate any deductions provided for in the Code. After applying tax rates to determine a tentative amount of estate tax, certain credits are subtracted to determine estate tax liability.293

Because the estate tax shares a common credit (exemption) and tax rate table with the gift tax, the exemption amounts and tax rates are described together above, along with certain other common features of these taxes.

Gross estate

A decedent's gross estate includes, to the extent provided for in other sections of the Code, the estate of all of a decedent's property, real or personal, tangible or intangible, wherever situated.295 In general, the value of property for this purpose is the fair market value of the property as of the date of the decedent's death, although an executor may elect to value certain property at the lower of the value that is six months after the decedent's death (the alternate valuation date).296

The gross estate includes not only property directly owned by the decedent, but also other property in which the decedent had a beneficial interest at the time of his or her death.297 The gross estate also includes certain transfers made by the decedent prior to his or her death, including: (1) certain gifts made within three years prior to the decedent's death;298 (2) certain transfers of property in which the decedent retained a beneficial interest at the time of his or her death; and (3) certain transfers taking effect at death;299 and (4) revocable transfers.300 In addition, the gross estate also includes property with respect to which the decedent had, at the time of death, a general power of appointment (generally, the right to determine who will receive the property).301 The value of a life insurance policy on the decedent's life is included in the gross estate if the proceeds are payable to the decedent's estate (unless the proceeds are payable to the decedent's spouse).302

Deductions from the gross estate

A decedent's taxable estate is determined by subtracting from the value of the gross estate any deductions provided for in the Code.

Marital and charitable transfers.—As described above, transfers to a surviving spouse or to charity generally are deductible for estate tax purposes. The effect of the marital and charitable deductions generally is to remove assets transferred to a surviving spouse or to charity from the estate tax base.

State death taxes.—An estate tax deduction is permitted for death taxes (e.g., any estate, inheritance, legacy, or succession taxes) actually paid to a state or the District of Columbia, in respect of property included in the gross estate of the decedent.303 Such State taxes must have been paid and claimed before the later of the filing of the estate tax return or (2) (a) 60 days after a decision of the U.S. Tax Court determining the estate tax liability becomes final, (b) the expiration of the period of extension to pay estate taxes over time under section 6166, or (c) the expiration of the period of limitations in which to file a claim for refund or 60 days after a decision of a court in which such refund suit has become final.

Other deductions.—A deduction is available for funeral expenses, estate administration expenses, and claims against the estate, including certain taxes.305 A deduction also is available for uninsured casualty and theft losses incurred during the settlement of the estate.306

Credits against tax

After accounting for allowable deductions, a gross amount of estate tax is computed. Estate tax liability is then determined by subtracting allowable credits from the gross estate tax.

Unified credit.—The most significant credit allowed for estate tax purposes is the unified credit, which is discussed in detail above.307 For 2017, the value of the unified credit is $2,141,800, which has the effect of exempting $5.49 million in transfers from tax. The value of credit available at death is reduced by the amount of unified credit used to offset gift tax on gifts made during the decedent's life.

Other credits.—Estate tax credits also are allowed for: (1) gift tax paid on certain pre-1977 gifts (before the estate and gift tax combination);308 (2) transfer taxes on gifts made prior to death; and (3) certain foreign death taxes paid (generally, where the property is situated in a foreign country but included in the decedent's U.S. gross estate).309

Provisions affecting small and family-owned businesses and farms

Special-use valuation.—An executor can elect to value for estate tax purposes certain property in a closely held trade or business at its current-use value, rather than its fair market value.310 The maximum reduction in value for such real property is $750,000 (adjusted for inflation occurring after 1997; the inflation-adjusted amount for 2017 is $1,120,000). In general, real property qualifies for special-use valuation if (1) at least 50 percent of the adjusted value of the gross estate (including both real and personal property) consists of a farm or closely-held business property in the decedent's estate and (2) at least 25 percent of the adjusted value of the gross estate consists of farm or closely held business real property. In addition, the property must be used in a qualified use (e.g., farming) by the decedent or a member of the decedent's family for five of the eight years before the decedent's death.

If, after a special-use valuation election is made, the heir who acquired the real property to use it in its qualified use within 10 years of the decedent's death, an additional estate tax is imposed to recapture the entire estate-tax benefit of the special-use valuation.

Installment payment of estate tax for closely held businesses.—Under present law, the estate tax generally is due within nine months of a decedent's death. However, an executor generally may elect to pay estate tax attributable to an interest in a closely held business in two or more installments (but no more than 10).311 An estate only is eligible for payment of estate tax in installments if the value of the decedent's interest in a closely held business exceeds 35 percent of the decedent's adjusted gross estate (i.e., the gross estate less certain deductions). If the election is made, the estate may defer payment of principal and pay only interest for the first five years, followed by up to 10 annual installments of principal and interest. This provision effectively extends the time for paying estate tax by 14 years from the
original due date of the estate tax. A special two-percent interest rate applies to the amount of defaulted estate tax attributable to the first $1 million (adjusted annually for inflation beginning 1998) of control-amount adjusted for 2017 is $1,490,000) in taxable value of a closely held business. The interest rate applicable to the amount of estate tax attributable to the taxable value of the closely held business in excess of $1 million (adjusted for inflation) is equal to 45 percent of the rate applicable to underpayments of tax under section 6621 of the Code (i.e., 45 percent of the Federal short-term rate plus three percentage points).341 Interest paid on deferred estate taxes is not deductible for estate or income tax purposes.

The gift tax

Overview

The Code imposes a tax for each calendar year on the transfer of property by gift during such year by any individual, whether a resident or nonresident of the United States.342 The amount of taxable gifts for a calendar year is determined by subtracting from the total amount of gifts made during the year the gift tax annual exclusion (described below); and (2) allowable deductions.343

Gift tax for the current taxable year is determined by: (1) computing a tentative tax on the combined amount of all taxable gifts for the current and all prior calendar years using the gift tax annual exclusion and estate tax rate table; (2) computing a tentative tax only on all prior-year gifts; (3) subtracting the tentative tax on prior-year gifts from the tentative tax computed for all years to arrive at the portion of the total tentative tax attributable to current-year gifts; and, finally, (4) subtracting the amount of unified credit not consumed by prior-year gifts.

Because the gift tax shares a common unified credit (exemption) and tax rate table with the estate tax, the exemption amounts and rates are described together above, along with certain other common features of these taxes.

Transfers by gift

The gift tax applies to a transfer by gift regardless of whether: (1) the transfer is made outright or in trust; (2) the gift is direct or indirect; or (3) the property is real or personal, tangible or intangible.345 For gift tax purposes, a gift of property is the fair market value of the property at the time of the gift.346 Where property is transferred for less than full consideration, the amount of the consideration which the value of the property exceeds the value of the consideration is considered a gift and is included in computing the total amount of a taxpayer’s gifts for a calendar year.347

For a gift to occur, a donor generally must relinquish dominion and control over donated property. For example, if a taxpayer transfers property to a trust established for the benefit of his or her children, but retains the right to revoke the trust, the tax question whether or not the gift is treated as a gift to the trust beneficiaries.

By reason of statute, certain transfers are not treated as transfers by gift for gift tax purposes. These include, for example, certain transfers to a trust for educational and medical purposes,348 transfers to collectibles,349 political, or

341 The interest rate on this portion adjusts with the Federal short-term rate.
342 Sec. 2501(a)(4).
343 Sec. 2511(a).
344 Sec. 2512(a).
345 Sec. 2521(a).
346 Sec. 2522(a).
347 Sec. 2503(a).
348 Sec. 2503(c)(4), (5), or (6).
349 Taxable gifts

As stated above, the amount of a taxpayer’s taxable gifts for a calendar year is determined by subtracting from the total amount of the taxpayer’s gifts for the year the gift tax annual exclusion and any allowable deductions.

Gift tax annual exclusion.—Under present law, donors of lifetime gifts are provided an annual exclusion of $14,000 per donee in 2017 (indexed for inflation from the 1997 annual exclusion amount of $10,000) for gifts of present interests in property during the taxable year.345 If the non-donee spouse consents to splitting the gift, then the annual exclusion is $28,000 per donee in 2017. In general, unlimited transfers between spouses are permitted without imposition of a gift tax. Special rules apply to the contributions to a qualified tuition program ("529 Plan") including an election to treat a contribution that exceeds the annual exclusion as a contribution made exemptably over a five-year period beginning with the year of the contribution.349

Marital and charitable deductions.—As described above, transfers to a surviving spouse or to charity generally are deductible for gift tax purposes. The effect of the marital and charitable deductions is that a taxable gift may be avoided.

The generation-skipping transfer tax

A generation-skipping transfer tax generally applies (in addition to the gift tax or the estate tax) on transfers, either directly or in trust similar arrangement, to a "skip person" (i.e., a beneficiary in a generation-skipping transfer). Transfers subject to the generation-skipping transfer tax include direct skips, taxable terminations, and taxable distributions.

Exemption and tax rate

An exemption generally equal to the estate tax exemption amount ($5.49 million for 2017) is provided for each person making generation-skipping transfers. This exemption may be allocated by a transferor (or his or her executor) to transferred property, and in some cases is automatically allocated. The allocation of the exemption effectively reduces the tax rate on a generation-skipping transfer.

The tax rate on generation-skipping transfers is zero percent (40 percent multiplied by the inclusion ratio of 0.5). If, however, the taxpayer allocated only $2.5 million of the exemption to the trust, the inclusion ratio is 0.5, and the applicable tax rate on any subsequent generation-skipping transfers from the trust is 20 percent (40 percent multiplied by the inclusion ratio of 0.5). If the taxpayer allocates no exemption to the transfer, the inclusion ratio is one, and the applicable tax rate on any subsequent generation-skipping transfers from the trust is 40 percent (40 percent multiplied by the inclusion ratio of one).

Generation-skipping transfers

Generation-skipping transfers tax generally is imposed at the time of a generation-skipping transfer—a direct skip, a taxable termination, or a taxable distribution.

A taxable distribution is a distribution from a trust to a non-skip person. The tax rate on a taxable distribution is zero percent (40 percent multiplied by the inclusion ratio of one).

Income tax basis in property received

In general

Gain or loss, if any, on the disposition of property received by a donee generally is to remove the tax basis of the donor and to transfer to the donee a basis in the property equal to the lesser of the donor’s adjusted basis or the fair market value of the property. For a gift of appreciated property, the tax basis of the property acquired from a decedent’s estate generally is not greater than the donor’s adjusted basis. Special rules apply to donations to qualified charitable organizations.350

The donor’s tax basis in property received by a donee is determined by subtracting from the value of the property the tax attributable to the taxable value of the property. The tax attributable to the taxable value of the property is determined by subtracting from the total amount of a taxpayer’s gifts for the year the gift tax annual exclusion and any allowable deductions.

Gift tax and estate tax on transfers of property to a trust

A taxable distribution is a distribution from a trust to a non-skip person. The tax rate on a taxable distribution is zero percent (40 percent multiplied by the inclusion ratio of one). If the distribution is to a skip person, the tax rate on a taxable distribution is 20 percent (40 percent multiplied by the inclusion ratio of 0.5). If the distribution is to a non-skip person, the tax rate on a taxable distribution is zero percent (40 percent multiplied by the inclusion ratio of one).

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generally is the fair market value on the date of the decedent's death (or, if the alternate valuation date is elected), the later of six months after the decedent's death or the date of the re-examined gift (if a gift is involved) (the estate). Providing a fair market value basis eliminates the recognition of income on any appreciation of the property that occurred after the decedent's death and eliminates the tax benefit from any unrealized loss.

In community property states, a surviving spouse is entitled to one-half of the community income. Stock in a passive foreign investment company generally is treated as having been included in gross income under section 2036(a)(1) (the estate). Providing a fair market value basis generally results in a corresponding reduction in the gift tax rate to 35 percent. The $10 million amount is indexed for inflation occurring after January 1, 1999.

Depreciation on property placed in service after 1986 and before January 1, 1999, is computed by using the generally longer class lives prescribed by the alternative depreciation system of section 167(a). The $500,000 amount provided in section 2010(c)(3) of the Code is increased by an amount equal to 25 percent of the amount that would have been allowable if depreciation under the regular tax (b) the 150-percent declining balance method in the case of other property. Depreciation on property placed in service after December 31, 1998, is computed by using the regular tax recovery periods and the AMTI methods described in the present sentence. Depreciation on property placed in service after December 31, 1998, that is allowed an additional allowance under section 199(k) for the regular tax is computed without regard to any AMTI adjustments.

Mining exploration and development costs are capitalized and amortized over a 10-year period.

Taxable income from a long-term contract (other than a home construction contract) is computed using the percentage completion method of accounting.

Depreciation on property placed in service after 1986 and before January 1, 1999, is computed by using the generally longer class lives prescribed by the alternative depreciation system of section 167(a) (generally determined under the straight-line method in the case of a married individual filing a separate return) and (c) the 150-percent declining balance method in the case of other property. Depreciation on property placed in service after December 31, 1998, is computed by using the regular tax recovery periods and the AMTI methods described in the present sentence. Depreciation on property acquired after September 10, 2001, which is allowed an additional allowance under section 199(k) for the regular tax is computed without regard to any AMTI adjustments.

Mining exploration and development costs are capitalized and amortized over a 10-year period.

Taxable income from a long-term contract (other than a home construction contract) is computed using the percentage completion method of accounting.

The amortization deduction allowed for pollution control facilities placed in service before January 1, 1999 (generally determined using the straight-line method in the case of the cost of the facility under the regular tax), is calculated under the alternative depreciation system (generally, using longer class lives and the mid-month convention method). The amortization deduction allowed for pollution control facilities placed in service before January 1, 1999 (generally determined using the straight-line method in the case of the cost of the facility under the regular tax), is calculated under the alternative depreciation system (generally, using longer class lives and the mid-month convention method).
after December 31, 1986, is calculated using the regular tax recovery periods and the straight-line method.

8. Miscellaneous itemized deductions are not allowed.
9. Itemized deductions for State, local, and foreign real property taxes; State and local personal property taxes; State and local, and foreign sales and use taxes; personal property taxes; and State and local sales taxes are not allowed.
10. Medical expenses are allowed only to the extent they exceed ten percent of the taxpayer's adjusted gross income.
11. Deductions for interest on home equity loans are not allowed.
12. The standard deduction and the deduction for personal exemptions are not allowed.
13. The amount allowable as a deduction for circulation expenditures is capitalized and amortized over a 60-month period.
14. The amount allowable as a deduction for research and experimentation expenditures from passive activities is capitalized and amortized in the case of other expenditures). The election applies.
15. The regular tax rules relating to incentive stock options do not apply.

Other rules

The taxpayer's net operating loss deduction generally cannot reduce the taxpayer's AMTI by more than 90 percent of the AMTI (determined without the net operating loss deduction).
The alternative minimum tax foreign tax credit reduces the tentative minimum tax.
The various nonrefundable business credits allowed under the regular tax generally are not allowed against the AMT. Certain exceptions apply.
If an individual is subject to AMT in any year, the amount of tax exceeding the taxpayer's AMTI by more than 90 percent of the AMTI is the alternative minimum tax (determined without the net operating loss deduction). The alternative minimum tax is the result of adjustments that are timing in nature. The individual AMT adjustments relating to itemized deductions and personal exemptions are not timing in nature, and no minimum tax credit is allowed with respect to these items.
An individual may elect to write off certain expenditures paid or incurred with respect of circulation expenses, research and experimental expenditures, intangible drilling and development expenditures, and mining exploration expenditures over a specified period (three years in the case of circulation expenses, 90 months in the case of intangible drilling and development expenditures, and 10 years in case of other expenditures). The election applies with respect to both the regular tax and the alternative minimum tax.

Corporate alternative minimum tax

In general

An AMT is also imposed on a corporation to the extent the corporation's tentative minimum tax exceeds its regular tax. This tentative minimum tax is computed at the rate of 20 percent on the AMTI in excess of $150,000. The corporation's AMTI is the amount of tax (before December 31, 1986, is calculated using the regular tax recovery periods and the straight-line method).

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If a corporation is subject to AMT in any year, the amount of AMT is allowed as an AMT credit in any subsequent taxable year to the extent the taxpayer's regular tax liability exceeds its tentative minimum tax in the subsequent year. Corporations are allowed to claim a limited amount of AMT credits in lieu of bonus depreciation.

The provision allows the AMT credit to offset the taxpayer's regular tax liability for any taxable year. In addition, the AMT credit is refundable for any taxable year beginning after December 31, 1986, and before January 1, 1997, equal to 50 percent (100 percent in the case of taxable years beginning in 2022) of the excess of the minimum tax credit for the taxable year over the amount of the credit allowable for the year against regular tax liability. Thus, the full amount of the minimum tax credit will be allowed in taxable years beginning after December 31, 2022.

Effective date—The provision is effective for taxable years beginning after December 31, 2017.
This page contains a detailed explanation of the Senate Amendment to the American Taxpayer Relief Act of 2012, which was effective for taxable years beginning after December 31, 2017. It includes provisions on shared responsibility payments, the elimination of shared responsibility payments, the creation of a qualified ABLE program, and other tax-related changes. The page also discusses the conference agreement that follows the present law, with effective dates for various provisions. The document is part of the Congressional Record for December 15, 2017.
the designated beneficiary during the taxable year. If a distribution from an ABLE account exceeds the qualified disability expenses of the designated beneficiary, a pro rate portion of the distribution is includible from income. The portion of any distribution that is includible in income is subject to an additional tax unless that distribution is made after the date of the beneficiary's death. Amounts in an ABLE account may be rolled over without income tax liability to another ABLE account for the same beneficiary.362 or another ABLE account for the designated beneficiary's brother, sister, step-brother or step-sister who is also an eligible individual. Except in the case of an ABLE account established in a different ABLE program for purposes of transferring ABLE accounts,363 no more than one ABLE account may be established by a designated beneficiary. Thus, once an ABLE account has been established by a designated beneficiary, no account subsequently established by such beneficiary shall be treated as an ABLE account.

As described above, a qualified ABLE program may provide for the establishment of ABLE accounts only if those accounts are established and owned by an eligible individual, such owner referred to as a designated beneficiary. For these purposes, an eligible individual is an individual either (1) for whom a disability certification has been filed with the Secretary for the taxable year, or (2) who is entitled to Social Security Disability Insurance benefits or SSI benefits365 based on blindness or disability, and such blindness or disability occurred before the individual attained age 26.

A disability certification means a certification to the satisfaction of the Secretary, made by the eligible individual or the parent or guardian of the eligible individual, that the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or which is expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 24 months, or which is expected to result in being permanently andtotally disabled. Nevertheless, no inference may be drawn from a disability certification for purposes of eligibility for Social Security Disability Insurance, SSI, or Title XVI of the Social Security Act. Such blindness or disability must have occurred before the date the individual attained age 26. Such certification must include a copy of the diagnosis of the individual’s impairment and be signed by a licensed physician.

Qualified disability expenses

As described above, the earnings on distributions from an ABLE account are excluded from income only to the extent total distributions do not exceed the qualified disability expenses of the designated beneficiary. For this purpose, qualified disability expenses are any expenses related to the eligible individual’s blindness or disability which are made for the benefit of the designated beneficiary. Such expenses include the following expenses: education, housing, food, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, job-seeking expenses, medical expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations consistent with the purposes of section 529A.

Transfer to State

In the event that the designated beneficiary dies, subject to any outstanding payables, the account may be transferred to another retirement plan do not affect distributions due for qualified disability expenses of the designated beneficiary.

Eligible individuals

For instance, if a designated beneficiary were to relocate to a different State.

No inference may be drawn from a disability certification for purposes of eligibility for Social Security Disability Insurance, SSI, or Medicaid benefits.

The following expenses: education, housing, food, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, job-seeking expenses, medical expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations consistent with the purposes of section 529A.

Taxable years beginning in 2017, married taxpayers filing joint returns with AGI of $61,500 or less, taxpayers filing head of household returns with AGI of $46,125 or less, and all other taxpayers filing returns with AGI of $30,750 or less are eligible for the credit.

The credit rate available to the taxpayer is reduced, until, at certain AGI levels, the credit is unavailable. The credit rates based on AGI for taxable years beginning in 2016 are provided in the table below. The AGI levels used for the determination of the available credit rate are indexed for inflation.

Saver's credit

Present law provides a nonrefundable tax credit for eligible taxpayers for qualified retirement savings contributions.366 The maximum annual contribution eligible for the credit is $2,000 per individual. The credit rate depends on the adjusted gross income ("AGI"") of the taxpayer. For this purpose, AGI is determined without regard to certain excludable foreign-source earned income and certain U.S. possession income.

The saver’s credit is in addition to any deduction or exclusion that would otherwise apply with respect to the contribution. The credit offsets alternative minimum tax liability as well as regular tax liability. The credit offsets contributions of individuals who are 18 years old or older, other than individuals who are full-time students or claimed as a dependent on another taxpayer’s return.

Qualified contributions consist of (1) elective deferrals to a section 401(k) plan, a section 403(b) plan, a governmental section 457 plan, a SIMPLE plan, or a 404(a)(9) plan to a traditional or Roth IRA; and (3) voluntary after-tax employee contributions to a qualified retirement plan or section 403(b) plan. Under the rules governing these arrangements, an individual’s contribution to the arrangement generally cannot exceed the lesser of an annual dollar amount (for example, in 2017, $5,500 in the case of an IRA of an individual under age 50) or the individual’s compensation that is includible in income. In the case of IRA contributions of a married couple, the combined includable contribution of both spouses may be taken into account.

The amount of any contribution eligible for the credit is reduced by distributions received by the taxpayer (or by the taxpayer’s spouse if the taxpayer files a joint return with the spouse) from any retirement plan to which eligible contributions can be made during the taxable year for which the credit is claimed, during the two taxable years prior to the year for which the credit is claimed, and during the period after the end of the taxable year for which the credit is claimed and prior to the due date (including extensions) for filing the taxpayer’s return for the year. Distributions that are rolled over to another retirement plan do not affect the credit.

No provision.

The Senate amendment temporarily increases the contribution limitation to ABLE accounts under certain circumstances. While the overall limitation on contributions (the per-donee annual gift tax exclusion ($14,000 for 2017)) remains the same, the limitation is temporarily increased with respect to contributions made by the designated beneficiary of the ABLE account. Under the temporary provision, after the overall limitation on contributions is reached, an ABLE account’s designated beneficiary may contribute an additional amount, up to the lesser of (a) the Federal poverty line for a one-person household; or
b) the individual’s compensation for the taxable year.

Additionally, the provision temporarily allows a designated beneficiary of an ABLE account to claim the saver’s credit for contributions made to his or her ABLE account. The provision does not apply to taxable years prior to December 31, 2025.

Effective date. The provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date. The provision is effective for taxable years beginning after the date of enactment.

2. Extension of time limit for contesting IRS levy

The IRS is authorized to return property that has been wrongfully levied upon. If in general, monetary proceeds from the sale of levied property may be returned within nine months of the date of the levy. Generally, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or demand that such property was wrongfully levied upon may bring a civil action for wrongful levy in a district court of the United States. Generally, an action for wrongful levy must be brought within nine months from the date of levy.

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Treatment of certain individuals performing services in the Sinai Peninsula of Egypt

The conference agreement follows the Senate amendment and secs. 2, 112, 692, 2201, 3401, 4253, 6013, and 7508 of the Code.

PRESENT LAW

Members of the Armed Forces serving in a combat zone are afforded a number of tax benefits. These include:

1. An exclusion from gross income of certain military pay received for any month during which the member served in a combat zone or was hospitalized as a result of service in a combat zone; and
2. An exemption from taxes on death while serving in a combat zone or dying as a result of wounds, disease, or injury incurred while so serving.

3. Special estate tax rules where death occurs in a combat zone.

4. Special benefits to surviving spouses in the event of a service member’s death or missing status.

5. An extension of time limits governing the filing of returns and other rules regarding timely compliance with Federal income tax rules; and
6. An exclusion from telephone excise taxes.

No provision.

SENATE AMENDMENT

The provision grants combat zone tax benefits to the Sinai Peninsula of Egypt, if as of the date of enactment any member of the Armed Forces of the United States is entitled to special pay under section 310I of title 10 of the Code (relating to special pay; duty subject to hostile fire or imminent danger), for services performed in such location. This benefit lasts only during the period such entitlement is in effect but not later than taxable years beginning before January 1, 2026.

Effective date. The provision is generally effective beginning June 9, 2015. The portion of the provision related to wage withholding applies to remuneration paid after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Modifications of user fees requirements for installment agreements (secs. 11073 of the Senate amendment and new sec. 6159(f) of the Code)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer agrees to pay taxes owed, as well as any penalties, in installments over an agreed schedule, if the IRS determines that doing so will facilitate collection of the amounts owed. This agreement provides for a period during which payments may be made. IRS enforcement actions are held in abeyance. An installment agreement generally does not reduce the amount of taxes, interest, or penalties owed. However, the IRS is authorized to enter into installment agreements with taxpayers which do not provide for full payment of the taxpayer's liability over the life of the agreement. The IRS is required to review such partial payment installment agreements at least every two years to determine whether the collection of the tax from the taxpayer has significantly changed so as to warrant an increase in the value of the payments being made.

Taxpayers may request an installment agreement by filing Form 9465, Installment Agreement Request. If the request for an installment agreement is approved by the IRS, the IRS charges a user fee. The IRS currently charges $225 for entering into an installment agreement. If the application is for a direct debit installment agreement, whereby the taxpayer authorizes the IRS to request the monthly electronic transfer of funds from the taxpayer's bank account to the IRS, the fee is reduced to $107.

In addition, regardless of the method of payment, the fee is $43 for low-income taxpayers. For this purpose, low-income is defined as a person who falls below 250 percent of the Federal poverty guidelines. Finally, there is no user fee if the agreement qualifies for a short term agreement (120 days or less).

No provision.

CONFERENCE AGREEMENT

The provision generally prohibits increases in the amount of user fees charged by the IRS for installment agreements. For low-income taxpayers (those whose income falls below 100 percent of the Federal poverty guidelines), it alleviates the user fee requirement in two ways. First, it waives the user fee if the low-income taxpayer enters into an installment agreement. Second, it provides that low-income taxpayers who are unable (as defined in the conference agreement) to make payments electronically remain subject to the required user fee, but the fee is reimbursed upon completion of the installment agreement.

Effective date. The provision is effective for agreements entered into on or after the date that is 60 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Relief for 2016 disaster areas (sec. 11029 of the Senate amendment and secs. 72(1), 165, 401–403, 408, 457, and 3405 of the Code)

PRESENT LAW

Distributions from tax-favored retirement plans

A distribution from a qualified retirement plan, a tax-sheltered annuity plan (a "section 403(b) plan"), or a governmental retirement plan may be rolled over to an individual retirement arrangement (an "IRA") to make the distribution tax-free. The provision generally prohibits increases in the amount of user fees charged by the IRS for installment agreements. For low-income taxpayers (those whose income falls below 100 percent of the Federal poverty guidelines), it alleviates the user fee requirement in two ways. First, it waives the user fee if the low-income taxpayer enters into an installment agreement. Second, it provides that low-income taxpayers who are unable (as defined in the conference agreement) to make payments electronically remain subject to the required user fee, but the fee is reimbursed upon completion of the installment agreement.

Effective date. The provision is effective for agreements entered into on or after the date that is 60 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

6. An exclusion from telephone excise taxes

The IRS is authorized to return property that has been wrongfully levied upon. In general, monetary proceeds from the sale of levied property may be returned within nine months of the date of the levy. Generally, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or demand that such property was wrongfully levied upon may bring a civil action for wrongful levy in a district court of the United States. Generally, an action for wrongful levy must be brought within nine months from the date of levy.

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

The conference agreement does not include the Senate amendment provision.
cases, restrictions may apply to distribution before an employee’s termination of employment, referred to as “in-service” distributions. Despite such restrictions, in-service distribution may be permitted in the case of financial hardship or an unforeseeable emergency.

Tax-favored retirement plans are generally required to be amended in accordance with the terms of the plan document, and amendments to reflect changes to the plan generally must be adopted within a limited period.

Itemized deduction for casualty losses

A taxpayer may generally claim a deduction for any loss sustained during the taxable year and not compensated by insurance or otherwise.384 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. Personal casualty or theft losses are deductible only if they exceed $100 per casualty or theft. In addition, aggregate net casualty and theft losses are deductible only to the extent they exceed 10 percent of an individual taxpayer’s adjusted gross income.

PRESENT LAW

6. Attorneys’ fees relating to awards to whistleblowers (sec. 11078 of the Senate amendment and sec. 62(a)(21) of the Code)

PRESENT LAW

The Code provides an above-the-line deduction for attorneys’ fees and costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim under State False Claim Acts, the SEC whistleblower program, or any federal whistle-blower statute.388 The amount that may be deducted above-the-line may not exceed the amount includible in the taxpayer’s gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement) for lump sum or periodic payments resulting from such claim. Additionally, the Code provides an above-the-line deduction for attorneys’ fees and costs paid by, or on behalf of, the individual in connection with any award for providing information regarding violations of the tax laws.391 The amount that may be deducted above-the-line may not exceed the amount includible in the taxpayer’s gross income for the taxable year on account of such award.392

No provision.

No provision.

In general

The provision provides tax relief, as described below, relating to a “2016 disaster area,” defined as any area with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act during calendar year 2016.

Distributions from eligible retirement plans

Under the provision, an exception to the 10-percent early withdrawal tax applies in the case of a qualified 2016 distribution from a qualified retirement plan, section 403(b) plan or an IRA. Under the provision, a distribution may be treated as qualified if, in addition to the requirements described below, the amendment is made on or before the last day of the first plan year beginning after December 31, 2016 (or in the case of a governmental plan, December 31, 2020), or a later date prescribed by the Secretary. In addition, the plan will be treated as operated in accordance with the period beginning with the date the provision or regulation takes effect (or the date specified by the plan if the amendment is not required by the requirements described below), and ending on the last permissible date for the amendment (or, if earlier, the date the amendment is adopted). In order for an amendment to be treated as operated in accordance with the amendment during that period.

Modification of rules related to casualty losses

Under the provision, in the case of a personal casualty loss which arose on or after January 1, 2016, in a 2016 disaster area and was attributable to the events giving rise to the President’s disaster declaration, such losses are deductible regardless of whether aggregate net losses exceed ten percent of a taxpayer’s adjusted gross income. Under the provision, in order to be deductible, the losses must exceed $100 per casualty. Additional net losses may be claimed in addition to the standard deduction.

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

Present law

Awards to whistleblowers

The Code authorizes the IRS to pay such sums as deemed necessary for: “(1) detecting underpayments of tax; (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conspiring at the same.”393 Generally, amounts are paid based on a percentage of proceeds collected based on the information provided.

The Tax Relief and Health Care Act of 2006 (the “Act”)394 established an enhanced reward program for actions in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $2,000,000 (the “outside lookback”). TheAct requires that if, in the individual’s gross income exceeds $200,000 for any taxable year in issue. In such cases, the award is calculated to be at least 15 percent

385 A qualified 2016 disaster distribution is subject to income tax withholding unless the recipient elects otherwise. The percentage is 20 percent withholding does not apply.

386 Sec. 62(a)(20) and (e). Section 62(e) defines “unlawful discrimination” to include a number of specific statutes, any federal whistleblower statute, and any federal, state, or local law “providing for the enforcement of civil rights” or “regulating any aspect of the employment relationship” or providing “for the discharge of a protective, regulatory, or enforcement against an employee, or any other form of retaliation or reprisal against an employee for asserting rights in actions taken or sanctions permitted by law.”

387 Secs. 7623(a) and (b). Sec. 7623(a)(1).

388 Secs. 7623 and 62(a)(21).


but not more than 30 percent of collected proceeds (including penalties, interest, addi-
tions to tax, and additional amounts). The Act permits an individual to appeal the amount or a denial of an award deter-
termination to the United States Tax Court (the “Tax Court”) within 30 days of such de-
termination. Tax Court review of an award determination may be assigned to a special 
trial judge.

Rules relating to taxpayers with foreign as-
sets
U.S. persons who transfer assets to, and hold interests in, foreign bank accounts or foreign entities may be subject to self-re-
porting requirements under both the Foreign Accoun-
t Compliance Act provisions in the Code and the provisions in the Bank Sec-
recy Act and its underlying regulations (which provide for FinCEN Form 114, Report of 
Foreign Bank and Financial Accounts (the “FBAR”), as discussed above. Amounts re-
covered for violations of FATCA provisions in the Code may be considered for purposes of computing an award under the Code. However, the IRS has found that amounts recovered for violations of non-tax laws, including the provisions of the Bank Sec-
ercy Act, are not available for purposes of computing an award under the Code.392

392Foreign Account Tax Compliance Act

The Code imposes a withholding and re-
porting regime for U.S. persons engaged in foreign activities, directly or indirectly, through a foreign business entity.393 This re-

gime for outbound payments,394 commonly referred to as the Foreign Account Tax Compliance Act (“FACTA”),395 imposes a with-
holding tax of 30 percent of the gross amount of certain payments to foreign financial insti-
tutions (“FFIs”) unless the FFI establishes that it is compliant with the informa-
tion reporting requirements of FATCA under its domestic laws.396 FFIs are defined to in-
clude identifying certain U.S. accounts held in the FFI. An FFI must report with re-
spect to a U.S. account (1) the name, address, and tax identification number of each U.S. 

person holding an account or a foreign entity with one or more substantial U.S. owners 
holding an account; (2) the account number, balance, and value; (3) the number of 

owners holding an account; (4) except as provided by the Secretary, the gross receipts, including from dividends and interest, and gross withdrawals or pay-
ments, required to be reported.397

Individuals are required to disclose with their annual Federal income tax return any interest in foreign accounts and certain for-

eign securities if the aggregate value of such assets is in excess of the greater of $50,000 or 
an amount determined by the Secretary in regulations. Failure to do so is punishable by a penalty of $10,000, which may increase for each 30-day period during which the failure continues after notification by the IRS, up to a maximum penalty of $50,000.398

397Sec. 6031D. Guidance on the scope of reporting required, the information reporting requirements for various fact patterns and how the value of assets is to be determined is found in Treas. Reg. sec. 1.6031d-1.1

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400Sec. 5314. The term “agency” in the Bank Secrecy Act and its underlying regulations includes any Federal reserve bank, Federal financial institution, national bank, foreign bank, or thrift institution.

401Sec. 5314(a). provides: “Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Sec-

etary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in the United States is re-

quired, the threshold values triggering reporting require-

ments for non-tax collection described above. The case was disposed on summary judgment


403The penalty for failure to file is $10,000 for each negligent viola-
tion, but negligent failure to file is subject to a penalty of $10,000 for each negligent viola-
tion.397 The penalty may be waived if (1) there is reasonable cause for the failure to report and (2) the amount of the transaction or balance in the account was properly re-

ported. In addition, serious violations are subject to criminal prosecution, potentially resulting in criminal penalties and impris-

onment. Civil and criminal sanctions are not mutually exclusive.

FBAR enforcement responsibility

Until 2003, the Financial Crimes Enforce-

ment Network (“FinCEN”), an agency of the 

Department of the Treasury, had exclusive 

responsibility for civil penalty enforcement 

404Sec. 6031D. Guidance on the scope of reporting required, the information reporting requirements for various fact patterns and how the value of assets is to be determined is found in Treas. Reg. sec. 1.6031d-1.1


407Sec. 6031D. Guidance on the scope of reporting required, the information reporting requirements for various fact patterns and how the value of assets is to be determined is found in Treas. Reg. sec. 1.6031d-1.1

408Treas. Directive 15–14 (December 1, 1992), in which the Secretary delegated to the IRS authority to conduct FBAR investigations and enforcement activities. The IRS Criminal Investigation Division declines to pursue a possible criminal case, it is to refer the matter to FinCEN for civil enforcement.

409Sec. 6031D. Guidance on the scope of reporting required, the information reporting requirements for various fact patterns and how the value of assets is to be determined is found in Treas. Reg. sec. 1.6031d-1.1

410The authority delegated to the IRS in 2003 included the authority to determine and assess FBAR penalties, as well as to revise the form and instructions. However, the Bank Secrecy Act does not include collec-

411A penalty may be assessed before the end of the six-year period beginning on the date of the trans-

action with respect to which the penalty is assessed.

412Sec. 5322(b)(2). A violation under FBAR collection proceedings may be commenced within two years of the later of the date of assessment and the date a judgment be-

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The money was forfeited pursuant to Title 18. The IRS argued that criminal fines and forfeitures are not collected proceeds because only amounts assessed and collected under Title 18 can be used to pay a whistleblower award. The IRS also argued that a criminal fine collected by the Government cannot be considered collected proceeds because the fines collected from persons convicted of offenses against the United States are to be deposited in the Crime Victims Fund (2) criminal fines are paid by the taxpayer directly to the imposing court, which in turn deposits them into the Crime Victims Fund; and (3) at no time are criminal fines made available to the Secretary. The court said that the Code did not refer to, or require, the availability of funds to be used in making an award.

Petitioners said the payment resulted from action taken by Secretary and relates to acts committed by taxpayer in violation of Title 26 provisions. The court agreed and held that collected proceeds are not limited to amounts assessed and collected under Title 26. In reaching its holding it referenced Whistleblower 22716–13W v. Commissioner, discussed above and noted there is no inconsistency because the issue there was about whether the threshold of $2,000,000 was exceeded. It is not clear whether FBAR penalties would be included under their holding because in the case, the taxpayer did violate Title 26 even if the penalties were imposed under Title 18.

No provision.

SENATE AMENDMENT

Under the provision, collected proceeds eligible for awards under the Code are defined to include: (1) penalties, interest, additions to tax, fraud penalties, and any other monetary award (including compensatory or statutory damages and restitution imposed in a criminal matter) relating to the incarceration of such individual for the course of conduct from which such individual was convicted. A wrongfully incarcerated individual means an individual.

1. Reduction in corporate tax rate (sec. 3001 of the House bill, secs. 13001 and 13002 of the Senate amendment, and secs. 11 and 243 of the Code)

Present Law

Corporate taxable income is subject to tax under a four-step graduated rate structure.420 The top marginal rate is 35 percent on taxable income in excess of $10 million. The corporate taxable income brackets and tax rates are as set forth in the table below.

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Tax rate (percent)</th>
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</thead>
<tbody>
<tr>
<td>Under $50,000</td>
<td>15</td>
</tr>
<tr>
<td>$50,000 but not over $75,000</td>
<td>25</td>
</tr>
<tr>
<td>$75,000 but not over $10,000,000</td>
<td>34</td>
</tr>
<tr>
<td>Over $10,000,000</td>
<td>35</td>
</tr>
</tbody>
</table>

An additional five-percent tax is imposed on a corporation's tax on capital gain as excess of corporate income tax rates (with respect to dividends received deduction) at rates set forth in the table above.

Present Law

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</tr>
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<td>35</td>
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</table>

An additional five-percent tax is imposed on a corporation's tax on capital gain as excess of corporate income tax rates (with respect to dividends received deduction) at rates set forth in the table above.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment provision.

8. Exclusion from gross income of certain amounts received by wrongfully incarcerated individuals (sec. 11027 of the Senate amendment and sec. 139F of the Code)

Present Law

Under a provision added in the PATH Act,421 with respect to any wrongfully incarcerated individual, gross income does not include any civil damages, restitution, or other monetary award (including compensatory or statutory damages and restitution imposed in a criminal matter) relating to the incarceration of such individual for the course of conduct from which such individual was convicted.422 A wrongfully incarcerated individual means an individual.

Dividends received deduction

Corporations are allowed a deduction with respect to dividends received from other taxable domestic corporations.423 The amount of the deduction is generally equal to 70 percent of the dividend received.

In the case of any dividend received from a 20-percent owned corporation, the deduction is equal to 80 percent of the dividend received.424 The term 20-percent owned corporation‘ means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For this purpose, certain preferred stock is not taken into account.

In the case of a dividend received from a corporation that is a member of the same affiliated group, a corporation is generally allowed a deduction equal to 100 percent of the dividend received.425

HOUSE BILL

The provision eliminates the graduated corporate rate structure and instead taxes corporate taxable income at 21 percent.

Personal service corporations are taxed at 25 percent.

The provision repeals the maximum corporate tax rate on net capital gain as obsolete.

The provision reduces the 70 percent dividends received deduction to 50 percent and the 90 percent dividends received deduction to 65 percent.426

For taxpayers subject to the normalization method of accounting (e.g., regulated public utilities), the provision provides for the normalization of excess deferred tax reserves resulting from the reduction of corporate income tax rates (with respect to prior depreciation or recovery allowances taken on assets placed in service before the date of enactment).

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

SENATE AMENDMENT

The Senate amendment follows the House bill, but does not provide a special rate for personal service corporations.

Effective date.—The provision applies to taxable years beginning after December 31, 2018.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, but provides for a 21-percent corporate rate effective for taxable years beginning after December 31, 2017.

In addition, for taxpayers subject to the normalization method of accounting (e.g., regulated public utilities), the conference agreement clarifies the normalization of excess tax reserves resulting from the reduction of corporate income tax rates (with respect to prior depreciation or recovery allowances taken on assets placed in service before the corporate rate reduction takes effect).

The excess tax reserve is the reserve for deferred taxes as of the day before the corporate rate reduction takes effect over what would have been the reserve under present law.

420 Sec. 13001.
421 Sec. 13002.
422 Sec. 13002.
423 Sec. 139F.
424 Sec. 139F.
425 Sec. 139F.
426 Sec. 139F.
427 Sec. 139F.
428 Sec. 139F.
429 Sec. 139F.
430 Sec. 139F.
431 Sec. 139F.
432 Sec. 139F.
433 Sec. 139F.
434 Sec. 139F.
435 Sec. 139F.
436 Sec. 139F.
437 Sec. 139F.
438 Sec. 139F.
439 Sec. 139F.
440 Sec. 139F.
441 Sec. 139F.
442 Sec. 139F.
443 Sec. 139F.
444 Sec. 139F.
445 Sec. 139F.
446 Sec. 139F.
447 Sec. 139F.
448 Sec. 139F.
449 Sec. 139F.
450 Sec. 139F.
451 Sec. 139F.
The reserve for deferred taxes would be if the corporate rate reduction had been in effect for all prior periods. If an excess tax reserve is reduced more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method, the taxpayer would not be treated as using a normalization method with respect to the corporate rate reduction. If the taxpayer does not use a normalization method of accounting for the corporate rate reduction, the taxpayer’s tax for the taxable year shall be increased by the amount by which it reduces its excess tax reserve more rapidly than permitted under a normalization method of accounting and the taxpayer will not be treated as using a normalization method of accounting for purposes of section 158(f)(1) and (1)(9)(C).

The average rate assumption method reduces the excess tax reserve over the remaining regulatory lives of the property that gave rise to the reserve for deferred taxes during the year in which the deferred tax reserve related to such property is reversing. Under this method, the excess tax reserve is reduced as the timing differences (i.e., differences between the tax depreciation and regulatory depreciation with respect to the property) reverse over the remaining life of the asset. The reversal of timing differences generally occurs in the year in which the tax depreciation taken with respect to an asset is less than the amount of the regulatory depreciation taken with respect to the asset. The excess tax reserve, including the excess tax reserve, is reduced to zero at the end of the regulatory life of the asset that generated the reserve, the amount of the timing difference which reverses during a taxable year is multiplied by the ratio of (1) the aggregate deferred taxes as of the beginning of the period in question to (2) the aggregate timing differences for the property as of the beginning of the period in question.

The following example illustrates the application of the average rate assumption method. A calendar year regulated utility company costing $400 million in service in 2016. For regulatory (book) purposes, the property is depreciated over 10 years on a straight line basis with a full year’s allowance in the first year. For tax purposes, the property is depreciated using the 20 percent declining balance method and a half-year placed in service convention.

### Normalization Calculation for Corporate Rate Reduction

<table>
<thead>
<tr>
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<td>$20</td>
<td>$20</td>
<td>$20</td>
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<td>$5</td>
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<td>$50</td>
</tr>
<tr>
<td>Tax rate</td>
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<td>35%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>31.1%</td>
<td>31.1%</td>
<td>31.1%</td>
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<tr>
<td>Annual adjustment to reserve</td>
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<tr>
<td>Cumulative deferred tax reserve</td>
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<td>$23.2</td>
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<td>$34.2</td>
<td>$39.7</td>
<td>$45.2</td>
<td>$50.7</td>
<td>$110</td>
</tr>
<tr>
<td>Annual adjustment at 21%</td>
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<td>$3.5</td>
<td>$3.5</td>
<td>$3.5</td>
<td>$3.5</td>
<td>$3.5</td>
<td>$3.5</td>
<td>$3.5</td>
<td>$3.5</td>
<td>$35</td>
</tr>
<tr>
<td>Annual amount of average rate</td>
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<td>$7.7</td>
<td>$7.7</td>
<td>$7.7</td>
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<td>$7.7</td>
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<td>$7.7</td>
<td>$77</td>
</tr>
<tr>
<td>Excess tax reserve</td>
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<td>$0.5</td>
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<td>$0.5</td>
<td>$0.5</td>
<td>$0.5</td>
<td>$0.5</td>
<td>$0.5</td>
<td>$0.5</td>
<td>$5</td>
</tr>
</tbody>
</table>

### Taxpayers’ Depreciation Allowances

- **Tangible property**: Generally, is depreciated under the modified accelerated cost recovery system (“MACRS”), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention.
- **Bonus depreciation**: An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified property acquired and placed in service before January 1, 2020 (January 1, 2021, for longer production period property and certain aircraft). The amount of the additional first-year depreciation deduction is not affected by a short taxable year.

The additional first-year depreciation deduction is allowed for both the regular tax and the alternative minimum tax (“AMT”) but is not allowed in computing earnings and profits. 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. The amount of the additional first-year depreciation deduction is not affected by a short taxable year.

The taxpayer may elect out of the additional first-year depreciation for any class of property for any taxable year.

### Interaction of Additional First-Year Depreciation Allowance

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2017 a taxpayer purchases new depreciable property and places it in service. The property’s cost is $10,000, and it is five-year property placed in service. The regular tax and the alternative minimum tax (AMT) are not allowed in computing earnings and profits. 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. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of the additional first-year depreciation for any class of property for any taxable year.

### Effective date

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

### B. Cost Recovery

#### 1. Increased expensing

- **Present Law**: See sec. 3101 of the House bill, sec. 13230 and 13231 of the Senate amendment, and sec. 166(k) of the Code.

- **Provisions**: A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and reflect such cost over time through annual deductions for depreciation or amortization.

- **Tangible property**: Tangible property generally is depreciated under the modified accelerated cost recovery system (“MACRS”), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention.

- **Bonus depreciation**: An additional first-year depreciation deduction is allowed equal to 50 percent of the adjusted basis of qualified property acquired and placed in service before January 1, 2020 (January 1, 2021, for longer production period property and certain aircraft). The amount of the additional first-year depreciation deduction is not affected by a short taxable year.

The additional first-year depreciation deduction is allowed for both the regular tax and the alternative minimum tax (“AMT”), but is not allowed in computing earnings and profits. 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. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of the additional first-year depreciation for any class of property for any taxable year.

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2017 a taxpayer purchases new depreciable property and places it in service. The property’s cost is $10,000, and it is five-year property placed in service.
subject to the 200 percent declining balance method and half-year convention. The amount of additional first-year depreciation allowed is $5,000. The remaining $5,000 of the cost of the depreciable property under the five-year rules is applicable to five-year property. Thus, $1,000 also is allowed as a depreciation deduction in 2017.445 The total depreciation deduction with respect to the property is $6,000. The remaining $4,000 adjusted basis of the property generally is recovered through otherwise applicable depreciation rules.

Property qualifying for the additional first-year depreciation deduction must meet all of the following requirements.446 First, the property must be: (1) property to which MACRS applies; (2) placed in service in an applicable recovery period of 20 years or less; (2) water utility property; (47) (3) computer software other than computer software covered by section 179; (4) qualified improvement property.48 Second, the original use49 of the property must commence with the taxpayer.48 Third, the taxpayer must acquire the property within the applicable time period (as described below). Finally, the property must be placed in service before January 1, 2020. As noted above, an extension of the placed-in-service date (i.e., before January 1, 2021) is provided for certain property with a recovery period of 10 years or longer, certain transportation property, and certain aircraft.450

To qualify, property must be acquired (1) before January 1, 2020, or (2) pursuant to a binding written contract which was entered into before January 1, 2020. With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property before January 1, 2020.451 Property that is manufactured, constructed, or produced for the taxpayer by another person and the cost of which is included prior to the cost of the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.452 This means the property was placed in service during the extended placed-in-service date, a special rule limits the amount of costs eligible for the additional first-year depreciation.453

Qualified improvement property

Qualified improvement property is any improvement to the exterior of a building that is nonresidential real property if such improvement is placed in service after the date such building was first placed in service.454 Qualified improvement property does not include any improvement for which the expenditure is attributable to the enlargement of the building, any elevator or escalator, or the internal structural framework of the building.455

Election to accelerate AMT credits in lieu of bonus depreciation

A corporation otherwise eligible for additional first-year depreciation may elect to claim additional AMT credits in lieu of claiming additional depreciation with respect to qualified property.456 In the case of a corporation making this election, the straight line method is used for the regular tax and the AMT with respect to qualified property.457 A corporation making an election increases the tax liability limitation under section 53(c) on the use of minimum tax credits attributable to the bonus depreciation amount.458 The aggregate increase in credits allowable by reason of the increased limitation is treated as refundable. The bonus depreciation amount generally is equal to 20 percent of bonus depreciation for qualified property that could be claimed as a deduction absent an election under this provision.459 The bonus depreciation amount for all taxable years is phased down from $8,000 by $1,600 per calendar year beginning in 2018. Thus, the provision290 in place in 2018 is $6,400, and during 2019 is $4,800. While the underlying section 280F limitation is indexed for inflation, the provision is not indexed for inflation. The increase does not apply to a taxpayer who elects to accelerate AMT credits in lieu of bonus depreciation for a taxable year.

Certain plants bearing fruits and nuts

A special election is provided for certain plants bearing fruits and nuts.460 Under the election, the applicable percentage of the adjusted basis of a specified plant which is planted or grafted after December 31, 2015, and before January 1, 2020, is deductible for regular tax and AMT purposes in the year in which it is planted or grafted.461 For purposes of determining the amount of costs eligible for bonus depreciation, any amount deducted under this election is treated as the equivalent of costs subject to capitalization under section 263A.462 For purposes of determining the amount of gains and losses with respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2020 (‘‘progress expenditures’’) is eligible for the additional first-year depreciation deduction.463

Special rules

Passenger automobiles

The limitation under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by $8,000 for automobiles that qualify (and for which the taxpayer does not elect out of the additional first-year deduction).464 The $8,000 amount is phased down from $8,000 by $1,600 per calendar year beginning in 2018. Thus, the provision290 in place in 2018 is $6,400, and during 2019 is $4,800. While the underlying section 280F limitation is indexed for inflation, the provision is not indexed for inflation. The increase does not apply to a taxpayer who elects to accelerate AMT credits in lieu of bonus depreciation for a taxable year.

Certain plants bearing fruits and nuts

A special election is provided for certain plants bearing fruits and nuts.465 Under the election, the applicable percentage of the adjusted basis of a specified plant which is planted or grafted after December 31, 2015, and before January 1, 2020, is deductible for regular tax and AMT purposes in the year in which it is planted or grafted.466 For purposes of determining the amount of costs eligible for bonus depreciation, any amount deducted under this election is treated as the equivalent of costs subject to capitalization under section 263A.467 For purposes of determining the amount of gains and losses with respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2020 (‘‘progress expenditures’’) is eligible for the additional first-year depreciation deduction.468

Special rules

Passenger automobiles

The limitation under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by $8,000 for automobiles that qualify (and for which the taxpayer does not elect out of the additional first-year deduction).469 The $8,000 amount is phased down from $8,000 by $1,600 per calendar year beginning in 2018. Thus, the provision290 in place in 2018 is $6,400, and during 2019 is $4,800. While the underlying section 280F limitation is indexed for inflation, the provision is not indexed for inflation. The increase does not apply to a taxpayer who elects to accelerate AMT credits in lieu of bonus depreciation for a taxable year.

Certain plants bearing fruits and nuts

A special election is provided for certain plants bearing fruits and nuts.470 Under the election, the applicable percentage of the adjusted basis of a specified plant which is planted or grafted after December 31, 2015, and before January 1, 2020, is deductible for regular tax and AMT purposes in the year in which it is planted or grafted.471 For purposes of determining the amount of costs eligible for bonus depreciation, any amount deducted under this election is treated as the equivalent of costs subject to capitalization under section 263A.472 For purposes of determining the amount of gains and losses with respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2020 (‘‘progress expenditures’’) is eligible for the additional first-year depreciation deduction.473

Special rules

Passenger automobiles

The limitation under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by $8,000 for automobiles that qualify (and for which the taxpayer does not elect out of the additional first-year deduction).474 The $8,000 amount is phased down from $8,000 by $1,600 per calendar year beginning in 2018. Thus, the provision290 in place in 2018 is $6,400, and during 2019 is $4,800. While the underlying section 280F limitation is indexed for inflation, the provision is not indexed for inflation. The increase does not apply to a taxpayer who elects to accelerate AMT credits in lieu of bonus depreciation for a taxable year.

Certain plants bearing fruits and nuts

A special election is provided for certain plants bearing fruits and nuts.475 Under the election, the applicable percentage of the adjusted basis of a specified plant which is planted or grafted after December 31, 2015, and before January 1, 2020, is deductible for regular tax and AMT purposes in the year in which it is planted or grafted.476 For purposes of determining the amount of costs eligible for bonus depreciation, any amount deducted under this election is treated as the equivalent of costs subject to capitalization under section 263A.477 For purposes of determining the amount of gains and losses with respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2020 (‘‘progress expenditures’’) is eligible for the additional first-year depreciation deduction.478

Special rules
is determined under the percentage-of-completion method.460 Solely for purposes of determining the percentage of completion under section 460(b)(1)(A), the cost of qualified property with a MACRS recovery period of seven years or less is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted for properties before January 1, 2020 (January 1, 2021, in the case of longer production period property).461

Intangible property
MACRS does not apply to certain property, including, among other things, a qualified film, video tape, or sound recording, or to any other property if the taxpayer elects to exclude such property from MACRS and the taxpayer elects to use a unit-of-production method or other method of depreciation not expressed in a term of years.462 Section 197 (amortization of goodwill and certain other intangibles) does not apply to certain intangible property, including certain property produced by the taxpayer or any interest in a film, sound recording, video tape, book or similar item that is treated as a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "tax basis," if the recovery period cannot 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 1245 by the taxpayer, which allows a depreciation deduction for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property if it is used in a trade or business or substantial portion thereof.463 Thus, the recovery of the cost thereof is treated as if it were a deduction allowable under section 167, which allows a depreciation allowance for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property if it is used in a trade or business or substantial portion thereof.464 Treasury Regulation section 1.181–2 provides rules on making an election under this section.465 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.466 A qualified film, television or live theatrical production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format), television program or live stage play if more than 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.467 The term "compensation" does not include participations and residuals (as defined in section 167(g)(1)(B)).468 Each episode of a television series is treated as a separate production, and only the first 44 episodes of a particular series qualify under the provision.469 Qualified productions do not include sexually explicit productions as referenced by section 2257 of title 18 of the U.S. Code.470 A qualified live theatrical production is defined as a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a commercial entity in any variety of live staged performances of not more than 3,000, or a series of venues the majority of which have an audience capacity of not more than 3,000.471 In addition, qualified live theatrical productions include any live staged production which is produced or presented by a taxable entity no more than 10 weeks annually in any venue which has an audience capacity of not more than 6,500.472 In general, in the case of multiple live-staged productions, each such live-staged production is treated as a separate production. Similarly, the exclusions for sexually explicit productions from the definition of qualified film or television productions, qualified live theatrical productions do not include stage performances that would be excluded by section 2257(h)(1) of title 18 of the U.S. Code, if such provision were extended to live stage performances.473 For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.474

Expensing of certain qualified film, television and live theatrical productions
Under section 162, a taxpayer may elect to deduct the cost of acquiring a film, television and live theatrical productions commenced prior to January 1, 2017, in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances.475 A taxpayer may elect to deduct up to $15 million of the aggregate cost of the film or television production under this section.476 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.477 A qualified film, television or live theatrical production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format), television program or live stage play if more than 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.478 The term "compensation" does not include participations and residuals (as defined in section 167(g)(1)(B)).479 Each episode of a television series is treated as a separate production, and only the first 44 episodes of a particular series qualify under the provision.480 Qualified productions do not include sexually explicit productions as referenced by section 2257 of title 18 of the U.S. Code.481 A qualified live theatrical production is defined as a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a commercial entity in any variety of live staged performances of not more than 3,000, or a series of venues the majority of which have an audience capacity of not more than 3,000.482 In addition, qualified live theatrical productions include any live staged production which is produced or presented by a taxable entity no more than 10 weeks annually in any venue which has an audience capacity of not more than 6,500.483 In general, in the case of multiple live-staged productions, each such live-staged production is treated as a separate production. Similarly, the exclusions for sexually explicit productions from the definition of qualified film or television productions, qualified live theatrical productions do not include stage performances that would be excluded by section 2257(h)(1) of title 18 of the U.S. Code, if such provision were extended to live stage performances.484 For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.485

FULL EXPENSING FOR CERTAIN BUSINESS ASSETS

The provision extends the special rule under the percentage-of-completion method for the allocation of bonus depreciation to a long-term contract for property placed in service before January 1, 2023 (January 1, 2024, in the case of longer production period property).

APPLICATION TO USED PROPERTY

The provision removes the requirement that the original use of qualified property be commenced with an eligible new property and that the property be placed in service in the year of acquisition. Thus, the provision applies to purchases of used as well as new items. To prevent abuses, the additional first-year depreciation deduction applies only to property purchased in an arm's-length transaction. It does not apply to property received as a gift or from a decedent.486 In the case of trade-ins, like-kind exchanges, conversions to operations, management, leasing, or brokerage trade or business,487 The provision also excludes from the definition of qualified property any property that is not a real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, lease, or management activity.488

EXCEPTION FOR CERTAIN BUSINESSES NOT SUBJECT TO LIMITATION ON INTEREST EXPENSE

The provision excludes from the definition of qualified property any property used in a real property trade or business, i.e., any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, lease, or management activity.489

For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.490
Election to accelerate AMT credits in lieu of bonus depreciation
As a conforming amendment to the repeal of AMT, the provision repeals the election to accelerate AMT credits in lieu of bonus depreciation.

Transition rule
The present-law phase-down of bonus depreciation is maintained for property acquired before September 28, 2017, and placed in service after September 27, 2017. Under the present-law phase-down, the adjusted basis incurred before September 28, 2017, the bonus depreciation rates are as follows.

<table>
<thead>
<tr>
<th>Phased-Down for Portion of Basis of Qualified Property Acquired before September 28, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Placed in Service Year</td>
</tr>
<tr>
<td>2017</td>
</tr>
<tr>
<td>2018</td>
</tr>
<tr>
<td>2019</td>
</tr>
</tbody>
</table>

Similarly, the section 280F increase amount in the limitation on the depreciation deduction is maintained with respect to certain passenger automobiles acquired before September 28, 2017, and placed in service after September 27, 2017, and placed in service before January 1, 2028 (January 1, 2028, in the case of longer production period). Under the conference agreement, the bonus depreciation rates are as follows.

<table>
<thead>
<tr>
<th>Placed in Service Year</th>
<th>Qualified Property in General/Specialized Plants</th>
<th>Long-term Production Period Property</th>
<th>Certain Aircraft</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>100 percent</td>
<td>100 percent</td>
<td>None</td>
</tr>
<tr>
<td>2018</td>
<td>80 percent</td>
<td>80 percent</td>
<td>None</td>
</tr>
<tr>
<td>2019</td>
<td>60 percent</td>
<td>60 percent</td>
<td>None</td>
</tr>
<tr>
<td>2020</td>
<td>40 percent</td>
<td>40 percent</td>
<td>None</td>
</tr>
<tr>
<td>2021 and thereafter</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Placed in Service Year</th>
<th>Qualified Property in General/Certain Aircraft</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>100 percent</td>
</tr>
<tr>
<td>2023</td>
<td>80 percent</td>
</tr>
<tr>
<td>2024</td>
<td>60 percent</td>
</tr>
<tr>
<td>2025</td>
<td>40 percent</td>
</tr>
<tr>
<td>2026</td>
<td>20 percent</td>
</tr>
<tr>
<td>2027</td>
<td>None</td>
</tr>
<tr>
<td>2028 and thereafter</td>
<td>None</td>
</tr>
</tbody>
</table>

The provision extends the special rule under the percentage-of-completion method for the allocation of bonus depreciation to a long-term contract for property placed in service before January 1, 2027 (January 1, 2028, in the case of longer production period).

Application to qualified film, television and live theatrical productions
The provision expands the definition of qualified property eligible for the additional first-year depreciation allowance to include qualified film, television and live theatrical productions placed in service after September 27, 2017, and before January 1, 2027, for which a deduction otherwise would have been allowable under section 181 without regard to the dollar limitation or termination of such section. For purposes of this provision, a production is considered placed in service at the time of initial release, broadcast, or live staged performance (i.e., at the time of the first commercial exhibition, broadcast, or live staged performance of a production). Exception for certain businesses not subject to limitation on interest expense
The provision excludes from the definition of qualified property any property which is primarily used in the trade or business of the furnishing of electrical energy, water, or sewage disposal services, (2) gas or steam through a local distribution system, (3) transportation of electricity, water, or steam through a local distribution system, (4) transportation of electricity, water, or steam through a transmission line, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, or by the Federal Government, or by a State or political subdivision thereof, or by the Federal Government, if the rates for such furnishing or sale are set by a Federal agency.

In general
The provision extends and modifies the additional first-year depreciation deduction through 2026 (through 2027 for longer production period property and certain aircraft). The 50-percent allowance is increased to 100 percent for property placed in service after September 27, 2017, and before January 1, 2023 (January 1, 2024, for longer production period property and certain aircraft), as well as for specified plants planted or grafted after such date. A transition rule provides that, for a taxpayer’s first taxable year ending after September 27, 2017, the taxpayer may elect to apply section 168 without regard to the amendments made by this provision.

<table>
<thead>
<tr>
<th>Placed in Service Year</th>
<th>Qualified Property in General</th>
<th>Long-term Production Period Property</th>
<th>Certain Aircraft</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>50 percent</td>
<td>50 percent</td>
<td>None</td>
</tr>
<tr>
<td>2018</td>
<td>30 percent</td>
<td>50 percent</td>
<td>None</td>
</tr>
<tr>
<td>2019</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>

A conforming amendment to the repeal of corporate AMT, the conference agreement repeals the election to accelerate AMT credits in lieu of bonus depreciation.

Effective date.—The provision generally applies to property placed in service after September 27, 2017, and placed in service after September 27, 2017, as well as the present-law phase-down of bonus depreciation to property acquired before September 28, 2017, and placed in service after September 27, 2017. Under the conference agreement, the bonus depreciation rates are as follows.

<table>
<thead>
<tr>
<th>Portion of Basis of Qualified Property Acquired before Sept. 28, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Placed in Service Year</td>
</tr>
<tr>
<td>2017</td>
</tr>
<tr>
<td>2018</td>
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<tr>
<td>2019</td>
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<tr>
<td>2020</td>
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<td>2021</td>
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<td>2022</td>
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<tr>
<td>2023</td>
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<tr>
<td>2024</td>
</tr>
<tr>
<td>2025</td>
</tr>
</tbody>
</table>

The conference agreement follows the Senate amendment but also includes the House bill’s removal of the requirement that the original use of qualified property must commence within the taxable years ending after such date, and to specified plants planted or grafted after such date.

A transition rule provides that, for a taxpayer’s first taxable year ending after September 27, 2017, the taxpayer may elect to apply a 50-percent allowance instead of the 100-percent allowance.

<table>
<thead>
<tr>
<th>Portion of Basis of Qualified Property Acquired after Sept. 27, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Placed in Service Year</td>
</tr>
<tr>
<td>2017</td>
</tr>
<tr>
<td>2018</td>
</tr>
<tr>
<td>2019</td>
</tr>
<tr>
<td>2020</td>
</tr>
<tr>
<td>2021</td>
</tr>
<tr>
<td>2022</td>
</tr>
</tbody>
</table>

For the purposes of this provision, the term ‘qualified property’ means property which is primarily used in the trade or business of the furnishing of electrical energy, water, or sewage disposal services, (2) gas or steam through a local distribution system, (3) transportation of electricity, water, or steam through a transmission line, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, or by the Federal Government, or by a State or political subdivision thereof, or by the Federal Government, if the rates for such furnishing or sale are set by a Federal agency.

Table: Portion of Basis of Qualified Property Acquired before Sept. 28, 2017

<table>
<thead>
<tr>
<th>Placed in Service Year</th>
<th>Qualified Property in General</th>
<th>Long-term Production Period Property</th>
<th>Certain Aircraft</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>8,000 for passenger automobiles placed in service after December 31, 2017</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>6,400 for 2017, $5,000 for 2018, $6,600 for 2019, and $6,800 for 2020</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>4,800 for 2018, $5,400 for 2019, $6,000 for 2020, and $6,600 for 2021</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2020</td>
<td>30 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2021</td>
<td>20 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2022</td>
<td>10 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2023</td>
<td>5 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2024</td>
<td>2.5 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2025</td>
<td>None</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For the purposes of this provision, the term ‘qualified property’ means property which is primarily used in the trade or business of the furnishing of electrical energy, water, or sewage disposal services, (2) gas or steam through a local distribution system, (3) transportation of electricity, water, or steam through a transmission line, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, or by the Federal Government, or by a State or political subdivision thereof, or by the Federal Government, if the rates for such furnishing or sale are set by a Federal agency.

Table: Portion of Basis of Qualified Property Acquired after Sept. 27, 2017

<table>
<thead>
<tr>
<th>Placed in Service Year</th>
<th>Qualified Property in General</th>
<th>Long-term Production Period Property</th>
<th>Certain Aircraft</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>100 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>80 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>60 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2020</td>
<td>40 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2021</td>
<td>20 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2022</td>
<td>None</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For the purposes of this provision, the term ‘qualified property’ means property which is primarily used in the trade or business of the furnishing of electrical energy, water, or sewage disposal services, (2) gas or steam through a local distribution system, (3) transportation of electricity, water, or steam through a transmission line, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, or by the Federal Government, or by a State or political subdivision thereof, or by the Federal Government, if the rates for such furnishing or sale are set by a Federal agency.

Table: As a conforming amendment to the prohibition of States, the conference agreement repeals the election to accelerate AMT credits in lieu of bonus depreciation.

Effective date.—The provision generally applies to property acquired and placed in service after September 27, 2017, and to specified plants planted or grafted after such date.

A transition rule provides that, for a taxpayer’s first taxable year ending after September 27, 2017, the taxpayer may elect to apply a 50-percent allowance instead of the 100-percent allowance.
Section 280F(a) limits the annual cost recovery with respect to certain passenger automobiles. This limitation is commonly referred to as the "luxury automobile deduction." For passenger automobiles placed in service in 2017, and for which the additional first-year depreciation deduction under section 168(k) is not claimed, the maximum amount of allowable depreciation is $3,160 for the year in which the vehicle is placed in service, $5,100 for the second year, $3,050 for the third year, and $1,870 for subsequent years. 

For purposes of the depreciation limitation, passenger automobiles are defined broadly to include any four-wheeled vehicles that are primarily used for travel on public streets, roads, and highways and which are rated at 6,000 pounds unloaded gross vehicle weight or less. In the case of a truck or van, the depreciation limitation applies to vehicles that are rated at 6,000 pounds gross vehicle weight or less. Sport utility vehicles are treated as a truck for the purpose of applying the section 280F limitation. 

The applicable recovery period for all real property is 27.5 years. Real property includes residential and non-residential real property. The straight line method is applied to the recovery period. In the case of certain listed property, special rules apply. Listed property generally is defined as a passenger automobile; any other property used as a means of transportation; any property of a type generally used for purposes of entertainment, recreation, or amusement; any computer or peripheral equipment; and any other property of a type specified in Treasury regulations. 

No property is listed property for purposes of the section 280F limitation. For listed property, the annual cost recovery is limited to the amount that would have been allowed for such prior taxable years. 

The applicable recovery period for an asset is determined in part by statute and in part by the Modified Accelerated Cost Recovery System ("MACRS"). For most assets, the recovery period is determined based on assigned applicable depreciation methods and a recovery period equal to the asset's useful life. The "useful life" of an asset is determined to be the "class life" of the asset, which in turn dictates the applicable recovery period for the asset. 

The MACRS recovery periods applicable to the most tangible personal property range from 7 years to 39 years. The 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 first taxable year where using the straight line method with respect to the adjusted basis as of the beginning of that year yields a larger depreciation allowance. 

The recovery periods for most real property are 39 years for nonresidential real property and 27.5 years for residential real property. The straight line method is the applicable recovery period for most real property. 

For passenger automobiles, the MACRS recovery period is 5 years. For passenger automobiles placed in service after December 31, 2017, and for which the additional first-year depreciation deduction under section 168(k) is not claimed, the maximum amount of allowable depreciation is $10,000 for the year in which the vehicle is placed in service, $16,000 for the second year, $9,600 for the third year, and $5,760 for the fourth and later years in the recovery period. 

For listed property, the applicable recovery period is determined in part by the applicable limitations that apply to listed property. For passenger automobiles placed in service after December 31, 2017, in taxable years ending after such date, the applicable recovery period is 5 years. 

The applicable recovery period for listed property is determined in part by statute and in part by the Modified Accelerated Cost Recovery System ("MACRS"). In November 1988, Congress modified the statutory treatment of listed property. The applicable recovery period for passenger automobiles is 5 years, regardless of whether the vehicle is placed in service after December 31, 2017. 

The applicable recovery period for listed property is determined in part by statute and in part by the modified accelerated cost recovery system ("MACRS"). In November 1988, Congress modified the statutory treatment of listed property. The applicable recovery period for passenger automobiles is 5 years, regardless of whether the vehicle is placed in service after December 31, 2017.
improvements such as drainage facilities, paved lots, and water wells are assigned a recovery period of 15 years.\footnote{Rev. Proc. 87-56. Asset class 90.3. Land improvements. See also, IRS Publication 225, Farmer’s Tax Guide (2017).} A 5-year recovery period was assigned to new machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which was used in a farming business, or the tax use of which commenced with the taxpayer after December 31, 2008, and which was placed in service before January 1, 2010.\footnote{As defined in section 263A(e)(4). See also Treas. Reg. sec. 1.263A-4(a)(4).}

Any property other than real estate, real property,\footnote{Sec. 168(b)(2)(B).} and trees or vines bearing fruits or nuts\footnote{Sec. 168(e)(3)(B)(vii).} used in a farming business is subject to the 150-percent declining balance method.\footnote{Treas. Reg. sec. 1.167(a)-10(b).}

Under a special accounting rule, certain taxpayers engaged in the business of farming who elect to deduct the production period expenses are required to depreciate all farming assets using the alternative depreciation system (ADS), which does not require the use of the 15-year recovery periods and the straight line method.\footnote{Treas. Reg. sec. 1.263A-4(a)(4).}

No provision.

SENIOR AMENDMENT

The provision shortens the recovery period from 15 years to 7 years for nonresidential real property (other than any grain bin, cotton ginning asset, fence, or other land improvement) used in a farming business, the original use of which commences with the taxpayer and is placed in service after December 31, 2011.\footnote{Sec. 168(b)(2)(B).}

The provision also repeals the required use of the 150-percent declining balance method for property used in a farming business (i.e., the 5-year and 10-year real property recovery periods are lessened). The 150-percent declining balance method will continue to apply to any 15-year or 20-year property used in the farming business to which the straight line method does not apply, or to property for which the taxpayer elects the use of the 150-percent declining balance method.

For these purposes, the term “farming business” means a farming business as defined in section 263A(e)(4). Thus, the term “farming business” means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity (e.g., the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other products; the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals).\footnote{Sec. 168.}

A farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products.\footnote{Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87-56, 1987-2 C.B. 674, laying out the framework of recovery periods for nonresidential real property. The Treasury clarified and modified the list of asset classes in Rev. Proc. 88-22, 1988-1 C.B. 783. In November 1988, Congress revised title 26 to authorize the Secretary to establish the class of depreciable property. Rev. Proc. 87-56, as modified, remains in effect except to the extent that the Congress has modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.}

Effective date.—The provision is effective for property placed in service after December 31, 2017, in taxable years ending after such date.
Qualified leasehold improvement property

Section 168(e)(3)(E)(iv) provides a statutory 15-year recovery period for qualified leasehold improvement property. Qualified leasehold improvement property is any improvement to an interior portion of a building that is nonresidential real property, provided certain requirements are met.\(^{546}\) The improvements 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 improvements must be placed in service more than three years after the date the building was first placed in service. Qualified leasehold improvement property is any improvement to a building which is not eligible for section 179 expensing.\(^{547}\) The improvement 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 applies in the case of death and certain transfers of property that qualify for non-recognition treatment.\(^{548}\)

Qualified leasehold improvement property is generally depreciated using the alternative depreciation system and a half-year convention,\(^{549}\) and is eligible for the additional first-year depreciation deduction if the other requirements of section 168(k) are met.\(^{550}\)

Qualified restaurant property

Section 168(e)(3)(E)(v) provides a statutory 15-year recovery period for qualified restaurant property. Qualified restaurant property is any improvement to a building, if that property is used for the production of income and is not used exclusively in a taxpayer’s business, trade or business for this purpose. See, e.g., broker of financial instruments is not in a real property trade or business for this purpose. See, e.g., section 168(e)(8)(B). Rules similar to section 168(e)(8)(B) apply in the case of property placed in service after December 31, 2017, that does not meet the definition of qualified improvement property, using the straight line method and half-year convention.

Qualified retail improvement property

Section 168(e)(3)(E)(vi) provides a statutory 15-year recovery period for qualified retail improvement property. Qualified retail improvement property is any improvement to a building or an improvement to a building, if 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.\(^{551}\) Qualified retail improvement property is recovered using the straight-line method and a half-year convention.\(^{552}\) Additionally, qualified leasehold improvement property is not eligible for the additional first-year depreciation deduction unless it also satisfies the definition of qualified improvement property.\(^{553}\)

Qualified improvement property

Section 168(e)(3)(E)(vii) provides a statutory 15-year recovery period for qualified retail improvement property. Qualified retail improvement property is any improvement to a building or an improvement to a building, if 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.\(^{551}\) Qualified retail improvement property is recovered using the straight-line method and a half-year convention.\(^{552}\) Additionally, qualified leasehold improvement property is not eligible for the additional first-year depreciation deduction unless it also satisfies the definition of qualified improvement property.\(^{553}\)

Alternative depreciation system

The alternative depreciation system (‘‘ADS’’) is required to be used for tangible property used predominantly outside the United States, certain tax-exempt use property, tax-exempt leasehold improvement property, and certain imported property covered by an Executive order.\(^{556}\) An election to use ADS is available to taxpayers for any class of property for which ADS, all property is depreciated using the straight line method over recovery periods which generally are equal to the class life of the property, with certain exceptions.\(^{557}\) For example, nonresidential real and residential rental property have a 40-year ADS recovery period, while qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property have a 39-year ADS recovery period.\(^{558}\)

No provision.

SENATE AMENDMENT

The provision shortens the recovery period for the depreciation deduction with respect to nonresidential real and residential rental property to 25 years. As a conforming amendment, the provision changes the statutory definition of nonresidential real and residential rental property to 25 years for purposes of determining whether a rental agreement is a long-term agreement (Limitation on deduction for interest), by excluding any property that is not used exclusively for the production of income and is not used exclusively in a taxpayer’s business, trade or business for this purpose. See, e.g., joint Committee on Taxation, ‘‘Present Law,’’ by section 13201 of the bill (Temporary 100-percent expensing for certain business assets). See section 13201 of the bill (Temporary 100-percent expensing for certain business assets). See section 13201 of the bill (Temporary 100-percent expensing for certain business assets).

CONGRESSional RECORD — HOUSE

December 15, 2017

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost through annual deductions for depreciation or amortization.\(^{559}\) Tangible property generally is depreciated under the modified accelerated cost recovery system (‘‘MACRS’’), which allows depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention.\(^{560}\)

\(^{546}\) See Sec. 168(e)(6).

\(^{547}\) See Sec. 168(e)(3)(B).

\(^{548}\) See Sec. 168(e)(3)(E)(iv).

\(^{549}\) See Sec. 168(e)(3)(E)(vi).

\(^{550}\) See Sec. 168(e)(3)(E)(v).

\(^{551}\) See Sec. 168(e)(3)(E)(vii).

\(^{552}\) See Sec. 168(e)(3)(E)(v).

\(^{553}\) See Sec. 168(e)(3)(E)(viia).

\(^{554}\) See Sec. 168(e)(3)(E)(vii).

\(^{555}\) See Sec. 168(e)(9)(B).

\(^{556}\) See Sec. 168(e)(6)(B). Rules similar to section 168(e)(6)(B) apply in the case of death and certain transfers of property that qualify for non-recognition treatment.

\(^{557}\) Joint Committee on Taxation, ‘‘Present Law,’’ by section 13201 of the bill (Temporary 100-percent expensing for certain business assets).

\(^{558}\) See Sec. 168(e)(3)(E)(v).

\(^{559}\) See Sec. 168(e)(3)(E)(vi).

\(^{560}\) See Sec. 168(e)(3)(E)(vii).

\(^{561}\) See Sec. 168(e)(3)(E)(vii).

\(^{562}\) See Sec. 168(e)(6)(A). Rules similar to section 168(e)(6)(B) apply in the case of death and certain transfers of property that qualify for non-recognition treatment.

\(^{563}\) See Sec. 168(e)(3)(E)(vii).

\(^{564}\) See Sec. 168(e)(3)(E)(vii).

\(^{565}\) See Sec. 168(e)(3)(E)(vii).

\(^{566}\) See Sec. 168(e)(3)(E)(vii).

\(^{567}\) See Sec. 168(e)(3)(E)(vii).

\(^{568}\) As defined in section 13301 of the Senate amendment (Modifications of first-year expensing cap (MACKS)).

\(^{569}\) As defined in section 13301 of the Senate amendment (Limitation on deduction for interest), by cross reference to section 168(c)(7)(C) (i.e., any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, lease, or brokerage trade or business). Note that a mortgage broker who is a broker of financial instruments is not in a real property trade or business for this purpose. See, e.g., CCA 201504010 (December 17, 2014).

\(^{570}\) See secs. 263(a) and 167. However, where property is not used exclusively for the production of income and is not used exclusively in a taxpayer’s business, trade or business for this purpose. See, e.g., joint Committee on Taxation, ‘‘Present Law,’’ by section 13201 of the bill (Temporary 100-percent expensing for certain business assets). See section 13201 of the bill (Temporary 100-percent expensing for certain business assets).

\(^{571}\) See Sec. 168(e)(9)(B).
The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance. The type of property of an asset is used to determine the "asset class," which in turn dictates the applicable recovery period for the asset. The MACRS recovery periods applicable to most tangible personal property range from three to 20 years. The depreciation methods generally applicable to tangible personal property are the 200 percent and 150 percent declining balance methods, switching to the straight line method for the first taxable year where using the straight line method with a shortened basis or a reduction in the recovery period of that year results in a greater depreciation allowance. The recovery periods for most real property are 39 years for nonresidential real property, 27.5 years for residential rental property. The straight line depreciation method is required for the aforementioned real property.

Property used in a farming business is assigned various recovery periods in the same manner as other business property. For example, depreciable assets used in agriculture activities that are assigned a recovery period of 7 years include machinery and equipment, grain bins, and fences (but no other land improvements). These and similar assets used in the production of crops or plants, vines, and trees; livestock; the operation of farm dairies, nurseries, greenhouses, sod farms, mushrooms, cellars, cranberries, and fur farms; and the performance of agriculture, animal husbandry, and horticultural services. Cotton ginning assets are also assigned a recovery period of 7 years. Any single purpose agricultural or horticultural structure, and any tree or vine bearing fruit or nuts are assigned a recovery period of 10 years. Land improvements, such as drainage facilities, paved lots, and water wells are assigned a recovery period of 15 years. A 5-year recovery period was assigned to new farm machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which was placed in service before January 1, 2010.581

578 Sec. 168(e)(3)(D)(i) and (ii).
579 As defined in section 263A(e)(4).
580 Sec. 168(b)(3)(E).
581 Sec. 168(e)(3)(B)(vii). However, section 13203 of the Senate amendment and section 263A of the House amendment (Modifications of treatment of certain farm property) generally equal to the class life of the property.
582 See section 168(g)(3)(B).
584 Sec. 168(b)(3)(D)(i) and (ii).
585 Sec. 168(b)(3)(D)(ii).
587 Sec. 168(b)(3)(A).
588 Sec. 168(g)(7).
589 Sec. 168(g)(3)(B).
590 Sec. 168(g)(3)(B). Farm buildings that do not meet the definition of a single purpose agricultural or horticultural structures have an ADS recovery period of 20 years. Section 263A, the costs of producing a plant generally required to be capitalized also include processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products. See Treas. Reg. sec. 1.263A–4(k)(1) (i) and (ii). A farming business does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another taxpayer to crop, or processing of plants or animals grown or raised by another taxpayer. See Treas. Reg. sec. 1.263A–4(a)(4)(i). The 150 percent declining balance method will continue to apply to any 15-year or 20-year property used in the farming business to which the straight line method does not apply, or to property for which the taxpayer elects the use of the 150-percent declining balance method. See Treas. Reg. sec. 1.168–7T.
591 Sec. 168(b)(3)(D)(ii).
592 Rev. Proc. 87–56, Asset class 00.3, Land improvements.
593 Sec. 263A(d)(3) and (e)(2).
594 As defined in section 13201 of the Senate amendment (Limitation on deduction for interest). Section 13201 of the Senate amendment also includes an exception for circumstances where the taxpayer's interest for taxpayers meeting the $15 million gross receipts test.
596 Sec. 13301 of the Senate amendment and sec. 263A of the House amendment (Modifications of treatment of certain farm property).
597 As defined in section 13307 of the Senate amendment and sec. 263A of the House amendment (Modifications of treatment of certain farm property).
598 See section 13301 of the Senate amendment (Limitation on deduction for interest).
599 The provision requires an electing farming business, i.e., a farming business
600 Under the declining balance method the depreciation rate is determined by dividing the appropriate percentage (here 150 or 200) by the appropriate recovery period. This leads to accelerated depreciation with the 150 percent declining balance percentage is greater than 100. The table below illustrates depreciation for an asset with a cost of $1,000 and a seven-year recovery period. The seven-year recovery period is determined by Treasury guidance. The Secretary defined and modified the list of asset classes in Rev. Proc. 88–22, 1988–1 C.B. 785. In November 1988, Congress modified the rules applicable to the class lives of depreciable property. Rev. Proc. 88–22, as modified, remains in effect except to the extent that it is inconsistent with this section 168(i)(13). See also Rev. Proc. 87–56, Asset class 01.1. Agriculture. The straight line method for the first taxable year reduces the recovery period. This leads to accelerated depreciation with the 150 percent declining balance method.
601 See section 263A(d)(3) and (e)(2).
602 The alternative depreciation system ("ADS") is required to be used for tangible personal property predominantly outside the United States, certain tax-exempt use property, tax-exempt bond financed property, and certain import property covered by an Executive order. Under the election to use ADS is available to taxpayers for any class of property for any taxable year. Under ADS, all property is depreciated using the straight line method. The modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance on the matter.
603 No provision.
604 As defined in section 263A(e)(4).
605 Sec. 168(b)(3)(E).
606 Sec. 168(b)(3)(A).
607 Section 263A generally requires the capitalization of the direct and indirect costs allocable to the production of any property in a farming business, including animals and plants without regard to the length of their preproductive period. The costs of a plant generally required to be capitalized under section 263A include any capital costs incurred so that the plant’s growing process may begin, such as the acquisition costs of the seed, seedling, or plant. Under section 263A, the costs of producing a plant generally required to be capitalized also include the preproductive period costs of planting, cultivating, maintaining, and developing the plant during the preproductive period. Preproductive period costs may include management, irrigation, pruning, soil and water conservation, fertilizing, frost protection, spraying, harvesting, storage and handling, upkeep, electricity, tax depreciation and repairs on buildings and equipment used in raising the plants, farm overhead, taxes, and interest, as applicable.
608 As defined in section 263A(e)(4).
609 As defined in section 13307 of the Senate amendment and sec. 263A of the House amendment (Modifications of treatment of certain farm property).
610 As defined in section 263A(e)(4).
611 As defined in section 263A(e)(4).
Special rules for plant farmers

Section 263A provides an exception to the general capitalization requirements for taxpayers who raise, harvest, or grow trees.601 Under this exception, section 263A does not apply to trees raised, harvested, or grown by the taxpayer (other than trees bearing fruit, nuts, or other crops, or ornamental trees) and applies to the income derived from the sale of such trees. Similarly, the UNICAP rules do not apply to any plant having a preproductive period of two years or less, which is produced by a taxpayer in connection with replanting and maintaining a new crop of plants that have a preproductive period of more than two years, and to taxpayers required to use an accrual method of accounting.

Plant farmers otherwise required to capitalize preproductive period costs may elect to deduct such costs currently, provided the alternative depreciation system described in section 168(g)(2) is used on all farm assets and the preproductive period costs are recapitalized upon disposition of the product.602 The election is not available to taxpayers required to use the accrual method of accounting. Moreover, the election is not available with respect to certain costs attributable to planting, maintaining, or developing citrus or almond groves.

Section 263A does not apply to costs incurred in replanting edible crops for human consumption, which were lost or damaged due to freezing temperatures, disease, drought, pests, or casualty.603 The same type of crop as the lost or damaged crop must be replanted, and the election to capitalize still applies if the replanting occurs on a parcel of land other than the land on which the damage occurred provided the acreage of the new land does not exceed the acreage of the land to which the damage occurred and the new land is located in the United States. This exception may also apply to costs incurred by persons other than the taxpayer who incurred the loss or damage, provided (1) the taxpayer who incurred the loss or damage retains an equity interest of more than 50 percent in the property on which the loss or damage occurred at all times during the taxable year in which the replanting costs are paid or incurred, and (2) the person holding the remaining equity interest claiming the deduction materially participates in the planting, maintenance, cultivation, or development of the property during the taxable year in which the replanting costs are paid or incurred.604

House bill

No provision.

Senate amendment

The provision modifies the special rule for costs incurred by persons other than the taxpayer in connection with replanting an edible crop for human consumption following loss or damage due to casualty. Under the provision, with respect to replanting costs paid or incurred after the date of enactment, but no later than a date which is ten years and one day after the date of enactment, for citrus plants lost or damaged due to casualty, such replanting costs may also be deducted by a person other than the taxpayer if (1) the taxpayer who incurred the loss or damage continues to retain an equity interest in the remaining equity interest, or (2) such other person acquires all of the taxpayer’s equity interest in the land on which the lost or damaged crop was located at the time of such loss or damage, and the replanting is on such land.

Effective date.—The provision is effective for costs paid or incurred after the date of enactment.

CONFERENECE AGREEMENT

The conference agreement follows the Senate amendment.

C. Small Business Reform

1. Expansion of section 179 (expiring. sec. 3201 of the House bill, sec. 13101 of the Senate amendment, and sec. 179 of the Code)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business unless the property is eligible for the recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method. However, recovery of certain qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Qualifying property also includes off-the-shelf computer software and qualified real property (i.e., qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property).612 Qualifying property excludes any property described in section 168(k)(1)(B) (i.e., certain property not eligible for the investment tax credit).613

Passenger automobiles subject to the section 280F limitation are discussed in section 179 expensing only to the extent of the dollar limitations in section 280F. For sport utility vehicles above the 6,000 pound weight rating and not more than the 14,000 pound weight rating, which are not subject to the limitation under section 280F, the maximum cost that may be expensed for any taxable year under section 179 is $5,000 ("the sport utility vehicle limitation").614

The amount eligible to be expensed for a taxable year may not exceed the taxable income for such taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision).615 Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to limitations).

No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.616 If a corporation elects under section 179 to deduct expenditures, the full amount of the deduction does not reduce earnings and profits. Rather, the expenditures that are deducted reduce corporate earnings and profits ratably over a five-year period.617

An expensing election is made under rules prescribed by the Secretary.618 In general, any election or specification made with respect to any property may not be revoked except with the consent of the Commissioner.619 However, an election or specification under section 179 may be revoked by the taxpayer without consent of the Commissioner.

House bill

The provision increases the maximum amount a taxpayer may expense under section 179 to $5,000,000, and increases the phase-out threshold amount to $20,000,000 for five taxable years, i.e., for taxable years beginning in 2018, 2019, 2020, 2021 and 2022. Thus, the provision provides that the maximum amount a taxpayer may expense, for taxable years beginning after 2017 and before 2023, is the lesser of (1) the amount of the cost of qualifying property placed in service in the taxable year that exceeds $2,000,000, or (2) the amount of the cost of qualifying property placed in service in the taxable year that exceeds $5,000,000. The $500,000 and $2,000,000 amounts are indexed for inflation for taxable years, beginning after 2017 and before 2023.

In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Qualifying property also includes off-the-shelf computer software and qualified real property (i.e.,

601 Sec. 263A(c)(5).
602 Sec. 263A(d).
603 Sec. 263A(c)(3), (e)(1), and (e)(2).
604 Sec. 168(g)(2) costs generally include costs attributable to the replanting, cultivating, maintaining, and developing of the plants that were lost or damaged that are incurred during the preproductive period. Treas. Reg. sec. 1.263A-4(e)(1). The acquisition costs of the replacement trees that were lost or damaged must be capitalized under section 263A(a) (see, e.g., T.D. 8897, 65 FR 50638, Treas. Reg. sec. 1.263A-4(e)(3). Examples 1-3, and TAM 9559862). Special bonus depreciation deduction in the year of replanting under section 168(k)(2).
605 Sec. 168(g)(2). Material participation for this purpose is determined in a similar manner as under section 262A(e)(8) (relating to qualified use valuation of farm property upon death of the taxpayer).
606 See secs. 262A(a)(5) and 187. However, where property is not used exclusively in a taxpayer’s business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, e.g., sec. 2304A.
607 The applicable recovery period for an asset is determined in part by statute and in part by historic earnings and profits ratably over a five-year period. Congress revoked the Secretary’s authority to modify the recovery period,608 and convention.609 Tangible property generally is depreciated under the recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method. However, recovery of certain qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Qualifying property also includes off-the-shelf computer software and qualified real property (i.e.,
610 Sec. 179(b)(2).
611 Sec. 179(b)(1).
612 Sec. 168(k)(1)(B).
613 Sec. 179(b)(1) and (d).
614 Sec. 179(b)(5).
615 Sec. 179(b)(3).
616 Sec. 179(b)(5).
617 Sec. 179(b)(3).
618 Sec. 179(b)(1).
619 Sec. 179(b)(2).
620 Sec. 179(b)(5).
621 Sec. 179(c)(1).
to include qualified energy efficient heating and air-conditioning property acquired and placed in service by the taxpayer after November 2, 2017. For purposes of the provision, qualified energy efficient heating and air-conditioning property means any depreciable section 1250 property that is (i) installed as part of a building’s heating, cooling, ventilation, or hot water system, and (ii) meeting the scope of Standard 90.1-2007 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on the day before the date of the adoption of Standard 90.1-2010 of such Societies) or any successor standard.

To effectuate an increased dollar limitation under section 179 apply to taxable years beginning after December 31, 2017.

The expansion of qualified real property to include qualified energy efficient heating and air-conditioning property and inventory accounting applies to property acquired and placed in service after November 2, 2017 ("the 2017 Legislation").

The provision increases the maximum amount a taxpayer may expense under section 179 to $1,000,000, and increases the phase-out threshold amount to $2,500,000. Thus, the provision has the effect that the maximum amount a taxpayer may expense, for taxable years beginning after 2017, is $1,000,000 of the cost of qualifying property placed in service for the taxable year. The $1,000,000 (or $2,500,000) is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service for the taxable year exceeds $2,500,000. The $1,000,000 and $2,500,000 amounts, as well as the $25,500 sport utility vehicle limitation, are indexed for inflation for taxable years beginning after 2018.

The provision expands the definition of section 179 property to include certain depreciable tangible personal property used predominately to furnish lodging or in connection with furnishing lodging or in connection with furnishing lodging and personal services. The provision also expands the definition of qualified real property eligible for section 179 expensing to include any of the following improvements to nonresidential real property placed in service after the date such property was first placed in service: roofs; heating, ventilation, and air-conditioning property; fire protection and alarm systems; and security systems.

Effective date. The provision applies to property placed in service in taxable years beginning after December 31, 2017.


during the taxable year exceeds $2,500,000. The $1,000,000 and $2,500,000 amounts, as well as the $25,500 sport utility vehicle limitation, are indexed for inflation for taxable years beginning after 2018. The provision expands the definition of section 179 property to include certain depreciable tangible personal property used predominately to furnish lodging or in connection with furnishing lodging and personal services. The provision also expands the definition of qualified real property eligible for section 179 expensing to include any of the following improvements to nonresidential real property placed in service after the date such property was first placed in service: roofs; heating, ventilation, and air-conditioning property; fire protection and alarm systems; and security systems.

Effective date. The provision applies to property placed in service in taxable years beginning after December 31, 2017.

The conference agreement follows the Senate amendment.


SPECIAL LAW

General rule for methods of accounting

Section 469 generally allows a taxpayer to select the method of accounting to be used to compute taxable income, provided that such method clearly reflects the income of the taxpayer. The term “method of accounting” includes not only the overall method of accounting used by the taxpayer, but also the accounting treatment of any one item. Permissible overall methods of accounting include the cash receipts and disbursements method, the accrual method, or any other method (including a hybrid method) permitted under regulations prescribed by the Secretary. Examples of any other methods of accounting include the cash method (for which an accounting method may be adopted include cost recovery, revenue recognition, and timing of deductions). For each separate trade or business, a taxpayer may adopt any permissible method, subject to certain restrictions. A taxpayer filing its first return may adopt any method of accounting in computing taxable income for such year. Except as otherwise provided, section 469(e) requires taxpayers to secure consent from the IRS before changing a method of accounting. The regulations under this section provide rules for determining: (1) what a method of accounting is, (2) how a method of accounting is adopted, (3) how a change in method of accounting occurs, and (3) how a method of accounting is effectuated.

Cash and accrual methods

Taxpayers using the cash method generally recognize income when cash is received or constructively received and items of expense when paid. The cash method is administratively easy and provides the taxpayer flexibility in the timing of income tax liability. The key difference between the cash method is the method generally used by most individual taxpayers, including farm and non-farm sole proprietors. Taxpayers using an accrual method generally accrue income when all the events have occurred that fix the right to receive the income and the amount of the income can be determined with reasonable accuracy. Taxpayers using an accrual method of accounting generally may not deduct items of expense prior to when all events have occurred that fix the obligation to pay the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred.

Accrual method of accounting generally results in a more accurate measure of economic income than does the cash method. The accrual method is often used by businesses for financial accounting and reporting. A C corporation, a partnership that has a C corporation as a partner, or a tax-exempt trust or corporation with unrelated business income generally may not use the cash method.

Exemptions for farming businesses, qualified personal service corporations, and the aforementioned entities to the extent their average annual gross receipts do not exceed $5 million for all prior years (including the prior taxable years of any predecessor of the entity) (the “gross receipts test”). This means that a method may not be used by any tax shelter. In addition, the method generally may not be used if the purchase, production, or sale of merchandise is an income producing factor to the taxpayer. Taxpayer regulations also provide that in any case in which the use of inventories is necessary to clearly reflect income, the accrual method must be used with regard to purchases and sales. However, an exception is provided for farmers, the use of which are not otherwise prohibited from using the cash method under section 446. Such taxpayers may account for inventories as materials and supplies that are not incidental (i.e., “non-incidental materials and supplies”).

In the circumstances in which a taxpayer is required to account for inventory, the taxpayer must maintain inventory records to determine the cost of goods sold during the taxable period. Cost of goods sold defined in section 263A(e)(3)(A) or any partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, (1) if at any time inures to such partner or partnership or enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having authority to regulate the offer of securities for sale or (2) if more than 15 percent of the losses during any period are allocable to limited partners or limited entrepreneurs.

In general, for Federal income tax purposes, taxpayers must account for inventories if the production, purchase, or sale of merchandise is an income-producing factor to the taxpayer. Taxpayer regulations also provide that in any case in which the use of inventories is necessary to clearly reflect income, the accrual method must be used with regard to purchases and sales. However, an exception is provided for farmers, the use of which are not otherwise prohibited from using the cash method under section 446. Such taxpayers may account for inventories as materials and supplies that are not incidental (i.e., “non-incidental materials and supplies”). In the circumstances in which a taxpayer is required to account for inventory, the taxpayer must maintain inventory records to determine the cost of goods sold during the taxable period. Cost of goods sold
The uniform capitalization rules require certain direct and indirect costs allocable to real or tangible personal property produced by a taxpayer to be included in either inventory or capitalized into the basis of such property, as applicable. For real or personal property acquired by the taxpayer for resale, section 263A generally requires certain direct and indirect costs allocable to such property to be included in inventory. Section 263A does not apply to trees raised, harvested, or grown by the taxpayer (other than those bearing fruit, nuts, or other crops, or ornamental trees) and any real property underlying such trees. Similarly, the uniform capitalization rules do not apply to any plant or animal live property with a life of two years or less or to any animal, which is produced by a taxpayer in a farming business (unless the taxpayer is required to use an accrual method of accounting under section 447 or 448(a)(3)). Freelance authors, photographers, and artists are also exempt from section 263A for any qualified creative expenses.

Accounting for long-term contracts

In general, in the case of a long-term contract, the taxable income from the contract is determined under the percentage-of-completion method. Under section 460, the taxpayer must include in gross income for the taxable year an amount equal to the product of (1) the gross contract price and (2) the percentage of the contract completed during the taxable year. The percentage of the contract completed during the taxable year is determined by comparing costs allocated to the contract and incurred before the end of the taxable year with the estimated total costs to be incurred by the taxpayer under the contract. For percentage-of-completion contracts that are not based on a taxpayer's expected gross receipts, the percentage of completion is determined under the last-in, first-out (''FIFO'') method. Exemptions from these rules include the percentage-of-completion method for contracts for the construction or improvement of real property if the contract is (1) expected (at the time such contract is entered into) to be completed within two years of commencement of the contract and (2) performed by a taxpayer whose average annual gross receipts for the prior three taxable years do not exceed $10 million. Thus, long-term contract income from small construction contracts must be reported consistently using the percentage-of-completion method. Also, permissible exempt contract methods include the completed contract method, the exempt-contract percentage-of-completion method, the completed-contract percentage-of-completion method, or any other permissible method.

HOU S E B IL L

The provision expands the universe of taxpayers to use the completed-contract method of accounting. Under the provision, the cash method of accounting may be used by taxpayers, other than tax shelters, that satisfy the gross receipts test, which is indexed for inflation for taxable years beginning after 2017. Application of the provisions to expand the universe of taxpayers eligible to use the cash method, exempt certain taxpayers from the requirement to keep inventories, and expand the exception from the uniform capitalization rules is a change in the taxpayer's accounting procedures. See Treas. Reg. sec. 1.162–3(a).

Effective date.—The provisions to expand the universe of taxpayers eligible to use the cash method, exempt certain taxpayers from the requirement to keep inventories, and expand the exception from the uniform capitalization rules apply to taxable years beginning after December 31, 2017, in taxable years ending after such date.
The Senate amendment modifies the $25 million gross receipts test to be a $15 million gross receipts test which is met if a taxpayer’s annual average gross receipts do not exceed $15 million for the three prior taxable-year period. The Senate amendment retains the present law $25 million gross receipts limit for family farming corporations and applies such limit consistent with present law.

Effective date.—The provisions to expand the universe of taxpayers eligible to use the cash method, exempt certain taxpayers from the requirement to keep inventories, and expand the exception from the uniform capitalization requirements were to apply to taxable years beginning after December 31, 2017. The provision to expand the exception for small construction contracts from the requirement to use the percentage-of-completion method applies to contracts entered into after December 31, 2017, in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

3. Modification of treatment of S corporation conversions to C corporations (sec. 3204 of the House bill, secs. 1303, and conforming amendments, and secs. 1371 and 1371 of the Code)

PRESENT LAW

Changes in accounting method

Cash and accrual methods in general

Taxpayers using the cash method generally recognize income when actually or constructively received and items of expense when paid. The cash method is administratively easy and provides the taxpayer flexibility in the timing of income recognition. A method of accounting generally is the method generally used by most individual taxpayers, including farm and non-farm sole proprietors.

Taxpayers using an accrual method generally accrue items of income when all events have occurred that fix the right to receive the income and the amount of the income can be determined with reasonable accuracy.663 Taxpayers using an accrual method of accounting generally may not deduct items of expense prior to when all events have occurred that fix the right to receive the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred.664 Accrual methods of accounting generally result in a more accurate measure of economic income than does the cash method. The accrual method is often used by businesses for financial accounting purposes.

A C corporation, a partnership that has a C corporation as a partner, or a tax-exempt trust or corporation is not eligible to use the cash method. Income generally may not use the cash method. Exceptions are made for farming businesses,665 qualified personal service corporations,666 and the income of certain farms or C corporations with annual average gross receipts that do not exceed $25 million for the three prior taxable-year period as part of this bill. See section 3202 of the bill (Small business accounting method reform and simplification).

667Sec. 448(a)(1) and (2) and 461(1) and (4). For this purpose, a tax shelter includes: (1) any enterprise (other than a C corporation) if at any time in interest in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having authority to regulate the offering of securities for sale; (2) any partnership or other entity at any time is not a C corporation engaged in the trade or business of farming, (1) if at any time in which on the date the S corporation election was terminated, (2) during the two-year period beginning on the date of such enactment revokes its S corporation election under section 1362(a), and (3) all of the owners of which on the date the S corporation election is revoked are the same owners (and in identical proportions) as the owners on the date of such enactment.

Under the provision, in the case of a distribution of money by an eligible terminated S corporation, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earnings and profits, in the same ratio as the current year's net adjustments to the accumulated adjustments account bears to the amount of the accumulated earnings and profits.

Effective date.—The provision is effective upon enactment.

D. Reform of Business Related Exclusions

1. Interest (secs. 1332 and 3201 of the House bill, secs. 13310 and 1331 of the Senate amendment, and sec. 163(i) of the Code)

PRESENT LAW

Interest deduction

Interest paid or accrued by a business generally is deductible in the computation of taxable income generally are taken into account entirely in the year of change, and net adjustments that increase taxable income generally are taken into account ratably during the six-year period beginning with the year of change.674 Post-termination distributions

Under present law, in the case of an S corporation that converts to a C corporation, distribution of cash by the C corporation to its shareholders during the post-termination transition period (to the extent of the amount in the accumulated adjustments account) are tax-free to the shareholders and reduced the adjusted basis of the stock.675 The post-termination transition period is generally the one-year period following the enactment of the S corporation election terminates.676

HOUSE BILL

Under the provision, any section 481(a) adjustment of an eligible terminated S corporation attributable to the revocation of its S corporation election (i.e., a change from the cash method to an accrual method) is taken into account ratably during the six-taxable-year period beginning with the year of change.677 An eligible terminated S corporation is any C corporation which (1) is an S corporation the day before the enactment of this bill, (2) during the two-year period beginning on the date of such enactment revokes its S corporation election under section 1362(a), and (3) all of the owners of which on the date the S corporation election is revoked are the same owners (and in identical proportions) as the owners on the date of such enactment.

Under the provision, in the case of a distribution of money by an eligible terminated S corporation, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earnings and profits, in the same ratio as the current year's net adjustments to the accumulated adjustments account bears to the amount of the accumulated earnings and profits.

Effective date.—The provision is effective for distributions after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

R. I. R. B. 419

663 See section 3202 of the House bill, secs. 13310 and 13311 of the Senate amendment, and sec. 163(i) of the Code.

674 See section 7.03 of Rev. Proc. 2015-13, 2015-5 I.R.B. 419

675 See section 1377(c)(1).

676 See section 1377(b).

677 See section 3202 of the House bill (Small business accounting method reform and simplification) and section 481(a) of the Code (Adoption of a method of accounting other than an inventory method) to expand the universe of partnerships and C corporations eligible to use the cash method to include partnerships or C corporations with annual average gross receipts that do not exceed $25 million for the three prior taxable-year period. Accordingly, an eligible terminated S corporation attributable to a S corporation election is eligible to remain on the cash method as a C corporation.
taxable income subject to a number of limitations.\footnote{Sec. 163(a). In addition to the limitations discussed in section 162, itemized deductions include: (1) the portion of the deduction for the disallowed portion of the original issue discount on an applicable high yield discount bond (sec. 163(h)(5)), denial of deduction for interest on certain obligations not in registered form (sec. 163(f)), reduction of the deduction for interest on indebtedness with respect to which a mortgage credit certificate has been issued under section 160(f)(2), disallowance of deductions for personal interest (sec. 163(h)), disallowance of deduction for interest relating to tax-exempt income (sec. 265). Interest may also be subject to capitalization.} Interest is generally deduced by a taxpayer as it is paid or accrued, depending on the tax method of accounting for all taxpayers, if an obligation is issued with original issue discount ("OID"). A deduction for interest expense is limited to the obligation on a yield to maturity basis.\footnote{Sec. 163(d).} Generally, OID arises where interest on a debt instrument is not calculated based on a qualified rate and required to be paid at least annually.

\section*{Investment interest expense}

In the case of a taxpayer other than a corporation, the deduction for interest on indebtedness allocable to the production or acquisition of property is generally a deductible investment expense ("investment interest") if limited to the taxpayer's net investment income for the taxable year.\footnote{Sec. 163(c).} Disallowed investment interest is carried forward to the next taxable year.

Net investment income is investment income net of investment expenses. Investment income generally consists of gross income from property held for investment, and investment expenses include all deductions directly connected with the production of investment income (including management fees) other than deductions for interest.

The two percent floor on miscellaneous itemized deductions allows taxpayers to deduct investment expenses connected with investment income only to the extent such deductions exceed two percent of the taxpayer's adjusted gross income ("AGI").\footnote{Sec. 163(h).} Miscellaneous itemized deductions\footnote{Sec. 163(h).} that are not investment expenses are disallowed first before any investment expenses are disallowed.\footnote{Sec. 163(d).}

\section*{Earnings stripping}

Section 163(j) may disallow a deduction for disqualified interest paid or accrued by a corporation for any taxable year if two three-year old tests are satisfied: the payor's debt-to-equity ratio exceeds 1.5 to 1.0 (the safe harbor ratio) and the payor's net interest expense exceeds 50 percent of its adjusted taxable income ("ATI"). The rule has been applied to dividends in respect of the interest paid on floor plan financing interest to be fully deductible and to floor plan financing interest in the limitation machinery or equipment.\footnote{H.R. Rep. No. 841, 99th Cong., 2d Sess., p. 218, Sept. 30, 1986 (Conf. Rep.)} In computing the amount of expenses that exceed the 2-percent floor, expenses that are not investment expenses are intended to be disallowed before any investment expenses are disallowed.\footnote{H.R. Rep. No. 841, 99th Cong., 2d Sess., p. 218, Sept. 30, 1986 (Conf. Rep.)} In computing the amount of expenses that exceed the 2-percent floor, expenses that are not investment expenses are intended to be disallowed before any investment expenses are disallowed.\footnote{In computing the amount of expenses that exceed the 2-percent floor, expenses that are not investment expenses are intended to be disallowed before any investment expenses are disallowed.}

\section*{In general}

In the case of any taxpayer for any taxable year, the deduction for business interest is limited to the sum of (1) business interest income; (2) 30 percent of the adjusted taxable income of the taxpayer for the taxable year; and (3) the floor plan financing interest of the taxpayer for the taxable year. The amount of any business interest not allowed as a deduction for any taxable year may be carried forward for up to five years beyond the year in which the business interest was paid or accrued.\footnote{Sec. 163(j).} Business interest includes any deduction allowed for depreciation, amortization, or depletion. The limitation applied at the consolidated taxable income return filing level.

Business interest means any interest paid or accrued on indebtedness properly allocable to a trade or business. Any amount treated as interest for purposes of the Internal Revenue Code is interest for purposes of the limitation.\footnote{Sec. 163(c).} The limitation means the amount of interest includible in the gross income of the taxpayer for the taxable year which is properly allocable to a trade or business.\footnote{Sec. 163(j).} Business interest income does not include investment interest, and business interest income does not include investment income, within the meaning of section 163(i).\footnote{Sec. 163(h).}

Adjusted taxable income means the taxable income of the taxpayer computed with regard to (1) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business; (2) any business interest or business income interest; (3) the amount of any net operating loss deduction; and (4) any deduction for depreciation, amortization, or depletion.\footnote{Sec. 163(h).} The Secretary may provide other adjustments to the computation of adjusted taxable income.

Floor plan financing interest means interest paid or accrued on floor plan financing indebtedness. Floor plan financing indebtedness means indebtedness used to finance the acquisition of motor vehicles held for sale to retail customers and secured by the inventory so acquired. A motor vehicle means a motor vehicle that is an automobile, a truck, a recreational vehicle, a motorcycle, a boat, farm machinery or equipment, or construction machinery or equipment.

Under the present law, business interest income and floor plan financing interest in the limitation, the rules operate to allow floor plan financing interest to be treated as business interest expenses.\footnote{689 Any deduction allowable for depreciation, amortization, or depletion includes any deduction allowable for any reason except interest, depreciation, amortization, or depletion under present law.} The floor plan financing interest of XYY would be disallowed in full. In the absence of such a rule, the same dollars of adjusted taxable income of a partnership could generate additional interest deductions if the income is passed through to the partners.

\section*{Double counting rule}

The adjusted taxable income of each partner (or shareholder, as the case may be) is determined without regard to such partner's distributive share of the nonseparately stated taxable income or loss of the partnership.\footnote{Sec. 163(d).} To prevent double counting, special rules are provided for the determination of the adjusted taxable income of each partner of the partnership. Similarly, to allow for additional interest deduction by a partner in the case of an excess amount of unused deductions, special rules apply. Similar rules apply with respect to any S corporation and its shareholders.

\section*{Application to pass-through entities}

In general

In the case of any partnership, the limitation is applied at the partnership level. Any deduction for business interest is taken into account in determining the nonseparately stated taxable income or loss of the partnership.\footnote{Sec. 163(d).} To prevent double counting, special rules are provided for the determination of the adjusted taxable income of each partner of the partnership. Similarly, to allow for additional interest deduction by a partner in the case of an excess amount of unused deductions, special rules apply. Similar rules apply with respect to any S corporation and its shareholders.

\section*{Example 1—ABC is a partnership owned 50 percent by XYZ Corporation and 50 percent owned by its shareholders. ABC generates $300 of noninterest income. Its only expense is $60 of business interest.} Under the provision the deduction for business interest is limited to 30 percent of adjusted taxable income, that is, 30 percent * $200 = $60. ABC deducts $60 of business interest and reports ordinary business income of $140. The distribution of the ordinary business income of ABC is $70. XYZ has net taxable income of zero from its other operations, none of which is attributable to interest income or without regard to its business interest expense. XYZ has business interest expense of $25. In the absence of any special rule, the $70 of taxable income from ABC is attributed to the $25 of business interest deduction of up to an additional $21 of interest (30 percent * $70 = $21), resulting in a deduction disallowance of only $4. XYZ's $10 share of the adjusted taxable income of ABC would generate $51 of interest deductions. If XYZ were
instead a passthrough entity, additional deductions could be available at each tier.

The double counting rule provides that XYZ has adjusted taxable income computed with reference to the distributive share of the partner's excess amount of unused adjusted taxable income limitation. As a result, XYZ has adjusted taxable income of $0. XYZ's deduction for business interest is limited to 30 percent of the taxable amount which is treated as a trade or business for purposes of the limitation.

The limitation does not apply to certain regulated public utilities. Specifically, the trade or business of furnishing or sale of (1) electrical energy, water, or sewage disposal services through a local distribution system, or (3) transportation of gas or steam by pipeline, if the rates for such furnishing or sale, as the case may be, have been or are approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof not treated as a trade or business for purposes of the limitation. As a result, for example, interest incurred in any real property trade or business is not business interest subject to limitation and is generally deductible in the computation of taxable income.

The limit on the amount allowed as a deduction for business interest is increased by a partner's distributive share of the partnership's excess amount of unused adjusted taxable income limitation. The excess amount with respect to any partnership is the excess (if any) of the adjusted taxable income of the partnership over the amount (if any) by which the business interest of the partnership (reduced by floor plan financing interest) exceeds the business interest income of the partnership. This allows a partner of a partnership to deduct more interest expense the partner may have paid or incurred to the extent the partnership could have deducted more business interest.

Example 2. The facts are the same as in Example 1. If ABC has only $10 of business interest expense the partner may have paid or incurred to the extent the partnership could have deducted more business interest.

Carryforward of disallowed business interest

The amount of any business interest not allowed as a deduction for any taxable year is treated as business interest paid or accrued in the succeeding taxable year. Business interest may be carried forward for up to five years. Carryforwards are determined on a first-in, first-out basis. It is intended that the provision be administered in a way to prevent trafficking in carryforwards.

A coordination rule is provided with the limitation on deduction of interest by domestic corporations in international financial reporting groups.696 Whichever rule imposes the lower limitation on deduction of business interest with respect to the taxable year is the greatest amount of interest to be carried forward governs.

Any carryforward of disallowed business interest is an item taken into account in the case of certain corporate acquisitions described in section 381 and is subject to limitation under section 382.

Exceptions

The limitation does not apply to any taxpayer that meets the $25 million gross receipts test of section 446(c), that is, if the average annual gross receipts for the three-taxable-year period ending with the prior taxable year of the partnership exceeds $25 million.694 The term ‘State’ includes the District of Columbia. See sec. 702(a)(10). ‘The term ‘State’ shall be construed to include the District of Columbia where such construction is necessary to carry out provisions of this title.’

The deduction for income attributable to domestic production activities is repealed effective for taxable years beginning after December 31, 2018. See section 13102 of the Senate amendment (Deletion of income attributable to domestic production activities). The Senate amendment takes a different mathematical approach from the House bill to calculating a partner's interest limitation, though both provisions have the same practical effect. In the Senate amendment, the limit on the amount allowed as a deduction for business interest is increased by a partner's distributive share of the partner's excess taxable income. The excess taxable income is measured with respect to the partner's share of the partner's adjusted taxable income as the excess (if any) of 30 percent of the adjusted taxable income of the partnership over the amount (if any) by which the business interest of the partnership (reduced by floor plan financing interest), exceeds the business interest income of the partnership. The Senate amendment expands the limited deduction for business interest of the partnership, reduced by floor plan financing interest, exceeds the business interest income of the partnership because such interest income is taxed as 30 percent of the adjusted taxable income of the partnership. This allows a partner of a partnership to deduct additional interest expense the partner may have paid or incurred to the extent the partnership could have deducted more business interest.

The Senate amendment requires that excess taxable income be allocated in the same manner as nonseparately stated income and loss. As in the House bill, rules similar to these rules also apply to S corporations.

The Senate amendment provides a special rule for carryforward of disallowed partner's business interest. In the Senate amendment, the general carryforward rule described in the discussion of the House bill does not apply. Instead, any business interest that is not allowed as a deduction is treated as the partner's distributive share of the partnership's excess business interest for the taxable year is allocated to each partner in the same manner as nonseparately stated income and loss or the partnership. The partner may deduct the partner's share of the partnership's excess business interest in any future year, but only against taxable income attributable to the partnership. The Senate amendment is the same as the House bill with respect to qualified business income of a passthrough entity.

The Senate amendment limits the amount that can be added back to the partner's taxable income to the amount of excess business interest that has been deducted. The Senate amendment also modifies the definition of floor plan financing interest. Specifically, the Senate amendment permits interest on the acquisition of motor vehicles for sale or lease (i.e., not just for sale, as in the House bill) to qualify as floor plan financing interest. The Senate amendment also modifies the self-propelled vehicles in the definition of motor vehicle, but removes construction machinery and equipment from the definition.

The Senate amendment also modifies the definition of floor plan financing interest. Specifically, the Senate amendment permits interest on the acquisition of motor vehicles for sale or lease (i.e., not just for sale, as in the House bill) to qualify as floor plan financing interest. The Senate amendment also modifies the self-propelled vehicles in the definition of motor vehicle, but removes construction machinery and equipment from the definition.

In general

The Senate amendment makes several changes to the definition of adjusted taxable income. Specifically, the Senate amendment does not add back deductions allowable for depreciation, amortization, or depletion, but there are additions back under section 199,694

The Senate amendment also modifies the definition of floor plan financing interest. Specifically, the Senate amendment permits interest on the acquisition of motor vehicles for sale or lease (i.e., not just for sale, as in the House bill) to qualify as floor plan financing interest. The Senate amendment also modifies the self-propelled vehicles in the definition of motor vehicle, but removes construction machinery and equipment from the definition.

Carryforward of disallowed business interest

The Senate amendment requires a partner in a partnership to ignore the partner's distributive share of all items of income, gain, deduction, or loss of the partnership when calculating excess business income of the partner. The Senate amendment also modifies the definition of floor plan financing interest. Specifically, the Senate amendment permits interest on the acquisition of motor vehicles for sale or lease (i.e., not just for sale, as in the House bill) to qualify as floor plan financing interest. The Senate amendment also modifies the self-propelled vehicles in the definition of motor vehicle, but removes construction machinery and equipment from the definition.

Application to passthrough entities

The Senate amendment requires a partner in a partnership to ignore the partner's distributive share of all items of income, gain, deduction, or loss of the partnership when calculating excess business income of the partner. In the Senate amendment, the definition of floor plan financing interest does not add back any deduction under section 199.

Exceptions

The Senate amendment exempts certain categories of taxpayers or trades or businesses from the interest limitation. First, any taxpayer that meets the $15 million gross receipts test of section 446(c) is exempt from the interest limitation.696 Second, the Senate amendment expands the regulated public utilities exception in the House bill to include utilities where the rates for such furnishing or sale, as the case may be, have been approved by a State or political subdivision thereof not treated as a trade or business for purposes of the limitation.
been established by the governing or rate-making body of an electric cooperative.

In the Senate amendment, at the taxpayer’s election, any real property development, construction, acquisition, conversion, rental, operation, management, leasing, or brokerage that is not treated as a trade or business for purposes of the limitation, and therefore the limitation does not apply to such trades or businesses. Similariy, at the taxpayer’s election, any farming business, as well as any business engaged in the trade or business of a specified agricultural or horticultural cooperative, are not treated as a trade or business for purposes of the limitation, and therefore the limitation does not apply to such trades or businesses.

PRESENT LAW

A net operating loss ("NOL") generally means the amount by which a taxpayer’s business deductions exceed its gross income for the taxable year. A NOL carryforward is any portion of the NOL that is not offset taxable income in such years. NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.

Different carryback periods apply with respect to NOLs arising in different circumstances. For example, if a NOL is attributable to specified eligible losses incurred in a specified disaster, it may be carried back two years and carried over 20 years to offset taxable income in such years. NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.

Different carryback periods apply with respect to NOLs arising in different circumstances. For example, if a NOL is attributable to specified eligible losses incurred in a specified disaster, it may be carried back two years and carried over 20 years to offset taxable income in such years. NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.

The conference agreement follows the Senate amendment, except that the provision limits the NOL deduction to 20 percent of taxable income (determined without regard to the deduction) for losses arising in taxable years beginning after December 31, 2022. The limitation does not apply to a property and casualty insurance company.

The provision repeals the two-year carryback and the special carryback provisions, but provides a two-year carryback in the case of certain losses incurred in the trade or business of farming. In addition, the Senate amendment provides a two-year carryback and 20-year carryforward for NOLs of the type described in section 1031 of the Code (defined in section 816(a) as an insurance company other than a life insurance company).

The provision does not increase NOL carryovers.

The conference agreement follows the Senate amendment, except that the provision limits the NOL deduction to 20 percent of taxable income (determined without regard to the deduction) for losses arising in taxable years beginning after December 31, 2022. The limitation does not apply to a property and casualty insurance company.

The conference agreement follows the Senate amendment, except that the provision limits the NOL deduction to 20 percent of taxable income (determined without regard to the deduction) for losses arising in taxable years beginning after December 31, 2022. The limitation does not apply to a property and casualty insurance company.

The provision repeals the two-year carryback and the special carryback provisions, but provides a two-year carryback in the case of certain losses incurred in the trade or business of farming. In addition, the Senate amendment provides a two-year carryback and 20-year carryforward for NOLs of the type described in section 1031 of the Code (defined in section 816(a) as an insurance company other than a life insurance company).

An exchange of property, like a sale, generally is a taxable event. However, no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged for property of a like kind which is to be held for productive use in a trade or business or for investment. The nonrecognition rules do not apply to exchanges involving livestock or foreign personal property. The nonrecognition rules do not apply to exchanges involving livestock or foreign personal property.
for any exchange if the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017, or the property received by the taxpayer in the exchange is disposed of on or before such date.

**SENATE AMENDMENT**

The Senate amendment follows the House bill.

**CONFERENCE AGREEMENT**

The conference agreement follows the Senate amendment.

**4. Revision of treatment of contributions to capital (sec. 3304 of the House bill and sec. 118 of the Code)**

The provision repeals the provision of the Internal Revenue Code under which, generally, a corporation’s gross income does not include contributions of capital to the corporation.

The provision provides that a contribution to capital, other than a contribution of money or property made in exchange for stock of a corporation or any interest in an enterprise, is included in the gross income of the corporation. For example, a contribution of municipal land by a municipality that is not in exchange for stock (or for a partnership interest or other interest) of equivalent value is considered a contribution to capital that is includible in gross income. By contrast, a municipal tax abatement for locating a business in a particular municipality is not considered a contribution to capital.

The provision further provides that a contribution of capital in exchange for stock is not includible in the gross income of the corporation to the extent that the fair market value of any money or other property contributed does not exceed the fair market value of stock received. It is intended that, for this purpose, the fair market value of any property contributed is calculated net of any liabilities to which the property is subject and net of any liabilities or obligations of the transferor assumed or taken subject to by the entity in connection with the transfer. When receiving stock in exchange, taxpayers may disregard discounts.

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[1] Sec. 3101(c).

[2] Sec. 3101(d). Thus, in the example noted above, the taxpayer's basis in B would be $40,000 (the taxpayer would recognize a $90,000 gain on the transaction, which would be includable in income). The remaining $50,000 of gain would be deferred until the taxpayer disposes of land B with a fair market value of $90,000 or more. The holding period of the qualifying property transferred, but the nonqualifying property received, is required to begin a new holding period.

[3] A like-kind exchange also does not require that the properties be exchanged simultaneously. Rather, the property to be received in the exchange must be received not more than 180 days after the date on which the taxpayer relinquishes the original property.


[5] The provision modifies the provision for nonrecognition of gain in the case of like-kind exchanges by limiting its application to property that is not held primarily for sale.

[6] Effective date.—The provision applies to exchanges completed after December 31, 2017. However, an exception is provided for any exchange if the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017, or the property received by the taxpayer in the exchange is disposed of on or before such date.

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[7] For example, an exchange of a personal computer classified under asset class 00.12 of Rev. Proc. 87–56, 1987–2 C.B. 674, for a personal computer classified under asset class 00.12 of Rev. Proc. 87–56 would not be treated as property of a like kind.

[8] See Sec. 1031(a)–1(b).


[10] Sec. 1031(b).

[11] For example, the gross income of a corporation does not include contributions of capital to the corporation. For example, a contribution of municipal land by a municipality that is not in exchange for stock (or for a partnership interest or other interest) of equivalent value is considered a contribution to capital that is includible in gross income. By contrast, a municipal tax abatement for locating a business in a particular municipality is not considered a contribution to capital.

[12] The provision further provides that a contribution of capital in exchange for stock is not includible in the gross income of the corporation to the extent that the fair market value of any money or other property contributed does not exceed the fair market value of stock received. It is intended that, for this purpose, the fair market value of any property contributed is calculated net of any liabilities to which the property is subject and net of any liabilities or obligations of the transferor assumed or taken subject to by the entity in connection with the transfer. When receiving stock in exchange, taxpayers may disregard discounts.
for lack of control and the effect of limited liquidity on valuation.

The provision does not change the application of the meaningless gesture doctrine, described in Lesinski v. Commissioner, 397 F.2d 519 (2d. Cir. 1969) and related cases, as well as in administrative guidance. Thus, under the provision, whether incremental shares of stock are issued when the existing shareholder or shareholders of a corporation make a pro-rata contribution to the capital of the corporation is not determinative of whether the contribution is included in income of the corporation.

The fair market value requirement generally will be satisfied in any arm’s length transaction, but the stock is issued in consideration for cash. Thus, for example, in a public offering, if the price of the stock was determined on an arm’s length basis, the fact the stock trades immediately after its issuance at a price below the issue price will not result in contribution to capital treatment.

Finally, the provision provides rules clarifying the contributor’s basis in the property contributed.

**Effective date.**—The provision applies to contributions made, and transactions entered into, after the date of enactment.

**SENATE AMENDMENT**

**CONFERENCE AGREEMENT**

The conference agreement follows the policy of the amendment that takes a different approach. The conference agreement does not repeal the provision of the Internal Revenue Code under which, generally, a corporation’s gross income does not include contributions to capital. Rather, it preserves that provision, but provides that the term “contributions to capital” does not include (1) any contribution made in aid of construction or any other contribution as a customer or potential customer, and (2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such). The conference intends that section 118, as modified, continue to apply only to corporations.

**Effective date.**—The provision applies to contributions made after the date of enactment. However, the provision shall not apply to any transaction made after the date of enactment by a governmental entity pursuant to a master development plan that has been approved prior to such date by a governmental body.

5. Repeal of deduction for local lobbying expenses (sec. 3305 of the House bill, sec. 13308 of the Senate amendment, and sec. 162(e) of the Code)

**PRESENT LAW**

**In general**

A taxpayer generally is allowed a deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. However, section 162(e) denies a deduction for amounts paid or incurred in connection with (1) influencing legislation, (2) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office, (3) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or (4) any direct or indirect contributions to any executive branch official in an attempt to influence the official actions or positions of such official. Expenses paid or incurred in connection with any political activity (such as research for, or preparation, planning, or coordination of, any previously described activity) also are not deductible.

**Exceptions**

**Local legislation.**—Notwithstanding the above, a deduction is allowed for amounts paid or incurred in connection with any legislation of any local council or similar governing body (“local legislation”). With respect to local legislation, the exception permits a deduction for amounts paid or incurred in carrying on any trade or business (1) in connection with any act before, submission of statements to, or sending communications to the committees or individual members of such council or body with respect to legislation or proposed legislation of direct interest to the taxpayer, or (2) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member and that engages in lobbying or incurs expenditures, losses, or gross income with respect to any such legislation or proposed legislation which is of direct interest to the taxpayer and such organization, and (3) that are for amounts paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in (1) or (2) carried on by such organization.

For purposes of this exception, legislation of an Indian tribal government is treated in the same manner as local legislation.

**De minimis**

For taxpayers with $2,000 or less of in-house expenditures related to lobbying and political activities, a de minimis exception is provided that permits a deduction.

**HOUSE BILL**

The provision repeals the exception for amounts paid or incurred related to lobbying local councils or similar governing bodies, and the term “influencing legislation.” Thus, the general disallowance rules applicable to lobbying and political expenditures will apply to costs incurred related to such local legislation.

**Effective date.**—The provision applies to amounts paid or incurred after December 31, 2017.

**SENATE AMENDMENT**

The Senate amendment follows the House bill other than to change the effective date so that the provision applies to amounts paid or incurred on or after the date of enactment.

**Effective date.**—The provision applies to amounts paid or incurred on or after the date of enactment.

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738 Rev. Rul. 64-155, 1964-1 CB 138
739 Sec. 162(a).
740 The term “influencing legislation” means any attempt to influence the passage of legislation through communication with any member or employee of a legislative body, or with any government official or employee, or with any member or employee of the executive branch of any governmental unit, or with any officer or employee of the White House Office of any Executive Office, (4) any individual serving in any official capacity in a foreign government.
741 The term “advocating legislation” includes any attempt to influence the passage of legislation through communication with any member or employee of a legislative body, or with any government official or employee, or with any member or employee of the executive branch of any governmental unit, or with any officer or employee of the White House Office of any Executive Office, (4) any individual serving in any official capacity in a foreign government.
742 De minimis
743 Adjusted gross income
744 For purposes of this exception, legislation of an Indian tribal government is treated in the same manner as local legislation.
745 De minimis
746 For purposes of this exception, legislation of an Indian tribal government is treated in the same manner as local legislation.
747 De minimis
748 For purposes of this exception, legislation of an Indian tribal government is treated in the same manner as local legislation.
749 The term “covered executive branch official” means (1) the President, (2) the Vice President, (3) any officer or employee of the White House Office of the Executive Office of the President, and the two most senior level officers of each of the other agencies in such Executive Office, (4) any individual serving in any official capacity in a foreign government.
750 The term “legislation” includes actions with respect to Acts, bills, resolutions, or similar items for legislation in Congress, action by legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. Sec. 162(e)(4) and 491(e)(2).
751 The term “covered executive branch official” means (3) any other individual designated by the President as having Cabinet-level status, and (6) any.cid, a period of time prior to January 1, 2017, in the case of any taxpayer’s oil related qualified production activities income.
752 The term “covered executive branch official” means (3) any other individual designated by the President as having Cabinet-level status, and (6) any official or employee of the White House Office of any Executive Office, (4) any individual serving in any official capacity in a foreign government.
753 The term “legislation” includes actions with respect to Acts, bills, resolutions, or similar items for legislation in Congress, action by legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. Sec. 162(e)(4) and 491(e)(2).
754 The term “covered executive branch official” means (3) any other individual designated by the President as having Cabinet-level status, and (6) any official or employee of the White House Office of any Executive Office, (4) any individual serving in any official capacity in a foreign government.
The amount of the deduction for a taxable year is determined first by subtracting Wages paid by the taxpayer, and properly allocable to domestic production gross receipts, during the calendar year that ends in such taxable year. The taxpayer accounts for the expenses to its patrons in a manner that is prorated to the extent that the expenses are allocable to the deductible portion of its qualified production activities income. The provision is effective for C corporations for taxable years beginning after December 31, 2018.
Excludable fringe benefits

Certain employer-provided fringe benefits are excluded from an employee’s gross income and wages for employment tax purposes, including, but not limited to, (a) minis from transportation fringe benefits, on-premises athletic facilities, and meals provided for the “convenience of the employer.”

A de minimis fringe generally means any property or service the value of which is (taking into account the frequency with which the fringe is provided) so small as to make accounting for it unreasonable or administratively impracticable, and also includes food and beverages provided to employees through an eating facility operated by the employer that is located on or near the employer’s business premises and meets certain requirements.

Qualified transportation fringes include qualified parking (parking on or near the employer’s business premises or on or near a location from which the employee commutes to work by public transit), transit passes, vanpool benefits, and qualified bicycle commuting reimbursements.

On-premises athletic facilities are gyms or other athletic facilities located on the employer’s premises, operated by the employer, and substantially all the use of which is by employees of the employer, their spouses, and their dependent children.

The value of meals furnished to an employee or the employee’s spouse or dependents for or on behalf of an employer for the convenience of the employer is excluded from the employee’s gross income, but only if such meals are provided on the employer’s business premises.

HOUSE BILL

The provision provides that no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement, or recreation, (2) membership dues with respect to any club organized for business, pleasure, recreation or other social purposes, (3) a de minimis fringe that is primarily personal in nature and involving property or services that are not directly related to the taxpayer’s trade or business, (4) a facility or portion thereof used in connection with any of the above items, (5) a qualified transportation fringe, including costs of operating a facility used for qualified parking, and (6) an on-premises athletic facility provided by an employer to its employees, including costs of operating such a facility.

Thus, the provision repeats the present-law exception to the deduction disallowance for entertainment, amusement, or recreation that is directly related to (or, in certain cases, associated with) the active conduct of the taxpayer’s trade or business (and the related rule applying a 50 percent limit to such deductions). The provision also repeals the present-law exception for recreational, social, or similar activities primarily for the benefit of employees. However, taxpayers may still, generally, deduct 50 percent of the food and beverage expenses associated with operating their eating facility (e.g., meals consumed by employees on work travel).

Under the provision, in the case of all individuals (not just specified individuals), the exceptions to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income. Thus, under those exceptions, no deduction is allowed with respect to expenses for (1) a nonbusiness activity generally considered for entertainment, amusement, or recreation, or (2) a facility (e.g., an airplane) used in connection with such activity to the extent that such expenses exceed the amount treated as compensation or includible in income. As under present law, the exceptions apply only if amounts are properly reported by the company as compensation and wages or otherwise includible in income.

The provision amends the present-law exception for reimbursed expenses. The provision disallows a deduction for amounts paid or incurred by the taxpayer in connection with the performance of services for another person (other than an employer) under a reimbursement or other expense allowance arrangement if the services are performed in a tax-exempt entity or the arrangement is designated by the Secretary as having the effect of avoiding the 50 percent deduction disallowance.

The provision clarifies that the exception to the 50 percent deduction limit for food or beverages applies to any expense excluded from the employee’s gross income for the convenience of the employer. The provision thereby repeals as deadwood the special exceptions for food or beverages provided to crew members of certain commercial vessels and certain oil or gas platform or drilling rig workers.

Effective date.—The provision applies to amounts paid or incurred after December 31, 2017.

SENATE AMENDMENT

The provision provides that no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement or recreation, (2) membership dues with respect to any club organized for business, pleasure, recreation or other social purposes, (3) a de minimis fringe that is primarily personal in nature and involving property or services that are not directly related to the employee, any expense incurred for providing food and beverages to employees through an eating facility (e.g., meals consumed by employees on work travel).

In addition, the provision disallows a deduction for expenses associated with providing transportation (or any payment or reimbursement) for commuting between the employee’s residence and place of employment. Taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their eating facility (e.g., meals consumed by employees on work travel). For amounts incurred and paid after December 31, 2017 and until December 31, 2025, the provision expands this 50 percent limitation to expenses of the employer associated with providing food and beverages to employees through an eating facility that meets requirements for de minimis fringes and for the convenience of the employer.

Effective date.—The provision applies to amounts paid or incurred after December 31, 2017. However, for expenses of the employer associated with providing food and beverages to employees through an eating facility that meets requirements for de minimis fringes and for the convenience of the employer, amounts paid or incurred after December 31, 2025 are not deductible.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

18. Repeal of exclusion, etc., for employee achievement awards (sec. 1403 of the House bill, sec. 13310 of the Senate amendment, and secs. 74(c) and 274(j) of the Code)

Present Law

An employer’s deduction for the cost of an employee achievement award is limited to a certain amount. Employee achievement awards that are deductible by an employer (or would be deductible but for the fact that the employer is a tax-exempt organization) are excludible from an employee’s gross income.

Amounts that are excludible from gross income under section 74(c) for income tax purposes are also excluded from wages for employment tax purposes.

An employee achievement award is an item of tangible personal property given to an employee in recognition of either length of service or safety achievement and presented as part of a meaningful presentation.

House Bill

The provision repeals the deduction limitation for employee achievement awards. It also repeals the exclusions from gross income and wages.

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

Senate Amendment

The Senate amendment adds a definition of “tangible personal property” that may be considered a deductible employee achievement award. It provides that tangible personal property shall not include cash, cash equivalents, gift cards, gift coupons or gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items pre-selected or pre-approved by the employer), or vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items. No inference is intended that this is a change from present law and guidance.

Effective date.—The provision applies to amounts paid or incurred after December 31, 2017.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

776 Sec. 132(2)(c).
unrelated business taxable income, is allowed to deduct their distributions to employees of a charitable organization. In addition, a charitable organization, a substantial portion of whose members, students, patients, officers, or employees of a charitable organization. In addition, a charitable organization, a substantial portion of whose members, students, patients, officers, or employees of a charitable organization. In addition, a charitable organization, a substantial portion of whose members, students, patients, officers, or employees of a charitable organization. In addition, a charitable organization, a substantial portion of whose members, students, patients, officers, or employees of a charitable organization. In addition, a charitable organization, a substantial portion of whose members, students, patients, officers, or employees of a charitable organization. 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The amount of gain that an individual may elect to roll over under this provision for a taxable year is limited to (1) $50,000 or (2) $500,000 reduced by the gain previously excluded under this provision for any other prior taxable year. For corporations, these limits are $250,000 and $1 million, respectively.802

HOUSE BILL

The House bill repeals the election described above to roll over tax-free capital gain realized on the sale of publicly-traded securities.

Effective date.—The provision applies to sales after December 31, 2017.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

12. Certain self-created property not treated as a capital asset (sec. 3311 of the House bill and sec. 1221 of the Code)

PRESENT LAW

In general, property held by a taxpayer (whether or not connected with his trade or business) is considered a capital asset.803 Certain assets, however, are specifically excluded from the definition of capital asset.804 Such excluded assets are: inventory property, property of a character subject to depreciation (including real property),805 certain self-created intangibles, account or notes receivable acquired in the ordinary course of business (e.g., for providing services or selling property), publications of the U.S. Government received by a taxpayer other than by purchase at the price offered to the public, commodities derivative financial instruments held by a commodities derivative dealer unless established to the satisfaction of the Secretary that any such instrument has no connection to the activities of such dealer to determine the market value of such instrument,806 and a self-created intangible subject to the exception.

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

SENATE AMENDMENT

The Senate amendment follows the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

11. Repeal of rollover of publicly traded securities gain into specialized small business investment companies (sec. 3310 of the House bill and sec. 1044 of the Code)

PRESENT LAW

A corporation or individual may elect to roll over any capital gain realized on the sale or exchange of a capital asset to a specialized small business investment company within 60 days of the sale.807

The provision repeals section 3315. Thus, the holder of a patented invention may not transfer his or her rights to the patent and any amounts received as royalty for services to a specialized small business investment company within 60 days of the sale of the capital asset. It is intended that the determination of whether a transfer is a sale or exchange of a capital asset that produces capital gain, or a transaction that produces ordinary income, will be determined under generally applicable principles.813

Effective date.—The provision applies to dispositions after December 31, 2017.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not follow the House bill provision.

806 Sec. 1231(a)(3).
808 A transfer by gift, inheritance, or devise is not included within the term "rollover." See sec. 1233(a).
809 Sec. 1225(a).
810 See also section 3311 of the House bill (Certain self-created property not treated as a capital asset).
14. Repeal of technical termination of partnerships (sec. 3313 of the House bill and sec. 708(b) of the Code)  
PRESENT LAW  
A partnership is considered as terminated under certain circumstances.814 Sec. 708(b)(1)(B) rules apply in the case of the merger, consolidation, or division of a partnership.815  
A partnership is treated as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.816  
A partnership is also treated as terminated if within any 12-month period, there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits interests as defined, and substantially all business assets transfer to a new partnership.817 A technical termination gives rise to a deemed contribution of all the partnership’s assets and liabilities to a new partnership in exchange for an interest in the new partnership, followed by a deemed distribution of interests in the new partnership to the purchasing partners and the other remaining partners.818  

The effect of a technical termination is not necessarily the end of the partnership’s existence, but rather the termination of some tax attributes. Upon a technical termination, the partnership’s taxable year closes, potentially resulting in short taxable years.819 The technical termination is generally treated as a taxable event for the partnership or the partner.820 Under this guidance, this treatment does not apply, however, if: (1) the profits interest relates to a substantially certain and predictable stream of income from partnership assets, such as income from high-quality debt securities or a high-quality net lease, (2) within two years prior to the transfer, the partner disposes of the profits interest; or (3) the profits interest is a limited partnership interest in a publicly traded partnership. More recent administrative guidance clarifies that this treatment applies with respect to substantially unvested profits interests provided the service partner takes into income his distributive share of interest income, and the partnership does not deduct any amount either on grant or on vesting of the profits interest.821 By contrast, a partnership capital interest received for services is includable in the partner’s income under generally applicable rules relating to the performance of services.822 A partnership capital interest for this purpose is an interest that would entitle the receiving partner to a share of the partnership’s assets.823 The assets were sold at fair market value and the proceeds were distributed in liquidation.824 Property received for services under section 83  
In general  
Section 83 governs the amount and timing of income and deductions allocable to transfers of property in connection with the performance of services. If property is transferred in connection with the performance of services, the property is considered to be property of the service partner for income tax purposes even if the service partner takes into income his distributive share of partnership income, and the partnership does not deduct any amount either on grant or on vesting of the profits interest.825 Under section 83(b), even if the property is substantially nonvested at the time of transfer, the service provider may nevertheless elect within 30 days of the transfer to recognize the fair market value of the property as the taxable event. Such an election is referred to as a “section 83(b) election.” The service provider makes an election by filing with the IRS a written statement that includes the fair market value of the property at the time of transfer and the amount (if any) paid for the property. The service provider must also provide a copy of the statement to the service recipient.  

Passsthrough treatment of partnerships  
The character of partnership items passes through to the partners, as if the items were realized directly by the partners.826 Thus, for example, long-term capital gain of the partnership is treated as long-term capital gain in the hands of the partners.827 A partner holding a partnership interest includes in income its distributive share (whether or not actually distributed) of partnership items of income and gain, including capital gain eligible for lower tax rates.828 A partner’s basis in the partnership interest is increased by any amount of gain included in income and is decreased by losses. These basis adjustments prevent double taxation of the partnership income to the partner, preserving the partnership’s tax status as a passthrough entity.829  

PASSAGE LAW  
Partnership profits interest for services  
A profits interest in a partnership is the right to receive future profits in the partnership but does not generally include any right to receive money or other property upon the immediate liquidation of the partnership. The treatment of the receipt of a profits interest in a partnership (sometimes referred to as a carried interest) in exchange for the performance of services is subject to controversy.823 Though courts have differed, in some instances, a taxpayer receiving a profits interest for performing services has not been taxed on the receipt of the partnership interest.822  
In 1998, the Internal Revenue Service, referring to the litigation of the tax treatment of certain carried interests,1 raised the possibility that the 708(b)(1)(B) rule providing for technical terminations of partnerships takes either an assets-over form of dissolution or a complete liquidation form.1 The 708(b)(1)(B) rule provides for technical terminations of partnerships. The provision repeals the section 708(b)(1)(B) rule providing for technical terminations of partnerships. The provision does not change the present-law rule of section 708(b)(1)(B) and the results in the cases.1  

1 The conference agreement adds a new section 708(b)(1) as a cross reference to section 708(b)(1)(B). The provision makes clear that the IRS would apply the guidance even if the interest is nonvested.1  

Section 83(b) election  
Under section 83(b), even if the property is substantially nonvested at the time of transfer, the service provider may nevertheless elect within 30 days of the transfer to recognize the fair market value of the property as the taxable event. Such an election is referred to as a “section 83(b) election.” The service provider makes an election by filing with the IRS a written statement that includes the fair market value of the property at the time of transfer and the amount (if any) paid for the property. The service provider must also provide a copy of the statement to the service recipient.
entity. Money distributed to the partner by the partnership is taxed to the extent the amount exceeds the partner’s basis in the partnership interest.

Net long-term capital gain
In the case of an individual, estate, or trust, any adjusted net capital gain which otherwise would be taxed at the 10- or 15-percent rate is not taxed. Any adjusted net capital gain which otherwise would be taxed at rates over 15 percent and below 39.6 percent is taxed at a 15-percent rate. Any adjusted net capital gain which otherwise would be taxed at a 39.6-percent rate is taxed at a 20-percent rate.

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of a capital asset, net any gain generally is included in income.

Short-term capital gain means gain from the sale or exchange of a capital asset held for not more than one year. If and to the extent such gain is taken into account in computing gross income. Net short-term capital loss means the excess of short-term capital losses over the short-term capital gains for the taxable year. Net long-term capital gain means the excess of long-term capital gains over the long-term capital losses for the taxable year.

Net capital gain is the excess of the net long-term capital gains over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

The adjusted basis of an individual in an asset is the net capital gain (but not below zero) by the sum of the 28-percent rate capital gains computed under section 1250 gain.

The net capital gain is reduced by the amount of gain that the individual treats as investment income for purposes of determining the investment interest limitation.

General rule
The provision provides for a three-year holding period in the case of certain net long-term capital gains with respect to any applicable partnership interest held by the taxpayer.

Section 83 (relating to property transferred in connection with performance of services) does not apply to the transfer of a partnership interest to which the provision applies.

Short-term capital gain
The provision defines as short-term capital gain taxed at ordinary income rates the amount of the taxpayer’s net long-term capital gain with respect to an applicable partnership interest for the taxable year that exceeds the amount of such gain calculated as if a three-year (not one-year) holding period applies. In making this calculation, the provision takes into account long-term capital gains calculated as if a three-year holding period applies.

A special rule provides that, as provided in regulations or other guidance issued by the Secretary, this rule does not apply to income or gain attributable to any asset that is not held for portfolio investment on behalf of third party investors. Third party investors means a person (1) who holds an interest in the partnership that is not property held in connection with an applicable trade or business (defined below) with respect to that person, and (2) who is not and has not been actively engaged in directly or indirectly providing substantial services for the partnership that is not property held in connection with an applicable trade or business (and (or was) not related to a person so engaged). A related person for this purpose is a family member (within the meaning of attribution rules) and a person who performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which the taxpayer performed a service.

Applicable partnership interest
An applicable partnership interest is any interest in a partnership that, directly or indirectly, is transferred to (or held by) the taxpayer in connection with performance of services in any applicable trade or business.

The services may be performed by the taxpayer or by any other related person or persons in any applicable trade or business. It is intended that partnership interests shall not fail to be treated as transferred or held in connection with the performance of services merely because any such services were performed for the partnership or trust.

A partnership interest is not an applicable partnership interest to the extent the individual holds the partnership interest directly or indirectly through a partnership that is not property held in connection with an applicable trade or business for purposes of this rule. Merely voting shares owned does not amount to development; for example, a mutual fund that merely votes proxies received with respect to shares of stock held in the fund is not engaged in development.

Specified assets
Under the provision, specified assets means securities (generally as defined under rules for mark-to-market accounting for securities dealers), commodities (as defined under rules for mark-to-market accounting for commodities dealers), real estate held for rental or investment, insurance, certain annuities, options or derivative contracts with respect to such securities, commodities, real estate, cash or cash equivalents, as well as an interest in a partnership or trust that is not widely held or publicly traded.

An applicable partnership interest includes an interest in a partnership directly or indirectly held by a corporation. For example, if two corporations form a partnership to conduct a joint venture, the corporation that owns the majority stock in the partnership also provides services to the other entity.

An applicable partnership interest does not include an interest in a partnership directly or indirectly held by a corporation. For example, if two corporations form a partnership to conduct a joint venture, the corporation that owns the majority stock in the partnership also provides services to the other entity.

An applicable partnership interest does not include any capital gain in a partnership directly or indirectly held by a corporation. For example, if two corporations form a partnership to conduct a joint venture, the corporation that owns the majority stock in the partnership also provides services to the other entity.

Applicable trade or business
An applicable trade or business means any activity (regardless of whether the activity is conducted in connection with an applicable partnership interest that consists in whole or in part of the following: (1) raising or returning capital, and either (2) position that is not such a commodity and a hedge with respect to such a commodity and is clearly identified. For purposes of the provision, real estate held for rental or investment does not include, for example, real estate on which the holder operates a farm activity.

A partnership interest, for purposes of determining the proportionate interest of a partner in any asset or related asset, includes any partnership interest that is not otherwise treated as a security for purposes of the partnership interest rules for mark-to-market accounting for commodities dealers, real estate held for rental or investment, insurance, certain annuities, options or derivative contracts with respect to such securities, commodities, real estate, cash or cash equivalents, as well as an interest in a partnership or trust that is not widely held or publicly traded.

A partnership interest is a share of partnership capital is commensurate with the amount of capital or he or she contributed to the partnership or trust is an applicable partnership interest to that extent.

A special rule provides that, as provided in regulations or other guidance issued by the Secretary, this rule does not apply to income or gain attributable to any asset that is not held for portfolio investment on behalf of third party investors. Third party investors means a person (1) who holds an interest in the partnership that is not property held in connection with an applicable trade or business (defined below) with respect to that person, and (2) who is not and has not been actively engaged in directly or indirectly providing substantial services for the partnership that is not property held in connection with an applicable trade or business (and (or was) not related to a person so engaged). A related person for this purpose is a family member (within the meaning of attribution rules) and a person who performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which the taxpayer performed a service.

Applicable partnership interest
An applicable partnership interest is any interest in a partnership that, directly or indirectly, is transferred to (or held by) the taxpayer in connection with performance of services in any applicable trade or business. The services may be performed by the taxpayer or by any other related person or persons in any applicable trade or business. It is intended that partnership interests shall not fail to be treated as transferred or held in connection with the performance of services merely because any such services were performed for the partnership or trust.

An applicable partnership interest is any interest in a partnership that, directly or indirectly, is transferred to (or held by) the taxpayer in connection with performance of services in any applicable trade or business.

The services may be performed by the taxpayer or by any other related person or persons in any applicable trade or business. It is intended that partnership interests shall not fail to be treated as transferred or held in connection with the performance of services merely because any such services were performed for the partnership or trust.

An applicable partnership interest does not include an interest in a partnership directly or indirectly held by a corporation. For example, if two corporations form a partnership to conduct a joint venture, the corporation that owns the majority stock in the partnership also provides services to the other entity.

An applicable partnership interest does not include any capital gain in a partnership directly or indirectly held by a corporation. For example, if two corporations form a partnership to conduct a joint venture, the corporation that owns the majority stock in the partnership also provides services to the other entity.

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person related to the taxpayer, then the taxpayer includes in gross income as short-term capital gain so much of the taxpayer's net capital gain so much of the amount of the capital gain so much of the amount of the capital gain attributable to the sale or exchange of an asset held for not more than three years as is allocable to the interest. The amount included as short-term capital gain on the transfer is reduced by the amount capitalized on the transfer for the taxable year under the general rule of the provision (that is, amounts are not double-counted). A related person (or a family member (within the meaning of attribution rules)) or colleague, that is a person who performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which or for which the taxpayer performed a service.

Reporting requirement

The Secretary is directed to require reporting (at the time in the manner determined by the Secretary) necessary to carry out the purposes of the provision. The penalties otherwise applicable to a failure to report under section 6031(b) apply to failure to report under this requirement.

Regulatory authority

The Treasury Department is directed to issue regulations or other guidance necessary to carry out the provision. Such guidance is also to provide for the application of the provision in the case of foreign persons engaged in trade or business in the United States.

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

SENATE AMENDMENT

The Senate amendment is generally the same as the House bill, except with respect to the nonapplicability of section 83. Under the Senate amendment, the provision provides a three-year holding period in the case of certain net long-term capital gain with respect to any applicable partnership interest held by the taxpayer, notwithstanding the rules of section 83(a) or any election in effect under section 83(b).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conference wishes to clarify the interaction of section 83 with the provision's three-year holding requirement, which applies notwithstanding the rules of section 83 or any election in effect under section 83(b). Under the provision, the fact that an individual may have included an amount in income upon acquisition of the applicable partnership interest, or that an individual may have made a section 83(b) election with respect to an applicable partnership interest, does not change the three-year holding period requirement for long-term capital gain treatment with respect to the applicable partnership interest. Thus, the provision treats as short-term capital gain taxed at ordinary income rates the amount of the taxpayer's net long-term capital gain with respect to an applicable partnership interest for the taxable year that exceeds the amount of such gain calculated as if a three-year (not one-year) holding period applies. In making this calculation, the provision takes account of long-term capital losses calculated as if a four-year holding period applies.489 Sec. 318(a)(1).

16. Amortization of research and experimental expenditures (sec. 3315 of the House bill, sec. 13206 of the Senate amendment, and sec. 174 of the Code)

Business expenses associated with the development or creation of an asset having a useful life extending beyond the current year generally will be capitalized and depreciated over the asset's useful life by taxpayers, however, may elect to deduct currently the amount of certain reasonable research or experimentation expenditures paid or incurred by taxpayers. In full, the research tax credit.

Taxpayers may choose to forgo a current deduction, capitalize their research expenditures and recover them ratably over the useful life of the research, but in no case over a period of less than 60 months. Taxpayers, alternatively, may elect to amortize their research expenditures over a period of 10 years. Research and experimental expenditures deductible under section 174 are not subject to capitalization under either section 263(a) or section 263A.490 Amounts defined as research or experimental expenditures under section 174 generally include all costs incurred in the experimental or laboratory sense related to the development or improvement of a product.491

In particular, qualifying costs are those incurred for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product.492 Uncertainty exists when information or knowledge concerning the development or improvement is not sufficient to ascertain the capability or method for developing, improving, and/or appropriately designing the product.493 The determination of whether the costs are deductible research expenditures depends on the nature of the activity to which the costs relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents. Examples of qualifying costs include salaries for those engaged in research or experimentation efforts, amounts incurred to operate and maintain research facilities (e.g., utilities, depreciation, rent), and expenditures for materials and supplies used and consumed in the course of research or experimentation (including amounts incurred in conducting trials).494 In addition, under administrative guidance, the costs of developing computer software for use in a taxpayer's business are included in the definition of research expenditures if the software is primarily useful in the conduct of scientific experiments similar to research expenditures.495

Research or experimental expenditures under section 174 do not include expenditures for quality control testing; efficiency surveys; advertising or promotions; the acquisition of another's patent, model, production or process, or research in connection with library, historical, or similar collections; or tests, etc. For purposes of section 174, quality control testing means testing to determine whether particular units of materials or products conform to specifications, but does not include testing to determine if the design of the product is appropriate.496

Generally, no current deduction under section 174 is allowable for expenditures for the acquisition or improvement of land or of depreciable or depletable property used in connection with any research or experimentation.497 In addition, no current deduction is allowed for research expenses incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, including oil and gas.498

HOUSE BILL

Under the provision, amounts defined as specified research or experimental expenditures are required to be capitalized and amortized ratably over a five-year period, beginning with the midpoint of the taxable year in which the specified research or experimental expenditures were paid or incurred. Specified research or experimental expenditures which are attributable to research that is performed outside the United States are required to be capitalized and amortized ratably over a period of 15 years, beginning with the midpoint of the taxable year in which such expenditures were paid or incurred. Specified research or experimental expenditures subject to capitalization include expenditures for software development.

Specified research or experimental expenditures do not include expenditures for land or for depreciable or depletable property used in connection with the research or experimentation, but do include the depreciation and depletion allowances of such property. Also excluded are exploration expenditures incurred for ore or other minerals (including oil and gas).

In the case of retired, abandoned, or disposed property with respect to which specified research or experimental expenditures are paid or incurred, any remaining basis may not be recovered in the year of retirement, abandonment, or disposal, but instead must continue to be amortized over the remaining amortization period.

As part of the repeal of the alternative minimum tax, taxpayers may no longer elect

489 Sec. 167 and 263(a).
490 Sec. 174(a) and (e).
491 Sec. 174(b).
493 Ibid.
494 Sec. 174(b).
495 Ibid.
496 Sec. 174(e)(v).
497 Sec. 174(e)(v).
498 Sec. 174(e)(v).
499 Sec. 174(d).
500 Sec. 174(d).
501 Sec. 174(d).
to amortize their research or experimental expenditures over a period of 10 years.\footnote{Rev. Proc. 2004-33, 2004-1 C.B. 989.}

**Effective date.**—The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2025.\footnote{Rev. Proc. 2005-47, 2005-2 C.B. 269.}

**SENA T E AMENDMENT**

The Senate amendment follows the House bill, except with the following modifications. The application of the Senate amendment is treated as a change in the taxpayer’s method of accounting for purposes of section 481, initiated by the taxpayer, and made with the consent of the Secretary. The Senate amendment applies to (i) any basis or research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2025 (hence there is no adjustment under rules specified by the Secretary, but only if there is no statement of the taxpayer or if the statement is not required by the Secretary), (ii) any basis or research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2026. In addition, the Senate amendment makes certain rules for amounts paid or incurred in taxable years beginning after December 31, 2025.

**CONFERENCE AGREEMENT**

The conference agreement follows the Senate amendment.

**Effective date.**—The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2021.

17. **Conferences on rules for taxable year of inclusion (sec. 1232 of the Senate amendment and sec. 451 of the Code)**

**PRESENT LAW**

**In general.**

Under section 61(a), gross income generally includes all income from whatever source derived, except as otherwise provided in Subtitle A of the Code. Thus, gross income generally includes income realized in any from, whether or not the title thereto is vested in the taxpayer, and whether or not the taxpayer is required to account for the income on some other basis of accounting. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of the amount whether or not the taxpayer makes the demand and actually receives the payment.\footnote{Sec. 1272(b).}

In general, for a cash basis taxpayer, an amount is included in gross income when either cashually or constructively received. For an accrual basis taxpayer, an amount is included in gross income when all the events have occurred that make it probable that an amount of income will be realized. The amount and the source of such income may be determined with reasonable accuracy (i.e., when the “all events test” is met), unless an exception permits deferral or exclusion, or a special method of accounting applies.\footnote{Secs. 61(a)(3) and 451.}

A number of exceptions that exist to permit deferral of gross income relate to advance payments. An advance payment is an amount the taxpayer is required to accrue to income when all the events have occurred that make it probable that such income will be realized. An advance payment includes all income from whatever source derived, except as otherwise provided in Subtitle A of the Code. Thus, gross income generally includes income realized in any form, whether or not the title thereto is vested in the taxpayer, and whether or not the taxpayer is required to account for the income on some other basis of accounting. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of the amount whether or not the taxpayer makes the demand and actually receives the payment.\footnote{Treas. Reg. section 1.61-1.}

In general, for a cash basis taxpayer, an amount is included in gross income when actually or constructively received. For an accrual basis taxpayer, an amount is included in gross income when all the events have occurred that make it probable that an amount of income will be realized. The amount and the source of such income may be determined with reasonable accuracy (i.e., when the “all events test” is met), unless an exception permits deferral or exclusion, or a special method of accounting applies.\footnote{Treas. Reg. section 1.61-1(b).}

A number of exceptions that exist to permit deferral of gross income relate to advance payments. An advance payment is an amount the taxpayer is required to accrue to income when all the events have occurred that make it probable that such income will be realized. An advance payment includes all income from whatever source derived, except as otherwise provided in Subtitle A of the Code. Thus, gross income generally includes income realized in any form, whether or not the title thereto is vested in the taxpayer, and whether or not the taxpayer is required to account for the income on some other basis of accounting. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of the amount whether or not the taxpayer makes the demand and actually receives the payment.\footnote{Treas. Reg. section 1.61-1(b).}

For purposes of the provision, the term “applied financial statement” means: (A) a financial statement as defined in section 471(b) which is prepared in accordance with generally accepted accounting principles and which is used for (I) credit purposes, (II) reporting to shareholders, partners, or other proprietors, or to benefici 7a fiers, or (III) filed by the taxpayer or a foreign government which is equivalent to the financial statement which is certified as being prepared in accordance with international financial reporting standards, (B) an audit or other report or similar documentation which is prepared by an auditor or other regulatory or governmental body certified by the Secretary, but only if there is no statement of the taxpayer or if the statement is not required by the Secretary.\footnote{Secs. 1272(a)(6)(C)(i)(I), 1272(a)(6)(C)(ii)(I), and 1272(a)(6)(C)(ii)(II).}
an applicable or other specified financial statement.\textsuperscript{874} In the case of a contract which contains multiple performance obligations, the provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement.

In addition, the provision directs accrual method taxpayers with an applicable financial statement to apply the income recognition rules under section 451 before applying the special rules under section 460 to any amounts required to come into compliance with the all events test of section 451. For these purposes, the recognition of income under the all events test under present law. Under the provision, an accrual method taxpayer with an applicable financial statement must recognize (i.e., "normal") mortgage servicing rights will be included in income upon the earlier of earned or received under the all events test of section 451 (i.e., not averaged over the life of the mortgage),

and "excess" mortgage servicing rights will be treated as stripped coupons under section 1268 a result subject to the original discount rules.\textsuperscript{875}

The provision also codifies the current deferred method of accounting for advance payments for goods, services, and other specified items provided by the IRS under Revenue Procedure 2004-34.\textsuperscript{876} That is, the provision allows taxpayers to defer the inclusion of income associated with certain advance payments to the end of the tax year following the tax year of receipt if such income also is deferred for financial statement purposes.\textsuperscript{877} In the case of advance payments received for a combination of services, goods, or other specified items, the provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement. The provision requires the inclusion in gross income of a deferred advance payment if the taxpayer ceases to exist.

The application of these rules is a change in the taxpayer's method of accounting for the purposes when received (amounts are included in revenue for financial statement purposes when received).\textsuperscript{878}

\textsuperscript{879} Effect of section 451. The Committee intends that the financial statement test under present law. Under the provision, an accrual method taxpayer with an applicable financial statement must recognize (i.e., "normal") mortgage servicing rights will be included in income upon the earlier of earned or received under the all events test of section 451 (i.e., not averaged over the life of the mortgage), and "excess" mortgage servicing rights will be treated as stripped coupons under section 1268 a result subject to the original discount rules.

The provision also codifies the current deferred method of accounting for advance payments for goods, services, and other specified items provided by the IRS under Revenue Procedure 2004-34. That is, the provision allows taxpayers to defer the inclusion of income associated with certain advance payments to the end of the tax year following the tax year of receipt if such income also is deferred for financial statement purposes. In the case of advance payments received for a combination of services, goods, or other specified items, the provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement. The provision requires the inclusion in gross income of a deferred advance payment if the taxpayer ceases to exist.

The application of these rules is a change in the taxpayer's method of accounting for the purposes when received (amounts are included in revenue for financial statement purposes when received). In the case of advance payments received for a combination of services, goods, or other specified items, the provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement. The provision requires the inclusion in gross income of a deferred advance payment if the taxpayer ceases to exist.

The application of these rules is a change in the taxpayer's method of accounting for the purposes when received (amounts are included in revenue for financial statement purposes when received). In the case of advance payments received for a combination of services, goods, or other specified items, the provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement. The provision requires the inclusion in gross income of a deferred advance payment if the taxpayer ceases to exist.

The application of these rules is a change in the taxpayer's method of accounting for the purposes when received (amounts are included in revenue for financial statement purposes when received). In the case of advance payments received for a combination of services, goods, or other specified items, the provision allows the taxpayer to allocate the transaction price in accordance with the allocation made in the taxpayer's applicable financial statement. The provision requires the inclusion in gross income of a deferred advance payment if the taxpayer ceases to exist.

Thus, the provision is intended to override any deferral method provided by Treasury Regulation section 1.460–4 for advance payments received for goods.

Thus, for example, the provision does not apply to payments made by one private party to another.
The Conference agreement follows the Senate amendment, but reduces the credit rate to 25 percent of qualified clinical testing expenses.

**Effective date.**—The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2017.

### 2. Repeal of employer-provided child care credit (sec. 42F of the Code)

The Conference agreement follows the Senate amendment, but reduces the credit rate to 25 percent of qualified clinical testing expenses.

**Effective date.**—The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2017.

The Conference agreement follows the Senate amendment, but reduces the credit rate to 25 percent of qualified clinical testing expenses.

**Effective date.**—The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2017.

The House bill repeals the credit for qualified rehabilitated expenditures with respect to a qualified historic structure. For this purpose, a certified historic structure means any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.

A 10-percent credit is provided for qualified rehabilitated expenditures with respect to a qualified rehabilitated building, which generally means a building that was first placed in service before 1936. A pre-1936 building may not currently deduct advances to or expenditures to be treated as qualified under this section are excluded from the computation of the research credit under section 41.

The Conference agreement follows the Senate amendment, but reduces the credit rate to 25 percent of qualified clinical testing expenses.

**Effective date.**—The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2017.

The Conference agreement follows the Senate amendment, but reduces the credit rate to 25 percent of qualified clinical testing expenses.

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The Conference agreement follows the Senate amendment, but reduces the credit rate to 25 percent of qualified clinical testing expenses.

**Effective date.**—The provision applies to amounts paid or incurred in taxable years beginning after December 31, 2017.
year period beginning in the taxable year in which the qualified rehabilitated building is placed in service is an amount equal to the ratable share. The ratable share for a taxable year during the five-year period is amount equal to 20 percent of the qualified rehabilitation expenditures for the building, as allocated ratably to each taxable year during the five-year period. It is intended that the sum of the ratable shares for the taxable years during the five-year period does not exceed 100 percent of the credit for qualified rehabilitation expenditures for the qualified rehabilitated building.

Effective date.—The provision applies to amounts paid or incurred after December 31, 2017.

The conference agreement provides that in the case of qualified rehabilitation expenditures (for a pre-1936 building) with respect to any building owned or leased (as provided under present law) by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer (under section 47(c)(1)(C)) is to begin not later than the end of the 180-day period beginning on the date of enactment of the Act, and the amendments made by the provision apply to such expenditures paid or incurred after the end of the taxable year in which such 24-month period ends.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with a modification to the transition rules relating to qualified rehabilitation expenditures under certain phased rehabilitations for which the taxpayer may select a 60-month period.

Effective date.—The provision applies to amounts paid or incurred after December 31, 2017.

In the case of qualified rehabilitation expenditures (for a pre-1936 building), with respect to any building owned or leased (as provided under present law) by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer (section 47(c)(1)(C)(i)), or the 60-month period selected by the taxpayer under the rule for phased rehabilitation expenditures (section 47(c)(1)(C)(ii)), is to begin not later than the end of the 180-day period beginning on the date of enactment of the Act, and the amendments made by the provision apply to such expenditures paid or incurred after the end of the taxable year in which such 24-month or 60-month period ends.

4. Repeal of work opportunity tax credit (sec. 3404 of the House bill and sec. 51 of the Code) (PRESENT LAW)

In general

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of ten targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer.

Generally, qualified wages consist of wages attributable to services 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 for qualified summer youth employees). Generally, qualified wages consist of 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.

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 and qualified veterans) is calculated as follows: (1) in the case of a qualified veteran unemployed for at least six months during the one-year period beginning on the date the employer begins employment, the maximum credit per employee is $2,400 (40 percent of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employment, the maximum credit per employee is $1,200 (40 percent of the first $3,000 of qualified first-year wages). Except for long-term family assistance recipients, no credit is available for second-year wages.

In the case of long-term family assistance recipients, the credit equals $1,000 (10 percent of the first $6,000 of qualified first-year 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. Therefore, the maximum credit per employee is $2,000 (40 percent of the first $6,000 of qualified first-year wages).

In the case of qualified veterans, the credit is calculated as follows: (1) in the case of a qualified veteran who is entitled to compensation for a service connected disability, who is hired during the first three-month period of the one-year period beginning on the date the employer begins employment, the maximum credit per employee is $9,000 (40 percent of the first $22,500 of qualified first-year wages); (2) in the case of a qualified veteran who is entitled to compensation for a service connected disability, who is hired during the second three-month period of the one-year period beginning on the date the employer begins employment, the maximum credit per employee is $6,000 (40 percent of the first $15,000 of qualified first-year wages); and (3) in the case of a qualified veteran who is entitled to compensation for a service connected disability, who is hired during the third three-month period of the one-year period beginning on the date the employer begins employment, the maximum credit per employee is $3,000 (40 percent of the first $7,500 of qualified first-year wages).

Expiration

The work opportunity tax credit is not available with respect to wages paid to individuals who begin work for an employer after December 31, 2019.

HOUSE BILL

The provision repeals the work opportunity tax credit.

Effective date.—The provision applies to amounts paid or incurred by individuals who begin work for an employer after December 31, 2017.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not follow the House bill provision.

5. Repeal of deduction for certain unsound business credits (sec. 3405 of the House bill, sec. 13403 of the Senate amendment, and sec. 196 of the Code) (PRESENT LAW)

The general business credit ("GBC") consists of various individual tax credits allowed with respect to qualified expenditures and activities. Generally, the various individual tax credits contain provisions that prohibit "double benefits," either by denying deductions in the case of expenditures attributable to services rendered by a member of a targeted group during the one-year period beginning with the day the individual begins 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). With respect to qualified summer youth employment, the maximum credit per employee is $1,200 (40 percent of the first $3,000 of qualified first-year wages). Except for long-term family assistance recipients, no credit is available for second-year wages.

In the case of long-term family assistance recipients, the credit equals $1,000 (10 percent of the first $6,000 of qualified first-year 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. Therefore, the maximum credit per employee is $2,000 (40 percent of the first $6,000 of qualified first-year wages).

In the case of qualified veterans, the credit is calculated as follows: (1) in the case of a qualified veteran who is entitled to receive assistance under a supplemental nutritional assistance program (for at least a three-month period during the one-year period beginning on the date the employer begins employment), the employer is entitled to a maximum credit of 40 percent of $6,000 of qualified first-year wages; (2) in the case of a qualified veteran who is entitled to compensation for a service connected disability, who is hired within one year of discharge, the employer is entitled to a maximum credit of 40 percent of $12,000 of qualified first-year wages; (3) in the case of a qualified veteran who is entitled to compensation for a service connected disability, and who has been unemployed for an aggregate of at least six months during the one-year period ending on the hiring date, the employer is entitled to a maximum credit of 40 percent of $24,000 of qualified first-year wages; and (4) in the case of a qualified veteran who is entitled to compensation for a service connected disability, and who has been unemployed for an aggregate of at least six months during the one-year period ending on the hiring date, the employer is entitled to a maximum credit of 40 percent of $6,000 of qualified first-year wages.

Section 45D provides a new markets tax credit ("NMTC") for certain businesses where the qualified investment is made in a qualified community development entity ("CDE"). The amount of the credit available 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 to the taxpayer who holds the qualified equity investment on the date of the investment, or on the first day of the 20-year period ending with the anniversary date that occurs during the taxable year. For this purpose, the recapture is credited if at any time during the seven-year period that begins on the date the original investment in the CDE is redeemed, the CDE 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 providing investment capital to, or lending to, low-income persons; (2) that maintains accountability to residents of low-income communities by its 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 at its original issue directly (or through an underwriter) from a CDE and provides 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 investments and the investment must be designated as a qualified equity investment in the CDE. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of an equity investment in another CDE; and (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 (as opposed to 80 percent) of median family income. A targeted population is not defined by reference to the most recent census but with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

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

The maximum annual amount of qualified equity investments is $3.5 billion for calendar years 2010 through 2019. No amount of unused allocation limitation may be carried forward beyond the taxable years beginning after December 31, 2024.

This provision provides that the new marks tax credit limitation is zero for calendar years 2010 through 2019 and no amount of unused allocation limitation may be carried to any calendar year after 2022.

For purposes of the credit, an eligible access expenditure is defined as (1) expenditures for the removal of, or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that "low-income" means (1) for a targeted population within a metropolitan area 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 the income of the statewide non-metropolitan area median family income. A targeted population is not required to be within any census tract. In addition, the definition of a targeted tract with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities. A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of the business is used in a qualified active low-income community; (3) a substantial portion of the services performed for the business by its employees is performed in a qualified active low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of the business is attributable to certain financial property or certain intangibles.

The maximum annual amount of qualified equity investments is $3.5 billion for calendar years 2010 through 2019. No amount of unused allocation limitation may be carried forward beyond the taxable years beginning after December 31, 2024.

For this purpose, certain food or beverage establishments may elect to claim a business tax credit equal to an employer's taxes under the Federal Insurance Contributions Act ("FICA") paid on tips in excess of those treated as wages for purposes of meeting the minimum wage requirements of the Fair Labor Standards Act ("FLSA"). In effect on January 1, 2007. The credit applies only with respect to FICA taxes paid on tips received from customers in connection with the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary. The credit is available whether or not the tips are reported or a percentage of gross receipts is allocated (described below). No deduction or withholding for any social security taxes is to be accounted for in determining the tip credit. A taxpayer may elect not to have the credit apply for a taxable year.

Employees are required to report monthly tips to their employer. Certain large food or beverage establishments are required to report to the IRS and employees various information including gross receipts of the establishment, and to allocate the unreported tips to employees who customarily receive tip income.
an amount equal to eight percent of gross receipts in excess of the amount of tips reported by such employees. Employee tip income that is reported by employees is treated as employer-provided wages subject to FICA.

House Bill

The provision revises the amount of the credit for FICA taxes an employer pays on tips, as an amount equal to the employer’s FICA taxes paid on tips in excess of those treated as minimum wages under the FLSA without regard to the January 1, 2007 date. For 2017, the rate is $7.25. In addition, the credit is permitted only if the employer satisfies the reporting requirements of section 6053(c) to the IRS and employees, and allocates among employees who customarily receive tip income an amount equal to 10 percent (rather than eight percent) of gross receipts in excess of the amount of tips reported by such employees. The claiming of the credit remains elective. However, if any size eligible food or beverage establishment elects to claim the FICA tip credit for any taxable year after the provision takes effect, the establishment must satisfy this reporting and 10-percent allocation requirement for that taxable year. Reporting and allocation requirements for food and beverage establishments that elect not to claim the credit remain unchanged.

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

Conference Agreement

The conference agreement follows the Senate amendment.

F. Energy Credits

1. Modifications to credit for electricity produced from certain renewable resources (sec. 3501 of the House bill and sec. 45 of the Code)

In general

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

SUMMARY OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

<table>
<thead>
<tr>
<th>Qualified energy production activity (sec. 45)</th>
<th>Credit amount for 2017 (cents per kilowatt-hour)</th>
<th>Expiration 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind</td>
<td>24</td>
<td>December 31, 2019</td>
</tr>
<tr>
<td>Closed-loop biomass</td>
<td>24</td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Open-loop biomass (including agricultural livestock waste nutrient facilities)</td>
<td>12</td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Geothermal</td>
<td>2.4</td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Municipal solid waste (including landfill gas facilities and trash combustion facilities)</td>
<td>1.2</td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Qualified hydropower</td>
<td>1.2</td>
<td>December 31, 2016</td>
</tr>
<tr>
<td>Marine and hydrotidal</td>
<td>1.2</td>
<td>December 31, 2016</td>
</tr>
</tbody>
</table>

1. Expires for property the construction of which begins after this date.

The credit rate, initially set at 1.5 cents per kilowatt-hour (reduced by one-half for certain renewable resources) is adjusted annually for inflation. In general, the credit is available for electricity produced during the first 10 years after a facility has been placed in service. Taxpayers may also elect to get a 30-percent investment tax credit in lieu of this production tax credit.

Phase-down for wind facilities

In the case of wind facilities, the available production tax credit or investment tax credit is reduced by 20 percent of the production or investment tax credit of the construction of which begins in 2017, by 40 percent for facilities the construction of which begins in 2018, and by 60 percent for facilities the construction of which begins in 2019.

Special rules for determining when the construction of a facility begins

In general, a taxpayer may establish the beginning of construction of the facility by beginning physical work of a significant nature (the “physical work test”). Alternatively, a taxpayer may establish the beginning of construction by the safe harbor test which generally requires that the taxpayer have paid or incurred five percent of the total cost of constructing the facility (the “five percent safe harbor”). Both methods require that a taxpayer make continuous progress towards completion once construction has begun. To demonstrate that continuous progress is being made, taxpayers relying on the physical work test must show that the project is undergoing “continuous construction,” and taxpayers relying on the five percent safe harbor must show “continuous effort” to complete the project. Collectively, the continuous progress tests are referred to as the “continuity requirement.”

House Bill

The provision eliminates the inflation adjustment for wind facilities the construction of which begins after the date of enactment. Such facilities are entitled to a credit of 1.5 cents per kilowatt-hour (i.e., the statutory credit rate unadjusted for inflation). Credits for wind facilities subject to the phase-down based on the year construction begins.

The provision includes a special rule for determining the beginning of construction, which is intended to codify Treasury guidance for determining when construction of a facility has begun, including the physical work test, the five percent safe harbor, and the continuity requirement.

Effective date.—The provision terminating the inflation adjustment is effective for tax years ending after the date of enactment. The provision codifying existing guidance for determining when construction has begun is effective for taxable years beginning before, on, or after the date of enactment.

Conference Agreement

The conference agreement does not follow the House bill provision.

2. Modification of the energy investment tax credit (sec. 502 of the House bill and sec. 48 of the Code)

In general

A permanent, nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment that uses solar energy to produce electric power, to heat or cool a structure, or to provide solar process heat or (2) is used to provide 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. Properly invested energy for the purposes of heating a swimming pool is not eligible solar energy property.

In addition to permanent credits, temporary investment credits are available for a variety of renewable and alternative energy property. The rules governing these temporary credits are described below. 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. The credit is allowed against the alternative minimum tax.

Solar energy property

The credit rate for solar energy property is incorporated in the case of property the construction of which begins before January 1, 2020. The rate is increased to 26 percent of the property the construction of which begins in calendar year 2020. The rate is increased to 22 percent in the case of property the construction of which begins after calendar year 2021. The otherwise allowable credit, the property must be placed in service before January 1, 2024. Additionally, equipment that uses fiber optic solar ("fiber optic solar") to illuminate the inside of a structure is solar energy property eligible for the 30-percent investment tax credit only for property placed in service before January 1, 2017.

Fuel cell property and microturbine property

The energy credit applies to qualified fuel cell power plant property, but only for periods prior to January 1, 2017. 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 electrochemical means, and (2) has an electricity generation capacity of greater than 30 percent and a capacity of at least one-half kilowatt. The credit may not exceed $1,500 for each 0.5 kilowatt of capacity. The energy credit applies to qualified stationary microturbine power plant property for periods prior to January 1, 2017. The credit rate is 30 percent. A qualified 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 electric energy using mechanical means and requires the generation of more than one-half kilowatt. The credit may not exceed $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 electric energy using mechanical means and requires the generation of more than one-half kilowatt. The credit may not exceed $200 for each kilowatt of capacity.

Geothermal heat pump property

The energy credit applies to qualified geothermal heat pump property placed in service prior to January 1, 2017. The credit rate is 10 percent. Qualified geothermal heat pump property is equipment that uses the ground or ground water as a thermal energy source to heat a structure as a thermal energy sink to cool a structure.

Small wind property

The energy credit applies to qualified small wind energy property placed in service prior to January 1, 2017. The otherwise allowable credit with respect to small wind energy property is reduced by one-half of the amount of the credit allowed if the property fails to meet the efficiency standard. The otherwise allowable credit with respect to small wind energy property is reduced by one-half of the amount of the credit allowed if the property fails to meet the efficiency standard.

Combined heat and power property

The energy credit applies to combined heat and power ("CHP") property placed in service prior to January 1, 2017. The credit rate is 10 percent. 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 useful thermal energy (including the provision of refrigeration or air conditioning) and (2) that has an electrical capacity of not more than 50 megawatts or a mechanical capacity of not 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 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 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 equal to the applicable limit divided by the capacity of the property. For example, a 45 megawatt property would be eligible to claim 45/50ths, or 90 percent, 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, 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 allowed the credit reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be eligible to receive the 30-percent efficiency standard, but which only achieves 25-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

Election of energy credit in lieu of section 45 production tax credit

A taxpayer may make an irrevocable election to have the property used in certain qualified renewable property facilities be treated as energy property eligible for a 30-percent investment credit under section 48. For this purpose, qualified facilities are facilities otherwise eligible for an electric production tax credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the production credit under section 45. In the case of non-wind facilities, to make this election, construction must begin before January 1, 2017. For wind facilities, the 30-percent credit rate is reduced by 20 percent in the case of wind facilities the construction of which begins in calendar year 2017, by 40 percent in the case of any wind facility the construction of which begins in calendar year 2018, and by 60 percent in the case of any wind facility the construction of which begins in calendar year 2019. The credit for wind facilities expires for facilities the construction of which begins after calendar year 2019. In general, a taxpayer may establish the beginning of construction of a facility by meeting the safe harbor test, which generally requires that the taxpayer have paid or incurred five percent of the total cost of constructing the facility (the "five percent safe harbor"). Both methods require that the taxpayer make continuous progress towards completion once construction has begun.

To demonstrate that continuous progress is being made in relying on the physical work test, it is required that the project is undergoing "continuous construction," and taxpayers relying on the five percent safe harbor must demonstrate the "five percent safe harbor plus a continuance effort" to complete the project. Collectively, these two tests are referred to as the "continuity requirement." The provision extends the energy credit for fiber optic solar, fuel cell, microturbine, geothermal heat pump, small wind, and combined heat and power property placed in service before January 1, 2024, and the permanent credits for solar and geothermal property the construction of which begins after December 31, 2021.

The provision includes a special rule for determining the beginning of construction, which is intended to adopt Treasury guidance for determining when construction of a facility has begun, including the physical work test, the five percent safe harbor, and the continuity requirement.

Effective date.—The provision generally applies to periods after December 31, 2016, under rules similar to the rules of section 48(g), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990. The extension of the credit for combined heat and power system property applies to property placed in service after December 31, 2016. The otherwise allowable credit, the credit rates and the termination of the permanent credits are effective on the date of the enactment of the provision. The special rule for determining the beginning of construction of qualified property applies to taxable years beginning before, on, or after the date of enactment of the provision.
HOUSE BILL

The provision extends the residential energy efficient property credit with respect to non-solar qualified property through December 31, 2031. This provision is reduced to 26 percent for property placed in service in calendar year 2020 and to 22 percent for property placed in service in calendar year 2021.

5. Repeal of credit for producing oil and gas from marginal wells (sec. 3505 of the House bill and sec. 45I of the Code)

The provision repeals the enhanced oil recovery credit.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not follow the House bill provision.

6. Modification of credit for production from advanced nuclear power facilities (sec. 3506 of the House bill and sec. 45J of the Code)

The provision modifies the credit for production from advanced nuclear power facilities to be available for property placed in service after December 31, 2017, for taxable years beginning after December 31, 2017.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not follow the House bill provision.

These provisions are subject to modification by the Senate and House.

The depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor allocated to the purchase of qualified geothermal heat pump property, qualified small wind energy property, and qualified fuel cell property are treated as rounded up to the nearest $0.5 kilowatt of capacity.

The credit is not available to production from any qualified geothermal heat pump property, qualified small wind energy property, or qualified fuel cell property placed in service before January 1, 2012.

The credit is treated as a general business credit. Unused credits can be carried back for up to five years rather than the generally applicable carryback period of one year. The credit is indexed for inflation.

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

No provision.

CONFERENCE AGREEMENT

The conference agreement does not follow the House bill provision.

These provisions are subject to modification by the Senate and House.

The depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor allocated to the purchase of qualified geothermal heat pump property, qualified small wind energy property, and qualified fuel cell property are treated as rounded up to the nearest $0.5 kilowatt of capacity.

The credit is not available to production from any qualified geothermal heat pump property, qualified small wind energy property, or qualified fuel cell property placed in service before January 1, 2012.

The credit is treated as a general business credit. Unused credits can be carried back for up to five years rather than the generally applicable carryback period of one year. The credit is indexed for inflation.

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

No provision.

CONFERENCE AGREEMENT

The conference agreement does not follow the House bill provision.

These provisions are subject to modification by the Senate and House.

The depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor allocated to the purchase of qualified geothermal heat pump property, qualified small wind energy property, and qualified fuel cell property are treated as rounded up to the nearest $0.5 kilowatt of capacity.

The credit is not available to production from any qualified geothermal heat pump property, qualified small wind energy property, or qualified fuel cell property placed in service before January 1, 2012.

The credit is treated as a general business credit. Unused credits can be carried back for up to five years rather than the generally applicable carryback period of one year. The credit is indexed for inflation.
megawatts, but has received an allocation from the Secretary for 750 megawatts of credit eligible capacity, then the two limitations apply such that the taxpayer may claim credit in the sum of the principal amount, one equal to one cent per kilowatt-hour of electricity produced (calculated as described above) subject to an annual credit limitation of $83,755 million in credits of $125 million.

The credit is part of the general business credit.

**HOUSE BILL**

The provision modifies the national megawatt limitation for the advanced nuclear power production credit. To the extent any amount of the 6,000 megawatts of authorized capacity remains unutilized, the provision requires the Secretary to allocate such capacity first to facilities placed in service before the year 2021, to the extent such facilities did not receive an allocation equal to their full nameplate capacity, and then to facilities placed in service after such date in the order in which such facilities are placed in service. The provision provides that the present-law placed-in-service sunset date of January 1, 2021, does not apply with respect to allocations of such unutilized national megawatt capacity.

The provision also qualified public entities to elect to forgo credits to which they otherwise would be entitled in favor of an eligible project partner. Qualified public entities include (1) Federal, State, or local government of any political subdivision, agency, or instrumentality thereof; (2) a mutual or cooperative electric company; or (3) a not-for-profit electric utility which has or had received a loan or loan guarantee under the Rural Electrification Act of 1936.

An eligible project partner under the provision (this includes any person who designed or constructed the nuclear power plant, participates in the provision of nuclear steam or nuclear fuel to the power plant, or has an ownership interest in the facility. In the case of a facility owned by a partnership, where the credit is determined at the partnership level, any electing qualified public entity is treated as the taxpayer with respect to such entity's distributive share of such credits, and any other partner is an eligible project partner.

**Effective date.**—The provision requiring the allocation of unutilized national megawatt capacity limitation is effective on the date of enactment. The provision allowing an election by qualified public entities to forgo credits in favor of an eligible project partner is effective for taxable years beginning after the date of enactment.

**SENATE AMENDMENT**

No provision.

**CONFERENCE AGREEMENT**

The conference agreement does not include in the House bill.

### G. Bond Reforms

#### 1. Termination of private activity bonds (sec. 3601 of the House bill and sec. 105 of the Code)

**PRESENT LAW**

In general

Under present law, gross income generally does not include interest paid on State or local bonds. Federal and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are those primarily used to finance governmental functions that 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 only applies if the bond is to private activity (if the bonds are issued for certain permitted purposes ("qualified private activity bonds").

**Private activity bonds**

Present law provides three main tests for determining whether a State or local bond is in substance a private activity bond, the two-part private business test, the five-percent unrelated or disproportionate use test, and the private loan test.

*Private business test*

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 are met:

1. 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
2. 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 to be derived from proceeds in respect of such property (the "private payment test").

**Private business use generally includes any property held 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 constitute private business use. The property is treated as used in a private business use, and rental payments are treated as securing the payment of the bond. Private business use also can arise in cases where 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.

**Five-percent unrelated or disproportionate business use test**

A second standard to determine whether a bond is to be treated as a private activity bond is the five percent unrelated or disproportionate business use test. Under this standard the private business use and private payment test (described above) are separately applied substituting five percent for 10 percent and generally only taking into account private and private payments that are not related to or not proportionate to the government use of the bond proceeds. For example, while a bond issue that finances a new State or local government office building may include a cafeteria, the issue may become a private activity bond if the size of the cafeteria is excessive (as determined under this rule).

**Private loan test**

The third standard for determining whether a State or local bond or private activity bond is whether an amount exceeding the lesser of (1) $5 million 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 business use and a transaction which transfers tax ownership of property to a private person is treated as a private loan.

#### 1. Termination of private activity bonds (sec. 3601 of the House bill and sec. 105 of the Code)

**PRESENT LAW**

In general

Under present law, gross income generally does not include interest paid on State or local bonds. Federal and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are those primarily used to finance governmental functions that 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 only applies if the bond is to private activity (if the bonds are issued for certain permitted purposes ("qualified private activity bonds").

**Private activity bonds**

Present law provides three main tests for determining whether a State or local bond is in substance a private activity bond, the two-part private business test, the five-percent unrelated or disproportionate use test, and the private loan test.

*Private business test*

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 are met:

1. 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
2. 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 to be derived from proceeds in respect of such property (the "private payment test").

**Private business use generally includes any property held 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 constitute private business use. The property is treated as used in a private business use, and rental payments are treated as securing the payment of the bond. Private business use also can arise in cases where 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.

**Five-percent unrelated or disproportionate business use test**

A second standard to determine whether a bond is to be treated as a private activity bond is the five percent unrelated or disproportionate business use test. Under this standard the private business use and private payment test (described above) are separately applied substituting five percent for 10 percent and generally only taking into account private and private payments that are not related to or not proportionate to the government use of the bond proceeds. For example, while a bond issue that finances a new State or local government office building may include a cafeteria, the issue may become a private activity bond if the size of the cafeteria is excessive (as determined under this rule).

**Private loan test**

The third standard for determining whether a State or local bond or private activity bond is whether an amount exceeding the lesser of (1) $5 million 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 business use and a transaction which transfers tax ownership of property to a private person is treated as a private loan.

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in the case of a partner of such entity, a partner in a partnership, where the credit is determined at the partnership level, any electing qualified public entity is treated as the taxpayer with respect to such entity's distributive share of such credits, and any other partner is an eligible project partner.

**Effective date.**—The provision requiring the allocation of unutilized national megawatt capacity limitation is effective on the date of enactment. The provision allowing an election by qualified public entities to forgo credits in favor of an eligible project partner is effective for taxable years beginning after the date of enactment.

**SENATE AMENDMENT**

No provision.

**CONFERENCE AGREEMENT**

The conference agreement does not follow the House bill provision.
2. Repeal of advance refunding bonds (sec. 3602 of the House bill, sec. 13532 of the Senate amendment, and sec. 149(d) of the Code)

PRESENT LAW

Section 103 generally provides that gross income does not include interest received on State or local bonds. State and local bonds are characterized generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance government activities, and the debt is 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 (e.g., private businesses or individuals).248 Bonds issued to finance the activities of charitable organizations described in section 501(c)(3) (“qualified 501(c)(3) bonds”) are a type of private activity bond. The exclusion from income for interest on State and local bonds only applies if certain Code requirements are met.

The exclusion for income for interest on State and local bonds applies to refunding bonds but there are limits on advance refunding bonds. A refunding bond is defined as any bond used to pay principal, interest, or redemption of (or bond issue (the refunded bond). Different rules apply to current as opposed to advance refunding bonds. A current refunding occurs when the refunded bond is redeemed within 90 days of issuance of the refunding bonds. Conversely, a bond is classified as an advance refunding if it is redeemed more than 90 days before the redemption of the refunded bond.249 Proceeds of advance refunding bonds are generally invested in an escrow account and held until a future date when the refunded bond may be redeemed.

Although there is no statutory limitation on the number of times that tax-exempt bonds may be currently refunded, the Code limits advance refundings. Generally, governmental bonds and qualified 501(c)(3) bonds may be advance refunded one time.250 Private activity bonds, other than qualified 501(c)(3) bonds, may not be advance refunded at all.251 Furthermore, in the case of an advance refunding bond that results in interest savings (e.g., a high interest rate to low interest rate refunding), the refunded bond must be redeemed on the first call date 90 days after the issuance of the refunding bond that results in debt service savings.252

HOUSE BILL

The provision repeals the exclusion from gross income for interest on a bond issued to advance refund another bond.

Effective date.—The provision applies to advance refunding bonds issued after December 31, 2017.

SENATE AMENDMENT

The Senate amendment follows the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Repeal of tax credit bonds (sec. 3603 of the House bill and secs. 54A, 54B, 54C, 54D, 54E, 54F and 6431 of the Code)

PRESENT LAW

In general

Tax-credit bonds provide tax credits to investors in return for a portion of the interest cost. The borrowing subsidy generally is measured by reference to the credit rate set by the Treasury Department. Current tax-credit bonds include qualified tax credit bonds, which have certain common general requirements, and include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds.253

Qualified tax-credit bonds

General rules applicable to qualified tax-credit bonds

Unlike tax-exempt bonds, qualified tax-credit bonds generally are not interest-bearing obligations. Rather, the taxpayer holding a qualified tax-credit bond on a credit allowable day 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 for an issue of qualified credits bonds is determined by the Secretary and is estimated to be a rate that permits issuance of the qualified tax-credit bonds without disqualifying the qualified issuer.254 The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed under regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be carried over to future years if a qualified activity bond is not issued or if the owners of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

New clean renewable energy bonds

New clean renewable energy bonds ("New CREBs") may be issued by qualified issuers to finance qualified renewable energy facilities.255 Qualified renewable energy facilities are general purpose facilities, such as facilities that: (a) qualify for the tax credit under section 45 (other than Indian coal and refined coal production facilities), regardless of the placed-in-service date, are owned by a public power provider, governmental body, or cooperative electric company, and the term "qualified issuers" includes: (1) public power providers; (2) 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. There was originally a national limitation for New CREBs of $800 million. The national limitation was then increased by an additional $2.4 billion in 2009. As with other tax credit bonds, the taxpayer holding New CREBs on a credit allowance date is entitled to a tax credit. 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.256 Qualified zone academy bonds

Qualified zone academy bonds ("QZABs") 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, services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A total of $300 million of QZABs has been authorized to be issued annually in calendar years 1998 through 2008. The authorization was increased to $1.4 billion for calendar year 2009 and calendar years 2010-2016. For each of the calendar years 2011 through 2016, the authorization was set at $400 million.

Qualified school construction bonds

Qualified school construction bonds must meet three requirements: (1) 100 percent of the available project proceeds of the bond issue are used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a bond-financed facility is to be constructed; (2) the bonds are issued by a State or local government within which such school is located; and (3) the issue designates such bonds as a qualified school construction bond.

There is a national limitation on qualified school construction bonds of $11 billion for calendar years 2009 and 2010, and zero after 2010. If an amount allocated is unused for a calendar year, it may be carried forward to the following and subsequent calendar years. Under a separate special rule, the Secretary of the Interior may allocate $200 million of school construction bond authority for Indian schools.

Direct-pay bonds and expired tax-credit bond provisions

The Code provides that an issuer may elect to issue certain tax credit bonds as “direct-pay bonds.” Instead of a credit to the holder with a “direct-pay bond” the Federal government pays the issuer a percentage of the interest on the bonds. The following tax credit bonds may be issued as direct-pay bonds: (1) clean renewable energy bonds, qualified energy conservation bonds, and qualified school construction bonds; (2) qualified zone academy bonds that are issued as direct-pay using any national zone academy bond allocation for calendar years 2011 or any carryforward of such allocations. The ability to issue direct-pay bonds under the Qualified Zone Academy Bonds and Recovery Zone Bonds, which have direct-pay features, has expired.

HousE bill

The provision prospectively repeals authority to issue tax-credit bonds and direct-pay bonds.

Effective date.—The provision applies to bonds issued after December 31, 2017.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. No tax-exempt bonds for professional stadiums (sec. 3604 of the House bill and sec. 103 of the Code)

Present law

In general

Section 103 generally provides gross income does not include interest on State or local bonds. State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental facilities or the debt is repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to private businesses or individuals. The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bond is used for purposes (“qualified private activity bonds”) permitted by the Code and other Code requirements are met.

Private activity bond tests

In general

A private activity bond includes any bond that satisfies (1) the “private business test” (consisting of two components: a private business use test and a private security or payment test); or (2) the “private loan financing test.”

Two-part private business test

Under the private business test, a bond is a private activity bond if it is part of an issue in which:

More than 10 percent of the proceeds of the issue (including the use of the bond-financed property) are to be used in the trade or business of any person other than a governmental unit (“private business use test”); and

More than 10 percent of the payment of principal or interest on the issue is, directly or indirectly, secured by (a) property used or to be used for a private business use or (b) to be derived from payments in respect of property, or borrowed money, used or to be used for a private business use (“private payment test”).

A bond is not a private activity bond unless both parts of the private business test (i.e., the private business use test and the private payment test) are met. For purposes of the private payment test, both direct and indirect payments made by any private person treated as using the financed property are taken into account. Payments by a person for the use of proceeds generally do not include payments for ordinary and necessary expenses (within the meaning of section 162) attributable to the operation and maintenance of financed property.

Private loan financing test

A bond issue satisfies the private loan financing test if proceeds exceeding the lesser of $5 million or five percent of such proceeds are used directly or indirectly to finance loans to one or more nongovernmental persons.

Types of qualified private activity bonds

The interest of qualified private activity bonds is tax exempt. A qualified private activity bond is a qualified mortgage, veterans mortgage, small issue, student loan, redevelop-ment, 501(c)(3), or exempt facility bond.

To qualify as an exempt facility bond, 95 percent of the issue proceeds must be used to fin-ance: (1) airports; (2) docks and wharves; (3) mass commuting facilities; (4) high-speed intercity rail facilities; (5) facilities for the furnishing of water; (6) sewage facilities; (7) solid waste disposal facilities; (8) hazardous waste disposal facilities; (9) qualified residential rental projects; (10) facilities for the local furnishing of electric energy or gas; (11) local district heating or cooling facilities; (12) environmental enhancements of hydro-electric generating facilities; (13) qualified public educational facilities; and (14) qualified green building and sustainable design projects.

Financing of sports facilities with governmental bonds

In 1986, Congress eliminated a provision expressly allowing tax-exempt financing for sports facilities. Nevertheless, professional sports facilities continue to be financed with tax-exempt bonds despite the fact that privately owned sports teams are the primary (if not exclusive) users of such facilities. Present law permits the use of tax-exempt bond proceeds for private activities if either part of the two-part private business test is met. Only if both parts of the private business test (private use and private payment) are met will the interest on such bonds be taxable. In the case of bond-financed professional sports facilities, issuers have intentionally structured the tax-exempt bond issuance and related transactions to fail the private payment test. In most of these transactions, the professional sports team is not required to pay for more than a small portion of its use of the sports facility. As a result, the private payment test is not met, and the bonds financing the facility are not treated as private activity bonds, despite the existence of substantial private business use.

House bill

The provision provides that the interest on bonds, the proceeds of which are to be used to finance or refinance capital expenditures allocable to a professional sports stadium, is not tax-exempt. The term “professional sports stadium” means any facility (or appurtenant real property) which during at least five days during any calendar year is used as a stadium or training facility for professional sports, exhibitions, games, or training.

Effective date.—The provision applies to bonds issued after November 2, 2017.

Senate amendment

No provision.

Conference agreement

The conference agreement does not follow the House bill provision.

H. Insurance

1. Net operating losses of life insurance companies (sec. 3701 of the House bill, sec. 13511 of the Senate amendment, and sec. 810 of the Code)

Present law

A net operating loss (“NOL”) generally means the amount by which a taxpayer’s business deductions exceed its gross income. In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years. NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.

For purposes of computing the alternative minimum tax (“AMT”), a taxpayer’s NOL deduction cannot reduce the taxpayer’s alternative minimum taxable income (“AMTI”) by more than 90 percent of the AMTI.

For purposes of the case of a life insurance company, a deduction is allowed in the taxable year for operations loss carryovers and carrybacks, in lieu of the deduction for net operating losses allowed to other corporations. A life insurance company is permitted to treat a loss from operations (as defined under section 810) for any taxable year operations loss carryback to each of the three


645 Sec. 1231(b)(2).

646 Sec. 56(d).

647 Secs. 810, 805(a)(5).
taxable years preceding the loss year and an operations loss carryover to each of the 15 taxable years following the loss year.\textsuperscript{968}

2. Repeal of small life insurance company deduction (sec. 3702 of the House bill, sec. 13512 of the Senate amendment, and sec. 806 of the Code)

The provision repeals the operations loss deduction for life insurance companies and allows the NOL deduction under section 172.

Effective date.—The provision applies to losses arising in taxable years beginning after December 31, 2017.

The Senate amendment is the same as the House bill.

The Senate amendment is the same as the House bill.

The conference agreement follows the House bill and the Senate amendment.

3. Surtax on life insurance company taxable income (sec. 3703 of the House bill and sec. 801 of the Code)

The conference agreement follows the House bill and the Senate amendment.

The Senate amendment is the same as the House bill.

The Senate amendment is the same as the House bill.

No provision.

The Senate amendment is the same as the House bill.

The conference agreement follows the House bill and the Senate amendment.

5. Repeal of special rule for distributions to shareholders from pre-1984 policyholders surplus account (sec. 3705 of the House bill, sec. 13514 of the Senate amendment, and sec. 815 of the Code)

The conference agreement follows the House bill and the Senate amendment.

The Senate amendment is the same as the House bill.

Under the law in effect from 1959 through 1983, a life insurance company was subject to tax on the lesser of its gain from operations or its taxable investment income (Phase I) and, if its gain from operations exceeded its taxable investment income, 50 percent of the excess (Phase II). Federal income tax on the other 50 percent of the gain from operations was not imposed and was accounted for as part of a policyholder’s surplus account. Further, subject to certain limitations, taxed only when distributed to stockholders or upon corporate dissolution (Phase III).

The provision repeals the three-phase taxable income computation under Federal tax law. Under the three-phase system, a company was taxed on the lesser of its gain from operations or its taxable investment income (Phase I) and, if its gain from operations exceeded its taxable investment income, 50 percent of the excess (Phase II). Federal income tax on the other 50 percent of the gain from operations was not imposed and was accounted for as part of a policyholder’s surplus account. Further, subject to certain limitations, taxed only when distributed to stockholders or upon corporate dissolution (Phase III).
The Conference agreement follows the House bill and the Senate amendment.

6. Modification of proration rules for property and casualty insurance companies (sec. 3707 of the House bill, sec. 8351 of the Senate amendment, and sec. 832 of the Code)

PRESENT LAW

The taxable income of a property and casualty insurance company is determined as the sum of its gross income from underwriting income and investment income (as well as gains and other income items), reduced by allowable deductions. A proration rule applies to property and casualty insurance companies. In calculating the deductible amount of its reserve for losses incurred, a property and casualty insurance company must reduce the amount of losses incurred by 15 percent of (1) the insurer's tax-exempt interest, (2) the deductible portion of dividends received (with special rules for dividends from affiliates), and (3) the increase for the taxable year in the cash value of life insurance, endowment, or annuity contracts for which the company owns. This proration rule reflects the fact that reserves are generally funded in part from tax-exempt interest, from deductible dividends, and from other untaxed amounts.

HOUSE BILL

The provision replaces the 15-percent reduction under present law with a 26.25-percent reduction under the proration rule for property and casualty insurance companies. This change in the percentage takes into account the reduction in the corporate tax rate from 35 to 20 percent under section 3001 of the House bill (sec. 3707 of the House bill).

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

SENATE AMENDMENT

The provision replaces the 15-percent reduction under present law with a reduction equal to 5.25 percent divided by the top corporate tax rate. For 2018, the top corporate tax rate is 35 percent, and the percentage reduction is 15 percent. For 2019 and thereafter, the corporate tax rate is 20 percent, and the percentage reduction is 26.25 percent under the Senate amendment. This percentage is the prescribed percentage for property and casualty insurance companies. The proration percentage will be automatically adjusted in the future if the top corporate tax rate is changed, so that the product of the proration percentage and the top corporate tax rate always equals 5.25 percent.

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

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The top corporate tax rate is 21 percent for 2018 and thereafter. So the percentage reduction is 25 percent under the proration rule for property and casualty insurance companies.

7. Modification of discounting rules for property and casualty insurance companies (sec. 3707 of the House bill and sec. 832 of the Code)

PRESENT LAW

A property and casualty insurance company generally is subject to tax on its taxable income. The taxable income of a property and casualty insurance company is determined as the sum of its underwriting income and investment income (as well as gains and other income items), reduced by allowable deductions. Among the items that are deductible in calculating underwriting income are additions to reserves for losses incurred and expenses incurred. The proration rule for property and casualty insurance companies must reduce the amount of losses incurred by 15 percent of (1) the insurer's tax-exempt interest, (2) the deductible portion of dividends received (with special rules for dividends from affiliates), and (3) the increase for the taxable year in the cash value of life insurance, endowment, or annuity contracts for which the company owns. This proration rule reflects the fact that reserves are generally funded in part from tax-exempt interest, from deductible dividends, and from other untaxed amounts.

Interest rate —The provision provides that the interest rate is an annual rate for any calendar year to be determined by Treasury based on the corporate bond yield curve (rather than the mid-term rate, as under present law). For this purpose, the corporate bond yield curve means, with respect to any month, a yield curve that reflects the average, for the preceding 25 months, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available. Because the corporate bond yield curve provides for 24-month averaging, the present-law rule providing for 60-month averaging to determine the interest rate is repealed under the provision. It is expected that Treasury will determine a 24-month average for the 24 months preceding the first month of the calendar year for which the determination is made.

Loss payment pattern —The provision extends the periods applicable for determining loss payment patterns. Under the provision, the maximum duration of the loss payment pattern is determined by the aggregate of losses incurred using aggregate experience for each line of business, rather than by a set number of years as under present law.

Under the provision, the 10-year period begins with the accident year that is extended up to a maximum of 15 more years for the lines of business to which the three-year period applies. For lines of business to which the three-year period applies, the amount of losses that would have been treated as paid in the third year after the accident year is treated as paid in that year and each subsequent year in an amount equal to the average of the amounts treated as paid in the first and second years (or, if less, the amount remaining). To the extent these unpaid losses have not been treated as paid before the 18th year after the accident year, they are treated as paid in that 18th year.

Similarly, for lines of business to which the 10-year period applies, the amount of losses that would have been treated as paid in the 18th year following the accident year is treated as paid in that year and each subsequent year in an amount equal to the average of the amounts treated as paid in the seventh, eighth, and ninth years (or, if less, the remaining amount). To the extent these unpaid losses have not been treated as paid before the 25th year after the accident year, they are treated as paid in that 25th year.

Under the provision, the present-law rule providing that in the case of certain "long-tail" lines of business an additional period is extended, but not by more than five additional years, the Treasury determinations are treated as paid in the third year after the accident year and each subsequent year in an amount equal to the average of the amounts treated as paid in the first and second years (or, if less, the amount remaining). To the extent these unpaid losses have not been treated as paid before the 18th year after the accident year, they are treated as paid in that 18th year.

Under the provision, the 18-year period begins with the accident year that is extended up to a maximum of 24 more years for the lines of business to which the three-year period applies. For lines of business to which the three-year period applies, the amount of losses that would have been treated as paid in the third year after the accident year is treated as paid in that year and each subsequent year in an amount equal to the average of the amounts treated as paid in the first and second years (or, if less, the amount remaining). To the extent these unpaid losses have not been treated as paid before the 30th year after the accident year, they are treated as paid in that 30th year.

Like present law, the provision provides that in the case of certain "long-tail" lines of business, an additional period is extended, but not by more than five additional years. The provision does not change the lines of business to which the three-year, 10-year, and 18-year periods, respectively, apply.

Election to use own historical loss payment pattern —The provision repeals the present-law rule permitting a taxpayer to use its own (rather than an aggregate industry-wide) historical loss payment pattern with respect to all lines of business, provided that applicable requirements are met.
payment patterns for accident years ending with calendar year 2018. Any adjustment is spread over eight taxable years, i.e., is included in the taxpayer’s gross income ratably in the first taxable year beginning in 2018 and the seven succeeding taxable years. For taxable years subsequent to the first taxable year beginning in 2018, the provision applies to such unpaid losses and expenses unpaid (i.e., unpaid losses and expenses unpaid at the end of the taxable year preceding the first taxable year beginning in 2018) by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 2018.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with modifications. The corporate bond yield curve means, with respect to any month, a yield curve that reflects the average, for the preceding 60-month period (not 24-month period), of monthly yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available. The present-law three-year period for discounting tax liabilities prescribed by the National Association of Insurance Commissioners for tax purposes generally are based on regulatory rules. More specifically, present law imposes a requirement that the taxpayer make special estimated tax payments in an amount equal to the tax benefit attributable to the additional deduction allowed under the provision. If amounts are included in gross income as a result of a reduction in the taxpayer’s special loss discount account or the liquidation or termination of the taxpayer’s insurance business, and an additional tax is due for any year as a result of the inclusion, then an amount equal to the special estimated tax payments equal to such additional tax is applied against such additional tax. If there is an adjustment reducing the amount of additional tax attributable to the special estimated tax payment, then in lieu of any credit or refund for the reduction, a special estimated tax payment is treated as made in an amount equal to the amount that would otherwise be allowable as a credit or refund.

The amount of the tax benefit attributable to the deduction is to be determined under Treas. Reg. (which have not been promulgated) by taking into account tax benefits that would arise from the carryback of any net operating loss for the year as well as any other tax benefits for the current and carryback years that are to take into account the benefit of filing a consolidated return with another insurance company without regard to the consolidation limitations imposed by section 1503(c).

The taxpayer’s estimated tax payments under section 6655 are to be determined without regard to the additional deduction allowed under this provision and the special estimated tax payments. Legislative history indicates that the conference agreement was intended to apply to determine the amount of special estimated tax payments that may be applied against tax calculated at the corporate alternative minimum tax rate. The special estimated tax payments are not treated as payments of regular tax for purposes of determining the taxpayer’s alternative minimum tax liability.

 Regulations have not been promulgated under section 847.

HOUSE BILL

The provision repeals section 847. Thus, the election to apply section 847, the additional deduction, special loss discount account, special estimated tax payment, and refundable amount rules of present law are eliminated. The entire balance of an existing account is included in income of the taxpayer for the first taxable year beginning after 2017, and the entire amount of existing special estimated tax payments are applied against the amount of additional tax attributable to this inclusion. Any special estimated tax payments in excess of the corporate rate tax rate are treated as estimated tax payments under section 6655.

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

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

9. Computation of life insurance tax reserves (sec. 13517 of the Senate amendment and sec. 807 of the Code)

PRESENT LAW

In general

In determining life insurance company taxable income, a life insurance company includes in gross income any net decrease in reserves for purposes of determining the net increase in reserves,2622 Methods for determining reserves for tax purposes generally are based on reserves prescribed by the National Association of Insurance Commissioners for purposes of financial reporting under State regulatory rules.4,5; however, a reserve that is calculated for the net increase or net decrease in reserves, six items are taken into

180Sec. 847.

1822Sec. 807.
account. These are (1) life insurance reserves; (2) unearned premiums and unpaid losses included in total reserves; (3) amounts that are discounted at interest to satisfy obligations of insurance and annuity contracts that do not involve life, accident, or health contingencies when the computation is made; (4) dividend accumulations and other increases in certain reserves of a life insurance company, the amount of the life insurance reserves for any contract (other than certain variable contracts) is the greater of (1) the net surrender value of the contract, or (b) the separate-account reserve amount under section 817 for the contract, plus (2) 92.87 percent of the excess (if any) of the amount determined using the tax reserve method otherwise applicable to the contract as of the date the reserve is determined over the amount determined in (1). In no event shall the reserves exceed the amount which would be taken into account in determining statutory reserves. No amount or item shall be taken into account more than once in determining any reserve under this law. No deduction for asset adequacy or deficiency reserves is allowed. The amount of life insurance reserves for each annual statement reserves. The provision provides reserve rules for supplemental benefits and retains present-law rules regarding certain contracts issued by foreign branches of domestic life insurance companies.

Effective date.—The proposal applies to taxable years beginning after December 31, 2017. For the first taxable year beginning after December 31, 2017, the difference in the amount of the reserve with respect to any contract at the end of the preceding taxable year and the amount of the reserve determined as if the proposal had applied for that year is taken into account for each of the eight taxable years following that preceding year, one-eighth per year.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that, instead of 92.87 percent, the statutory reserve is 92.81 percent. More specifically, the provision provides that for purposes of determining the deduction for income taxes of life insurance companies, the amount of the life insurance reserves for any contract (other than certain variable contracts) is the greater of (1) the net surrender value of the contract (if any), or (2) 92.81 percent of the amount determined using the tax reserve method otherwise applicable to the contract as of the date the reserve is determined over the amount determined in (1). In no event shall the reserves exceed the amount which would be taken into account in determining statutory reserves. As under present law, no deduction for asset adequacy or deficiency reserves is allowed. The amount of life insurance reserves may not exceed the annual statement reserves. A no-double-counting rule provides that no amount or item is taken into account more than once in determining any reserve under subsection L of the Code. For example, an amount including a life insurance contract and a life insurance contract, the amount of the life insurance reserves for any contract (other than certain variable contracts) is the greater of (1) the net surrender value of the contract, or (b) the separate-account reserve amount under section 817 for the contract, plus (2) 92.81 percent of the excess (if any) of the amount determined using the tax reserve method otherwise applicable to the contract as of the date the reserve is determined over the amount determined in (1). In no event shall the reserves exceed the amount which would be taken into account in determining statutory reserves. As under present law, no deduction for asset adequacy or deficiency reserves is allowed.

The provision provides rules for supplemental benefits and retains present-law rules regarding certain contracts issued by foreign branches of domestic life insurance companies. The provision requires the Secretary to provide for reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balance and closing balance or reserves and with respect to the method of computing reserves and the method of computing income, for this purpose, the Secretary may require that a life insurance company (including an affiliated group filing a consolidated return that includes a life insurance company) be required to report each of the line item elements of each separate account by combining reserves and other separate accounts and the general account, and to report the combined amounts on a line-by-line basis on the taxpayer’s return. Similarly, the Secretary may in such guidance provide that reporting on a separate account by separate account basis is generally not permitted. Under existing regulatory authority, if the Secretary determines it is necessary in order to carry out and enforce this provision, the Secretary may require e-filing or comparable filing of this information in an electronic machine readable form, and may require that the taxpayer provide its annual statement via a link, electronic copy, or other similar means.

Effective date.—The provision applies to taxable years beginning after December 31, 2017. For the first taxable year beginning after December 31, 2017, the difference in the amount of the reserve with respect to any contract at the end of the preceding taxable year and the amount of such reserve determined as if the proposal had applied for that year is taken into account for each of the eight taxable years following that preceding year, one-eighth per year.

Refutation of rules for life insurance proration for purposes of determining the dividends received deduction (sec. 13518 of the Senate amendment and sec. 812 of the Code).

Present law
Reduction of reserve deduction and dividends received deduction to reflect untaxed income
A life insurance company is subject to proration rules in calculating life insurance company taxable income. The proration rules reduce the company’s deductions, including items and dividends received deductions, if the life insurance company has tax-exempt income, deductible dividends received, or other similar untaxed income items, because deductible reserve increases can be viewed as being funded proportionately out of taxable and tax-exempt income.

Under the proration rules, the net increase and net decrease in reserves are computed by reducing the ending balance of the reserve items by the policyholders’ share of tax-exempt income.

Similarly, under the proration rules, a life insurance company is allowed a dividends-received deduction for dividends from nonaffiliates only in proportion to the company’s share of such dividends, but not for the policyholders’ share. Fully deductible dividends from affiliates are excluded from the application of the proration formula, if such dividends are not themselves distributions from tax-exempt interest or tax-exempt income, and the dividends are fully deductible if received directly by the taxpayer. In addition, the proration rule includes in prorated amounts the increase for the taxable year in policy cash values of life...
insurance policies and annuity and endowment contracts.

**Company's share and policyholder's share**

The life insurance company proration rules provide that the company’s share, for this purpose, is the greater of the following:

- The greater of the applicable Federal interest rate or the prevailing State assumed interest rate, for purposes of determining separate account reserves for variable contracts.
- The corporation proration rule for reducing dividends.
- The recipient corporation owns.
- The proportion of the overall dividends received deduction depends on the percentage of the stock of the distributing corporation that the recipient owns.
- The taxpayer’s holding period is reduced for periods during which the net decrease in reserves, and deducts a portion of policyholders share and policyholder’s share of the net investment income for the year for purposes of financial reporting.
- Limitation on dividends received deduction under section 246(c)(4)
- The dividends received deduction is not allowed with respect to stock held for 45 days or less during a 91-day period beginning 45 days before the ex-dividend date, or (2) the extent the taxpayer is under an obligation to make related payments with respect to positions in substantially similar or related property. The taxpayer’s holding period is reduced for periods during which its risk of loss is reduced.
- Effective date—The provision applies to taxable years beginning after December 31, 2017.

**Present law**

In the case of an insurance company, specified policy acquisition expenses, such as the $3.1 million of specified policy acquisition expenses with a phase-out, the phase-out reduces the amount amortized over 60 months by the excess of the insurance company’s specified policy acquisition expenses for the taxable year over $10 million.

Specified policy acquisition expenses are determined as that portion of the insurance company’s general deductions for the taxable year that does not exceed a specific percentage of the net premiums for the taxable year on each of three categories of insurance contracts. For annuity contracts, the percentage is 1.75; for group life insurance contracts, the percentage is 2.05; and for all other specified insurance contracts, the percentage is 7.7.

With certain exceptions, a specified insurance contract is any life insurance, annuity, or noncancellable accident and health insurance contract or combination thereof.

**Senate amendment**

The provision extends the amortization period for specified policy acquisition expenses from a 120-month period to the 180-month period beginning with the first month in the second half of the taxable year. The provision extends the special rule providing for the 180-month amortization of the first $5 million of specified policy acquisition expenses with a phase-out. The phase-out reduces the amount amortized over 60 months by the excess of the insurance company’s specified policy acquisition expenses for the taxable year over $10 million.

**Conference agreement**

The conference agreement follows the Senate amendment.
insurance contract paid by reason of the death of the insured.\textsuperscript{999}

Under rules known as the transfer for value rules, if a life insurance contract is sold for consideration, the amount paid by reason of the death of the insured that is excludable from income must be included in the basis of the contract. Thus, for example, if a person buys a life insurance contract, and the consideration he pays is combined with his subsequent payments on the policy, the amount received by the insurer exceeds the amount paid by reason of the death of the insured, and the excess is long-term capital gain. Gain on surrender to the life insurance company the IRS disregards the cost of insurance.\textsuperscript{1001} There is no gain or loss on the transfer of a life insurance contract. The gain or loss on the sale of a life insurance contract is ordinary income. In the case of sale of a life insurance contract, the IRS ruled that the insured’s (seller’s) basis is reduced by the cost of insurance, and the gain on sale of the contract is ordinary income to the extent of the amount that would be recognized as ordinary income if the contract were surrendered (the “inside buildup”), and any excess is long-term capital gain. Gain on sale of a term life insurance contract (without cash surrender value) is long-term capital gain under the rules.\textsuperscript{1002}

In Revenue Ruling 2009–13,\textsuperscript{1003} the IRS ruled that income recognized under section 72(e) on surrender of a life insurance company’s obligations under a life insurance contract with cash value is ordinary income. In the case of sale of a cash value life insurance contract, the IRS ruled that the insured’s (seller’s) basis is reduced by the cost of insurance, and the gain on sale of the contract is ordinary income to the extent of the amount that would be recognized as ordinary income if the contract were surrendered (the “inside buildup”), and any excess is long-term capital gain. Gain on sale of a term life insurance contract (without cash surrender value) is long-term capital gain under the rules.\textsuperscript{1002}

No provision.\textsuperscript{999}

In general

The provision imposes reporting requirements in the case of the purchase of an existing life insurance contract in a reportable policy sale and imposes reporting requirements on the payor in the case of the payment of reportable death benefits. The provision sets forth rules for determining the basis of the life insurance contract.\textsuperscript{1006} The provision modifies the transfer for value rules in a transfer of an interest in a life insurance contract in a reportable policy sale.\textsuperscript{1007}

Reporting requirements for acquisitions of life insurance contracts

Reporting upon acquisition of life insurance contract

The reporting requirement applies to every person who acquires a life insurance contract, or any interest in a life insurance contract, or any interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured (apart from the acquirer’s interest in the life insurance contract). An indirect acquisition includes the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract. Under the reporting requirement, the buyer reports information about the purchase to the IRS, to the insurance company, and to the seller. The information reported by the buyer about the purchase is (1) the buyer’s name, address, and taxpayer identification number (“TIN”), (2) the date of the reportable policy sale, (3) the date of the sale, (4) the name of the issuer, and (5) the amount of each payment. The statement the buyer provides to any issuer of a life insurance contract is not required to include the amount of the payment or payments for the purchase of the contract.

Reporting of seller’s basis in the life insurance contract

On receipt of a report described above, or on any notice of the transfer of a life insurance contract to a foreign person, the insurer is required to report to the IRS and to the seller (1) the name, address, and TIN of the seller or the transferor to a foreign person, (2) the date of the reportable sale, (3) the date of the reportable policy sale, (4) the policy number of the contract, (5) the payor’s estimate of the buyer’s basis in the contract, and (6) the payor’s estimate of the seller’s basis in the contract. A reportable death benefit means an amount paid by reason of the death of the insured under a life insurance contract that has been transferred in a reportable policy sale.

For purposes of these reporting requirements, a payment means the amount of cash and policy sales occurring of an December 31, 2017, and reportable death benefits paid after December 31, 2017. The clarification of the basis rules for life insurance and annuity contracts is effective for transactions entered into after August 25, 2009. The modification of exception to the transfer for value rules is effective for transfers occurring after December 31, 2017.

CONFERENCES AGREEMENT

The conference agreement follows the Senate amendment.

I. Compensation\textsuperscript{1005}

1. Modification of limitation on excessive employee remuneration (sec. 3801 of the House bill, sec. 13801 of the Senate amendment, and sec. 162(m) of the Code)

PRESENT LAW

In general

An employer generally may deduct reasonable compensation for personal services as an ordinary and necessary business expense. Section 162(m) provides an explicit limitation on the deductibility of compensation expenses in the case of publicly traded corporate employers. The otherwise allowable deduction for compensation with respect to a covered employee of a publicly held corporation\textsuperscript{1006} is limited to no more than $1 million per year.\textsuperscript{1007} The deduction limitation applies...
when the deduction attributable to the compensation would otherwise be taken.

Covered employees
Section 162(m) defines a covered employee as (1) the chief executive officer of the corporation, (2) any other officer acting in that capacity as of the close of the taxable year, and (2) any employee whose total compensation is required to be reported to shareholders pursuant to the Securities Exchange Act of 1934 ("Exchange Act") by reason of being among the corporation's four most highly compensated officers for the taxable year (other than the chief executive officer).1008 Treasury regulations under section 162(m) provide that whether an employee is the chief executive officer or among the three most highly compensated officers should be determined pursuant to the executive compensation disclosure rules promulgated under the Exchange Act. In 2006, the Securities and Exchange Commission amended certain rules relating to executive compensation, including which officers' compensation must be disclosed under the Exchange Act. Under the new rules, such officers are (1) the principal executive officer (or an individual acting in such capacity), (2) the principal financial officer (or an individual acting in such capacity), and (3) the three most highly compensated officers, other than the principal executive officer or principal financial officer. In response to the Securities and Exchange Commission's new disclosure rules, the Internal Revenue Service updated guidance on identifying which employees are covered by section 162(m).1009 The new guidance provides that "covered employee means any corporation who is (1) as of the close of the taxable year, the principal executive officer (or an individual acting in such capacity) defined in reference to the Exchange Act among the three most highly compensated officers for the taxable year (other than the principal executive officer or principal financial officer), again defined by reference to the Exchange Act. Thus, under current guidance, only four employees are covered under section 162(m) for any taxable year. Under Treasury regulations, the requirement that the individual meet the criteria as of the last day of the taxable year applies to both the principal executive officer and the three highest compensated officers.

Definition of publicly held corporation
For purposes of the deduction disallowance of section 162(m), a publicly held corporation means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.1010 All U.S. publicly traded companies are subject to this registration requirement, including those with foreign affiliates. A foreign company publicly traded through American depositary receipts ("ADRs") is also subject to this registration requirement. If more than 50 percent of the issuer's outstanding voting securities are held, directly or indirectly, by residents of the United States and either (i) the majority of the executive officers are (or a United States citizen or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States. Other foreign companies are not subject to the registration requirement. Re: Remuneration subject to the deduction limitation
In general
Unless specifically excluded, the deduction limitation applies to all remuneration for services, including cash and the cash value of all remuneration (including benefits) paid in the form of a taxable retirement plan (other than the retirement plan of a tax-exempt organization) to the principal executive officer, among the four most highly compensated officers for the taxable year, the deduction limitation applies to all compensation not explicitly excluded from the deduction limitation, regardless of whether the compensation is for services as a covered employee and regardless of when the compensation was finally paid. If the per-deduction cap is reduced by excess parachute payments (as defined in section 280G) that are not deductible by the corporation.1011 Certain types of compensation are not subject to the deduction limit and are not taken into account in determining whether other compensation exceeds $1 million. The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain requirements are met; (3) payments to a tax-favored retirement plan (including salary reduction contributions); (4) amounts that are excludable from the executive's gross income (such as employer-provided retirement benefits and miscellaneous fringe benefits); and (5) any remuneration payable under a written binding contract which was in effect on February 17, 1986.1012 Remuneration does not include compensation for which a deduction is allowable after a covered employee ceases to be a covered employee. (Thus, the deduction 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 compensation is deferred until after termination of employment.

Performance-based compensation
Compensation qualifies for the exception for performance-based compensation only if (1) it is paid solely on account of the attainment of one or more performance goals, (2) the performance goals are established by a compensation committee of the board of directors or two or more outside directors,1013 (3) the material terms under which the compensation is to be paid, including the performance goals, are disclosed to and approved by the shareholders in a separate majority-approved vote prior to payment, and (4) prior to payment, the compensation committee certifies that the performance goals and any other material terms were in fact satisfied. Compensation (other than stock options or other stock appreciation rights ("SARs")) is not treated as performance-based if it depends on factors other than corporate performance.

House bill
Definition of covered employee
The provision revises the definition of covered employee to include both the principal executive officer and the principal financial officer. Further, an individual is a covered employee if the individual holds one of these positions at any time during the taxable year. The provision also defines as a covered employee the three (rather than four) most highly compensated officers for the taxable year (other than the principal executive officer or principal financial officer) who are required to be reported on the company's proxy statement (i.e., the statement required to be filed with the Securities and Exchange Commission pursuant to executive compensation disclosure rules promulgated under the Exchange Act) for the taxable year (or who would be required to be reported on such a statement for a company not required to make such a report to shareholders). This includes such officers of a corporation not required to file a proxy statement (e.g., a company that is not within the revised definition of a publicly held corporation, as well as such officers of a publicly traded corporation that would otherwise have been required to file a proxy statement for the year (for example, but for the fact that the corporation delisted its securities or underwent a transaction that resulted in the nonapplication of the proxy statement requirement). In addition, if an individual is a covered employee with respect to a corporation for a taxable year beginning on or after December 31, 2016, the individual remains a covered employee for all future years. Thus, an individual remains a covered employee with respect to compensation includible in income for subsequent years, including for years during which the individual is no longer employed by the corporation and years after the individual has died. Compensation does not fail to be compensation with respect to a covered employee and thus subject to the deduction limit for a taxable year merely because the compensation is includible in the income of, or paid to, another individual, such as compensation paid to a beneficiary after the employee's death, or to a former spouse pursuant to a domestic relations order.

Definition of publicly held corporation
The provision extends the applicability of section 162(m) to include all domestic publicly traded corporations and all foreign companies publicly traded through ADRs. The proposed definition may include certain additional corporations that are not publicly traded such as large private G or S corporations.

Performance-based compensation and commissions exceptions
The provision eliminates the exceptions for performance-based compensation and commissions from the definition of compensation subject to the deduction limit. Thus,
such compensation is taken into account in determining the amount of compensation with respect to a covered employee for a taxable year that exceeds $1 million and is thus not deductible.

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

S. 2. Excise tax on excess tax-exempt organization executive compensation (sec. 3802 of the House bill, sec. 13602 of the Senate amendment, and sec. 4980 of the Code)

Taxable employers and other service recipients generally may deduct reasonable compensation expenses. However, in some cases, compensation in excess of specific levels is not deductible. A publicly held corporation generally cannot deduct more than $1 million of compensation as related to a tax-exempt organization which is provided pursuant to a written binding contract which was in effect on November 2, 2017. For example, suppose a covered employee was hired by XYZ Corporation on October 31, 2017. Assume further that the terms of the written employment contract is that the executive is eligible to participate in the ‘XYZ Corporation Executive Deferred Compensation Plan’ in accordance with the terms of the plan. Assume further that the terms of the plan provide for participation after 6 months of employment, amounts payable under the plan are subject to discretion, and the corporation does not have the right to amend materially the plan or terminate the plan (except on a prospective basis before any services are performed with respect to the applicable period for which such compensation is to be paid). Provided that the conditions of the binding contract exception (the plan itself is written), payments under the plan are grandfathered, even though the employee was not actually a participant in the plan on November 2, 2017.

The fact that a plan was in existence on November 2, 2017 is not by itself sufficient to qualify the plan for the exception for binding written contracts. The exception for remuneration paid pursuant to a binding written contract ceases to apply to amounts paid after there has been a material modification to the terms of the contract. The exception does not apply to new contracts entered into or renewed after November 2, 2017. For purposes of this rule, any contract that is entered into on or before November 2, 2017 and that is renewed after that date is a new contract. Edwards, entered into on the day the renewal takes effect. A contract that is terminable or cancelable unconditionally at will by either party to the contract, without the consent of the other, or by both parties to the contract, is treated as a new contract entered into on the date any such termination or cancellation, if made, would be effective. However, a new contract is not treated as so terminable or cancelable if it can be terminated or cancelled only by terminating the employment relationship of the covered employee.

The Senate amendment follows the House bill, except that it adds a transition rule for remuneration which is provided pursuant to a written binding contract which was in effect on November 2, 2017 and which was not modified in any material respect on or after such date.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The purpose of the transition rule, compensation paid pursuant to a plan qualifies for this exception provided that the right to participate in the plan is part of a written binding contract with the covered employee in effect on November 2, 2017. For example, suppose a covered employee was hired by XYZ Corporation on October 31, 2017. Assume the terms of the written employment contract is that the executive is eligible to participate in the ‘XYZ Corporation Executive Deferred Compensation Plan’ in accordance with the terms of the plan. Assume further that the terms of the plan provide for participation after 6 months of employment, amounts payable under the plan are subject to discretion, and the corporation does not have the right to amend materially the plan or terminate the plan (except on a prospective basis before any services are performed with respect to the applicable period for which such compensation is to be paid). Provided that the conditions of the binding contract exception (the plan itself is written), payments under the plan are grandfathered, even though the employee was not actually a participant in the plan on November 2, 2017.

The fact that a plan was in existence on November 2, 2017 is not by itself sufficient to qualify the plan for the exception for binding written contracts. The exception for remuneration paid pursuant to a binding written contract ceases to apply to amounts paid after there has been a material modification to the terms of the contract. The exception does not apply to new contracts entered into or renewed after November 2, 2017. For purposes of this rule, any contract that is entered into on or before November 2, 2017 and that is renewed after that date is a new contract. Edwards, entered into on the day the renewal takes effect. A contract that is terminable or cancelable unconditionally at will by either party to the contract, without the consent of the other, or by both parties to the contract, is treated as a new contract entered into on the date any such termination or cancellation, if made, would be effective. However, a new contract is not treated as so terminable or cancelable if it can be terminated or cancelled only by terminating the employment relationship of the covered employee.

Under the provision, an excise tax is imposed with respect to the aggregate present value of a ‘parachute payment’ which equals or exceeds three times the ‘base amount’ of a covered employee. The ‘base amount’ is the average annualized compensation includible in the individual’s gross income for the five taxable years ending before the date of the executive’s separation from employment. Provided that the conditions of the binding contract exception are met (e.g., the plan itself is written), payments under the plan do not constitute a ‘parachute payment.’ The excise tax applies as a result of an excess parachute payment, even if the covered employee’s remuneration does not exceed $1 million.

For purposes of the provision, a ‘covered employee’ is an employee (including any former employee) of an applicable tax-exempt organization for a taxable year, and (2) any excess parachute payment (which relates solely to separation pay) paid by the applicable tax-exempt organization to a covered employee. Accordingly, the excise tax applies as a result of an excess parachute payment, even if the covered employee’s remuneration does not exceed $1 million.

Under the provision, an excise tax equal to 20 percent of the sum of (1) any remuneration (other than an excess parachute payment) paid to a covered employee by an applicable tax-exempt organization for a taxable year; and (2) any excess parachute payment, of not more than 10 percent of the base amount which equals or exceeds three times the ‘base amount’ of a covered employee. The ‘base amount’ is the average annualized compensation includible in the individual’s gross income for the five taxable years ending before the date of the executive’s separation from employment. The excise tax applies as a result of an excess parachute payment, even if the covered employee’s remuneration does not exceed $1 million.

For purposes of the provision, a ‘covered employee’ is an employee (including any former employee) of an applicable tax-exempt organization if the employee is one of the five highest compensated individuals of the organization for the taxable year or was a covered employee of the organization (or a predecessor) for any preceding taxable year beginning after December 31, 2016. An ‘applicable tax-exempt organization’ is an organization exempt from tax under section 501(a), an exempt farmers’ cooperative, a Federal, State or local governmental entity with excludable income, or a political organization.

Remuneration means wages as defined in section 3401(a), tax withholding purposes, section 7421(a), but does not include any designated Roth contribution. Remuneration of a covered employee includes any remuneration paid with respect to employment of the covered employee by any person or governmental entity related to the applicable tax-exempt organization. A person or governmental entity is treated as related to the applicable tax-exempt organization if the person or governmental entity (1) controls, or is controlled by, the organization, (2) is controlled by one or more persons that control the organization, (3) is a supported organization during the taxable year with respect to the organization, (4) is a supporting organization during the taxable year with respect to the organization, or (5) in the case of a voluntary employees’ beneficiary association (‘VEBA’), establishes, maintains, or makes contributions to the VEBA. However, remuneration of a covered employee that is not deductible by reason of the $1 million limit on deductible compensation is not taken into account for purposes of the provision.

Under the provision, an excess parachute payment is the amount by which any parachute payment exceeds the portion of the parachute payment allocated to the payment. A parachute payment is a payment in the nature of compensation to (or for the benefit of) a covered employee if the payment is contingent on the employee’s separation from employment and the aggregate present value of all such payments equals or exceeds three times the base amount. The base amount is the average annualized compensation includible in the covered employee’s gross income for the five taxable years ending before the date of the employee’s separation from employment. Parachute payments include payments under a qualified retirement plan, a simplified employee pension plan, a simple retirement account, a tax-deferred annuity, or an eligible deferred compensation plan of a State or local government employer.

The employer of a covered employee is liable for the excise tax without regard to whether the payor is a covered employer. If remuneration of a covered employee from more than one employer is taken into account in determining the excise tax, each employer is liable for the tax on the same amount that bears the same ratio to the total tax as the remuneration paid by that employer bears to the remuneration paid by all employers to the covered employee.

Effective date.—The provision is effective for taxable years beginning after December 31, 2017.
required to be included in gross income under section 457(f).

**CONFERENCE AGREEMENT**

The conference agreement follows the Senate amendment with modifications. Under the conference agreement, the tax imposed by the tax law is equal to corporate tax rate, which is 21 percent under the conference agreement. In addition, for purposes of the requirement to treat otherwise tax-free amounts as income when services to the remuneration are no longer subject to a substantial risk of forfeiture, the conference agreement clarifies that “substantial risk of forfeiture” is defined under section 457(f)(3)(B) which applies to eligible deferred compensation subject to section 457(f). Accordingly, the tax imposed by the tax law is equal to the amount of remuneration that is vested (and any increases in such value or vested remuneration) under this definition, even if it is not yet received.

The conference agreement exempts compensation paid to employees who are not highly compensated employees (within the meaning of section 414(q)) from the definition of parachute payment, and also exempts compensation attributable to medical services of certain qualified medical professional services of the employer stock transferred to an employee.

**Income tax treatment of employer stock transferred to an employee**

Pursuant to the conference agreement, employer stock transferred to an employee is generally subject to tax at the time that the employee’s right to the stock is substantially vested. 1039 An employee’s right to the stock is substantially vested if the employee can transfer the stock at any time and the amount (if any) paid for the stock is at least $100,000. If the right to the stock is substantially vested, the amount includable in the employee’s income is equal to the fair market value of the stock as of the date of transfer.

**3. Treatment of qualified equity grants (sec. 3803 of the House bill, sec. 13603 of the Senate amendment, and secs. 83, 3401, and 6051 of the Code)**

**PRESENT LAW**

**Income tax treatment of employer stock transferred to an employee**

Specific rules apply to property, including employer stock, transferred to an employee in connection with the performance of services.1037 These rules govern the amount and timing of income inclusion by the employee and the amount and timing of the employer’s compensation deduction.

Under these rules, an employee generally must recognize income in the taxable year in which the employee’s right to the stock is substantially vested (or is subject to a substantial risk of forfeiture, whichever occurs earlier). 1038 An employee’s right to the stock is substantially vested if the employee transfers the stock at any time and the amount paid for the stock is at least $100,000. If the right to the stock is substantially vested, the amount includable in the employee’s income is equal to the fair market value of the stock as of the date of transfer.

**Under section 457(f)**

1038 Sec. 457(f) applies to an “ineligible” deferred compensation plan of a State or local government or a tax-exempt employer (that is, a plan that does not meet the requirements to be an eligible plan under section 457(b)). Under an ineligible plan, deferred amounts are treated as nonqualified deferred compensation attributable to the performance of services. If the employee’s right to the stock is substantially vested, the amount includable in the employee’s income is equal to the fair market value of the stock as of the date of transfer. 1039 An employee’s right to the stock is substantially vested if the employee transfers the stock at any time and the amount paid for the stock is at least $100,000. If the right to the stock is substantially vested, the amount includable in the employee’s income is equal to the fair market value of the stock as of the date of transfer.
information for a calendar year, including taxable compensation, FICA wages, and withheld income and FICA taxes. In addition, information relating to certain non-taxable compensation arrangements is required to be reported, such as stock options disposed of in connection with retirement and health plan contributions. The statement, made on Form W-2, Wage and Tax Statement, must be provided to each employee by January 31 of the succeeding year.

Statutory options

Two types of statutory options apply with respect to the stock transferred on exercise of a statutory option and the employee later disposed of the stock: (1) nonqualified statutory options ("10Es") and (2) options provided under an employee stock purchase plan ("ESPP"). Stock received pursuant to a statutory option is subject to special rules, rather than the rules for nonqualified options, discussed above. No amount is includible in an employee’s income on the grant, vesting, or exercise of a statutory option.

In addition, generally no deduction is allowed to the employer with respect to the option or the stock transferred to an employee.

If a holding requirement is met with respect to the stock transferred on exercise of a statutory option and the employee later disposes of the stock, the employee’s gain is generally treated as capital gain rather than ordinary income. Under the holding requirement, the employee must not dispose of the stock within two years after the date the option is granted and also must not dispose of the stock within one year after the date the option is exercised. If a disposition occurs before the end of the required holding period (a “disqualifying disposition”), the employee recognizes ordinary income in the taxable year in which the disqualifying disposition occurs. The employer may follow a corresponding deduction in the taxable year in which such disposition occurs. The amount of ordinary income recognized when a disposition occurs generally equals the fair market value of the stock on the date of exercise (that is, the date the stock was transferred to the employee) less the exercise price.

Employment taxes do not apply with respect to the grant or vesting of a statutory option, transfer of stock pursuant to the option, or a disposition (including a disqualifying disposition) of the stock. However, certain special reporting requirements apply.

Nonqualified deferred compensation

Compensation is generally includible in an employee’s income when paid to the employee. However, in the case of a non-qualified deferred compensation plan, unless the arrangement either is exempt from or meets the requirements of section 409A, the amount of deferred compensation is first includible in income for the taxable year when not subject to a substantial risk of forfeiture. If an arrangement includes exercise of a statutory option that will not occur until a later year.

In general

The provision allows a qualified employee to elect to defer for income tax purposes, the inclusion in income of the amount of income attributable to qualified stock transferred to the employee by the employer. An election to defer income inclusion (“inclusion deferral election”) with respect to qualified stock may not be made later than 30 days after the first time the employee’s right to the stock is substantially vested or is transferable, whichever occurs earlier.

If an employee makes an inclusion deferral election with respect to qualified stock, then (1) the date the employee first becomes an excluded employee (as described below); (2) the first date on which any of the stock is vested in the employee becomes readily tradable on an established securities market; and (3) the date five years after the first date the employee’s right to the stock becomes substantially vested; or (5) the date on which the employee revokes her inclusion deferral election.

This provision applies in a manner similar to the manner in which a section 83(b) election is made. The provision clarifies that Section 83 (other than the provision that controls a section 83(b) election) does not apply to nonvested stock that is includible as a result of a section 83(b) election. The provision applies for purposes of the alternative minimum tax. See the section 409A provisions that apply to nonqualified deferred compensation.

An employee may not make an inclusion deferral election for an arrangement providing RSUs in respect to qualified stock if, in the preceding calendar year, the corporation purchased any of its outstanding stock unless at least 25 percent of the total dollar amount of the stock so purchased is stock with respect to which an inclusion deferral election is in effect (“deferred stock”) and the determination of which individuals from whom deferred stock is purchased is made on a reasonable basis.

For purposes of this requirement, stock purchased from an individual is not treated as deferred stock (and the purchase is not treated as a purchase of deferred stock) if, immediately after the purchase, the individual holds any deferred stock with respect to which an inclusion deferral election has been in effect for a longer period than the election with respect to the purchased stock.

In general, the price paid in purchase requirement, an individual’s deferred stock with respect to which an inclusion deferral election has been in effect for the longest period must be purchased from an individual that has deferred stock outstanding as of the beginning of any calendar year and that purports to own any of its outstanding stock during the calendar year must report on its income tax return for the taxable year in which, or with which, the calendar year ends the total dollar amount of the outstanding stock purchased during the calendar year and such other information as the Secretary may require for purposes of administering this requirement.

A qualified employee may make an inclusion deferral election with respect to qualified stock attributable to a statutory option arrangement if that arrangement provides for an arrangement under which an employee may receive qualified deferred compensation that is treated as a statutory option and the rules relating to such arrangement that has deferral stock outstanding as of the beginning of any calendar year and that purports to own any of its outstanding stock during the calendar year must report on its income tax return for the taxable year in which, or with which, the calendar year ends the total dollar amount of the outstanding stock purchased during the calendar year and such other information as the Secretary may require for purposes of administering this requirement.

Deferred income inclusion applies also for purposes of the employer’ deduction of the amount of income attributable to the qualified stock. That is, if the entity makes an inclusion deferral election, the employer’s inclusion deferral election, the employer’s income tax return for the taxable year in which, or with which, the calendar year ends the total dollar amount of the outstanding stock purchased during the calendar year and such other information as the Secretary may require for purposes of administering this requirement.

Deferred income inclusion applies also for purposes of the employer’s deduction of the amount of income attributable to the qualified stock.
this purpose, in general, the determination of rights and privileges with respect to stock is determined in a similar manner as provided under the present-law ESPP rules.\textsuperscript{1072} However, qualified stock will be treated as having the same rights and privileges to receive qualified stock solely because the number of shares available to all employees under any ESPP with respect to a calendar year is not equal in amount, provided that the number of shares available to each employee is more than a de minimis amount. In addition, rights and privileges with respect to the qualified stock are treated for this purpose as the same as rights and privileges with respect to the settlement of an RSU.\textsuperscript{1073} For purposes of the provision, corporations that are members of the same controlled group\textsuperscript{1074} are treated as one corporation.

**Notice, withholding and reporting requirements**

Under the provision, a corporation that transfers qualified stock to a qualified employee must provide a notice to the qualified employee at the time (or a reasonable period before the employee's right to the qualified stock is substantially vested) and (2) that, if the employee makes an inclusion deferral election, the amount of income required to be included at the end of the deferral period will be based on the value of the stock at the time the employee's right to the stock first becomes substantially vested, notwithstanding whether the value of the stock has declined during the deferral period (including whether the value of the stock has declined below the employee's tax liability with respect to such stock), and the amount of income to be included at the end of the deferral period will be subject to withholding as provided under the provision, as well as of the employee's responsibilities with respect to required withholding. Failure to provide the notice may result in the imposition of a penalty of $100 for each failure, subject to a maximum penalty of $10,000,000 for all failures during any calendar year.

An inclusion deferral election applies only for income tax purposes. The application of section 83(i) and FICA tax to the deferred compensation is not equal in amount, provided that the value of the stock has declined below the employee's tax liability with respect to such stock, and the amount of income to be included at the end of the deferral period will be subject to withholding as provided under the provision, as well as of the employee's responsibilities with respect to required withholding. Failure to provide the notice may result in the imposition of a penalty of $100 for each failure, subject to a maximum penalty of $10,000,000 for all failures during any calendar year.

For the taxable year for which income subject to an inclusion deferral election is required to be included in income by the employee, the portion of the amount required to be included in income as wages with respect to which the employer is required to withhold income tax at a rate not less than the top marginal rate applicable to individual taxpayers.\textsuperscript{1075} The employer must report on Form W-2 the amount of income covered by an inclusion deferral election (1) for the year of deferral and (2) for the year the income is required to be included in income by the employee. In addition, for any calendar year, the employer must report on Form W-2 the aggregate amount of income covered by inclusion deferral elections, determined as of the close of the calendar year.

**Effective date.**—The provision generally applies with respect to stock transferred to employees on or after December 31, 2017. Under the transition rule, until the Secretary (or the Secretary's delegate) issues regulations or other guidance implementing the 80-percent and employer notice requirements under the provision, a corporation will be treated as complying with those requirements (respectively) if it complies with a reasonable good faith interpretation of the requirements. The penalty for a failure to provide the notice required under the provision applies to failures after December 31, 2017.

**SENATE AMENDMENT**

The Senate amendment is the same as the House bill, except that, for purposes of determining corporations that are members of the same controlled group, one corporation, the definition of controlled group under section 414(b) applies.

**CONFERENCE AGREEMENT**

The conference agreement follows the Senate amendment with modifications. The conference agreement clarifies that (1) when an inclusion deferral election is made with respect to stock transferred under an ESPP, the provision is not considered an ESPP, such that stock transferred under an inclusion deferral election is made in connection with the exercise of both ESPPs and ISOs, the options are not treated as statutory options but rather as non-qualified stock options for FICA purposes (in addition to being subject to section 83(i) for income tax purposes), (2) an excluded employee includes an individual who first becomes a 1 percent owner or one of the 4 highest-compensated officers in a taxable year, notwithstanding that such individual may not have been among such categories for the 10 preceding taxable years, (3) the requirement that 80 percent of all applicable employees be granted stock options or restricted stock units with the same rights and privileges cannot be satisfied in a taxable year by granting a combination of stock options and RSUs, and instead all such employees must either be granted stock options or be granted restricted stock units for that year, and (4) the exception from treatment as a nonqualified deferred compensation plan for purposes of section 409A applies solely with respect to an employee who may receive qualified stock. It is intended that the requirement that 80 percent of all applicable employees be granted stock options or restricted stock units apply consistently to eligible employees, whether they are new hires or existing employees. Additionally, it is intended that the limited circumstances outlined in section 3.2(c)(3) and applicable regulations apply with respect to their application. The determination of whether stock becomes transferrable or is no longer subject to a substantial risk of forfeiture for example, income inclusion cannot be delayed due to a lock-up period as a result of an initial public offering. Finally, that the transition rule provided with respect to compliance with the 80-percent and employer notice requirements not be expanded beyond these specific items.
4. Increase in excise tax rate for stock compensation of insiders in expatriated corporations (sec. 13604 of the Senate amendment and sec. 4985 of the Code)

PRESENT LAW

Income tax treatment of employee stock compensation

In general

Employers may grant various forms of stock compensation to employees, including statutory options, restricted stock, restricted stock units, and stock appreciation rights. The tax treatment of these various forms of stock compensation depends on the specific terms and conditions of the arrangement and applicable rules.

Stock compensation treated as property transferred in connection with the performance of services

Section 83 generally governs the taxation of transfers of any property in connection with the performance of services by any service provider. Typically, this encompasses the transfer of stock to an employee which is subject to conditions that amount to a substantial risk of forfeiture, called "restricted stock." Section 83 also generally governs the taxation of transfers of property (or nonqualified) stock options. In general, an employee's right to stock or other property is subject to a substantial risk of forfeiture if the employee's right to full enjoyment of the property is subject to a condition, such as the future performance of substantial services.

Generally, an employee must recognize income in the taxable year in which the employee's right to the stock is transferable or is not subject to a substantial risk of forfeiture, whichever occurs earlier (referred to herein as "substantially vested"). Thus, if the employee's right to the stock is substantially vested when the stock is transferred to the employer, the employee must recognize income in the taxable year of such transfer, in an amount equal to the fair market value of the stock as of the date of transfer (less any amount paid for the stock). If at the time the stock is transferred to the employee, the employee's right to the stock is not substantially vested (referred to herein as "nonvested"), the employee does not recognize income attributable to the stock transfer until the taxable year in which the employee's right becomes substantially vested. In this case, the employee's recognition of income is capped at the amount equal to the fair market value of the stock as of the date of transfer (less any amount paid for the stock).

These rules do not apply to the grant of a nonqualified option unless the option has a readily ascertainable fair market value. Instead, those rules generally apply to the transfer of employer stock by the employee on exercise of the option. That is, if the right to the stock is substantially vested on transfer (the time of exercise), income recognition applies for the taxable year of transfer. If the right to the stock is nonvested on transfer, the timing of income inclusion is determined under the rules applicable to the transfer of nonqualified options, discussed below.

Statutory stock options

Two types of statutory options apply with respect to employer stock: incentive stock options ("ISOs") and options provided under an employee stock purchase plan ("ESPP"). Stock received pursuant to a statutory option is subject to special rules, rather than the rules for nonqualified options, discussed above. Nonqualified options, statutory options may only be considered as such if granted to employees. No amount is includible in an employee's income on the grant, vesting, or exercise of a statutory option.

If a holding requirement is met with respect to the stock transferred on exercise of a statutory option and the employee later disposes of the stock, the employee's gain generally is treated as capital gain rather than ordinary income. If the stock is still subject to a holding requirement, the employee must not dispose of the stock within two years after the date the option is granted and also must not dispose of the stock within one year after the date the option is exercised. If a disposition occurs before the end of the required holding period (a "disqualifying disposition"), the employee recognizes income on the fair market value of the stock in the taxable year in which the disqualifying disposition occurs. The amount of ordinary income recognized when a disqualifying disposition occurs is the fair market value of the stock on the date of exercise (that is, when the stock was transferred to the employee) less the exercise price paid.

Stock compensation treated as deferred compensation

A restricted stock unit ("RSU") is a term used for an arrangement under which an employee has the right to receive at a specified time in the future an amount determined by reference to the value of one or more shares of employer stock. An employee's right to receive specified payments is subject to both a condition, such as continued employment for a certain period or the attainment of certain performance goals. The payment to the employee is made at a later date when the arrangement is referred to as settlement of the RSU. The arrangement may provide for the settlement amount to be paid in cash or as a transfer of employer stock. An arrangement providing RSUs is generally considered a nonqualified deferred compensation plan and is subject to the rules, including the limits, of section 409A, unless it meets an exemption from section 409A. If the RSU either is exempt from or complies with section 409A, the employee is subject to income taxation on receipt of cash or the transfer of shares attributable to the RSU.

A stock appreciation right ("SAR") is an arrangement under which an employee has the right to receive an amount (in the form of cash or stock) determined by reference to the appreciation in value of one or more shares of employer stock, based on the difference between the fair market value of the stock on the date that the employee chooses to exercise the right and the value of the stock on the date of grant of the SAR. An SAR is generally taxable at the time of exercise on the appreciation in value of stock transferred at the time of exercise of the SAR.

Various exemptions from section 409A apply, including transfers of property subject to section 83, such as restricted stock. Nonqualified options and SARs are not automatically exempt from section 409A, but may be structured so as not to be considered nonqualified deferred compensation. In addition, ISOs and ESPPs are exempt from section 409A.

Section 4985 excise tax on stock compensation of insiders in expatriated corporations

Under section 4985, certain holders of stock options and other stock-based compensation are subject to an excise tax on certain transactions that result in an expatriated corporation (also referred to as corporate inversions). The provision imposes an excise tax currently at the rate of 20 percent, on the value of specified stock compensation held (directly or indirectly) by or for the benefit of a disqualified individual, or a member of such individual's family, at any time during the 12-month period beginning six months before the corporation's expatriation date. Specified stock compensation is treated as held for the benefit of a disqualified individual if such compensation is held by an entity, e.g., a partnership or trust, in which the individual, or a member of the individual's family, has an ownership interest.

A disqualified individual is any individual who, with respect to a corporation, is, at any time during the 12-month period beginning on the date which is six months before the expatriation date, subject to the requirements of section 16(a) of the Securities and Exchange Act of 1934, as applicable to any member of the corporation, or any member of the corporation's expanded affiliated group, or would be subject to such requirements if the corporation were an issuer of equity securities referred to in section 16(a). Disqualified individuals generally include officers (as defined by section 16(a)), directors, and 10% amounts includible in income and a potential interest factor tax ("409A taxes"). Section 409A and the additional 409A taxes apply in connection with the value of the failed compensation each year until it is paid.

For further discussion of the tax treatment of expatriated entities before the effective date of section 4985, see the General Explanation of Tax Legislation Enacted in 2004 by the 108th Congress (JCS–5–05), May 2005.

For discussion of the tax treatment of expatriated entities before the effective date of section 4985, see the General Explanation of Tax Legislation Enacted in 2004 by the 108th Congress (JCS–5–05), May 2005.
percent owners of private and publicly-held corporations.

The excise tax is imposed on a disqualified individual of an expatriated corporation (as defined below) only if gain recognized in whole or part by any shareholder by reason of the acquisition resulting in the corporation's expatriation.

Specified stock compensation subject to the excise tax includes any payment (or right to payment) granted by the expatriated corporation to any member of the corporation’s expanded affiliated group to any person in connection with the performance of services by a disqualified individual for such corporation (or member of the corporation’s expanded affiliated group) if the value of the payment or right is based on, or determined by reference to, the value or change in value of stock or stock options of the corporation (including warrants and other similar rights to acquire stock) and stock appreciation rights and the fair market value for all other forms of compensation. For purposes of the tax, the fair value of an option (or a warrant or other similar right to acquire stock) or a stock appreciation right is determined using an appropriate option-pricing model, as specified or permitted by the Treasury Secretary, that takes into account the stock price at the exercise or fair market price of the stock as of the date of the expiration transaction. The value of any deferred compensation that can be valued by reference to stock is the amount that the disqualified individual would receive if the plan were to distribute all such deferred compensation in a single sum on the date of the expiration transaction (or the date of cancellation or grant, if applicable).

The excise tax applies to any payment by the expatriated corporation or any member of the corporation’s expanded affiliated group to any disqualified individual that takes into account the stock price at the time of any future exercise or lapse of any option or payment of any specified stock compensation. The payment of the tax is not deductible and has no effect on any deduction that might be allowed at the time of any future exercise or payment.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision increases the 15 percent rate of excise tax imposed on the value of stock compensation held by individuals of an expatriated corporation, to 20 percent.

Effective date.—The provision applies to corporations first becoming expatriated corporations after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

J. Other Provisions

1. Treatment of gain or loss of foreign persons from sale or exchange of interests in partnerships engaged in trade or business within the United States (sec. 13501 of the Senate amendment and secs. 864(e) and 1446 of the Code)

PRESENT LAW

In general

A partnership generally is not treated as a taxable entity, but rather, income of the partnership is taken into account on the tax returns of the partners. The character (as capital or ordinary) of partnership items passes through to the partners as if the items were realized directly by the partners.1091 A partner holding a partnership interest includes in income its distributive share (whether or not actually distributed) of partnership items of income and gain, including capital gain, in excess of the partner’s ratable share of lower tax rates, and deducts its distributive share of partnership items of deduction and loss. A partner’s basis in the partnership interest is increased by any amount of gain and decreased by any amount of losses thus included. These basis adjustments prevent double taxation of partnership income to the partner. Money distributed to the partner by the partnership is taxed to the extent the amount exceeds the partner’s basis in the partnership interest.

Gain or loss from the sale or exchange of a partnership interest generally is treated as gain or loss from the sale or exchange of a capital asset.1092 Any amount of gain and the fair market value of property received in the exchange that represent the partner’s share of certain ordinary income-producing assets of the partnership give rise to ordinary income rather than capital gain.1093 In general, a partnership does not adjust the basis of partnership property following the transfer of a partnership interest unless either the partnership has made a one-time election to do so, or the partnership has a substantial built-in loss immediately after the transfer. These adjustments are to account for the difference between the transferee partner’s proportionate share of the adjusted basis of the partnership property and the transferee partner’s basis in its partnership interest.

Effect of the adjustments on the basis of partnership property is

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1091 Sec. 701. 1092 Sec. 1221. 1093 Sec. 731(a). These ordinary income-producing assets are unrealized receivables, inventory or other similar rights to acquire stock or inventory items of the partnership ("731 assets").
to approximate the result of a direct pur-
chase of the property by the transferee part-
ger.

Source of gain or loss on transfer of a part-
nership interest

A foreign person that is engaged in a trade or business in the United States is taxed on income that is "effectively connected" with the conduct of that trade or business ("effectively connected income" or "loss").1102 In determining whether the activities of a trade or business in the United States are a material factor in the realization of the income, gain, or loss (the "asset use" and "business activities" tests),1103 to determine whether the asset use or business activities tests are met, due regard is given to whether such assets or such income, gain, or loss are maintained for through such trade or business. Thus, notwithstanding the general rule that source of gain or loss from the sale or exchange of personal property is generally determined by the residence of the seller,1104 a foreign partner may have effect-
ively connected income by reason of the asset use or business activities of the part-
nership in which he is an investor.

Special rules apply to treat gain or loss from disposition of U.S. real property in-
est as effectively connected with the con-
duct of a U.S. trade or business, sales to non-
residents of U.S. real property interests may be subject to withholding tax of ten percent of the amount realized on the transfer.1105 The effective date is effective for sales and exchanges on or after November 27, 2017.

The conference agreement generally fol-
lores the Senate amendment. The conference agreement modifies the grant of authority to the Secretary to address coordination with the nonrecognition provisions of the Code.

Effective date.—The provision is effective for sales and exchanges on or after November 27, 2017.

The conference agreement provides that if an interest in a publicly traded partnership is sold to a non-U.S. person for $33,333. Under the rule applying both at the partnership level and at the partner level, no withholding applies. The provision applies to sales after December 31, 2017. The conference agreement amends the partnership level provision to address coordination with the nonrecognition provision of the Code.

Under the ruling, in determining the source of gain or loss from the sale or exchange of an interest in a foreign partnership, the IRS applied the asset-use test and the business activities test.1106 To the extent that consideration received by the nonresident alien or foreign corporation for all or part of its interest in a partnership is attributable to a U.S. real property interest, that consideration is considered to be re-
cieved from the sale or exchange in the United States of such property.1107 In certain circumstances, gain attributable to sales of U.S. real property interests may be subject to withholding tax of ten percent of the amount realized on the transfer.

Under the ruling, if there is unrealized gain or loss in partnership as-
sets that would be treated as effectively con-
ected with the conduct of a U.S. trade or business, and those assets were sold by the partnership, some or all of the foreign per-
son's gain or loss from the sale or exchange of a partnership interest may be treated as effectively connected with the conduct of a U.S. trade or business. However, a 2017 Tax Court case casts doubt on the logic of the ruling and instead holds that, generally, gain or loss on sale or exchange by a foreign person of an in-
terest in a partnership that is engaged in a U.S. trade or business is foreign-source.1108

Under the provision, gain or loss on the sale or exchange of a partnership interest is effectively connected with a U.S. trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange. The provision requires that any gain or loss from the hypothetical asset sale by the partnership be allocated to inter-
ests in the partnership in the same manner as nonseparately stated income and loss.

The provision also requires the transferee of a partnership interest to withhold 10 per-
cent of the fair market value on a sale or ex-
change of a partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign cor-
poration. If an election is made for withholding purposes, the partnership is re-
quired to deduct and withhold from distribu-
tions to the transferee partner an amount equal to the amount the transferee failed to withhold.

The provision provides the Secretary of the Treasury with specific regulatory authority to address coordination with the nonrecognition provision of the Code.1108

No provision.

2. Modification of the definition of substan-
tial built-in loss in the case of transfer of partnership interest (sec. 13502 of the Senate amendment and sec. 743 of the Code)

In general, a partnership does not adjust the basis of partnership property following the transfer of a partnership interest unless either the partnership agreement on the effective date of the transfer provides that the transferee partner and the transferee partner’s pro-
portionate share of the adjusted basis of the partnership property and the transferee partner’s basis in its partnership interest.1112 The adjust-
ments are intended to adjust the basis of partnership property to approximate the re-
sult of a direct purchase of the property by the transferee partner.

Under the provision, a substantial built-in loss exists if the partnership’s adjusted basis for its property exceeds by more than $250,000 the fair market value of the partnership property.1113 Certain securitization partner-
ships and electing investment partnerships are not treated as having a substantial built-in loss in certain instances, and thus are not required to make basis adjustments to partner-
ship property.1114 For election investing partnerships, in lieu of the partnership basis adjustments, a partner-level loss limitation rule applies.1115

No provision.

The provision modifies the definition of a substantial built-in loss for purposes of sec-
tion 743(d), affecting transfers of partnership interests. Under the provision, in addition to the present-law definition, a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition by the transferee of the assets in a fully taxable transaction for cash equal to the assets’ fair market value, immediately after the transfer of the partnership interest.

For example, a partnership of three tax-
able partners (partners A, B, and C) has not made an election pursuant to section 743. The partnership consists of asset X, a built-in gain of $1 million, while the other asset, asset Y, has a built-in loss of $900,000. Pursuant to the partnership agreement, any gain on sale or exchange of asset X is specially allocated to partner A. The three partners share equally in all other partnership items, including in the built-in loss on asset Y. In such a case, each of partner B and partner C has a net built-in loss of $300,000 (one third of the loss attributable to asset Y) allocable to his partnership interest. Nevertheless, the partnership does not have an overall built-in loss, but a net built-in gain of $100,000 ($1 million minus $900,000). Partner C sells his partnership interest to another person, D, for $33,333. Under the pro-
vision, the test for a substantial built-in loss applies both at the partnership level and at the partner level.
the transferee partner level. If the partnership were to sell all its assets for cash at their fair market value immediately after the transfer to D, D would be allocated a loss of $900,000 (the difference between $900,000 in Asset Y).

A substantial built-in loss exists under the partner-level test added by the provision, and the partnership adjusts the basis of its assets accordingly with respect to D.

Effective date.—The provision applies to transfers of partnership interests after December 31, 2017.

Conference agreement

The conference agreement follows the Senate amendment. Effective date.—The provision applies to transfers of partnership interests after December 31, 2017.

3. Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss

In general

A partner’s distributive share of partnership loss (including capital loss) is allowed only to the extent of the adjusted basis (before reduction by the partner’s share of partner losses) of the partner’s interest in the partnership at the end of the partnership taxable year in which the property is contributed or sold, and a loss otherwise allowable as a deduction at the end of the partnership taxable year in which the property is contributed or sold, and a loss otherwise allowable as a deduction at the end of the partnership taxable year in which the property is contributed or sold, is allowable as a deduction at the end of the first succeeding partnership taxable year, and subsequent taxable years, to the extent that the partner’s interest in the partnership at the end of any such year exceeds zero (before reduction by the loss for the year).1114

A partner's distributive share of partnership losses and expenditures (sec. 1367(a)(2)) must first be determined under the rules prescribed by the Code.1125 The result is increased by its distributive share of partnership charitable contributions and foreign taxes (described in section 901) paid or accrued to the partnership, notwithstanding that the partner has been identified as a beneficiary of charitable contributions, a special rule is provided relating the amount of appreciation not subject to the limitation in the case of charitable contributions of appreciated property by the S corporation.1123

In general

A partner who happens to have a positive basis may do a charitable contribution without an offsetting deduction.1119 The regulation provides that “if the partner’s basis in the property transferred to D, D would be allocated a loss to the extent that the basis of the property transferred to the partnership and the partnership’s share of the excess.

Effective date.—The provision applies to transfers of partnership interests after December 31, 2017.

Conference agreement

The conference agreement follows the Senate amendment. Effective date.—The provision applies to transfers of partnership interests after December 31, 2017.

4. Cost basis of specified securities determined without regard to identification

A partner’s distributive share of partnership losses and expenditures (sec. 1367(a)(2)) must first be determined under the rules prescribed by the Code.1125 The result is increased by its distributive share of partnership charitable contributions and foreign taxes (described in section 901) paid or accrued to the partnership, notwithstanding that the partner has been identified as a beneficiary of charitable contributions, a special rule is provided relating the amount of appreciation not subject to the limitation in the case of charitable contributions of appreciated property by the S corporation.1123

In general

Gain or loss generally is recognized for Federal income tax purposes on realization of that gain or loss (for example, as the result of sale of property). The taxpayer’s gain or loss on a disposition of property is the difference between the amount realized on the sale and the taxpayer’s adjusted basis in the property disposed of.

To compute adjusted basis, a taxpayer must first determine the property’s undiscounted or original basis, and then make adjustments prescribed by the Code.1120 The original basis of property is its cost, except as otherwise prescribed by the Code (for example, the case of property acquired by gift or bequest or in a tax-exempt exchange). Once determined, the taxpayer’s original basis generally is adjusted downward to take account of depreciation and then generally is adjusted upward to reflect income and gain inclusions or capital improvements with respect to the property.

Basis computation rules

If a taxpayer has acquired stock in a corporation on different dates or at different prices and sells or transfers some of the shares of that stock, and the lot from which the stock is sold or transferred is not adequately identified, the shares sold are deemed to be drawn from the earliest acquired shares.1126 However, the taxpayer must give an adequate identification ("specific identification") of shares of stock that it sells, the shares of stock treated as sold are the shares that have been identified as such, and the shareholder who owns shares in a regulated investment company ("RIC") generally is permitted to elect, in lieu of the specific identification or first-in, first-out rule, a method of determining the basis of RIC shares sold under one of two average-cost/basis methods described in Treasury regulations (together, the "average basis methods").1128 In the case of the sale, exchange, or other disposition of a specified security (defined below) to which the basis reporting requirement applies, the first-in, first-out rule, specific identification, and average basis method conventions are applied on an account by account basis.1130 To facilitate the determination of the cost of RIC stock under the average basis method, RIC stock acquired before January 1, 2012, generally is treated as a separate account from RIC stock acquired on or after that date unless the RIC (or a broker holding the stock as a nominee) elects otherwise with respect to one or more of its shareholders, in which case all the RIC stock with respect to which the election is made is treated as a single account and the basis reporting requirement described below applies to all the RIC stock.

The basis of stock acquired after December 31, 2010, in connection with a dividend reinvestment plan ("DRP") is determined under the average basis method for as long as the stock is held as part of that plan.1131

Basis reporting

A broker is required to report to the IRS a customer’s adjusted basis in a covered security that the customer has sold or transferred, whether any gain or loss from the sale is long-term or short-term.1132 A covered security is, in general, any specified security acquired after an applicable date specified in the basis reporting rules. A specified security is any share of stock of a corporation (including stock of a RIC); any note, bond, debenture, or other evidence of
derivative with respect to such commodity, if the Treasury Secretary determines that adjusted basis reporting is appropriate; and any other financial instrument with respect to which rules intended to ensure that the broker’s reported adjusted basis numbers are the same numbers that customers must use in filing their tax returns.\textsuperscript{1132}

\section*{HOUSE BILL}

No provision.

\section*{SENATE AMENDMENT}

The provision requires that the cost of any specified security sold, exchanged, or otherwise disposed of on or after January 1, 2018, be determined on a first-in-first-out basis except to the extent the average basis method is otherwise allowed (as in the case of a taxpayer holding shares in a RIC). The provision does not apply to sales, exchanges, or other dispositions of specified securities by RICs.

The provision includes several conforming amendments, including a rule restricting a broker’s average basis method to the first-in-first-out method in the case of the sale of any stock for which the average basis method is required.

\textbf{Effective date.—}The provision applies to sales, exchanges, and other dispositions after December 31, 2017.

\section*{CONFERENCE AGREEMENT}

The conference agreement does not include the Senate amendment provision.

\section*{5. Expansion of qualifying beneficiaries of an elective small business trust (sec. 13541 of the Senate amendment and sec. 1361 of the Code)}

\textbf{PRESENT LAW}

An elective small business trust (“ESBT”) may be a shareholder of an S corporation.\textsuperscript{1134} Generally, the eligible beneficiaries of an ESBT include individuals, estates, and certain charitable organizations eligible to hold S corporation stock directly. A nonresident alien individual may not be a shareholder of an S corporation and may not be a potential current beneficiary of an ESBT.\textsuperscript{1135}

The portion of an ESBT which consists of the stock of an S corporation is treated as a separate trust and generally is taxed on its share of the S corporation’s income at the highest rate of tax imposed on individual taxpayers (that is, not distributed by the ESBT) is not taxed to the beneficiaries of the ESBT. In addition to nonseparately computed income or loss, an S corporation must pro rata share of certain separately stated items of income, loss, deduction, and credit.\textsuperscript{1136} For this purpose, charitable contributions (as defined in section 170(c)) of an S corporation are separately stated and taken by the shareholder.

The treatment of a charitable contribution passed through by an S corporation depends on the shareholder. Because an ESBT is a trust, the deduction for charitable contributions applicable to trusts,\textsuperscript{1137} rather than the deduction applicable to individuals,\textsuperscript{1138} applies to the trust. Generally, a trust is allowed a charitable contribution deduction for amounts of gross income, without limitation, which pursuant to the terms of the governing instrument are paid for a charitable purpose. No carryover of excess contributions is allowed. An individual is allowed a charitable contribution deduction limited to the charitable contribution amounts made by the portion of an ESBT holding S corporation stock.

\textbf{Effective date.—}The provision applies to taxable years beginning after December 31, 2017.

\section*{CONFERENCE AGREEMENT}

The conference agreement follows the Senate amendment.

\section*{6. Charitable contribution deduction for electing small business trusts (sec. 13542 of the Senate amendment and sec. 642(c) of the Code)}

\textbf{PRESENT LAW}

The Senate amendment allows a nonresident alien individual to be a potential current beneficiary of an ESBT.

\textbf{Effective date.—}The provision takes effect on January 1, 2018.

\section*{CONFERENCE AGREEMENT}

The conference agreement follows the Senate amendment.

\section*{7. Production period for beer, wine, and distilled spirits (sec. 263A of the Code)}

\textbf{PRESENT LAW}

The uniform capitalization (“UNICAP”) rules, which were enacted as part of the Tax Reform Act of 1986, took effect on January 1, 2018.1141 The UNICAP costs in inventory.

Exceptions from UNICAP

Section 263A provides a number of exceptions to the general capitalization requirements. One such exception exists for certain small businesses that are required to use the first-in-first-out method of accounting for their inventories.\textsuperscript{1142} Such businesses are not required to include additional section 263A costs in inventory.

Another exception exists for taxpayers who raise, harvest, or grow trees.\textsuperscript{1143} Under this exception, section 263A does not apply to trees raised, harvested, or grown by the taxpayer (other than trees bearing fruit, nuts, or other crops, or ornamental trees) and any real property under which such trees grow.

Similarly, the UNICAP rules do not apply to any animal or plant having a reproductive period of two years or less, which is produced by a taxpayer in a farming business.\textsuperscript{1144} For this purpose, the taxpayer is required to use an accrual method of accounting under section 447 or 461.\textsuperscript{1145}

Freelance authors, photographers, and artists also are exempt from section 263A for any qualified creative expenses.\textsuperscript{1146} Qualified creative expenses are defined as amounts paid or incurred by an individual in the trade or business of being a writer, photographer, or artist. However, such term does not include the expense related to photographic plates, motion picture files, video tapes, or similar items.

\textbf{HOUSE BILL}

No provision.

\section*{SENATE AMENDMENT}

The Senate amendment provides that the charitable contribution deduction of an ESBT is not determined by the rules generally applicable to trusts but rather by the rules applicable to individuals. Thus, the percentage limitations and carryforward provisions applicable to individuals apply to charitable contributions made by the portion of an ESBT holding S corporation stock.

\textbf{Effective date.—}The provision applies to taxable years beginning after December 31, 2017.

\section*{CONFERENCE AGREEMENT}

The conference agreement follows the Senate amendment.

The conference agreement follows the Senate amendment.

The conference agreement follows the Senate amendment.

The Senate amendment would exclude the aging periods for beer, wine, and distilled spirits from the production period for purposes of the UNICAP interest capitalization rules. Taxpayers, under the production period for beer, wine and distilled spirits are able to deduct interest expenses (subject to any other applicable limitation) attributable to a shorter production period.

The provision does not apply to interest costs paid or accrued after December 31, 2019.
Federal excise taxes are imposed at different rates on distilled spirits, wine, and beer and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the Treasury, except the taxes on imported bottled distilled spirits, wine, and beer are collected by the Customs and Border Protection Bureau (the “CBP”) of the Department of Homeland Security (under delegation by the Secretary of the Treasury).

Liability for the excise tax on beer also come into existence when the alcohol is produced but is not payable until the beer is removed from the brewery for consumption or sale. Generally, beer may be transferred between commonly owned breweries without payment of tax and transferred in bond to a brewer who is exported without payment of tax may be withdrawn without payment of tax or free of tax from the production facility for certain authorized uses, including industrial uses and non-beverage uses.

The rate of tax on beer is $18 per barrel (31 gallons). Small brewers are subject to a reduced tax rate of $7 per barrel on the first 60,000 barrels of beer domestically produced and removed each year. Small brewers are defined as brewers producing fewer than two million barrels of beer during a calendar year.

The credit reduces the effective per-gallon tax rate from approximately 22.6 cents per gallon to approximately 58 cents per gallon for this beer. Any importer making an election to receive the reduced tax rate shall be deemed to be a member of the controlled group of the brewer, within the meaning of section 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in section 1563(a). Under rules issued by the Secretary of the Treasury, two or more entities (whether or not under common control) that produce beer marketed under a similar brand, license, franchise, or other arrangement shall be treated as a single taxpayer for purposes of the excise tax on beer. The provision does not apply for beer removed after December 31, 2019.

Federal excise taxes are imposed at different rates on distilled spirits, wine, and beer and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the Treasury, except the taxes on imported bottled distilled spirits, wine, and beer are collected by the Customs and Border Protection Bureau (the “CBP”) of the Department of Homeland Security (under delegation by the Secretary of the Treasury). The rate of tax on beer is $18 per barrel (31 gallons). Liability for the excise tax on beer also come into existence when the alcohol is produced but is not payable until the beer is removed from the brewery for consumption or sale. Generally, beer may be transferred between commonly owned breweries without payment of tax. However, beer may be transferred free of tax from brewery to brewery for personal or family use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

Transfer rules and removals without tax Certain removals or transfers of beer are exempt from tax. Beer may be transferred without payment of the tax between bonded premises under certain conditions specified in regulations. The tax liability accompanies the beer that is transferred in bond. However, beer may only be transferred free of tax between breweries if both breweries are owned by the same brewer.

The Senate amendment lowers the rate of excise tax on certain wine (sec. 13803 of the Senate amendment and sec. 5414 of the Code)
States, the tax credit allowable may be assigned by the person who produced such wine (the “foreign producer”) to any electing importer of such wine gallons pursuant to requirements established by the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services and the Secretary of the Department of Homeland Security. These requirements are to include (1) a limitation to ensure that the number of wine gallons of wine for which the tax credit has been assigned by a foreign producer to any importer does not exceed the number of wine gallons of wine produced by such foreign producer, during the calendar year, which were imported into the United States by such importer; (2) procedures that allow the election of a foreign producer to assign, and an importer to receive, the tax credit; (3) requirements that the foreign producer provide any information that the Secretary of the Treasury determines to be necessary and appropriate for purposes of assigning the tax credit; and (4) procedures that allow for revocation of eligibility of the foreign producer and the importer for the tax credit in the case of erroneous or fraudulent information provided in (3) which the Secretary of the Treasury deems material for qualifying for the reduced tax rate.

Any importer making an election to receive the reduced tax rate shall be deemed to be a member of the group of the foreign producer, within the meaning of sec. 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in sec. 1563(a).

The provision does not apply for wine removed in calendar quarters beginning after December 31, 2019.

Effective date.—The provision applies to wine removed after December 31, 2017.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

11. Adjustment of alcohol content level for application of excise tax rates (sec. 13805 of the Senate amendment and sec. 5041 of the Code)

PRESENT LAW

In general
Under present law, excise taxes are imposed at different rates on wine, depending on the wine’s alcohol content and carbonation levels. The following table outlines the present rates of tax on wine.

<table>
<thead>
<tr>
<th>Wine Type</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Still wines</td>
<td>$1.07 per wine gallon</td>
</tr>
<tr>
<td>Sparkling wines</td>
<td>$3.40 per wine gallon</td>
</tr>
<tr>
<td>Natural carbonated wines</td>
<td>$3.15 per wine gallon</td>
</tr>
<tr>
<td>Auto-dissolved carbonated wines</td>
<td>$3.30 per wine gallon</td>
</tr>
</tbody>
</table>

Liability for the excise taxes on wine come into existence when the wine is produced but is not payable until the wine is removed from the bonded wine cellar or winery for consumption or sale. Generally, bulk and bottled wine may be transferred in bond between bonded premises; however, tax liability follows the products. Bulk natural wine may be released from customs custody without payment of tax and transferred in bond to a winery. Wine may be exported without payment of tax and may be withdrawn without payment of tax or free of tax from the production facility for certain authorized uses, including industrial uses and non-beverage uses.

Reduced rates and exemptions for certain wine producers
Winery producers receiving aggregate annual production not exceeding 250,000 gallons (“small domestic producers”) receive a credit against the wine excise tax equal to 90 cents per gallon (the amount of a wine tax increase enacted in 1990) on the first 100,000 gallons of wine domestically produced and removed during a calendar year.1165 The credit is reduced (but not below zero) by one percent for each 1,000 gallons produced in excess of 150,000 gallons; the credit does not apply to sparkling wines. In the case of a controlled group, the 250,000 gallon limitation for wineries is applied to the controlled group, and the 100,000 gallons eligible for the credit, are apportioned among the wineries who are component members of such group. The term “controlled group” has the meaning assigned to it by sec. 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in sec. 1563(a).

Individuals may produce limited quantities of wine for personal or household use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies alcohol-by-volume levels of the first two tiers of the excise tax on wine, by changing 14 percent to 16 percent. Thus, under the provision, a wine producer or importer may produce or import “still wine” that has an alcohol-by-volume level of up to 16 percent, and remain subject to the lowest rate of $1.07 per gallon wine.

The provision does not apply to wine removed after December 31, 2019.

Effective date.—The provision applies to wine removed after December 31, 2017.

CONFERENCES AGREEMENT

The conference agreement follows the Senate amendment.

12. Definition of meal and low alcohol by volume wine (sec. 13806 of the Senate amendment and sec. 5041 of the Code)

PRESENT LAW

In general
Under present law, excise taxes are imposed at different rates on wine, depending on the wine’s alcohol content and carbonation levels. The following table outlines the present rates of tax on wine.

<table>
<thead>
<tr>
<th>Wine Type</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Still wines</td>
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<td>$3.30 per wine gallon</td>
</tr>
</tbody>
</table>

Liability for the excise taxes on wine come into existence when the wine is produced but is not payable until the wine is removed from the bonded wine cellar or winery for consumption or sale. Generally, bulk and bottled wine may be transferred in bond between bonded premises; however, tax liability follows the products. Bulk natural wine may be released from customs custody without payment of tax and transferred in bond to a winery. Wine may be exported without payment of tax and may be withdrawn without payment of tax or free of tax from the production facility for certain authorized uses, including industrial uses and non-beverage uses.

Reduced rates and exemptions for certain wine producers
Winery producers having aggregate annual production not exceeding 250,000 gallons (“small domestic producers”) receive a credit against the wine excise tax equal to 90 cents per gallon (the amount of a wine tax increase enacted in 1990) on the first 100,000 gallons of wine domestically produced and removed during a calendar year.1165 The credit is reduced (but not below zero) by one percent for each 1,000 gallons produced in excess of 150,000 gallons; the credit does not apply to sparkling wines. In the case of a controlled group, the 250,000 gallon limitation for wineries is applied to the controlled group, and the 100,000 gallons eligible for the credit, are apportioned among the wineries who are component members of such group. The term “controlled group” has the meaning assigned to it by sec. 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in sec. 1563(a).

Individuals may produce limited quantities of wine for personal or household use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies alcohol-by-volume levels of the first two tiers of the excise tax on wine, by changing 14 percent to 16 percent. Thus, under the provision, a wine producer or importer may produce or import “still wine” that has an alcohol-by-volume level of up to 16 percent, and remain subject to the lowest rate of $1.07 per gallon wine.

The provision does not apply to wine removed after December 31, 2019.

Effective date.—The provision applies to wine removed after December 31, 2017.

CONFERENCES AGREEMENT

The conference agreement follows the Senate amendment.

1165 Members of the controlled group may include foreign corporations.

1166 A “still wine” is a non-sparkling wine. Most common table wines are still wines.

1167 A wine gallon is a U.S. liquid gallon.
Reduced rates and exemptions for certain wine producers

Winerys having aggregate annual production more than 250,000 gallons (‘‘small domestic producers’’) receive a credit against the wine excise tax equal to 90 cents per gallon on the first 100,000 gallons of wine domestically produced and removed during a calendar year. The credit is reduced (but not below zero) by one percent for each 100,000 gallons produced in excess of 150,000 gallons; the credit does not apply to sparkling wines. In the case of a controlled group, the 250,000 gallon limitation for winerys applying to the controlled group, and the 100,000 gallons eligible for the credit, are apportioned among the winerys who are component members of such group. The term ‘‘controlled group’’ has the meaning assigned to it by sec. 1563(a), except that the phrase ‘‘more than 50 percent’’ is substituted for the phrase ‘‘at least 80 percent’’ in each place it appears in sec. 1563(a).

Individuals may produce limited quantities of wine for personal or family use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

No provision.

SENATE AMENDMENT

The Senate amendment designates mead and certain sparkling wines to be taxed at the lowest rate applicable to ‘‘still wine,’’ of $1.07 per wine gallon of wine. Mead is defined as a wine that contains not more than 0.64 grams of carbon dioxide per hundred milliliters of wine, which is derived solely from honey, and contains no fruit product or fruit flavoring, and contains less than 8.5 percent alcohol-by-volume. The sparkling wines eligible to be taxed at the lowest rate of excise tax on distilled spirits shall contain not more than 0.64 grams of carbon dioxide per hundred milliliters of wine, which are derived primarily from grapes or grape juice concentrate, and water, which contain no fruit flavoring other than grape, and which contain less than 8.5 percent alcohol by volume.

The provision does not apply to wine removed after December 31, 2019.

1166 Sec. 5001(c).
1167 Secs. 5001, 5006, 5043, and 5054. In general, proprietors of distillers of spirits, producers of bonded wine cellars, brewers, and importers are liable for the tax.
1168 A ‘‘proof gallon’’ is a U.S. liquid gallon of proof spirits, or the alcoholic equivalent thereof. Generally a proof gallon is a U.S. liquid gallon consisting of 50 percent alcohol. On lesser quantities, the tax is paid proportionately. Credits are allowed for wine content and flavors content of distilled spirits.
1169 Sec. 7652.
1170 Because Puerto Rico is inside U.S. customs territory, articles entering the United States from that commonwealth are ‘‘brought into’’ rather than ‘‘imported into’’ the U.S.
1171 Sec. 7652.
1172 SEC. 5011. Section 5011 is amended and enforced by the IRS.
A special loss disallowance rule reduces (but not below zero) any loss that would otherwise be recognized upon disposition of stock of a sponsoring Native Corporation by a settlement trust selling such property. The fiduciary of a Native Corporation that is caused by a transfer of assets from the Native Corporation to a Settlement Trust.

The conference agreement follows the Senate amendment.

15. Modification of tax treatment of Alaska Native Corporations and Settlement Trusts (as reported in the Senate amendment and sec. 6039H and new secs. 139G and 247 of the Code)

The Alaska Native Claims Settlement Act ("ANCSA") established Native Corporations1183 to hold property for Alaska Natives. Alaska Natives are generally the only permitted beneficiaries of shareholders of those corporations under section 7(h) of ANCSA, unless a Native Corporation specifically allows other shareholders under specified procedures.

The fiduciary of an electing Settlement Trust is obligated to provide certain information relating to distributions from the Trust in lieu of reporting requirements under Section 6039A. The election to pay tax at the lowest rate is not available in certain disqualifying cases where transfer restrictions have been modified to allow a transfer of either: (a) a beneficial interest that would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act if the interest were Settlement common stock, or (b) any stock in an Alaska Native Corporation that would not be permitted by section 7(h) but it were Settlement common stock and the Native Corporation thereafter makes a transfer to the Trust. Where an election is already in effect at the time that the trust ceases to be an election trust, the special rules applicable to an electing trust cease to apply and rules generally applicable to trusts apply. In addition, the distribution of substantially all of the trust's in-kind trust assets to the beneficial interest that would not be permitted by section 7(h) will be a taxable distribution and the beneficiaries will be taxed on the amount of any distributions received consistent with the applicable tax rate bracket.

No provision.

SENATE AMENDMENT

The conference agreement follows the Senate amendment.

16. Amounts paid for aircraft management services (sec. 13822 of the Senate amendment and sec. 4261 of the Code)

Excise tax on taxable transportation by air

For domestic passenger transportation, section 4261 imposes an excise tax on amounts paid for taxable transportation. In general, the excise tax on taxable transportation consists of two parts: a 7.5 percent ad valorem tax applied to the amount paid and a flat dollar amount for each flight segment (consisting of the "door-to-door" leg of the flight). 'Taxable transportation' generally means transportation by air which begins and ends in the United States. The tax is paid by the person receiving the payment, and the tax is collected by the person receiving the payment. For commercial freight aviation, the ad valorem tax is 8.25 percent of the amount paid for taxable transportation.
the amounts paid for such transportation are subject to tax, the Internal Revenue Service (“IRS”) has looked at who has “possession, command, and control” of the aircraft based on the facts and circumstances.1186

Applicability to aircraft management services

Generally, an aircraft management services company (“management company”) has as its business purpose the management of aircraft that are owned by individuals (“aircraft owners”). In this function, management companies provide aircraft owners, among other things, with administrative services (such as scheduling, flight planning, and weather forecasting), aircraft maintenance services, the provision of pilots and crew, and compliance with federal standards. Although an arrangement between management companies and aircraft owners may vary, it is our understanding that aircraft owners generally pay management companies a monthly fee to cover the fixed expenses of maintaining the aircraft (such as insurance, maintenance, and recordkeeping) and a variable fee to cover the cost of using the aircraft (such as the provision of pilots, crew, and fuel).

In March 2012, the IRS issued a Chief Counsel Advice determining that a management company’s pro rata allocation of a payment to a management company is required if the allocation is made on a fair and reasonable basis. If no allocation is made, the tax applies to the total payment attributable to flights on the aircraft.1187 Thus, if an aircraft owner makes a payment to a management company for the provision of a pilot and the pilot provides services to the aircraft owner’s aircraft, such payment is not subject to Federal excise tax. However, if the pilot provides his services to the aircraft owner on an aircraft other than the aircraft owner’s (for instance, on an aircraft that is part of a fleet of aircraft available for third-party charter services), then such payment is subject to Federal excise tax.

The provision provides a pro rata allocation rule in the event that a monthly payment made to a management company is allocated on a per-flight basis to aircraft owner’s aircraft, and in part to flights on aircraft other than the aircraft owner’s. In such a circumstance, Federal excise tax must be collected on that portion of the payment attributable to flights on aircraft not owned by the aircraft owner. Under the provision, a lessee of an aircraft is considered an aircraft owner provided that the lease is not a “disqualified lease.” A disqualified lease is any lease of an aircraft from a management company (or a related party) for a term of 31 days or less.

1186 See, e.g., Rev. Rul. 60-311, 1960-2 C.B. 341, which held that, since the company in question retains the elements of possession, command, and control of the aircraft, it is a management company. Id. at 342; 1187 NetJets Large Aircraft Inc. v. United States, 116 A.F.T.R. 2d 2015-0776 (S.D. Ohio 2015).
census tracts as qualified opportunity zones, where low-income communities are defined in Section 45D(e). The designation of a population census tract as a qualified opportunity zone has the effect of delaying beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation.

Governors may submit nominations for a limited number of opportunity zones to the Secretary of Commerce and development. If the number of low-income communities in a State is less than 100, the Governor may designate up to 25 tracts, otherwise the Governor designates up to 35 percent of the number of low-income communities in the State. Governors are required to provide particular consideration to areas that are currently the focus of state or local, or private economic development initiatives to attract investment and foster startup activity; (2) have demonstrated success in geographically targeted development programs such as promise zones, the new markets tax credit, empowerment zones, and renewal communities; and (3) are experiencing significant losses due to business closures or relocations.

The provision provides two main tax incentives for investment in qualified opportunity zones. First, it allows for the temporary deferral of inclusion in gross income for capital gains that are reinvested in a qualified opportunity zone. A qualified opportunity zone fund is an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone business interests. The provision intends to temporarily exempt qualified opportunity zone funds from income tax. It requires that at least 90 percent of its assets in qualified opportunity zone property. Qualifying investments are made by the Secretary or the Secretary's delegate.

The conference agreement generally follows the Senate amendment with the following modifications. First, the provision provides that each population census tract in each U.S. possession that is a qualified opportunity zone after the date of enactment is to be treated as a separate new building.

In order to be eligible for the low-income housing credit, the building must be located in a qualified low-income housing project must be available for use by the general public. A project is available for general public use if the building complies with housing non-dis- crimination policies including those set forth in the Fair Housing Act (42 U.S.C. sec. 3601 and the project does not restrict occupancy based on membership in a social organization or employment by specific employers. In addition, any residential unit that is part of a hospital, nursing home, sanitarium, or intermediate care facility for the mentally or physically handicapped is not available for use by the general public.
shall not fail to meet the general public use requirement solely because of occupancy re-
strictions or preferences that favor tenants with (1) special needs; (2) who are members 
of a specified group under a Federal program or State program or policy that supports 
housing for such specified group; or (3) who are involved in artistic or literary activities.

HOU SE BILL

No provision.

SENATE AMENDMENT

Treatment of veterans’ preference as not viol-
ating general public use requirements

The provision replaces the exception to the 
general public use requirement for tenants 
engaged in artistic and literary activities with 
a provision for veterans.

Increase in credit for certain rural housing

For buildings eligible for the 70 percent 
present-value credit, the provision makes 
two changes. First, the provision treats such 
buildings located in rural areas (as defined in 
section 520 of the Fair Housing Act of 1949) as 
located in a HUD-designated difficult de-
velopment area. Second, the provision reduces the 
effectiveness of the 70 percent present-value 
credit in such areas and qualified census tracts from 130 
percent to 125 percent.1124

Effective date.—The provisions generally 
apply to buildings placed in service after the 
date of enactment. The changes related to 
the treatment of a veterans preference as not 
violating general public use requirements apply to buildings placed in service before, 
or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not follow 
the Senate amendment provisions.

EXEMPT ORGANIZATIONS

A. Unrelated Business Income Tax

1. Clarification of unrelated business income 
tax on entities exempt from tax under 
section 501(a) (sec. 5001 of the House bill and sec. 511 of the Code)

PRESENT LAW

Tax exemption for certain organizations

Section 501(a) exempts certain organizations 
from Federal income tax. Such organi-
izations include: (1) tax-exempt organizations described in section 501(c) (including among 
others section 501(c)(3) charitable organiza-
tions and section 501(c)(4) social welfare or-
ganizations); (2) religious and apostolic orga-
nizations described in section 501(d); and (3) 
organizations described in section 501(e).

In general

Unrelated business income tax, in general

Most exempt organizations may operate an 
unrelated trade or business so long as the or-
ganization remains primarily engaged in ac-
tivities that further its exempt purposes.

Therefore, an organization may engage in a 
substantial amount of unrelated business ac-
tivity without jeopardizing exempt status. A 
section 501(c)(3) (charitable) organization, 
however, may not operate an unrelated trade 
or business as a substantial part of its activi-
ties.1127 Therefore, the unrelated trade or 
business activity of a section 501(c)(3) orga-
nization must be insubstantial.

Organizations subject to tax on unrelated 
business income

Most exempt organizations are subject to 
the tax on unrelated business income. Spe-
cially, organizations subject to unrelat-
ed business income tax generally include: 
(1) organizations exempt from tax under 
section 501(a), including organizations described in 
section 501(e) (except for U.S. instrument-
alties and certain charitable trusts); 1128 (2) 
qualified pension, profit-sharing, and stock 
bonus plans described in section 401(a);1129 and 
(3) certain State colleges and univer-
sities.1130

HOUSE BILL

The provision clarifies that an organiza-
tion's tax-exempt functions.1201 An 
organization remains primarily engaged in ac-
tivities of exempt organizations is excluded 
from unrelated business taxable income. For 
example, an organization is described in 
section 501(a) solely because the organization also is ex-
cept, or excludes amounts from gross in-
come, by reason of another provision of the Code. For example, if an organization is 
described in section 401(a) (and thus is exempt 
from tax under section 501(a)) and its income also is described in section 115 (relating to 
the exclusion from gross income of certain income derived from the exercise of an essen-
tial governmental function), its status under 
section 115 determines to exempt from tax on its unrelated business income.

Effective date.—The provision is effective 
for taxable years beginning after December 

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include 
the House bill provision.

2. Exclusion of revenue from unrelated 
business taxable income limited to 
publicly available research (sec. 5002 of 
the House bill and sec. 512(b)(9) of the 
Code)

PRESENT LAW

Tax exemption for certain organizations

Section 501(a) exempts certain organiza-
tions from Federal income tax. Such organi-
izations include: (1) tax-exempt organizations described in section 501(c) (11)7, 
voluntary employees’ beneficiary associations (sec. 501(c)(9)), and organizations and trusts described in 
sections 501(c)(17) and 501(c)(20). Sec. 512(a)(3).

1126 Sec. 511(a)(2)(A).

1127 Secs. 511–514.

1128 Sec. 511(a)(2)(A).


1130 Sec. 511(b)(9).
example, income derived from research performed for the United States, a State, and certain agencies and subdivisions is excluded.\textsuperscript{1210} Income from research performed by a college, university, or hospital for any person also is excluded.\textsuperscript{1211} Finally, if an organization is operated primarily for purposes of carrying out tax-exempt functions, the results of which are freely available to the general public, all income derived by research performed by such organization for any person, not derived from research available to the general public, is excluded.\textsuperscript{1212}

3. Unrelated business taxable income separately computed for each trade or business activity

\textbf{HOUSE BILL}

The conference agreement does not include the House bill provision.

\textbf{SENATE AMENDMENT}

No provision.

\textbf{CONFERENCE AGREEMENT}

The conference agreement follows the Senate amendment.

\textbf{B. Excise Taxes}

1. Simplification of excise tax on private foundation investment income

Under section 4940(a), private foundations that are recognized as exempt from Federal income tax under section 501(a) (other than exempt operating foundations)\textsuperscript{1225} are subject to a two-percent excise tax on their net investment income. Net investment income generally includes interest, dividends, rents, royalties (and income from similar sources), gains from sales of stock and securities, and gains from the disposition of investments, less the amount of charitable deductions. The excise tax rate is reduced if the foundation's qualitative distributions are exemplary. Specifically, the excise tax rate is reduced if the foundation's qualifying distributions (generally, amounts

\textsuperscript{1210} Sec. 512(b)(7).

\textsuperscript{1211} Sec. 512(b)(8).

\textsuperscript{1212} Sec. 512(b)(9).

\textsuperscript{1213} Sec. 512(a).

\textsuperscript{1220} Ibid.

\textsuperscript{1221} Sec. 512(b)(1).

\textsuperscript{1222} Sec. 512(b)(2).

\textsuperscript{1223} Sec. 512(b)(3).

\textsuperscript{1224} Sec. 512(b)(4).

\textsuperscript{1225} Sec. 4940(a).
paid to accomplish exempt purposes.\textsuperscript{1224} An organization may qualify as public charities because they are broadly publicly supported. First, a charity may qualify as publicly supported if at least one-third of its total support is from gifts, grants, bequests, and contributions from governmental units or the general public.\textsuperscript{1225} Alternatively, it may qualify as publicly supported if it receives more than one-third of its support from related activities, such as the sale of goods, services, and not for profit enterprises; gifts, grants, and contributions from governmental units and the public plus revenue arising from activities related to its exempt purpose, and other reasonable and necessary administrative expenses that the foundation incurs in operating a grant program. A qualifying distribution also includes any amount paid to an organization that is used (or held for use) directly in carrying out or one more of the organization’s exempt purposes and certain amounts set aside for exempt purposes.\textsuperscript{1226}

Private operating foundations

The tax on failure to distribute income does not apply to the undistributed income of a private foundation for any taxable year for which it is operating a grant program.\textsuperscript{1227} Private operating foundations generally operate their own charitable programs directly, rather than serving primarily as a grantmaking entity.

Private operating foundations must satisfy several tests designed to distinguish them from nonoperating (grantmaking) foundations. First, an operating foundation generally must make qualifying distributions for the direct conduct of activities related to its exempt purpose (as opposed to making such distributions in the form of grants to other charities) equal to 55 percent of the foundation’s adjusted investment income in its minimum investment return, each as defined under section 4942.\textsuperscript{1228} In addition, an operating foundation must satisfy one of the following three alternative tests designed to distinguish them from nonoperating (grantmaking) foundations. Under the provisions of section 4945, violations of these rules result in excise taxes on the foundation and, in some cases, may result in excise taxes on the managers of the foundation.

\textsuperscript{1224}Sec. 4942(k).
\textsuperscript{1225}Sec. 4942(e).
\textsuperscript{1226}Sec. 4942(j).
\textsuperscript{1227}Sec. 4942(a)(1).
\textsuperscript{1228}Sec. 4942(g)(1)(B) and 4942(g)(2).
\textsuperscript{1229}Sec. 4942(g)(1)(A).
\textsuperscript{1230}Sec. 4942(g)(l)(A).
\textsuperscript{1231}Sec. 4942(g)(l)(B).
\textsuperscript{1232}Sec. 4942(j).
\textsuperscript{1233}Sec. 4942(k).
### 3. Excise tax based on investment income of private colleges and universities (sec. 5103 of the House bill, sec. 13701 of the Senate amendment, and new sec. 4968 of the Code)

#### PRESENT LAW

**Public charities and private foundations**

An organization qualifying for tax-exempt status under section 501(c)(3) is further classified as a public charity or a private foundation. An organization may qualify as a public charity in several ways. Certain organizations are classified as public charities on the basis of their sources of support. These include churches, certain schools, hospitals and other medical organizations, certain organizations providing assistance to veterans and governmental units. Other organizations qualify as public charities because they are broadly publicly supported. First, a charity may qualify as publicly supported if it receives more than one-third of its total support from a combination of gifts, grants or other contributions from governmental units or the general public. Alternatively, it may qualify as publicly supported if receives more than one-third of its total support from a combination of gifts, grants, or other contributions from governmental units and the public plus revenue arising from activities related to its exempt purposes (e.g., fee for service income). In addition, a public charity must not rely excessively on endowment income as a source of support. A supporting organization, i.e., an organization that provides support to another section 501(c)(3) entity that is not a private foundation and meets the requirements of the Code, also is classified as a public charity.

A section 501(c)(3) organization that does not fit within any of the above categories is not a public charity. Instead, private foundations receive funding from a limited number of sources (e.g., a family, a corporation).

The deduction for charitable contributions to private foundations is in some instances less generous than the deduction for charitable contributions to public charities. In addition, private foundations are subject to a number of operational rules and restrictions that do not apply to public charities.

#### Sec. 509(a)(2)(B)

Section 509(a)(2) provides exceptions to the definition of public charity, including charitable trusts.

#### Sec. 509(a)(3)

Supporting organizations also are subject to more restrictions on their activities than are public charities. For example, private foundations are prohibited from engaging in self-dealing transactions (sec. 4941), and may not make certain expenditures (sec. 4945). Violations of these rules result in excise taxes on the foundation and, in some cases, may result in excise taxes on the managers of the foundation.

#### Excise tax based on investment income of private foundations

Under section 4940(a), private foundations that are recognized as exempt from Federal income tax under section 501(a) (other than exempt operating foundations) are subject to a tax on their net investment income. Net investment income generally includes interest, dividends, rents, royalties, gains from sales or other dispositions of interest or capital assets, and gain net income, and is reduced by expenses incurred to earn this income. The two-percent rate of tax is reduced to one percent if the foundation, of which the excess of the average historical level of its charitable distributions, specifically, the excise tax rate is reduced if the foundation's qualifying distributions (generally, amounts paid to accomplish exempt purposes) equal or exceed the sum of (1) the amount of the foundation's assets for the taxable year multiplied by the average percentage of the foundation's qualifying distributions over the five taxable years immediately preceding the taxable year in question, and (2) one percent of the fair market value of the foundation's assets at the beginning of the taxable year. In addition, the foundation cannot have been subject to tax in any of the five preceding years for failure to satisfy distribution requirements in section 4942.

Private foundations that are not exempt from taxation and that are categorized as charitable trusts, are subject to an excise tax under section 4940(b). The tax is equal to the excess of the sum of the excise tax that would have been imposed if the foundation were a supporting organization with respect to the educational institution, the foundation's assets and net investment income include amounts with respect to an organization that is related to the institution. An organization is treated as related to the institution for this purpose if the organization: (1) is controlled by the institution; (2) is controlled by one or more persons that control the institution; or (3) is a supported organization or a supporting organization during the taxable year with respect to the institution.

The excise tax imposed on the foundation under subtitle A of the Code.

Private foundations are required to make a minimum amount of qualifying distributions each year to avoid tax under section 4942. The minimum amount of qualifying distributions that a foundation has to make to avoid tax under section 4942 is reduced by the amount of section 4940 excise taxes paid.

#### Private colleges and universities

Private colleges and universities generally are treated as public charities rather than private foundations and thus are not subject to the private foundation excise tax on net investment income.

#### HOUSE BILL

The provision imposes an excise tax on an applicable educational institution for each taxable year equal to 1.4 percent of the net investment income of the institution for the taxable year. Net investment income is determined using rules similar to the rules of section 4940(c) (relating to the net investment income of a private foundation).

The excise tax on an applicable educational institution is an institution: (1) that has at least 500 students during the preceding taxable year; (2) that is an eligible educational institution as defined in section 25A of the Code; that is not described in the first sentence of section 511(a)(2)(B) of the Code (generally describing State colleges and universities); or (4) the aggregate fair market value of the assets of which at the end of the preceding taxable year (other than those assets that are used directly in carrying out the institution's exempt purpose) is at least $250,000 per student. For these purposes, the number of students of an institution is based on the daily average number of full-time-equivalent students attending the institution, with part-time students being taken into account on a full-time-equivalent student enrollment basis.

For purposes of determining whether an institution meets the asset-per-student threshold and determining net investment income, applicable educational institutions include amounts with respect to an organization that is related to the institution. An organization is treated as related to the institution for this purpose if the organization: (1) is controlled by the institution; (2) is controlled by one or more persons that control the institution; or (3) is a supported organization or a supporting organization during the taxable year with respect to the institution. The provision is effective for taxable years beginning after December 31, 2017.

#### SENATE AMENDMENT

The Senate amendment follows the House bill with the following modifications. First, the definition of applicable educational institution is modified in two ways: (1) it requires that the educational institution have at least 500 tuition paying students; and (2) it increases the asset-per-student threshold from $250,000 to $500,000.

Second, the Senate amendment clarifies that the provision of the House bill describing the provision. For purposes of determining whether an educational institution meets the asset-per-student threshold and for purposes of determining net investment income, assets and net investment income of a related organization with respect to the educational institution are treated as assets and net investment income of the educational institution, except that:

1. No such amount is taken into account with respect to more than one educational institution; and

2. **Secs. 509(a)(X) and 170(b)(1)(A)(ii).**

**Section 25A defines an eligible educational institution as one described in section 481 of the Higher Education Act of 1965 (20 U.S.C. sec. 1088), as in effect on August 5, 1977, and eligible educational institutions (as defined in section 25A) shall participate in a program under title IV of such Act.**

**Assets used directly in carrying out the institution's exempt purposes include, for example, classroom buildings and physical facilities used for educational activities and office equipment or other assets used directly in carrying out exempt activities, among others.**

**Secs. 509(a)(5).**

**Secs. 509(a)(3).**
2. Unless the related organization is controlled by the educational institution or is a supporting organization (described in section 509(a)(3)) with respect to the institution for the taxable year, net investment income is deemed to be unrelated business income that is not intended or available for the use or benefit of the educational institution and is not taken into account. For example, assets of a related organization that are earmarked or restricted for (or fairly attributable to) the educational institution would be treated as assets of the educational institution that are held for unrelated purposes (and are not fairly attributable to the educational institution) would be disregarded.

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

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modification. The provision modifies the definition of “applicable educational institution” to include only institutions more than 50 percent of the tuition paying students of which are located in the United States. For this purpose, the number of students at a location is based on the daily average number of full-time students attending the location, with part-time students being taken into account on a full-time student equivalent basis.

It is intended that the Secretary promulgate regulations to carry out the intent of the provision, including regulations that describe: (1) assets that are used directly in carrying on educational or charitable activities of the related organization’s exempt purpose; (2) the computation of net investment income; and (3) assets that are intended or available for the use or benefit of the educational institution.

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

4. Provide an exception to the private foundation excess business holdings rules for philanthropic business holdings (sec. 5104 of the House bill and sec. 4943 of the Code)

PRESENT LAW

Public charities and private foundations

An organization qualifying for tax-exempt status under section 501(c)(3) is further classified as either a public charity or a private foundation. An organization may qualify as a public charity in several ways.1255 Certain organizations are classified as public charities per se, regardless of their sources of support.1256 A supporting organization that is held for unrelated purposes (and are not fairly attributable to the educational institution) would be disregarded.

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

504. Provide an exception to the private foundation excess business holdings rules for philanthropic business holdings (sec. 5104 of the House bill and sec. 4943 of the Code)

PRESENT LAW

An organization qualifying for tax-exempt status under section 501(c)(3) is further classified as either a public charity or a private foundation. A public charity is an organization that is a section 509(a)(1) organization (including medical research organizations) that does not possess one of the conditions that disqualify it from being classified as a public charity.1257 Certain organizations are classified as public charities per se, regardless of their sources of support.1258 A supporting organization that is held for unrelated purposes (and are not fairly attributable to the educational institution) would be disregarded.

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Effective date.—The provision is effective for taxable years beginning after December 31, 2017.
foundations.'' The Code specifies that a charitable organization must operate primarily in pursuance of one or more charitable purposes; and (5) it may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.1269 The prohibition on such political campaign activity is absolute and, in general, includes activities such as making contributions to a candidate’s political campaign, endorsement of a candidate, using employees to work in a political campaign, or providing facilities for use by a candidate. The absolute prohibition on campaign activities was added in 1954 by the so called “Johnson amendment.”1272 Many other activities may constitute political campaign activity, depending on the facts and circumstances. The sanction for a violation of the prohibition is loss of the organization’s tax-exempt status.

For organizations that engage in prohibited political campaign activity, the Code provides that the prohibition is not to be applied either as an alternative to revocation of tax exemption or in addition to loss of tax-exempt status: an excise tax on political expenditures,1273 termination assessment of all the organization’s assets,1274 and an injunction against further political expenditures.1275

HOUSE BILL

The provision modifies the present-law rules relating to political campaign activity by section 501(c)(3) organizations for the following purposes: (1) section 501(c)(3) tax-exempt organizations maintain as a recipient of tax-deductible contributions for income, gift, and estate taxes due,1276 and an injunction against further political expenditures.1277

For such purposes, an organization shall not fail to be treated as organized and operated exclusively for a purpose described in section 501(c)(3), nor shall it be described as a charitable organization for the purposes of section 501(c)(3).

Section 501(c)(3) organizations are classified either as “public charities” or “private foundations.” They are defined generally under section 509(a) as all organizations described in section 501(c)(3) other than an organization granted public charity status under section 501(4)(B) being a specifically defined type of organization, i.e., churches, educational institutions, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit; (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; or (3) providing support to another section 501(c)(3) entity that is not a private foundation. In contributing to such organizations, private foundations generally are funded from a limited number of sources (e.g., an individual, family, or corporation). Donors to private foundations and persons related to such donors together often control the operations of private foundations.

Because private foundations receive support from, and are typically controlled by, a small number of supporters, private foundations are subject to a number of anti-abuse rules and excise taxes not applicable to public charities. Public charities also have certain advantages that may not be available regarding the deductibility of contributions.

Political campaign activities

Charitable organizations may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. The prohibition on such political campaign activity is absolute and, in general, includes activities such as making contributions to a candidate’s political campaign, endorsement of a candidate, using employees to work in a political campaign, or providing facilities for use by a candidate. The absolute prohibition on campaign activities was added in 1954 by the so called “Johnson amendment.” Many other activities may constitute political campaign activity, depending on the facts and circumstances. The sanction for violation of the prohibition is loss of the organization’s tax-exempt status.

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Statutory definition of a donor advised fund

The Code defines a “donor advised fund” as a fund or account that is (1) separately identified by reference to contributions of a donor; (2) operated by a sponsoring organization; and (3) with respect to which a donor (or any person appointed or designated by such donor) has (a) the power to direct the use of the contributions to the extent that the interest of the charitable organization is comprised in the purpose or activities described in section 170(b)(1); (b) the power to have, advisory privileges with respect to the distribution or investment of amounts held in the separately identified fund or account by the organization in which such amounts are held as a donor. All three prongs of the definition must be met in order for a fund or account to be treated as a donor advised fund.
A “sponsoring organization” is an organization that: (1) is described in section 170(c); (2) not a private foundation (as defined in section 509(a)); and (3) maintains one or more donor advised funds.1280

Reporting and disclosure

Each sponsoring organization must disclose on its return: (1) the total number of donor advised funds it owns; (2) the aggregate value of assets held in those funds at the end of the organization’s taxable year; and (3) the aggregate contributions to and grants made from those funds during the year.1281 In addition, when seeking recognition of its tax-exempt status, a sponsoring organization must disclose whether it intends to maintain donor advised funds.1282

HOUSE BILL

The provision requires a sponsoring organization to report additional information on its annual information return (Form 990). Sponsoring organizations must indicate: (1) the average amount of grants made from donor advised funds during the taxable year (expressed as a percentage of the value of assets held in such funds at the beginning of the taxable year); and (2) whether the organization has a policy with respect to donor advised funds relating to the frequency and minimum contributions that may be made to donor advised funds. The sponsoring organization must include with its return a copy of any such policy.

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

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

INTERNATIONAL TAX PROVISIONS

PRESENT LAW

The following discussion provides an overview of general principles of taxation of cross-border transactions as well as a discussion of the internationalization of the U.S. taxation system. The conference agreement recognizes the right of each sovereign nation to prescribe rules to regulate conduct with a sufficient nexus to the sovereign nation. The nexus may be based on nationality of the actor, i.e., a nexus between said conduct and a person (whether natural or juridical) with a connection to the sovereign nation, or it may be territorial, i.e., a nexus between the conduct to be regulated and the territory where the conduct occurs.1283 For example, most legal systems respect limits on the extent to which a jurisdiction may give extraterritorial effect. The broad acceptance of such norms extends to authority to regulate cross-border trade and economic dealings, including taxation.

The exercise of sovereign jurisdiction is usually based on either nationality of the person or residence (nationality of the taxpayer).1284 A jurisdiction may determine the place of use or consumption by applying the convention that the place of business or residence of a customer is the place of consumption. Use of such proxies are normally used to determine the residence of businesses that are juridical entities, which are more able than natural persons to move the location of use of services or intangibles in response to imposition of tax.

2. Source and residence principles

Exercise of taxing authority based on a person’s residence may be based on status as a donor or donor advisor. The Secretary also may exempt a fund or account from treatment as a donor advised fund if such fund or account benefits a single identified charitable purpose. Sec. 4946(d)(2)(B) and (C).

1280 Section 170(c)(3) describes organizations to which charitable contributions are deductible for income tax purposes that can receive donor advised funds.

1281 See sec. 170(c)(2A)(A).

1282 Sec. 4946(d)(1).

1283 Sec. 6038(f).

1284 Sec. 508(f).


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a national, resident, or domiciliary of a jurisdic-
tion and may reach worldwide activities of
such persons. As such, it is the broad-
est assertion of taxing authority. For indi-
viduals, the limits of authority are based
upon nationality, or a physical presence test,
or some combination of the two. For all
other persons, determining residency may
require consideration of the level of activi-
ties within a jurisdiction, manage-
ment, control or place of incorporation.
Such rules generally reflect a policy decision about the limits of activity within,
or contact with, a jurisdiction by a person
that is sufficient to warrant assertion of tax-
ing jurisdiction.

Source-based exercise of taxing authority
taxes income from activities that occur, or
property that is located, within the territory
of the country. If a person conducts business
or owns property in a jurisdiction,
or if a transaction occurs in whole or in
part in a jurisdiction, the resulting taxation
may require allocation and apportionment
of expenses attributable to the activity in order
to ensure that only the portion of profits
that have the required nexus with the terri-

ty of the country are taxed. Most jurisdic-
tions, including the United States, have rules
for determining the source of items of income
and endowments and categories such as compensation for services, dividends,
interest, royalties and gains.

Regardless of which of these two bases of
taxing is determined by a jurisdiction,
a jurisdiction's determination of whether a
transaction, activity or person is subject to
tax requires that the jurisdiction establish
the limits on its assertion of authority to tax.

3. Resolving overlapping or conflicting jurisdic-
tion to tax

Countries have developed norms about what constitutes a reasonable regulatory ac-
tion by a sovereign state that will be re-
pected by other sovereign states. Consensus
on what constitutes a reasonable limitation
on the extent of one state's jurisdiction helps
to minimize the risk of conflicts arising as a
result of extraterritorial action by a state
or overlapping exercise of authority by states.
Mechanisms to eliminate double taxation
have developed to address those situations in
which the source and residency determina-
tions made by different jurisdictions lead to
duplicative assertion of taxing authority.
For example, asymmetry between different
standards adopted in two countries for deter-
mining whether businesses, persons, sources
come, or other basis for taxation may result
in income that is subject to taxation in both
jurisdictions.

When the rules of two or more countries
overlap, potential double taxation is usually
mitigated by operation of bilateral tax trea-
ties or by legislative measures permitting
credit for taxes paid to another jurisdiction.
The United States is a partner in numerous
bilateral agreements that have as their ob-
jective the elimination of double taxation
and the prevention of tax avoidance and
evasion. Another related objective of
U.S. tax treaties is the removal of the bar-
riers to trade, capital flows, and commercial
travel that may be caused by overlapping tax
jurisdictions and by the burdens of com-
plying with the tax laws of a jurisdiction
when a person conducts business with, or is
derived from, that jurisdiction are minimal.
The United States Model Income Tax Con-
vention ("U.S. Model Treaty of 2016") with
an approach to the convention, reflects the policy
principles and objectives of the conven-
tion of Treaty, reflects the most recent
comprehensive statement of U.S. negotiati-
lateral agreements are also used to permit
limited mutual administrative assistance be-
tween jurisdictions.1296

In addition to entering into bilateral trea-
ties, countries are involved in multilateral
debates to develop common principles to
alleviate double taxation. Those princi-

ciples are generally reflected in provi-
sions of the Model Tax Convention on In-
come and on Capital of the Organization
for Economic Cooperation and Development (the "OECD Model Treaty") which
was first developed by a predecessor
organization in 1958, which in turn has ante-
cedents from work by the League of Nations
in the 1920s. As a consensus document, the
OECD Model treaty is intended to serve as a
model for countries to use in negotiating a
bilateral treaty that would settle issues of
doubtful tax law. The OECD Model treaty differs
on whether income is subject to outbound investment
in-
had held in the domestic corporation) at least 60 percent but less than 80 percent (by vote or value) of the stock of the foreign-incorporated entity after the transaction (this stock is referred to as “stock held by reason of”); and (3) the foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 25 percent ownership (the “expanded affiliated group”), does not have substantial business activities in the entity’s country of incorporation, compared to the business activities of the expanded affiliated group.\footnote{Section 7874(a). In addition, an excise tax may be imposed in whole or in part on the compensation of companies that undertake inversion transactions. Sec. 4985.}

The Treasury Department and the IRS have promulgated detailed guidance, through regulations and final and temporary notices, addressing these requirements under section 7874 since the section was enacted in 2004,\footnote{T.D. 9812, January 13, 2017.} and have sought to expand the reach of section 7874 since the section was enacted in 1997.\footnote{N.R. LEXIS 583 (Nov. 19, 2015), which announced their intent to issue further regulations to limit cross-border merger transactions, expanding on the guidance issued in Notice 2014–52.} In Notice 2014–52, Treasury and the IRS issued Notice 2015–79, which announced their intent to issue further regulations to limit cross-border merger transactions, expanding on the guidance issued in Notice 2014–52. In Notice 2015–79 and a new multiple domestic entity acquisition rule.\footnote{Sec. 861(a)(2)(A).} In early 2017, Treasury issued final and temporary regulations that adopt, with few changes, the 2016 temporary and proposed regulations.

2. Entity classification

Certain entities are eligible to elect their classification for Federal tax purposes under the “check-the-box” regulations adopted in 1997.\footnote{T.D. 9612, January 13, 2017.} Those regulations simplified the entity classification process for both taxpayers and the IRS.\footnote{Treas. Reg. sec. 301.7701–1, et seq.} The eligibility to elect and the breadth of an entity’s choices depend upon whether it is a “per se” corporation and its number of beneficial owners.\footnote{Treas. Reg. sec. 301.7701–2, as in effect prior to 1997, under which a corporation of unincorporated entities for Federal tax purposes was determined on the basis of a four characteristics indicative of status as a corporation: (1) the investor’s right to the use of life, central management, limited liability, and free transferability of interests. An entity that possessed three or more of these characteristics was treated as a corporation; if it possessed two or fewer, then it was treated as a partnership. Thus, to achieve characterization under this system, taxpayers needed to arrange the governing instruments of an entity in such a way as to eliminate two of these corporate characteristics. The advent and proliferation of limited liability companies (“LLCs”) under State laws allowed business owners to create new types of ownership partnerships under this system, treating nonresident aliens for purposes of section 7874.\footnote{T.D. 9612, April 4, 2016. But see, Chamber of Commerce of the U.S. v. IRS, 944 WL (D.C. W.D. Tex. Sept. 29, 2017), granting summary judgment to plaintiff in challenge to temporary regulations. Secs. 861–7(c).} The 2016 regulations, which incorporate the rules previously announced in Notice 2014–52 and Notice 2015–79 and a new multiple domestic entity acquisition rule.

In 2017, Treasury issued final and temporary regulations that adopt, with few changes, the 2016 temporary and proposed regulations.

3. Source of income rules

The rules for determining the source of certain types of income are specified in the Code and described briefly below. Various factors determine the source of income for U.S. tax purposes, including the status or nationality of the payor, the status or nationality of the recipient, the location of the recipient’s activities that generate the income, and the location of the assets that generate the income. If the source of income is not specified by statute, the Treasury Secretary may promulgate regulations that explain the appropriate treatment.

For purposes of determining whether income is treated as partly U.S.-source and partly foreign-source, a tax treaty may provide that income is treated as entirely foreign-source.\footnote{T.D. 9812, January 13, 2017.} Dividend income is generally sourced by reference to the payor’s place of incorporation.\footnote{T.D. 9612, January 13, 2017.} Thus, dividends paid by a domestic corporation are generally treated as entirely U.S.-source income. Similarly, dividends paid by a foreign corporation are generally treated as entirely foreign-source income. Under a special rule, dividends from certain foreign corporations that conduct U.S. business within the United States are treated in part as U.S.-source income.\footnote{Sec. 861(a)(2)(B).}

Rents and royalties

Rental income is sourced by reference to the location or place of use of the leased property. The nationality of the lessor or lessee does not affect the source of rental income. Rental income from property located or used in the United States (or from any interest in such property) is U.S.-source income, regardless of whether the property is real or personal, intangible or tangible.\footnote{Sec. 861(a)(6), 862(a)(6); Treas. Reg. sec. 1.861–1(b).} Royalties are sourced in the place of use (or the place of privilege to use) the property for which the royalties are paid.\footnote{Sec. 861(a)(6), 862(a)(6); Treas. Reg. sec. 1.861–1(b).} This source rule applies to royalties for the use of either tangible or intangible property, including patents, copyrights, secret processes, formulas, goodwill, trademarks, trade names, and franchises.

Income from sales of personal property

Subject to significant exceptions, income from the sale of personal property is sourced on the basis of the residence of the seller.\footnote{Sec. 861(a)(6), 862(a)(6); Treas. Reg. sec. 1.861–1(b).} For purposes of determining whether income is treated as U.S.-source or foreign-source, a tax treaty may provide that income is treated as entirely foreign-source income.\footnote{Sec. 861(a)(6), 862(a)(6); Treas. Reg. sec. 1.861–1(b).} As a result, nonresident includes any foreign corporation.

Several special rules apply. For example, income from the sale of inventory property is generally sourced to the place of sale, which is determined by where title to the property passes.\footnote{Sec. 861(a)(6), 862(a)(6); Treas. Reg. sec. 1.861–1(b).} However, if the sale is by a nonresident and is attributable to an office or other fixed place of business in the United States, the sale is treated as income from real property for U.S. tax purposes, because the inventory property that a taxpayer produces is, in whole or in part, placed in or outside the United States and sold outside the United States, or that a taxpayer's use of property is personal, such property is not treated as U.S.-source. In such a situation, income attributable to such property is treated as wholly foreign-source income.\footnote{Sec. 861(a)(6), 862(a)(6); Treas. Reg. sec. 1.861–1(b).} As a result, nonresident includes any foreign corporation.

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In determining the source of gain or loss from the sale or exchange of an interest in a foreign partnership, the IRS has taken the position that to the extent that there is unrealized gain or loss to partners attributable to partnerships that effectively connected with the U.S. business, the foreign person’s gain or loss from the sale or exchange of a partnership interest is treated as U.S.-source gain or loss to the extent of the partner’s distributive share of unrealized gain or loss, and not capital gain or loss. Similarly, to the extent that the partner’s distributive share of unrealized gain is attributable to a permanent establishment of the partnership under an applicable treaty provision, it may be subject to the treaty.

Gain on the sale of depreciable property is divided between U.S.-source and foreign-source in the same ratio that the depreciation was previously deductible for U.S. tax purposes. Payments received on sales of intangible property are sourced in the same manner as royalties to the extent the payments are contingent on the productivity, use, or disposition of the intangible property.

Personal services income

Compensation for labor or personal services is generally sourced to the place-of-performance. Thus, compensation for labor or personal services performed in the United States is attributable to U.S.-source income, subject to an exception for amounts that meet certain de minimis criteria. Compensation for services performed both within and without the United States is allocated between U.S.-and foreign-source.

Insurance income

Underwriting income from issuing insurance or annuity contracts generally is treated as U.S.-source income. Amounts received from contracts that extend reciprocal relief to U.S. persons. A nonresident alien individual with income from the international operation of a ship may qualify, provided that the foreign country in which such individual is resident grants an equivalent exemption to individual residents of the United States. A similar exemption from U.S. tax is provided for U.S. aliens, as well as non-U.S. residents and organizations that conduct international operations. To be U.S. source because travel begins or ends in the United States, is not effectively connected, and is not of a kind to which the exemption from tax applies.

An exemption from U.S. tax is provided for transportation income of foreign persons who do not have a U.S. presence that extend reciprocal relief to U.S. persons. A nonresident alien individual with income from the international operation of a ship may qualify, provided that the foreign country in which such individual is resident grants an equivalent exemption to individual residents of the United States.

Compensation for labor or personal services performed in the United States is attributable to U.S.-source income, subject to an exception for amounts that meet certain de minimis criteria. Compensation for services performed both within and without the United States is allocated between U.S.-and foreign-source.

Transportation income

Transportation income is any income derived from, or in connection with, the use (or hiring or leasing for use) of a vessel or aircraft (or a container used in connection therewith) or the performance of services directly related to such use. That definition does not encompass land transport except to the extent that it is directly related to shipping by vessel or aircraft, but regulations extend a similar rule for determining the source of income from transportation services other than shipping or aviation. Sources rules for determining the source of income from furnishing transportation that both begins and ends in the United States are allocated between U.S.-and foreign-source.

Income from space or ocean activities or international communications

In the case of a foreign person, generally no income from a space or ocean activity or from international communications is treated as U.S.-source income. With respect to an alien who is present in the United States, is not effectively connected, and is not of a kind to which the exemption from tax applies.

4. Intercompany transfers

Transfer pricing

A basic U.S. tax principle applicable in dividing profits from transactions between related taxpayers is that the amount of profit allocated to each related taxpayer must be measured by reference to the amount of profit that a similarly situated taxpayer would realize from similar sales or transactions with unrelated parties. The transfer pricing rules of section 482 and the accompanying Treasury regulations are intended to preserve the U.S. tax base by ensuring that taxpayers do not shift income properly attributable to the United States to a related foreign company through pricing that does not reflect a comparable price. Similarly, the domestic laws of most U.S. trading partners include rules to limit income shifting through transfer pricing. The arm’s-length standard is difficult to administer in situations in which the international operation of a ship is generally shared by U.S. and foreign principal owners, and the cost of the vessel is shared among several owners.

1328 Payments received on sales of intangible property are sourced in the same manner as royalties to the extent the payments are contingent on the productivity, use, or disposition of the intangible property.

1329 Amounts received on sales of depreciable property is divided between U.S.-source and foreign-source in the same ratio that the depreciation was previously deductible for U.S. tax purposes.

1330 Sec. 861(a)(3).

1331 Treas. Reg. sec. 1.861–4(b).

1332 United States.


1334 Sec. 863(c).

1335 Sec. 883(a)(2).

1336 Sec. 887(b)(1).

1337 Sec. 861(a)(9). This provision effects a legislative change to previous positions that limited the definition of "full" to include rules to limit income shifting through transfer pricing. The arm’s-length standard is difficult to administer in situations in which the international operation of a ship is generally shared by U.S. and foreign principal owners, and the cost of the vessel is shared among several owners.
which no unrelated party market prices exist for transactions between related parties. When a foreign person with U.S. activities has transactions with related U.S. taxpayers, the amount of potential for abuse and administrative difficulties. The activities is determined in part by the same transfer pricing rules of section 482 that apply when U.S. persons with foreign activities transact with related foreign entities.

Section 482 authorizes the Secretary of the Treasury to allocate income, deductions, credits, or allowances among related business entities when necessary to clearly reflect income or otherwise prevent tax avoidance, and comprehensive 'Treasury regulations' that apply the length standard as the method for determining whether allocations are appropriate. The regulations generally attempt to identify the respective amounts of taxable income of the related parties that would have resulted if the parties had been unrelated parties dealing at arm's length. For income treated as attributable to property, section 482 provides 'in the case of any transfer (or license) of intangible property (within the meaning of section 896(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.' By requiring inclusion in income of amounts commensurate with the income attributable to the intangible, Congress was responding to concerns regarding the effectiveness of the arm's length standard with respect to intangible properties and in particular, high-profit-potential intangibles.

Gain recognition on outbound transfers

If a transfer of intangible property to a foreign affiliate occurs in connection with certain termination events, nonrecognition rules that may otherwise apply are suspended. The transferor of intangible property must recognize gain from the transfer as though the transferor were liquidating the intangible. Congress was responding to concerns regarding the effectiveness of the arm's-length standard with respect to intangible properties and in particular, high-profit-potential intangibles.

I. Gross-basis taxation of U.S-source income.

Non-business income received by foreign persons is generally subject to tax on a gross basis at a rate of 30 percent, which is collected by withholding at the source of the payment. As explained below, however, subject to a very limited number of exceptions, the 30-percent tax and the categories for which withholding is required are generally 'coextensive,' with the result that determining the withholding tax liability determines the substantive liability. The income of non-resident aliens or foreign corporations that is subject to tax on a gross basis includes FDAP income that is not effectively connected with the conduct of a U.S. trade or business. Interest on bank deposits may qualify for nonrecognition of gain from outbound transfers of foreign goodwill and going concern value. However, the Secretary announced that reinvestment of after-tax earnings for active trade or business is under consideration for cases with little potential for abuse and administrative difficulties.

1349 The term "related" as used herein refers to relationships described in section 482, which refers to "two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) that are controlled directly or indirectly by the same interests." Section 482A buttresses section 482 by limiting the extent to which costs used to determine custom valuation can also be used to determine basis in property imported from a related party. A taxpayer that imports property from a related party may not assign a value to the property for cost purposes that exceeds its customary value.

1350 Sec. 1231(a).

1351 Sec. 482(d).

1352 Sec. T.D. 9683, 81 F.R. 5012 (December 17, 2016). Treas. Reg. 1.367-1T(b) now provides that the rules of section 367(d) apply to transfers of intangible property as defined under Treas. Sec. 1.367(a)-1(d)(5) after September 14, 2015, and to any transfers of intangible property occurring before that date resulting from entity classification elections filed on or after September 15, 2015. However, the regulations had cited legislative history that contemplated ac-

C. U.S. Tax Rules Applicable to Nonresident Aliens and Foreign Corporations (Inbound)

Nonresident aliens and foreign corporations are generally subject to U.S. tax only on income effectively connected with the conduct of a U.S. trade or business. The U.S. source and type of income received by a foreign person generally determines whether there is any U.S. income tax liability and whether that income is "effectively connected." The U.S. tax rules for U.S. activities of foreign taxpayers apply differently to two broad types of income: U.S.-source income that is not effectively connected with the conduct of a U.S. trade or business ("FDAP income") or income that is "effectively connected with the conduct of a trade or business within the United States" ("ECI"). FDAP income generally is subject to a 30-percent gross-basis tax withheld at its source, while ECI is generally subject to the same U.S. tax rules that apply to business income derived by U.S. persons. That is, deductions are permitted in determining taxable income, which is then taxed at the same rates applicable to U.S. persons. Much FDAP income and similar income is, however, exempt from tax or is subject to a reduced rate of tax under section 368 (discussed below) or a bilateral income tax treaty.


Non-business income received by foreign persons is generally subject to tax on a gross basis at a rate of 30 percent, which is collected by withholding at the source of the payment. As explained below, however, subject to a very limited number of exceptions, the 30-percent tax and the categories for which withholding is required are generally 'coextensive,' with the result that determining the withholding tax liability determines the substantive liability. The income of non-resident aliens or foreign corporations that is subject to tax on a gross basis includes FDAP income that is not effectively connected with the conduct of a U.S. trade or business. Interest on bank deposits may qualify for nonrecognition of gain from outbound transfers of foreign goodwill and going concern value. However, the Secretary announced that reinvestment of after-tax earnings for active trade or business is under consideration for cases with little potential for abuse and administrative difficulties.


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1354 Sec. 367(d).

1355 Commissioner v. Wodehouse, 337 U.S. 369, 393 (1949).

1356 Sec. 861(b)(1).

1357 E.g., the portion of the interest income in section 871(h)(1) discussed below.

1358 For purposes of this rule, whether a person is foreign-source present in the United States for 183 days or more is determined by the reciprocal exemption for net basis taxation. See section 871(b)(1). Compareable rules in section 872(b)(1) apply to income of nonresident alien individuals from shipping operations.

1359 Treasury regulations generally provide that payments paid to a foreign insurer or reinsurer are FDAP income, they are exempt from withholding under Treas. Reg. section 3161-4(b)(1)(i) and 3161-4(b)(2). If a foreign corporation is subject to the excise tax under section 4971. Treas. Regs. secs. 1.1441-2(b)(1)(i) and 1.1441-2(b)(2).

1360 For purposes of this rule, whether a person is considered a resident in the United States is determined by application of the rules under section 7701(b).

1361 Sec. 871(a)(2). In addition, certain capital gains from sales of U.S. real property interests are subject to tax if effectively connected with a U.S. trade or business. See section 897(b)(1). Capital gains from sales of intangibles created by or acquired from a U.S. resident corporate or partnership, and certain amounts held by foreign corporations that is subject to tax on a gross basis include FDAP income from sales of property, in contrast with the excise tax under section 4371. Treas. Regs. secs. 1.367(h)-1(d)(5) and 1.367(h)-2 provide rules of section 367(d) apply to transfers of intangible property as defined under Treas. Sec. 1.367(a)-1(d)(5) after September 14, 2015, and to any transfers of intangible property occurring before that date resulting from entity classification elections filed on or after September 15, 2015. However, the regulations had cited legislative history that contemplated ac-

1362 Similarly, the original discount on certain short-term obligations is also exempt from U.S. tax when paid to a foreign person. Additionally, there is...
generally no information reporting required with respect to payments of such amounts.1384

Although FDAP income includes U.S.-source gross interest, such interest is specifically exempt from the 30-percent gross-basis tax. Portfolio interest is any interest (including original issue discount) that is not a U.S. person.1385 Portfolio interest is generally no information reporting required with respect to payments of such amounts.1384

Any foreign person that is a nonresident alien who resides in a country that is also subject to the excise tax, the United States is required to report and pay over any amounts withheld, if the recipient has no ECI income and the withholding is sufficient to satisfy the tax. The excise tax paid by one party cannot be credited if, for example, the risk is reinsured with a second party in a transaction insured with a second party in a transaction. Thus, if a U.S. insurer or reinsurer providing guidance to the effect that the excise tax is imposed separately on each reinsurance policy covering U.S. risks. The excise tax is imposed on a gross basis at the rate of one percent on reinsurance premiums. The excise tax does not apply to premiums paid for insurance against physical loss or damage to property, or for insurance against personal injury or sickness. The excise tax on foreign reinsurance premiums applies to premiums paid to foreign insurers and reinsurers covering U.S. risks.

Excise tax on foreign reinsurance premiums

An excise tax applies to premiums paid to foreign insurers and reinsurers covering U.S. risks. The excise tax is imposed on a gross basis at the rate of one percent on reinsurance premiums, and at the rate of four percent on property and casualty insurance premiums. The excise tax applies to premiums that are effectively connected with the conduct of a U.S. trade or business that are exempt from the excise tax treaty. The excise tax paid by one party cannot be credited if, for example, the risk is reinsured with a second party in a transaction. Thus, if a U.S. insurer or reinsurer providing guidance to the effect that the excise tax is imposed separately on each reinsurance policy covering U.S. risks. The excise tax is imposed on a gross basis at the rate of one percent on reinsurance premiums. The excise tax does not apply to premiums paid for insurance against physical loss or damage to property, or for insurance against personal injury or sickness. The excise tax on foreign reinsurance premiums applies to premiums paid to foreign insurers and reinsurers covering U.S. risks.

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2. Net-basis taxation of U.S.-source income

The United States taxes on a net basis the income of foreign persons that is "effectively connected" with the conduct of a trade or business in the United States. Any gross income derived by the foreign person that is not effectively connected with the person's U.S. business is not taken into account in determining the rates of U.S. tax applicable to the person's income from the business.1382

U.S. trade or business

A foreign person is subject to U.S. tax on a net basis if the person is engaged in a U.S. trade or business. Partners in a partnership that is a U.S. trade or trust are treated as engaged in the conduct of a trade or business within the United States if the partnership, estate, or trust is so engaged.1383

The question whether a foreign person is engaged in a U.S. trade or business is factual and has generated much case law. Basic issues include whether the activity constitutes business rather than investing, whether sufficient activities in connection with the business are conducted in the United States, and whether the relationship between the foreign person and persons performing functions in the United States in respect of the business is sufficient to attribute those functions to the foreign person.

The trade or business rules differ from one activity to another. The term "trade or business within the United States" expressly includes the performance of services within the United States.1384 If, however, a nonresident alien individual performs personal services for a foreign employer, and the individual's total compensation for the services and period in the United States are minimal ($3,000 or less in total compensation and 90 days or fewer of physical presence in a year), the individual is not considered to be engaged in a U.S. trade or business.1385 Detailed rules govern whether trading in stocks or securities or commodities constitutes the conduct of a U.S. trade or business.1386

To the extent that the withholding agent deducts and withholds an amount, the withholding is the only income of the foreign recipient is required with respect to payments of such interest, that is paid on an obligation that is in registered form, provided that the recipient is not targeted to foreign investors under the conditions sufficient to establish deductibility of the payment of such interest. Portofolio interest, however, does not include interest received by a 10-percent shareholder,1397 certain contingent interest,1398 interest received by controlled foreign corporation from a related person, or interest received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business.1399

Imposition of 30-percent tax and reporting by U.S. withholding agents

The 30-percent tax on FDAP income is generally collected by means of withholding.1371 Within a period of 60 days after the payee is required unless the withholding agent, i.e., the person making the payment to the foreign person receiving the income, withholds tax at the rate of 30 percent on the amount. Withholding is required on payments of interest, dividends, and royalties that are not effectively connected with the person's U.S. trade or business.1380

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- If the recipient is an individual temporarily present in the United States for two years after enactment, thus narrowing the portofolio interest exemption for obligations issued after March 18, 2012.
- If the agent withholds more than is required, and results in an overpayment of tax, the excess may be refunded to the recipient of the income upon filing of a timely claim for refund.
- If, however, a nonresident alien individual performs personal services for a foreign employer, and the individual's total compensation for the services and period in the United States are minimal ($3,000 or less in total compensation and 90 days or fewer of physical presence in a year), the individual is not considered to be engaged in a U.S. trade or business. Detailed rules govern whether trading in stocks or securities or commodities constitutes the conduct of a U.S. trade or business. A foreign person who trades in stocks or securities or commodities in the United States through an independent agent generally is not treated as engaged in a U.S. trade or business if the foreign person does not have an office or other fixed place of business in the United States through which trades are carried out. A foreign person who performs personal services or commodities for the person's own account also generally is not considered to be engaged in a U.S. business so long as the foreign person is not dealer in stock or securities or commodities. For eligible foreign persons, U.S. bilateral income tax treaties restrict the application of net-basis U.S. taxation. Under each treaty, the United States is permitted to tax business profits only to the extent those profits are attributable to a U.S. permanent establishment of the foreign person. The threshold level of activities that constitute a permanent establishment is generally higher than the threshold level of activities that constitute a U.S. trade or business. For example, a permanent establishment typically requires the maintenance of a fixed place of business over a significant period of time.

Effectively connected income

A person that is engaged in the conduct of a trade or business within the United States is subject to U.S. net-basis applies to the premiums paid to the second foreign reinsurer, the second foreign reinsurer is itself entitled to an excise tax exemption.1380

Rev. Proc. 2014–64.1376 The IRS publishes lists of the countries whose residents are subject to the reporting requirements, and the information collected is reported to the Treasury.1377 

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The United States is subject to U.S. net-basis taxation on the income that is "effectively connected" with the business. Specific statutory rules govern whether income is ECI.1387 In the case of U.S. persons, this income includes certain U.S.-source income of a type that would be subject to gross basis U.S. taxation, the factors taken into account in determining whether the income is ECI include whether the income is derived from assets used in or held for use in the conduct of the U.S. trade or business and whether the activities of the trade or business generally were a material factor in the realization of the amount (the "asset use" and "business activities tests").1388 Under the asset use and business activities tests, due regard is given to whether the income, gain, or asset was accounted for through the U.S. trade or business. All other U.S.-source income is treated as ECI.1389

A foreign person who is engaged in a U.S. trade or business may have limited categories of foreign-source income that are considered to be ECI.1390 Foreign-source income not included in one of these categories (described next) generally is exempt from U.S. tax.

A foreign person's income from foreign sources generally is considered to be ECI only if the person has an office or other fixed place of business within the United States to which the income is attributable and the income is derived from one or more of the following categories: (1) rents or royalties for the use of patents, copyrights, secret processes or formulas, good will, trade-marks, trade names, franchises, or other like intangible properties derived in the active conduct of the trade or business; (2) interest or dividends derived in the active conduct of a banking, financing, or similar business; (3) gain from the sale or exchange of property held by the foreign person primarily for use or consumption in the active conduct of a banking, financing, or similar business; (4) gain from the sale or exchange of certain property, and net operating losses. The place of business of an agent other than an independent agent acting in the ordinary course of business is not disregarded, however.1391

In determining whether a foreign person has a U.S. office or other fixed place of business, the place of business of an agent generally is disregarded. The place of business of an agent generally is disregarded if the agent either has the authority (regularly exercised) to negotiate and conclude contracts in the name of the foreign person, is a regular and substantial branch of merchandise from which he regularly sells orders on behalf of the foreign person, or is an independent agent acting in the ordinary course of business of which is trading in stocks or securities, or is engaged in providing certain services in the United States or received by a corporation the principal business of which is trading in stocks or securities for its own account, or (3) income derived from the sale or exchange (outside the United States), through the U.S. office or fixed place of business, of inventory or property held by the foreign person primarily for sale to customers in the ordinary course of the trade or business, unless the sale or exchange is for use, consumption, or disposition outside the United States and an office or other fixed place of business of the foreign person in a foreign country participated materially in the sale or exchange.1392

Foreign-source income of a U.S. branch of a foreign corporation at- tributable to the active conduct of a banking, financing, or other like intangible properties derived in the active conduct of the U.S. trade or business is not disregarded, however.1393 If a foreign person has an office in a foreign country participated materially in the sale to customers in the ordinary course of business of which is trading in stocks or securities, or other like intangible properties derived in the active conduct of a banking, financing, or similar business, the office or other fixed place of business generally is disregarded.1394

Income, gain, deduction, or loss for a particular year generally is not treated as ECI if the foreign person is not engaged in a U.S. trade or business in that year.1395 If, however, income for a taxable year is attributable to the sale or exchange of property, the performance of services, or any other transaction that occurred in a prior taxable year, the determination whether the income or gain is taxable on a net basis is made as if the income were taken into account in the earlier year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the later taxable year.1396 If any property ceases to be used in connection with the active conduct of a U.S. trade or business and the property is disposed of within 10 years after the cessation, the determination whether the income or gain attributable to the disposition of the property is taxable on a net basis is made as if the disposition occurred immediately before the property ceased to be used in connection with the active conduct of a U.S. trade or business and without regard to the requirement that the taxpayer be engaged in a U.S. business during the taxable year for which the income or gain is taken into account.1397

Transportation income from U.S. sources is treated as effectively connected with a foreign person's conduct of a U.S. trade or business only if the foreign person has a fixed place of business in the United States that is involved in the earning of such income and substantially all of such income of the foreign person is attributable to regularly scheduled transportation.1398 If the transportation income is effectively connected with conduct of a U.S. trade or business, the transportation income, along with transportation income that is from U.S. sources because the transportation both begins and ends in the United States, may be subject to net-basis taxation. Income from the international operation of a ship or aircraft may be subject to a second tax, this time at the shareholder level, when dividends are paid. As described previously, when the shareholders are foreign, the second-level tax is imposed at a flat rate and is taxable at the income tax rates applicable to U.S. persons, including the rates for net capital gain. A foreign person subject to tax on its U.S. income is required to file a U.S. tax return under the normal rules relating to receipt of ECI income.1399 In the case of a foreign corporation, the gain from the disposition of a U.S. trading asset is treated similarly. Branch profits tax is assessed on U.S. bank branches and branch profits tax at a 30 percent rate (or lower treaty rate). The term of income that is effectively connected income ("ECI") is generally required to withhold U.S. tax from the payment.1400

A foreign person may have a "branch" in the United States. For example, a U.S. branch of a foreign corporation is a branch of a foreign corporation that is engaged in a U.S. trade or business through a U.S. branch on amounts of U.S. earnings and profits that are shifted out of, or amounts of interest that are deducted by, the U.S. branch of the foreign corporation. These branch taxes may be reduced or eliminated under an applicable income tax treaty.1401

Under the branch profits tax, the United States imposes a tax of 30 percent on any foreign corporation's "branch profits tax withholding amount."1402 The dividend equivalent amount generally is the earnings and profits of a U.S. branch of a foreign corporation attributable to its U.S. trading asset, subject to its US- tax. The dividends and profits attributable to a foreign corporation's ECI are excluded in calculating the dividend equivalent amount.1403

1393 Sec. 864(c)(5)(A).
1388 Sec. 864(c)(7).
1387 Sec. 864(c)(6).
1386 Sec. 864(c)(5).
1385 Sec. 864(c)(4)(B).
1384 Sec. 864(c)(3).
1383 Sec. 864(c)(2).
1382 Sec. 864(c)(1).
1381 Sec. 864(c).
1380 Sec. 864(c)(9).
1379 Sec. 864(c)(8).
1378 Sec. 864(c)(7).
1377 Sec. 864(c)(6).
1376 Sec. 864(c)(5).
1375 Sec. 864(c)(4).
1374 Sec. 864(c)(3).
1373 Sec. 864(c)(2).
1372 Sec. 864(c)(1).
1371 Sec. 864(c)(5).
1370 Sec. 864(c)(4).
1369 Sec. 864(c)(3).
1368 Sec. 864(c)(2).
1367 Sec. 864(c)(1).
1366 Sec. 864(c)(5)(A).
1365 Sec. 864(c)(4)(B).
1364 Sec. 864(c)(5)(B).
1363 Sec. 864(c)(4)(C).
1362 Sec. 864(c)(4)(B).
1361 Sec. 864(c)(3).
1360 Sec. 864(c)(2).
1359 Sec. 864(c)(1).
In arriving at the dividend equivalent amount, a branch’s effectively connected earnings and profits are adjusted to reflect changes in a branch’s U.S. net equity (that is, the excess of branch’s assets over its liabilities, taking into account only amounts treated as connected with its U.S. trade or business). The first adjustment reduces the dividend equivalent amount to the extent the branch’s earnings are reinvested in trade or business assets in the United States (or reduce U.S. trade or business liabilities). The second adjustment increases the dividend equivalent amount to the extent prior reinvested earnings are considered remitted to the home office of the foreign corporation.

Interest paid by a U.S. trade or business of a foreign corporation generally is treated as if paid by a U.S. corporation to a foreign corporation for its stock. Interest is generally allowed as a deduction, provided it is paid or accrued by the payor in a taxable year and is paid or accrued to a person who is not a related party. Certain “excess interest” of a U.S. trade or business is treated as if paid by a U.S. corporation to a foreign corporation as having received a current distribution of dividends to the U.S. person. The first adjustment reduces the excess interest paid or accrued by the payor in a taxable year is generally disallowed to the extent of the excess of the branch’s assets over its liabilities (measured by vote or value), by which the payor’s net interest expense (that is, net interest expense for disqualified interest) exceeds 50 percent of the payor’s net income for the taxable year.

2. Anti-deferral regimes

Subpart F

Subpart F, applicable to CFCs and their shareholders, is the main anti-deferral regime of relevance to a U.S.-based multinational group. A CFC can be defined in law as any foreign corporation (domestic or otherwise) in which U.S. persons (directly or indirectly) (measured by vote or value) own (directly, indirectly, or constructively) at least 10 percent of the stock of a CFC as having received a current distribution of subpart F income.

Domestic corporation stock that constitutes a U.S. real property interest described in section 897.

A U.S. citizen or resident living abroad may be eligible to exclude from U.S. tax certain foreign earned income and foreign housing costs under section 911. For a description of this exclusion, see General Expla- nation of the Tax Reform Act of 1986 (JCX–38–87), May 8, 1987, p. 859. 

Sec. 952. Subpart F income

The United States generally taxes the 10-percent U.S. shareholders of a CFC on their pro rata shares of certain income of the CFC (referred to as “subpart F income”) to the extent the income is earned by a U.S. person indirectly through a foreign corporation as having received a current distribution of subpart F income.

Subpart F income consists of foreign personal holding company income, interest income, dividends, and certain rents and royalties.

Subpart F income is taxed on a current basis, but is not subject to U.S. tax until the income is distributed to a U.S. person. Certain anti-deferral regimes that provide such exceptions are the controlled foreign corporation ("CFC") rules of subpart F and the passive foreign investment company ("PFIC") rules. Foreign personal holding company income is treated as if paid by a U.S. corporation to a foreign corporation for its stock.

The dividend equivalent amount to the extent the excess of the branch’s assets over its liabilities exceeds 1.5 to 1 (a debt-to-equity ratio) is generally available to offset, in whole or in part, the U.S. tax owed on foreign-source income, where the income is earned directly by the domestic corporation (or repatriated as an actual dividend, or included in the domestic parent corporation’s income under one of the anti-deferral regimes). The threshold for determining control is reduced to 25 percent, and any level of stock ownership by a U.S. person is treated as sufficient for a CFC to be treated as a U.S. shareholder for the person to be treated as a U.S. shareholder.

Investments in U.S. property

The U.S. shareholders of a CFC also are required to include currently in income for tax purposes their pro rata shares of the corporation’s untaxed earnings and profits in certain instances.1420

This U.S. property generally includes tangible property located in the United States, stock of a U.S. corporation, an obligation of a U.S. person, and certain intangible assets, such as patents and copyrights, acquired or developed by the CFC for use in the United States. There are specific exceptions to the general definition of U.S. property, including for bank deposits, certain export property, and certain trade or business obligations. The inclusion rule for investment earnings in U.S. property is intended to prevent taxpayers from avoiding U.S. tax on dividend repatriations by repatriating CFC earnings through non-dividend payments, such as loans to U.S. persons.

Subpart F exceptions

Several exceptions to the broad definition of subpart F income permit continued deferral of income from certain categories of income: dividends, interest and certain rents and royalties.

The same-country exception is not available to the extent that the payments reduce the subpart F income of the payor. A second exception from subpart F is the subject to an effective foreign income tax rate greater than 90 percent of the maximum U.S. corporate income tax rate (that is, more than 90 percent of 35 percent, or 31.5 percent). 

Sec. 954.

Sec. 954(c).

Sec. 954(c). Related person income is defined for this purpose to mean any insurance in- come attributable to a policy of insurance or rein- surance with respect to which the primary insured is either a U.S. person or a shareholder (within the meaning of the provision) in the foreign corporation receiving the insurance or a person related to a such a shareholder.

Sec. 954(c).

Sec. 954(c).

Sec. 954(c).

Sec. 954(c).

Sec. 954(b).
A provision colloquially referred to as the “CFC look-through” rule excludes from foreign personal holding company income dividends, interest, rents, and royalties received or accrued by a U.S. shareholder in respect of its stock in the CFC (with relation based on control) to the extent attributable or properly allocable to non-subpart-F income of the payor.

Deferred income is income attributable to risks located in a country other than the United States, provided that the requirement for these exceptions, including reserve requirements, are met.

In the case of a securities dealer, an exception from foreign personal holding company income applies to 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 1297.

In general, a 10-percent U.S. shareholder of a CFC receives a basis increase with respect to its stock in the CFC equal to the amount of the CFC’s earnings that are included in the 10-percent U.S. shareholder’s income as previously taxed under subpart F.

A 10-percent U.S. shareholder of a CFC may exclude from its income actual distributions of earnings and profits from the CFC that were previously included in the 10-percent U.S. shareholder’s subpart F.

Any income inclusion (under section 956) resulting from investments in U.S. property may also be excluded from the 10-percent U.S. shareholder’s income as previously matured.

Ordering rules provide that distributions from a CFC are treated as coming first out of earnings and profits of the CFC that have been previously taxed under subpart F, then out of other earnings and profits.

A 10-percent U.S. shareholder of a CFC that is a qualifying insurance company with respect to risks located in the home country of the branch or within the CFC’s country of domicile that is excised from foreign personal holding company income, provided that certain requirements are met.

In general, a 10-percent U.S. shareholder of a CFC receives a basis increase with respect to its stock in the CFC equal to the amount of the CFC’s earnings that are included in the 10-percent U.S. shareholder’s income as previously taxed under subpart F.

Passive foreign investment companies

The Tax Reform Act of 1986 established the PFIC anti-deferral regime. A PFIC is generally defined as any foreign corporation if 75 percent or more of its gross income for the taxable year consists of passive income, or 50 percent or more of its assets consist of assets that produce, or are held for the production of, passive income.

Alternative sets of income inclusion rules apply to U.S. persons that are shareholders in a PFIC, regardless of their percentage ownership in the company. One set of rules applies to PFICs that are qualified electing funds, under which electing U.S. shareholders currently include in gross income their respective shares of the company’s earnings, with a separate election to defer payment of tax, subject to interest charges, on income not currently received.
serves its purpose of mitigating double taxation of foreign-source income without offsetting U.S. tax on U.S.-source income. The limit is computed by multiplying a taxpayer’s liability for foreign income tax by the ratio of the taxpayer’s foreign-source taxable income for the year to the taxpayer’s total taxable income for the year. If the total amount of foreign income taxes paid and deemed paid for the year exceeds the taxpayer’s foreign tax credit limitation for the year, the taxpayer may carry back the excess foreign taxes to the previous year or carry forward the excess taxes to one of the succeeding 10 years.

The loss of the foreign tax credit limitation requires a taxpayer to determine the amount of its taxable income from foreign sources in each limitation category (described below) and allocate and apportion deductions between U.S.-source gross income, on the one hand, and foreign-source gross income in each limitation category, on the other. In general, deductions are allocated and apportioned to the gross income to which the deductions factually relate. However, subject to certain exceptions, deductions for interest expense and research and experimental expenses are apportioned based on foreign tax ratios. In the case of interest expense, this ratio is the ratio of the corporation’s foreign or domestic (as applicable) assets to its worldwide assets. In the case of research and experimental expenses, the apportionment ratio is based on either sales or gross income. All members of an affiliated group of corporations generally are treated as a single corporation for purposes of determining the apportionment ratios.

The term “affiliated group” is determined generally by reference to the rules for determining whether corporations are eligible to file consolidated returns. These rules include foreign corporations from an affiliated group. Interest expense allocation rules permitting a U.S. affiliated group to apportion the interest expense of the members of the U.S. affiliated group on a worldwide-group basis were modified in 2004, and initially effective for taxable years beginning after December 31, 2008. The effective date of the modified rules has been delayed to January 1, 2021.

In addition to the foreign tax credit limitation just described, a taxpayer’s ability to claim a foreign tax credit may be further limited by a matching rule that prevents the separation of foreign tax credits from foreign income and losses from the associated foreign income. Under this rule, a foreign tax generally is not taken into account for U.S. tax purposes, and thus no foreign tax credit is allowed with respect to that foreign tax, until the taxable year in which the related income is taken into account for U.S. tax purposes.

4. Special rules

A. Double consolidated loss rules

Under the rules applicable to corporations filing consolidated returns, a dual consolidated loss (“DCL”) is any net operating loss of a domestic corporation if the corporation is subject to an income tax of a foreign country without regard to whether such income is from sources in or outside of such foreign country, or if the corporation is subject to such a tax on a residence basis (“dual resident corporation”). A DCL generally cannot be utilized to reduce the foreign-source income of any member of the corporation’s affiliated group. Losses of a separate unit of a domestic corporation (a foreign branch or an interest in a hybrid entity owned by the corporation) are subject to this limitation in the same manner as if the unit were a wholly owned subsidiary of such corporation. An exemption is available under Treasury regulations in the case of DCLs for which a domestic use election (that is, an election to use the DCL only for domestic-source foreign tax purposes) has been made. Recapture is required, however, upon the occurrence of certain triggering events, including the conversion of a separate unit of a corporation and the transfer of 50 percent or more of the assets of a separate unit within a twelve-month period.

Temporarily dividends-received deduction for repatriated foreign earnings

AJCA section 421 added to the Code section 965, a temporary provision intended to encourage U.S. multinationals to re-patriate foreign earnings. Under section 965, for one taxable year certain dividends received by a U.S. corporation from its CFCs were eligible for the dividends-received deduction. At the taxpayer’s election, this deduction was available for dividends received either during the taxpayer’s first tax year beginning on or after January 1, 2001, or during the taxpayer’s last taxable year beginning before such date.

The temporary deduction was subject to a number of general limits, and it applied only to cash repatriations generally in excess of the taxpayer’s average repatriation level. For dividends received deduction purposes, the average repatriation level was scaled to the previous year’s earnings after December 31, 2003, and was indexed to inflation. The plan was required to provide for the reinvestment of the repatriated dividends in the United States, including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investment, and the financial stability of the corporation for the purposes of job retention or creation.

Accordingly, taxpayers generally were expected to pay regular dividends out of high-taxed CFC earnings (thereby availing themselves of the 85-percent deduction). Subpart F rules applicable to CFCs and their 10-percent U.S. shareholders are described below.
expenses that were directly allocable to the deductible portion of any dividend.\footnote{1472}

\textit{Domestic international sales corporations}

A domestic international sales corporation ("DISC") is a domestic corporation that is not a controlled foreign corporation. If 95 percent of its gross receipts must be qualified export receipts; 95 percent of the sum of the adjusted bases of all of its assets must be attributable to property that is used in the active conduct of the export business; and the corporation must meet one of the following conditions: (1) it is an investment company qualifying for status under section 382 of the Internal Revenue Code; (2) it is a domestic international sales corporation that is engaged primarily in the active conduct of the export business; or (3) it is a domestic corporation that is engaged primarily in the active conduct of its export business and meets the passive foreign investment income requirement of section 954(b).\footnote{1473} DISC income attributable to a maximum of $10 million annually of earnings and profits from qualified export receipts is generally excludable to a maximum of $10 million annually.\footnote{1474} The shareholders of a corporation which is not a DISC, but was a DISC in a previous taxable year, and which has previously taxed income or accumulated DISC income, are also required to pay interest on the deferral income or accumulated DISC income, and gain on the sale or exchange of stock in such corporation is treated as a dividend.

\textbf{INTERNATIONAL TAX PROVISIONS}

\textbf{A. Establishment of Participation Exemption System for Taxation of Foreign Income}

\textbf{1. Deduction for foreign-source portion of dividends received by domestic corporations from specified 10-percent owned foreign corporations (sec. 4001 of the House bill, sec. 14101 of the Senate amendment, and new sec. 245A of the Code) \hspace{1cm} HOUSE BILL}

In general

The provision generally establishes a participation exemption system for foreign income. This exemption is provided for by means of a 100-percent deduction for the foreign-source portion of dividends received from a specified 10-percent owned foreign corporation by domestic corporations that are United States shareholders of those foreign corporations within the meaning of section 951(b).\footnote{1482} (referred to here as "participation DRD").\footnote{1483}

A specified 10-percent owned foreign corporation is any foreign corporation with respect to which any domestic corporation is a United States shareholder. The phrase does not include a foreign investment company within the meaning of subpart D of part VI of subchapter P. The term "dividend received" is intended to be interpreted consistently with the meaning of the phrases "amount received as dividends" and "dividends received" under sections 243 and 245, respectively.\footnote{1484} Under section 245A(e), the Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of sections 245A of the Code, including the extended scope of the term "dividend received." For example, if a domestic corporation indirectly owns stock of a foreign corporation through a foreign partnership and the domestic corporation would qualify for the participation DRD with respect to dividends from the foreign corporation if the domestic corporation owned such stock directly, the domestic corporation would be allowed a full participation DRD in respect of its distributive share of the partnership's dividend from the foreign corporation.

Foreign-source portion of a dividend

The participation DRD is available only for the foreign-source portion of dividends received from specified 10-percent owned foreign corporations. The foreign-source portion of any dividend is the amount that bears the same ratio to the dividend as the specified foreign corporation's post-1986 undistributed foreign earnings bears to the corporation's total foreign earnings. Post-1986 undistributed foreign earnings are the amount of the earnings and profits of a domestic corporation that is a United States shareholder of a foreign corporation when post-1986 undistributed foreign earnings are in excess of $10 million. See sec. 956(b).

\textbf{2. Effective date.—The provision applies to distributions made (and for purposes of determining the foreign tax credit limitation under section 904, deductions in taxable years beginning) after December 31, 2017.} \hspace{1.5cm} SENATE AMENDMENT

In general

The provision allows an exemption for certain foreign income. This exemption is provided for by means of a 100-percent deduction for the foreign-source portion of dividends received from specified 10-percent owned foreign corporations by domestic corporations that are United States shareholders of those foreign corporations within the meaning of section 951(b).\footnote{1482} (referred to here as "nimble dividend.")\footnote{1485} A specified 10-percent owned foreign corporation is any foreign corporation (other than a PFIC or a CFC) with respect to which any domestic corporation is a U.S. shareholder.

Foreign-source portion of a dividend

The DRD is available only for the foreign-source portion of dividends received by a domestic corporation from specified 10-percent owned foreign corporations. An additional rule provides for the treatment of distributions of a specified 10-percent owned foreign corporation in excess of undistributed earnings. Under section 951(b), dividends distributed in excess of accumulated earnings and profits of a corporation in the taxable year of the distribution is treated as a dividend even if the distribution exceeds accumulated earnings and profits.\footnote{1486} An ordering rule provides for the treatment of a shareholder with respect to such corporation during that period.

\textbf{Six-month holding period requirement}

A domestic corporation is not permitted a participation DRD in respect of any dividend on any share of stock that is held by the domestic corporation for 180 days or less during the 361-day period beginning on the date that is 180 days before the date on which the share becomes ex-dividend with respect to the dividend. For this purpose, a domestic corporation is treated as holding a share of stock for any period only if the corporation is a specified 10-percent owned foreign corporation and the taxpayer is a United States shareholder with respect to such corporation during that period.
owned foreign corporations. The foreign-source portion of any dividend is the amount that bears the same ratio to the dividend as the undistributed foreign earnings bear to the total undistributed earnings of the foreign corporation. Undistributed earnings are the amount of the earnings and profits of a specified 10-percent owned foreign corporation in which the dividend is distributed and not reduced by dividends distributed during the taxable year. The dividend is an hybrid dividend. A hybrid dividend is an amount received from a controlled foreign corporation for which a deduction would be allowable under this provision and for which the specified 10-percent owned foreign corporation received a deduction (or other tax benefit) from taxes imposed by a foreign country.

If a controlled foreign corporation with respect to which a domestic corporation is a U.S. shareholder receives a hybrid dividend from that foreign corporation the specified 10-percent owned foreign corporation is also a U.S. shareholder, then the hybrid dividend is treated for purposes of section 956 of the Code, as a dividend paid by a foreign corporation on the foreign-source portion of such dividend.

Foreign tax credit disallowance

For purposes of determining the amount received from a controlled foreign corporation if the dividend is a hybrid dividend, the hybrid dividend is an amount received from a controlled foreign corporation for which a deduction would be allowable under this provision and for which the specified 10-percent owned foreign corporation received a deduction (or other tax benefit) from taxes imposed by a foreign country.

The DRD is available only to C corporations that are not RICs or REITs.

Foreign tax credit disallowance

No foreign tax credit or deduction is allowed for any taxes paid or accrued with respect to a dividend that qualifies for the DRD.

For purposes of computing the section 904(a) foreign tax credit limitation, a domestic corporation that is a U.S. shareholder of a specified 10-percent owned foreign corporation must compute its foreign-source taxable income by disregarding the foreign-source portion of any dividend received from that foreign corporation for which the dividend is a hybrid dividend.

Holding period requirement

A domestic corporation is not permitted a DRD in respect of any dividend on any share of stock that is held by the domestic corporation for 365 days or less during the 731-day period beginning on the day that is 365 days before the date on which the share becomes ex-dividend.

Effective date—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

In general

The provision in this conference agreement generally follows the provision in the Senate amendment, with some changes, as described below, and allows an exemption for certain foreign income by means of a 10-percent depletion deduction for the foreign-source portion of dividends received from specified 10-percent owned foreign corporations by domestic corporations. A specified 10-percent owned foreign corporation is defined in section 956(b).

A specific 10-percent owned foreign corporation is any foreign corporation (other than a PFIC that is not also a CFC) with respect to which a domestic corporation is a U.S. shareholder.

The term “dividend” is intended to be interpreted broadly, consistently with the definition of “subpart F income” of sections 956(a) and 959. The term “dividend” includes any dividend received from a controlled foreign corporation through a partnership and the domestic corporation would be allowed a participation DRD with respect to its distributive share of the partnership’s dividend from the foreign corporation.

The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which such taxable years of foreign corporations end.

Hybrid dividends

The DRD is not available for any dividend received by a U.S. shareholder from a controlled foreign corporation if the dividend is a hybrid dividend. A hybrid dividend is an amount received from a controlled foreign corporation for which a deduction would be allowable under this provision and for which the specified 10-percent owned foreign corporation received a deduction (or other tax benefit) from taxes imposed by any foreign country.

Foreign tax credit disallowance

No foreign tax credit or deduction is allowed for any taxes paid or accrued with respect to any portion of a distribution treated as a dividend even if it reduces earnings and profits. For purposes of computing the section 904(a) foreign tax credit limitation, a domestic corporation that is a U.S. shareholder of a specified 10-percent owned foreign corporation must compute its foreign-source taxable income (and entire taxable income) by disregarding the foreign-source portion of any dividend received from that foreign corporation for which the DRD is taken, and any deductions properly allocable or apportioned to that foreign-source portion or the stock with respect to which it is paid.

Holding period requirement

A domestic corporation is not permitted a DRD in respect of any dividend on any share of stock that is held by the domestic corporation for 365 days or less during the 731-day period beginning on the date that is 365 days before the date on which the share becomes ex-dividend.

Effective date—The provision applies to distributions made after December 31, 2017, for determining a taxpayer’s foreign tax credit limitation under section 961, deductions in taxable years beginning after December 31, 2017.

2. Modification of subpart F inclusion for increased investments in United States property

Under the provision, the amount determined under section 966 (relating to CFC investments in United States property) with respect to a domestic corporation is zero. A similar rule is intended for domestic corporations that own a CFC through a domestic partnership. The provision includes a special rule for authorized persons acting uniformly to issue regulations to effect that intent.

Effective date—The provision applies to taxable years of foreign corporations beginning after December 31, 2017.
from the requirement that they recognize income when the CFC increases its investment in U.S. property.

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

CONFERENCE AGREEMENT

The conference agreement does not follow the House bill or the Senate amendment.

3. Special rules relating to sales or transfers in the case of 10-percent owned foreign corporations

SEC. 4003 of the House bill, sec. 14102 of the Senate Amendment and secs. 367(a)(3)(C), 961, 1248 and new sec. 91 of the Code

HOU DEHILL

Reduction in basis of certain foreign stock

 Solely for the purpose of determining a loss, a domestic corporate shareholder’s adjusted basis in the stock of a 10-percent owned foreign corporation (as defined in section 367(a)(3)(C)) is reduced by an amount equal to the portion of any dividend received with respect to such stock that is not realized by reason of section 1059. This rule applies in coordination with section 1059, such that any reduction in basis required pursuant to this provision will be disregarded, to the extent that the 10-percent owned foreign corporation’s stock has already been reduced pursuant to section 1059.

Inclusion of transferred loss amount in certain assets transfers

Under the provision, if a domestic corporation transfers substantially all of the assets of a foreign branch (within the meaning of section 367(a)(3)(C)) to a foreign corporation which is a specified 10-percent owned foreign corporation with respect to which it is a U.S. shareholder after December 31, 2017, an amount equal to the transferred loss amount, subject to certain limitations.

The transferred loss amount is the excess of: (1) losses incurred by the foreign branch after December 31, 2017 which are deductible by reason of section 1248; (2) the sum of taxable income earned by the foreign branch in taxable years after the loss is incurred through the close of the taxable year of the transfer, is included. The transferred loss amount is the excess of: (1) losses incurred by the foreign branch after December 31, 2017 which are deductible by reason of section 1248; (2) the sum of taxable income earned by the foreign branch in taxable years after the loss is incurred through the close of the taxable year of the transfer, is included.

Inclusion of transferred loss amount in certain assets transfers

Under the provision, if a domestic corporation transfers substantially all of the assets of a foreign branch (within the meaning of section 367(a)(3)(C)) to a foreign corporation which is a specified 10-percent owned foreign corporation with respect to which it is a U.S. shareholder after December 31, 2017, an amount equal to the transferred loss amount, subject to certain limitations.

The transferred loss amount is the excess of: (1) losses incurred by the foreign branch after December 31, 2017 which are deductible by reason of section 1248; (2) the sum of taxable income earned by the foreign branch in taxable years after the loss is incurred through the close of the taxable year of the transfer, is included.

Reduction in basis of certain foreign stock

Solely for the purpose of determining a loss, a domestic corporate shareholder’s adjusted basis in the stock of a specified 10-percent owned foreign corporation (as defined in section 367(a)(3)(C)) is reduced by an amount equal to the portion of any dividend received with respect to such stock that is not realized by reason of section 1059. This rule applies in coordination with section 1059, such that any reduction in basis required pursuant to this provision will be disregarded, to the extent that the 10-percent owned foreign corporation’s stock has already been reduced pursuant to section 1059.

Sale by a CFC of a lower-tier CFC

If for any taxable year of a CFC beginning after December 31, 2017, an amount is treated as a dividend under section 956(e)(1) because of a sale or exchange by the CFC of stock in another foreign corporation held for a year or more, then: (i) the foreign-source portion of the dividend is treated as a subpart F income of the CFC in the same manner as under section 951(a)(1)(A), (ii) a United States shareholder with respect to the selling CFC includes in gross income for the taxable year of the CFC the same amount as if the subpart F income included under (i) in the same manner as if the subpart F income were a dividend received by the shareholder from the selling CFC.

In the case of a sale or exchange by a CFC of stock in another corporation in a taxable year of the CFC beginning after December 31, 2017, to which this provision applies if gain were recognized, rules similar to those in section 961(d) apply.

Inclusion of transferred loss amount in certain assets transfers

Under the provision, if a domestic corporation transfers substantially all of the assets of a foreign branch (within the meaning of section 367(a)(3)(C)) to a foreign corporation which is a specified 10-percent owned foreign corporation with respect to which it is a U.S. shareholder after December 31, 2017, an amount equal to the transferred loss amount, subject to certain limitations.

The transferred loss amount is the excess of: (1) losses incurred by the foreign branch after December 31, 2017 which are deductible by reason of section 1248; (2) the sum of taxable income earned by the foreign branch in taxable years after the loss is incurred through the close of the taxable year of the transfer, is included.
as a dividend under section 966(c)(1) because of a sale or exchange of the CFC of stock in another foreign corporation held for a year or more, then, (i) the foreign-source portion of the gain, as well as such foreign income of the selling CFC for purposes of section 951(a)(1)(A), (ii) a United States shareholder with respect to the selling CFC included in the tax liability of the shareholder with or within the taxable year of the CFC, an amount equal to the shareholder’s pro rata share (determined in the same manner as under section 951(a)(1)(A)) of the amount treated as subpart F income under (i), and (iii) the deduction under section 245(a) is allowable to the United States shareholder to the extent that the amount included in gross income under (ii) in the same manner as if the subpart F income were a dividend received by the shareholder from the selling CFC. In the case of a sale or exchange by a CFC of stock in another corporation in a taxable year beginning after December 31, 2017, to which this provision applies if gain were recognized, rules similar to section 961(d)(1) apply.

### Inclusion of transferred loss amount in certain assets transfers

Under the provision, if a domestic corporation transfers substantially all of the assets of a foreign branch (within the meaning of section 956(d)(3)) to a specified 10-percent owned foreign corporation with respect to which it is a U.S. shareholder after the transfer, the domestic corporation includes in gross income an amount equal to the transferred loss amount, subject to certain limitations. The transferred loss amount is the excess (if any) of: (1) losses incurred by the foreign branch after December 31, 2017, and before the transfer, for which a deduction was allowed; or (2) the sum of certain taxable income earned by the foreign branch and gain recognized by reason of an overall foreign loss recapture arising out of disposition of assets on account of the underlying transfer. For the purposes of (2), only taxable income of the foreign branch in taxable years after the loss is included in the calculation. The transferred loss amount is reduced by the amount of gain recognized by the taxpayer (other than as a result of reason of an overall foreign loss recapture) on account of the transfer.

Amounts included in gross income by reason of the provision are treated as derived from sources within the United States. Consistent with regulations or guidance that the Secretary of the Treasury may prescribe, proper adjustments are made in the adjusted basis of the taxpayer’s stock in the specified 10-percent owned foreign corporation to which the transfer is made, and in the transferor’s basis in the property transferred, to reflect amounts included in gross income under this provision.

The income inclusion required of a U.S. shareholder under subpart F, the transition rule applies to all U.S. shareholders of a specified foreign corporation after December 31, 2017. This provision includes in a U.S. shareholder’s gross income the accumulated post-1986 deferred foreign income of a foreign corporation (as defined in section 951(b)(4), other than a PFIC that is not a CFC). A specified corporation for which the deferred foreign income is a deferred foreign income of a foreign corporation means (1) a CFC or (2) any foreign corporation in which a domestic corporation is a U.S. shareholder (determined without regard to the participation exemption rules of section 956(b)(4)), other than a PFIC. A specified foreign corporation that has deferred foreign income is a deferred foreign income of a foreign corporation. Consistent with the general operation of subpart F, each U.S. shareholder of a specified foreign corporation must include in income its pro rata share of the foreign corporation’s subpart F income attributable to its accumulated deferred foreign income.1495

### Accumulated post-1986 deferred foreign income

Accumulated post-1986 deferred foreign income of a specified foreign corporation is the amount of post-1986 earnings and profits attributable to that foreign corporation included in the gross income of a U.S. shareholder as previously taxed income under section 965.

Post-1986 earnings and profits are those earnings that accumulated in taxable years beginning after 1986, computed in accordance with sections 902 and 965. Earnings and profits of a specified foreign corporation that were included in the income of a U.S. shareholder before January 1, 2018, and for which there is no taxable year beginning or ending in 2017 are not within the scope of this provision.

Effects of the provision on the stock of any CFC or other foreign corporation in which a domestic corporation is a U.S. shareholder after the date of enactment of TCJA is allowable to the United States shareholder to the extent that the amount included in gross income under (ii) in the same manner as if the subpart F income were a dividend received by the shareholder from the selling CFC.

### Effective date

The provision relating to transfers of assets of a foreign branch after December 31, 2017, and before the date of enactment of TCJA.1496

### Repeal of active trade or business exception

Section 367 is amended to provide that in connection with any exchange described in section 332, 351, 354, 356, or 361, if a U.S. person transfers property used in the active conduct of a trade or business to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which such property is subject to current U.S. income tax, on such transfer, be considered to be a corporation.

### Taxation of dividend income earned by PFICs remains subject to the antideferral PFIC regime

Taxation of income earned by PFICs remains subject to the antideferral PFIC regime and are included in the dividend received deduction under new section 245A.

### In general

The provision generally requires that, for the last taxable year of a foreign corporation beginning January 1, 2018, all U.S. shareholders of any CFC or other foreign corporation in which a domestic corporation is a U.S. shareholder after December 31, 2017, is included. The transfer, the domestic corporation includes in gross income an amount equal to the transferred loss amount, subject to certain limitations. The transferred loss amount is the excess (if any) of: (1) losses incurred by the foreign branch after December 31, 2017, and before the transfer, for which a deduction was allowed; or (2) the sum of certain taxable income earned by the foreign branch and gain recognized by reason of an overall foreign loss recapture arising out of disposition of assets on account of the underlying transfer. For the purposes of (2), only taxable income of the foreign branch in taxable years after the loss is included in the calculation. The transferred loss amount is reduced by the amount of gain recognized by the taxpayer (other than as a result of reason of an overall foreign loss recapture) on account of the transfer.

Amounts included in gross income by reason of the provision are treated as derived from sources within the United States. Consistent with regulations or guidance that the Secretary of the Treasury may prescribe, proper adjustments are made in the adjusted basis of the taxpayer’s stock in the specified 10-percent owned foreign corporation to which the transfer is made, and in the transferor’s basis in the property transferred, to reflect amounts included in gross income under this provision.

The income inclusion required of a U.S. shareholder under subpart F, the transition rule applies to all U.S. shareholders of a specified foreign corporation after December 31, 2017. This provision includes in a U.S. shareholder’s gross income the accumulated post-1986 deferred foreign income of a foreign corporation (as defined in section 951(b)(4), other than a PFIC that is not a CFC). A specified foreign corporation that has deferred foreign income is a deferred foreign income of a foreign corporation. Consistent with the general operation of subpart F, each U.S. shareholder of a specified foreign corporation means (1) a CFC or (2) any foreign corporation in which a domestic corporation is a U.S. shareholder (determined without regard to the participation exemption rules of section 956(b)(4)), other than a PFIC. A specified foreign corporation that has deferred foreign income is a deferred foreign income of a foreign corporation. Consistent with the general operation of subpart F, each U.S. shareholder of a specified foreign corporation must include in income its pro rata share of the foreign corporation’s subpart F income attributable to its accumulated deferred foreign income.1495

Accumulated post-1986 deferred foreign income of a specified foreign corporation is the amount of post-1986 earnings and profits attributable to that foreign corporation included in the gross income of a U.S. shareholder as previously taxed income under section 965.

Post-1986 earnings and profits are those earnings that accumulated in taxable years beginning after 1986, computed in accordance with sections 902 and 965. Earnings and profits of a specified foreign corporation that were included in the income of a U.S. shareholder before January 1, 2018, and for which there is no taxable year beginning or ending in 2017 are not within the scope of this provision.

The income inclusion required of a U.S. shareholder under this transition rule is reduced by the amount of gain which would be recognized under section 332(a)(3)(C) as in effect before the date of enactment of TCJA.1496

### Subpart F inclusion of deferred foreign income

The mechanism for the mandatory inclusion of pre-effective date foreign earnings is subpart F. The provision provides that the subpart F income of all specified foreign corporations for the last taxable year that begins before January 1, 2018, is included. The increased tax liability generally is applied for the last taxable year of a foreign corporation to which section 965 applies. Such earnings are included in the amount of qualified deficits1497 that arose in a taxable year beginning before January 1, 2018, and which are attributable to earnings and profits of a foreign corporation’s total earnings and profits, irrespective of the foreign tax credit separate category limitations.

### Reductions of amounts included in income of U.S. shareholder on foreign corporations with deficits in earnings and profits

The income inclusion required of a U.S. shareholder under this transition rule is reduced by the portion of aggregate foreign earnings and profits deficit allocated to that person by reason of that person’s interest in an “E&P deficit foreign corporation.” An E&P deficit foreign corporation is defined as an uncontrolled foreign corporation owned by the U.S. shareholder as of the date on which the account of earnings and profits is measured and is subject for that corporation (November 2, 2017 or December 31, 2017, as applicable to implement the intent of the provision) or as of December 31, 2017. The applicable amount may be (1) when distributed, not excludable from the gross income of a U.S. shareholder as previously taxed income under section 965.

### Post-1986 earnings and profits

For purposes of taking into account its subpart F income under this rule, a noncontrolled 10/50 corporation is treated as a CFC.

### Forcibly Related

See Treas. Reg. § 1.959-3, under which an election may specify an effective date up to 75 days prior to the date on which the election is filed.
determining the aggregate foreign earnings and profits deficit of a U.S. shareholder.\textsuperscript{1498}

The U.S. shareholder aggregates its pro rata share in the foreign E&P deficits of each such company and allocates such aggregate amount among the deferred foreign income corporations in which the shareholder is a U.S. shareholder, based on the ratio of the aggregate foreign earnings and profits deficit allocable to a specified foreign corporation in the same ratio as the U.S. shareholder’s pro rata share of post-1986 deferred income attributable to such foreign corporation bears to the aggregate U.S. shareholder’s pro rata share of accumulated post-1986 deferred foreign income from all deferred income companies of such shareholder.

To illustrate the ratio, assume that, Z, a domestic corporation, is a U.S. shareholder with respect to each of four specified foreign corporations which are E&P deficit foreign corporations. Assume further the foreign companies have the following accumulated post-1986 deferred foreign income or foreign earnings and profits deficits as of November 2, 2017, and December 31, 2017:

<table>
<thead>
<tr>
<th>Specified Foreign Corp.</th>
<th>Percentage Owned</th>
<th>Post-1986 E&amp;P Deficit</th>
<th>Pro Rata Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>60%</td>
<td>($1,000)</td>
<td>($600)</td>
</tr>
<tr>
<td>B</td>
<td>10%</td>
<td>($200)</td>
<td>($20)</td>
</tr>
<tr>
<td>C</td>
<td>20%</td>
<td>($400)</td>
<td>($80)</td>
</tr>
<tr>
<td>D</td>
<td>10%</td>
<td>$1,000</td>
<td>$100</td>
</tr>
</tbody>
</table>

The aggregate foreign earnings and profits deficit of the U.S. shareholder is $2,200, and the aggregate share of accumulated post-1986 deferred foreign income is $2,400. Thus, the portion of the aggregate foreign earnings and profits deficit allocable to Corporation C is ($320), that is, ($220) x 1,400/2,400. The remainder of the aggregate foreign earnings and profits deficit is allocable to Corporation D. The U.S. shareholder has a net surplus of earnings and profits in the amount of $1,780.

The provision also permits intragroup netting among U.S. shareholders in an affiliated group in which there is at least one U.S. shareholder with a net E&P surplus and another with a net E&P deficit. The net E&P surplus shareholder may reduce its net surplus by the shareholder’s applicable share of aggregate foreign earnings and profits deficit, based on the group’s ownership percentage of the members. For example, a U.S. corporation may have two domestic subsidiaries, X and Y, in which the U.S. shareholder owns 80% and 90% respectively. If X has a $1,000 net E&P surplus, and Y has $1,000 net E&P deficit, X is an E&P surplus shareholder, and Y is an E&P net deficit shareholder. The net E&P surplus of X may be reduced by the net E&P deficit of Y to the extent of the group’s ownership percentage in Y, which is 80 percent. The remaining net surplus of Y is $400, and the U.S. shareholder Z is also a wholly owned domestic subsidiary of the same U.S. parent as X and Y, the group ownership percentage of which is split between X and Z. The aggregate cash positions of X and Z are reduced ratably by 800 of the net E&P deficit of Y.

\textsuperscript{1498}For example, assume that a foreign corporation owned after December 31, 2016, has a $100 accumulated earnings and profits and profits deficit of a U.S. shareholder.

\textsuperscript{1499}Sec. 964(b) and regulations thereunder.

\textsuperscript{1500}Other foreign tax credits used by a taxpayer against tax liability resulting from the deemed inclusion of post-1986 undistributed CFC earnings are subject to a 30 percent limitation.

\textsuperscript{1501}See Sec. 78.
paid annually no later than the due dates (without extensions) for the income tax return of each succeeding year. If a deficiency is later determined with respect to the net tax liability attributable to such a transaction, the deficiency is prorated among all installment payments in most circumstances. The portions of the deficiency prorated to an installment that was due but which was not paid may be paid upon notice and demand. The portion prorated to any remaining installment is payable with the timely payment of that installment unless the deficiency is attributable to negligence, intentional disregard of rules or regulations, or fraud with intent to evade tax, in which case the deficiency is payable upon notice and demand.

The timely payment of an installment does not preclude the assessment of a deficiency. If a deficiency is determined that is attributable to an understatement of the net tax liability due under this provision, the deficiency is payable with underpayment interest for the period beginning on the date on which the net tax liability would have been due, without regard to an election to pay in installments, and ending with the payment of the deficiency. Furthermore, any amount of deficiency prorated to a remaining installment also bears interest on the deficiency but not on the original installment amount.

The provision also includes an acceleration rule. If (1) there is a failure to pay timely any required installment, (2) there is a liquidation or sale of substantially all of the U.S. shareholder’s assets (including in a bankruptcy case), (3) the U.S. shareholder ceases business, or (4) another similar circumstance arises, the unpaid portion of all remaining installments is due on the date of the event (or, in a title 11 case or similar event, including reorganization, sale of substantially all corporate assets, or similar event, the unpaid portion of all remaining installments is due on the date of the event), determined without regard to extensions of time to file.

Special rule for S corporations

A special rule permits deferral of the transaction net tax liability for shareholders of a U.S. S corporation that is a flow-through entity known as an S corporation. The S corporation is required to report on its income tax return the amount includible in gross income by reason of this provision, as well as the amount of deduction that would be allowable, and provide a copy of such information to the IRS. Any shareholder of the S corporation may elect to defer his portion of the net tax liability at participation on the S corporation’s taxable year in which a triggering event occurs. The election to defer the tax is due not later than the due date for the return of the S corporation for its last taxable year that begins before January 1, 2018.

Three types of events may trigger an end to deferral of the net tax liability. The first type of triggering event is the sale or other disposition of stock, the company’s end of an organization in bankruptcy, or similar event, including reorganization in bankruptcy. The third type of triggering event is a transfer of shares of stock to another person. Partial transfers trigger the end of deferral only with respect to the portion of stock properly allocable to the portion of stock sold.

If a shareholder of an S corporation has elected deferral under the special rule for S corporations, and a triggering event occurs, the S corporation and the electing shareholder are jointly and severally liable for any net tax liability and related taxes and interest assessed within the period that the election is in effect. Failure to include that information with each income tax return will result in a penalty equal to five-percent of the amount that should have been reported.

After a triggering event occurs, a shareholder is required to pay the net tax liability in eight equal installments, subject to rules similar to those generally applicable absent deferral. Whether a shareholder may elect to pay in installments depends upon the type of event that triggered the end of the deferral period. If the triggering event is a liquidation, sale of substantially all corporate assets, or similar event, the installment payments are not available. Instead, the entire net tax liability is due upon notice and demand. The installment election is due with the timely return for the year in which the triggering event occurs. The first installment payment is required by the due date of the same return, determined without regard to extensions of time to file.

Effective Date—The provision is effective for the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to shareholders for the taxable years in which or with which such taxable years of the foreign corporations end.

In general

The provision generally requires that, for the last taxable year beginning before January 1, 2018, any U.S. shareholder of a specified foreign corporation must include in income a portion of the accumulated post-1986 deferred foreign income of the corporation. For purposes of this provision, a specified foreign corporation is any foreign corporation in which a U.S. shareholder is the S corporation or a triggering event occurs, as defined in section 951(b)(5) prior to date of enactment of this bill, i.e., any foreign corporation in which a U.S. person owns 10 percent of the voting stock. Consistent with the general operation of section 951, a U.S. shareholder of a deferred foreign income corporation must include in income the shareholder’s pro rata share of the foreign corporation’s accumulated post-1986 deferred foreign income attributable to its section 951 inclusion.

Accumulated post-1986 deferred foreign income

A specified foreign corporation’s accumulated post-1986 deferred foreign income on the measurement date is based on all post-1986 foreign earnings and profits (“E&P”) in each specified foreign corporation with a U.S. shareholder. The potential pool of includible earnings includes all undistributed earnings that are not previously taxed and are neither U.S. income nor (2) subpart F income (determined without regard to the section 951 inclusion) included in the gross income of a U.S. shareholder. The potential pool of includible earnings includes all undistributed foreign earnings accumulated in taxable years beginning after 1986, computed in accordance with sections 966 and 986, taking into account only the foreign corporation that was a specified foreign corporation. The pool of post-1986 foreign earnings and profits is not reduced by distributions during the taxable year to which section 966 applies.

Reductions of amounts included in income of U.S. shareholder of foreign corporations with deficits in E&P

The pool of post-1986 foreign earnings and profits taken into account in computing the section 951 inclusion required of a U.S. shareholder under this transition rule generally is reduced by foreign earnings and profits deficits attributable to a qualified activity, must be identified. The U.S. shareholder must determine its aggregate E&P deficit based on its interest in each specified foreign corporation with a deficit in post-1986 foreign earnings and profits as of the measurement date (“E&P deficit foreign corporation”). The U.S. shareholder’s aggregate E&P deficit is then allocated among the deferred foreign income corporations in the same ratio as the U.S. shareholder’s pro rata share of the accumulated post-1986 deferred foreign income bears to the U.S. shareholder’s pro rata share of accumulated post-1986 deferred foreign income from all deferred foreign income corporations with respect to which the shareholder is a U.S. shareholder. For the portion of aggregate E&P deficits that include qualified deficits, the portion of the deficit that is attributable to qualified and the qualified activity, must be identified. The
provision does not permit intragroup netting among U.S. shareholders within an affiliated group.

In taxable years beginning after 2017, amounts by which the section 951 inclusion was reduced by aggregate E&P deficits are considered as amounts included in the gross income of the U.S. shareholder. The shareholder’s inclusion in the E&P of an E&P deficit foreign corporation that used qualified deficits to reduce its section 951 inclusion is increased by the amount of such deficit that was in effect as of January 1, 2017. The cash position of a foreign corporation consists of all cash, net accounts receivable and short-term obligations of a U.S. shareholder may disregard accounts receivable and short-term obligations of a foreign corporation that are evidenced by notes or bills constituting a debt obligation with respect to another specified foreign corporation.

Deductions from section 951 inclusion

To determine the taxable portion of the section 951 inclusion, the U.S. shareholders with respect to another specified foreign corporation may deduct a portion of the section 951 inclusion in an amount that depends upon the proportion of aggregate earnings and profits attributable to cash assets rather than noncash assets, in the nature of a partial dividends-received deduction. A U.S. shareholder may deduct 74.1 percent of the aggregate earnings and profits attributable to the portion of cash included in the cash position of the foreign corporation.

The aggregate earnings and profits attributable to the portion of cash included in the cash position of the foreign corporation is the greater of the pro rata share of the cash position of all specified foreign corporations as of the last day of the last taxable year beginning before January 1, 2017, ending immediately before November 9, 2017, and 85.7 percent of the remainder of the aggregate earnings and profits in the section 951 inclusion.

A U.S. shareholder may elect, no later than with a timely filed return for the taxable year, not to apply its net operating loss deduction to the deemed repatriation. If so, neither the inclusion nor any related deemed paid foreign tax credits may be taken into account in computing the net operating loss deduction for that year.

Cash position

The aggregate earnings and profits attributable to cash assets for a U.S. shareholder is the greater of the pro rata share of the cash position of all specified foreign corporations as of the last day of the last taxable year beginning before January 1, 2017, ending immediately before November 9, 2017, and 85.7 percent of the remainder of the aggregate earnings and profits in the section 951 inclusion.

To avoid double counting of cash assets, a taxpayer may take into account the cash position as of the last day of two taxable years ending immediately before November 9, 2017.

Installment payments

The Senate amendment follows the House provision in allowing a U.S. shareholder to elect to pay the net tax liability resulting from the section 965 inclusion in eight installment payments. If so elected, the Senate amendment requires that the payments for each of the first five years equal 15 percent of the net tax liability, the sixth installment equals 15 percent of the net tax liability, increasing to 20 percent for the seventh installment and the remaining balance of 25 percent in the eighth year.

Special rule for S corporations

The Senate amendment eliminates the special rule of the House provision that permits deferral of the transition net tax liability for shareholders of a U.S. shareholder that is a flow-through entity known as an S corporation. After a triggering event occurs, the Senate amendment requires that the shareholders in an S corporation may elect to pay the net tax liability in eight installments, subject to rules similar to those generally applicable absent deferral.

To alleviate burden of compliance with this section by REITs, special rules are provided if a U.S. shareholder is a REIT. First, although it must determine its pro rata share of the increase in subpart F income in accordance with the rules described above, the REIT is not required to take into account the section 951 inclusion for purposes of determining the REIT’s amount of qualified REIT gross income.

Foreign tax credit

A portion of foreign income tax that is deemed paid or accrued with respect to the section 951 inclusion is not creditable or deductible for purposes of determining the income potentially required to be included in taxable income under section 857(b). Unlike a regular dividend from a C corporation, the U.S. shareholder may not deduct the portion of its income that is distributed to its shareholders as a dividend or qualified liquidating dividend. The U.S. shareholder may trigger a requirement that the REIT distribute an amount equal to 90 percent of that inclusion despite the fact that it received no distribution from the deferred foreign income corporation.

To avoid requiring that any distribution required to be satisfied for redistribution of the REIT liquidates, ceases to operate its business, or distributes substantially all its assets for any other similar event occurs, any portion of the required inclusion not yet taken into income is accelerated and required to be included as gross income on the date of such event.

Recapture from expatriated entities

The provision denies any deduction claimed with respect to the mandatory subpart F inclusion and imposes a 35 percent tax on any loss that results from the recapture of earnings and profits, or the recharacterization of earnings and profits, as foreign income arisings in proportion to the amount included in each of the eight years. Neither the REIT nor the recipient of the distribution may elect to use the installment payment alternative.

In the event that a REIT liquidates, ceases to operate its business, or distributes substantially all its assets for any other similar event occurs, any portion of the required inclusion not yet taken into income is accelerated and required to be included as gross income on the date of such event.

Regulatory authority

A specific grant of regulatory authority to carry out the intent of this provision is included. For example, the Secretary may identify entities in which it is appropriate to grant relief from potential double-counting of the earnings and profits and the recapture of earnings and profits as foreign income arisings due to different measurement dates applicable to specified foreign corporations within an affiliated group, or the timing of the triggering distribution. It also specifies that the Secretary shall prescribe rules or guidance in order to deter tax avoidance through use of entity classification elections and accounting method changes, among other possible strategies.

Effective date.—The provision is effective for the last taxable year of a foreign corporation that begins before January 1, 2018, and such requirements must be met in order to avoid an excise tax under section 898.
with respect to U.S. shareholders, for the taxable years in which or with which such taxable years of the foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment, with several modifications, including those described below.

Scope of earnings and profits subject to the transition tax

The provision applies to all CFCs. It also applies to all foreign corporations (other than an individual) that, solely for purposes of calculating the inclusion, the conferees expect the holder recognizing an incremental income generally be deemed paid by the U.S. shareholder for purposes of applying section 959.

For example, assume that a foreign corporation organized after December 31, 1986 has $100 of accumulated earnings and profits as of December 31, 1986. The determination of the earnings and profits accumulated as of the measurement date for purposes of determining the accumulated earnings and profits for which a dividends-received deduction is permitted is modified in several ways. First, cash items of a specified foreign corporation is determined in measuring the cash position of an entity is modified in several ways. First, cash items are excluded in measuring the cash position of an entity.

This provision applies to all CFCs. It also applies to all foreign corporations (other than an individual) that, solely for purposes of calculating the inclusion. However, the conferees expect the holder recognizing an incremental income generally be deemed paid by the U.S. shareholder for purposes of applying section 959.

In order to avoid double-counting and double non-counting of earnings, the Secretary may prescribe a rate equivalent to 15 percent of post-1986 earnings and profits or a specified foreign corporation to ensure that a single item of a specified foreign corporation inclusions may be necessary, for example, when there is a debt-equity payment (e.g., interest or royalties) from one specified foreign corporation to another specified foreign corporation between measurement dates.

The conferences are also aware that certain taxpayers may have engaged in tax strategies designed to reduce the amount of post-1986 earnings and profits in order to decrease the amount of income subject to the tax by the fraction, numerator of which is taxable portion of the increased subpart F income under the definition of which is the total increase in subpart F income under this provision.

The conferences recognize that basis adjustments increases or decreases may be necessary with respect to both the stock of the deferred foreign income corporation and the E&P deficit foreign corporation and authorizes the Secretary to provide for such basis adjustments or other adjustments, as may be appropriate. For example, with respect to the stock of the deferred foreign income corporation, the Secretary may determine that a basis increase is appropriate in the taxable year of the section 951A inclusion or, alternatively, the Secretary may modify the application of section 965(b)(1) with respect to such stock. Moreover, with respect to the stock of the E&P deficit corporation, the Secretary may require a reduction in basis for the taxable year in which the U.S. shareholder’s pro rata share of the earnings of the E&P deficit corporation are increased.

Determination of cash position

The determination of assets to be considered in measuring the cash position of an entity is modified in several ways. First, cash items owned by a surrogate corporation inverted post-enactment foreign income corporation is determined in measuring the cash position of an entity. The determination of assets to be considered in measuring the cash position of an entity is modified in several ways. First, cash items owned by a surrogate corporation inverted post-enactment foreign income corporation is determined in measuring the cash position of an entity. The determination of assets to be considered in measuring the cash position of an entity is modified in several ways. First, cash items owned by a surrogate corporation inverted post-enactment foreign income corporation is determined in measuring the cash position of an entity.

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The conference agreement clarifies that U.S. shareholders acquired by a surrogate corporation are within the scope of the provision only if the surrogate corporation inverted post-enactment foreign income corporation is determined in measuring the cash position of an entity.

The conference agreement also provides that the cash position of a U.S. shareholder that becomes an expatriate entity within the meaning of section 7874(a)(2) at any point within the ten-year period following enactment of the Tax Cuts and Jobs Act, the conference agreement clarifies that the value of such stock was taken into account as cash or cash equivalent by another specified foreign corporation in which such shareholder is a U.S. shareholder.

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would be specified foreign corporations with respect to the U.S. shareholder if the entity were a foreign corporation. For example, if a U.S. shareholder owns a five-percent interest in a foreign corporation, the corporation’s overall domestic loss and residual value would be apportioned to the U.S. shareholder, and the cash or cash equivalents held by the partnership are includible in the aggregate cash position of the U.S. shareholder on a look-through basis. The tax simplification would allow the Secretary of Treasury to provide guidance for taking into account the specified foreign corporation’s ownership structure in determining the amount of foreign-source income or foreign-source property allocable to deduction eligible income for the purposes of determining an overall domestic loss.

15. Election to increase percentage of domestic taxable income offset by overall domestic loss.

In general.

No provision.

Senate Amendment

The provision modifies section 904(g) by generally allowing as a deduction an amount properly allocable to such gross income (referred to in this document as “deduction eligible gross income”). The exceptions to deduction eligible income are: (1) the subpart F income of the corporation determined under section 951; (2) the GILTI of the corporation; (3) any financial services income (as defined in section 954(d)(2)(B) of the corporation); (4) any dividend received from a CFC with respect to which the corporation is a U.S. shareholder; and (5) any domestic oil and gas extraction income of the corporation; and (6) any foreign branch income (as defined in section 904(h)(2)(J)) of the corporation.

FDII = Deemed Intangible Income × Foreign-Derived Deduction Eligible Income

Deduction Eligible Income

The formula for deduction eligible income can generally be written as follows: Deduction Eligible Income = Gross Income – Exceptions – Allocable Deductions

Where Exceptions refers to the exceptions to deduction eligible income and Allocable Deductions encompasses all deductions (including alternative depreciation system under section 168(g), notwithstanding any provision of law that might reduce or otherwise amend the definition of the deduction) that are allocable to deduction eligible gross income.

Deemed Intangible Income

The domestic corporation’s deemed intangible income means the excess (if any) of its deduction eligible income over its deemed tangible income return. The deemed tangible income return recovered in respect to a corporation, an amount equal to 10 percent of the corporation’s qualified business asset investment (“QBAI”). Deemed intangible income can be calculated as follows: Deemed Intangible Income = Deduction Eligible Income – (10% × QBAI)

For purposes of computing its FDII, a domestic corporation’s QBAI is the average of the aggregate of its adjusted bases, determined as of the close of each quarter of the taxable year, in specified tangible property used in its trade or business and of a type with respect to which a deduction is allowable under section 167. The adjusted basis in any property must be determined using the alternative depreciation system under section 168(g), notwithstanding any provision of law that might reduce or otherwise amend the definition of the deduction (as amended by the Senate amendment) which is enacted after the date of enactment of this provision (unless such later enacted law specifically and directly amends this provision).

Specified tangible property means any tangible property used in the production of deduction eligible income. If such property was used in the production of deduction eligible income and income that is not deduction eligible income (i.e., dual-use property), the property is treated as specified tangible property in the same proportion that the amount of deduction eligible gross income produced with respect to the property bears to the total amount of gross income produced with respect to the property.

The deduction for the foreign-derived intangible income and global intangible low-taxed income provisions are generally allowed as a deduction an amount equal to the sum of 7.5 percent of its FDII plus 50 percent of its GILTI (if any). For taxable years beginning after December 31, 2017, the deduction for FDII and GILTI is reduced from 20 percent to 12 percent. The deduction for FDII and GILTI in taxable years beginning after December 31, 2017, and before January 1, 2026, the provision generally allows as a deduction an amount equal to the sum of 20 percent of its FDII plus 50 percent of its GILTI (if any). For taxable years beginning after December 31, 2025, the deduction for FDII and GILTI is limited to 7.5 percent of its GILTI. The reduction in deduction for which a deduction is allowed equals the remainder of such excess.

FDII

The FDII of any domestic corporation is the amount which bears the same ratio to the corporation’s QBAI as its foreign-derived deduction eligible income bears to its deduction eligible income.

In other words, a domestic corporation’s FDII is the portion of its intangible income, determined on a formulaic basis, that is derived from serving foreign markets. For taxable years beginning after December 31, 2017, and before January 1, 2028, the effective tax rate on FDII is 12.5 percent and the effective U.S. tax rate on GILTI is 17.5 percent. For taxable years beginning after December 31, 2027, and before January 1, 2028, the effective tax rate on FDII is 12.5 percent and the effective U.S. tax rate on GILTI is 17.5 percent.

The conference agreement follows the Senate amendment.

1. Deduction for foreign-derived intangible income and global intangible low-taxed income (sec. 14202 of the Senate amendment and new section 250 of the Code)

No provision.

Senate Amendment

The provision provides for the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to U.S. shareholders, for the taxable years in which or with which such taxable years of the foreign corporations end.

Effective date.—The provision is effective for the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to U.S. shareholders, for the taxable years in which or with which such taxable years of the foreign corporations end.
other words, the percentage of a domestic corporation’s adjusted basis in dual-use prop-
erty that is included in QBAI equals the de-
duction eligible gross income produced with respect to the property divided by the total gross income produced with respect to the property. 

Foreign-derived deduction eligible income 

Foreign-derived deduction eligible income means income described in section 954(b)(3) earned in a taxable year, any deduction eligible income of the taxpayer that is derived in connection with (1) property that is sold by the taxpayer to any person who is not a U.S. person and that the taxpayer establishes to the satisfaction of the Secretary is for a foreign use, (2) services provided by the taxpayer to any person who is not a U.S. person, or (3) property that is sold or the provision of services to another person that is ultimately sold by a related party, or (4) services provided to a related party who is not a U.S. person and the tax-
ernment eligible gross income, then 75 percent of a tion income and the remaining $750 of which was de-
cluded in QBAI for that taxable year. 

1525 Due to the reduction in the effective U.S. tax 
rate resulting from the deduction for FDII and 
GILTI, the effective tax rate on FDII is 13.125 
percent and the effective U.S. tax rate on GILTI 
(with respect to domestic corpora-
tions) is 10.5 percent. 

1525 An 8 corporation’s taxable income is computed in the same manner as an individual (sec. 1366(b)) so that deductions allowable only to corporations, such as FDII and GILTI, are allowed in the same manner as an individual (sec. 1363(b)) so that 
deductions allowable only to corporations, such as FDII and 
GILTI, are allowed in the same manner as an individual 
for taxable years of U.S. shareholders in which or 

effective tax rate on FDII and 
GILTI, the effective tax rate on FDII is 13.125 
percent and the effective U.S. tax rate on GILTI 
(with respect to domestic corpora-
tions) is 10.5 percent. 

1525 Effective date—The provision is effective 
for taxable years beginning after December 31, 
2017. 

2. Special rules for transfers of intangible property from controlled foreign corpora-
tions to United States shareholders (sec. 14203 of the Senate amendment and new 
sec. 966 of the Code) 

HOUSE BILL 

No provision. 

SENATE AMENDMENT 

For certain distributions of intangible property held by a CFC on the date of enact-
ment of this provision, the fair market value of the property on the date of the distrib-
ution is treated as not exceeding the adjusted basis of the property immediately before the distribution. If the distribution is not a divi-
dend, a U.S. shareholder’s adjusted basis in the stock of the CFC is increased by the amount of the increase (if any) described previously. 

For purposes of the provision, intangible property means intangible property as de-
scribed in section 1245(h)(3)(B) and computer software as described in section 197(e)(3)(B). 

The provision applies to distributions that are (1) received by a domestic corporation 
from a CFC with respect to which it is a U.S. shareholder and (2) made by the CFC before the last day of the third taxable year of the CFC beginning after December 31, 2017. 

Effective date—The provision is effective 
for taxable years of foreign corporations 
beginning after December 31, 2017, and for 
taxable years of U.S. shareholders that 
begin with such taxable years of foreign corpor-
ations end. 

C. Modifications Related to Foreign Tax 
Credit System 

1. Repeal of section 902 indirect foreign tax 
credits; determination of section 960 
credit on current year’s basis (sec. 4101 of the 
House bill, sec. 14301 of the Senate 
amendment, and secs. 902 and 960 of the 
Code) 

HOUSE BILL 

The provision repeals the deemed-paid credit with respect to dividends received by 
a domestic corporation that owns 10 percent or more of the voting stock of a foreign 
corporation.
A deemed-paid credit is provided with respect to any income inclusion under subpart F. The deemed-paid credit is limited to the amount of foreign income taxes properly attributable to subpart F income. The Secretary is granted authority under the proposal to provide regulations and other guidance as may be necessary and appropriate to carry out the purposes of this proposal. It is anticipated that the Secretary would provide regulations with rules for allocating taxes similar to rules in place for purposes of determining the allocation of taxes to specific foreign tax credit baskets. Under such rules, taxes are not attributable to an item of subpart F income if the base upon which the tax was imposed does not include subpart F income. For example, if foreign law exempts a certain type of income from its tax base, no deemed-paid credit results from the inclusion of such income as subpart F income. If the tax imposed on income that is not included in subpart F income, is not considered attributable to subpart F income.

In addition to the rules described in this section, the proposal makes several conforming amendments to various other sections of the Code reflecting the repeal of section 902 and the modification of section 966. These conforming amendments include amending the section 78 gross-up provision to apply solely to taxes deemed paid under the amendment. Effective date.—The provision applies to taxable years beginning after December 31, 2017.

SENATE AMENDMENT
The Senate amendment is identical to the House bill.

CONFERENCE AGREEMENT
The conference agreement follows the House bill and the Senate amendment.

3. Separate foreign tax credit limitation basket for foreign branch income (sec. 14302 of the Senate amendment and sec. 904 of the Code)

HOUSE BILL
No provision.

SENATE AMENDMENT
The provision requires foreign branch income to be allocated to a specific foreign tax credit basket. For purposes of this provision, the business profits of a United States person which are attributable to one or more QBUs in one or more foreign countries. Under this provision, business profits of a QBU shall be determined under rules established by the Secretary. Business profits of a QBU shall not, however, include any income which is passive category income.

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

CONFERENCE AGREEMENT
The conference agreement follows the Senate amendment.

4. Acceleration of election to allocate interest, etc., on a worldwide basis (sec. 14503 of the Senate amendment and sec. 864 of the Code)

HOUSE BILL
No provision.

SENATE AMENDMENT
This provision accelerates the effective date of the election to allocate interest and other deductions to taxable years beginning after December 31, 2017, rather than to taxable years beginning after December 31, 2020.

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

CONFERENCE AGREEMENT
The conference agreement does not include the Senate amendment provision.

D. Modification of Subpart F Provisions

1. Repeal of inclusion based on withdrawal of previously excluded subpart F income from qualified investment (sec. 4201 of the House bill, sec. 14213 of the Senate amendment, and sec. 953 of the Code)

HOUSE BILL
The provision repeals section 955. As a result, a U.S. shareholder in a CFC that invested its previously excluded subpart F income in qualified foreign base company shipping operations is no longer required to include in income a pro rata share of the previously excluded subpart F income when the CFC decreases such investments.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders within which or with which such taxable years of foreign corporations end.

SENATE AMENDMENT
The Senate amendment follows the House bill.

CONFERENCE AGREEMENT
The conference agreement follows the House bill and the Senate amendment.

2. Repeal of treatment of foreign base company oil related income as subpart F income (sec. 14209 of the House bill, sec. 14211 of the Senate amendment, and sec. 954(a) of the Code)

HOUSE BILL
The provision eliminates foreign base company oil related income as a category of foreign base company income.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

SENATE AMENDMENT
The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT
The conference agreement follows the House bill and the Senate amendment.

3. Inflation adjustment of de minimis exception for foreign base company income (sec. 4203 of the House bill, sec. 14212 of the Senate amendment, and sec. 954(b)(3) of the Code)

HOUSE BILL
The provision amends the de minimis exception of present law, which permits a CFC to exclude its foreign base company income if the sum of its total foreign base company income and gross insurance income is the lesser of five percent of its gross income or $1,000,000. In the case of any taxable year beginning after 2017, the provision indexes for inflation the $1,000,000 de minimis amount for foreign base company income, with all increases rounded to the nearest multiple of $50,000.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

SENATE AMENDMENT
The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT
The conference agreement follows the House bill and the Senate amendment.

4. Effective date of the worldwide interest allocation provisions (sec. 14301 of the House bill, sec. 14302 of the Senate amendment, and sec. 953 of the Code)

HOUSE BILL
No provision.

SENATE AMENDMENT
The provision amends the worldwide interest allocation provisions so that they apply to taxable years beginning after December 31, 2017.
5. Modification of stock attribution rules for the House bill or the Senate amendment proposed under section 318(a)(3) to a U.S. person that is not a related person (within the meaning of section 954(d)(3)) to such U.S. shareholder as a result of the repeal of section 958(b)(4).1529

Effective date.—The provision is effective for the last taxable year of foreign corporations beginning after December 31, 2017, and for each subsequent year of such foreign corporations and for the taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. In adopting this provision, the conferees intend to render ineffective the certain attribution rule to the extent of avoiding the subpart F provisions. One such transaction involves effectuating "de-control" of a foreign subsidiary, by taking advantage of the section 958(b)(4) rule that effectively turns off the constructive stock ownership rules of 318(a)(3) when to otherwise would result in a U.S. person being treated as owning stock owned by a foreign person. Such a transaction converts foreign CFCs to non-CFCs, despite continuous ownership by U.S. shareholders.

Effect date.—The provision is effective for the last taxable year of foreign corporations beginning after January 1, 2018 and for each subsequent year of such foreign corporations and for the taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. In adopting this provision, the conferees intend to render ineffective the certain attribution rule to the extent of avoiding the subpart F provisions. One such transaction involves effectuating "de-control" of a foreign subsidiary, by taking advantage of the section 958(b)(4) rule that effectively turns off the constructive stock ownership rules of 318(a)(3) when to otherwise would result in a U.S. person being treated as owning stock owned by a foreign person. Such a transaction converts foreign CFCs to non-CFCs, despite continuous ownership by U.S. shareholders.

Effect date.—The provision is effective for the last taxable year of foreign corporations beginning after December 31, 2017, and for each subsequent year of such foreign corporations and for the taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

6. Modification of definition of United States shareholder (section 14215 of the Senate amendment and section 961 of the Code)

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision expands the definition of U.S. shareholder under subpart F to include any U.S. person, person or corporation, in which the total value of all shares of stock of a foreign corporation. Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

7. Elimination of requirement that corporation must be controlled for 30 days before subpart F inclusions apply.

HOUSE BILL

The provision eliminates the requirement that a corporation must be controlled for an uninterrupted period of 30 days before subpart F inclusions apply.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

8. Current year inclusion of foreign high return assets (FHRAs) from passive income for certain transactions that are used to reduce the scope of the reporting requirements.

HOUSE BILL

Effective date.—Under the provision, a U.S. shareholder of any CFC must include in gross income for a taxable year the excess of any deduction allowable for the payment or accrual of such amount over the applicable percentage of subpart F income for such year.

The applicable percentage is the Federal rate of interest (determined under section 1274(d) for the month in which such shareholder's taxable year ends) plus seven percentage points.

New formula for FHRA, which is calculated at the U.S. shareholder level, is generally:

\[ \text{FHRA} = \text{Net CFC Tested Income} \times (17\% + \text{AFR}) \times \text{QBAI} \]

where AFR is the short-term Federal rate.

Net CFC tested income

Net CFC tested income means, with respect to any U.S. shareholder, the excess of the aggregate of its pro rata share of the tested income of each CFC with respect to which it is a U.S. shareholder, over the aggregate of its pro rata share of the tested loss of each CFC with respect to which it is a U.S. shareholder.

The formula for net CFC tested income, which is calculated at the U.S. shareholder level, is:

\[ \text{Net CFC Tested Income} = \sum \text{CFC Tested Income} \]

where CFC Tested Income = Sum of CFC Tested Income — Sum of CFC Tested Loss

The tested income of a CFC means the excess (if any) of the gross income of the corporation determined without regard to certain exceptions to tested income, over deductions (including taxes) properly allocable to such gross income. The gross income of a tested income are: (1) the corporation's ECI if the income is subject to tax;1530 (2) any gross income taken into account in determining the corporation's subpart F income; (3) any amount, except as otherwise provided by the Secretary, that qualifies for CFC look-through treatment, but only to the extent that any deduction allowable for the payment or accrual of such amount does not result in a reduction of the FHRA of any U.S. shareholder (determined without regard to such amount); (4) any gross income excluded as foreign personal holding company income by reason of the exceptions for active financing income and active non-financing income as well as the exception for dealers under section 954(c)(2)(C); (5) any gross income excluded from foreign base company income or


1530 If the amount of interest expense exceeds (17% + AFR) x QBAI, then the quantity in brackets in the formula equals zero in the determination of FHRA.

1531 ECI includes income that is subject to the election described in section 4360 of the House bill and new sec. 4895. As a result, any income derived from certain sales to the U.S. market is excluded from the FHRA calculation and is subject to new sec. 4891 to the extent that the sales are made to a related party.
Commodities income is intended to include corporation from the disposition of property. Commodities income of a corporation (or of a partnership with respect to such property). The test of the loss is that any commodities that it has produced or extracted and that are commodities described in sections 475(e)(2)(A) and (2) and the gross income of the corporation from such disposition of property that gives rise to income described in (1). Commodities income is intended to include any foreign oil and gas extraction income.

The tested loss of a CFC means the excess (if any) of the deductions (including taxes) properly allocable to the corporation’s gross income over the tested income exceptions over the amount of such gross income.

**Quality adjusted asset investment**

QBAI means, with respect to any CFC for a taxable year, the aggregate of its adjusted bases (determined as of the close of the taxable year and after any adjustments with respect to such taxable year) in specified tangible property used in the trade or business and with respect to which a deduction is allowable under section 168. Specified tangible property means any tangible property to the extent used in the production of tested income or tested loss. The adjusted basis in any property is determined without regard to any provision of law that is enacted after the date of enactment of this provision, unless such law specifically and directly amends this provision’s definition.

If a CFC holds an interest in a partnership as of the close of the corporation’s taxable year, the corporation takes into account its distributive share of the aggregate of the partnership’s adjusted bases (determined as of the close of the partnership’s taxable year) to the extent such property is used in the production of tested income or tested loss. The adjusted basis in any property is determined without regard to any provision of law that is enacted after the date of enactment of this provision, unless such law specifically and directly amends this provision’s definition.

For purposes of determining QBAI, the CFC bears to the aggregate amount of the tested income of the foreign corporation the same ratio to the total foreign income of the foreign corporation as the shareholder’s pro rata share of the aggregate amount of the shareholder’s pro rata share of the tested income of each CFC with respect to which it is a U.S. shareholder bears to the aggregate amount of the shareholder’s pro rata share of the tested income of each CFC with respect to which it is a U.S. shareholder.

**Foreign tax credits and coordination with subpart F**

Deemed-paid credit for taxes properly attributable to tested income

For any CFC included in the gross income of a domestic corporation, the corporation is deemed to have paid foreign income taxes attributable to tested income equal to 80 percent of its foreign high return percentage multiplied by the aggregate tested foreign income taxes paid or accrued by the CFC to which the distribution is attributable. For purposes of this provision, a CFC is generally treated as a CFC for any taxable year if the corporation is a CFC at any time during the taxable year.

**Examples**

The following examples illustrate how QBAI is calculated. The examples are highly stylized and are not meant to represent actual taxpayer scenarios.

**Example 1: Two Wholly Owned CFCs, Each Having Tested Income**

Assume a domestic corporation, US1, wholly owns two CFCs, CFC1 and CFC2. These are the only CFCs with respect to which US1 is a U.S. shareholder. Assume that the applicable percentage to be applied to QBAI is 10 percent. The following table includes more information about CFC1 and CFC2. Assume that their foreign sales income are items of gross income included in the computation of tested income, and that all expenses are allocable to their foreign sales income. Also assume a U.S. corporate tax rate of 20 percent, that the foreign tax rates faced by CFC1 and CFC2 are applied evenly across each of its sources of income.

### Facts for Example 1

<table>
<thead>
<tr>
<th>CFC1</th>
<th>CFC2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Income</td>
<td>$300</td>
</tr>
<tr>
<td>Foreign Sales Income</td>
<td>$300</td>
</tr>
<tr>
<td>Subpart F Income</td>
<td>$100</td>
</tr>
<tr>
<td>CFC Foreign Income</td>
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<tr>
<td>Expenses</td>
<td>$500</td>
</tr>
<tr>
<td>Net Income</td>
<td>$500</td>
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<td>Foreign Tax Rate</td>
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<td>Net Income - Foreign Tax</td>
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</tr>
<tr>
<td>QBAI</td>
<td>$500</td>
</tr>
</tbody>
</table>

**QBAI calculations of tested income and QBAI**

CFC1 earns foreign sales income of $300 and has deductions of $220 (=$20 of taxes plus $200 of operating expenses) allocable to its foreign sales income. Therefore, it has tested income of $80 (= $300 – $220) and tested foreign income tax of $20 (= 20% × $100). CFC1 has QBAI of $500.

CFC2 earns foreign sales income of $2,000 and has deductions of $385 (= $85 of taxes plus $300 of operating expenses) allocable to its foreign sales income. Therefore, it has tested income of $1,615 (= $2,000 – $385) and tested foreign income tax of $385 (= 5% × $7,500). CFC2 has QBAI of $500.

### U.S.-shareholder-level calculation of FHRA and tax liability

US1 has net CFC-tested income of $1,695, which is the sum of CFC1’s tested income of $80 and CFC2’s tested income of $1,615. Its pro rata share of QBAI is QBAI (= [100% × $500] + [100% × $500]) = $1,000. No interest expense is taken into account in determining US1’s net CFC tested income. Therefore, US1’s FHRA = $1,695 – ($1,000 × 5%) = $1,645.

US1 receives a deemed-paid credit equal to 80 percent of its foreign high return percentage multiplied by the aggregate tested foreign income taxes paid or accrued by CFC1 and CFC2. Its foreign high return percentage is 97.1 percent (QBAI =$1,645/1,695). The aggregate tested foreign income taxes paid or accrued by CFC1 and CFC2 is $1,645 (=$80 + $1,565). Therefore, US1’s deemed-paid credit is 80 percent × 97.1 percent × $105 = $81.52.

US1 includes 50 percent of its FHRA and 50 percent of its section 78 gross-up in gross income, or $873.45 (= 50% × [$1,645 + $81.52]).

**Taxable years for which persons are treated as U.S. shareholders of a CFC**

For purposes of the FHRA inclusion, a U.S. shareholder of a CFC is treated as a U.S. shareholder of the CFC related income for any taxable year of the corporation ends in or with the taxable year of such person and the person owns (within the meaning of section 958(a)) stock in the corporation on the last day in the taxable year of the corporation on which the corporation is a CFC. A corporation is generally treated as a CFC for any taxable year if the corporation is a CFC at any time during the taxable year.
The tentative U.S. tax owed on this income is the U.S. corporate tax rate of 20 percent applied to the total inclusion of $875.43, or $174.89.

The residual U.S. tax paid by US1 on its FHRA is its tentative U.S. tax of $147.69 less its deemed-paid credit of $81.52, or $66.17.

Example 2: Variation of Example 1, With Tested Loss

Example 2 generally has the same facts as example 1, except that CFC2 earns foreign sales of $360. This means that CFC2 has tested income of $70, which is calculated at the U.S. shareholder's corporate tax rate of 20 percent applied to the total inclusion of $70. To determine CFC2's net loss for U.S. shareholder purposes, the following formula is used:

\[ \text{Net CFC tested income} = \text{Aggregate Tested Income} - \text{Depreciation} \]

Example 3: CFC Look-Through Payment

Example 3 illustrates how the FHRA calculation applies where there are payments that qualify for CFC look-through treatment. Example 3 is limited to the calculation of the FHRA and does not provide calculations of the amount of U.S. or foreign income tax related to the FHRA.

USCo, a domestic corporation, wholly owns US1 and US2, each a domestic corporation. US1 wholly owns CFC1, and US2 wholly owns CFC2. These are the only CFCs with respect to which either US1 or US2 is a U.S. shareholder. The portion of GILTI included under section 951(a)(1)(A) for purposes of applying section 168(h)(2)(B), 535(b)(10), 904(b)(1), 959, 961, 962, 963(a)(1)(B), 996(f)(1), 6654(d)(2)(D), and 6655(e)(4). However, the Secretary may provide rules for coordinating the GILTI inclusion with provisions of law in which the determination of subpart F income is required to be made at the CFC level.

The provision requires that the amount of GILTI included by a U.S. shareholder be allocated across each CFC with respect to which it is a U.S. shareholder. The portion of GILTI treated as being with respect to a CFC with respect to which it is a U.S. shareholder equals zero for a CFC with no tested income and, for a CFC with tested income, the portion of GILTI which bears the same ratio to the total amount of GILTI included by the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to such gross income (referred to in this document as “tested gross income”) as each CFC’s loss (if any) of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property) bears to the aggregate amount of the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property).

The provision is effective for taxable years beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or beginning after December 31, 2017, and for tax years of any CFC that is a U.S. shareholder. The portion of GILTI included under section 951(a)(1)(A) for purposes of applying section 168(h)(2)(B), 535(b)(10), 904(b)(1), 959, 961, 962, 963(a)(1)(B), 996(f)(1), 6654(d)(2)(D), and 6655(e)(4). However, the Secretary may provide rules for coordinating the GILTI inclusion with provisions of law in which the determination of subpart F income is required to be made at the CFC level.

The provision requires that the amount of GILTI included by a U.S. shareholder be allocated across each CFC with respect to which it is a U.S. shareholder. The portion of GILTI treated as being with respect to a CFC with respect to which it is a U.S. shareholder equals zero for a CFC with no tested income and, for a CFC with tested income, the portion of GILTI which bears the same ratio to the total amount of GILTI included by the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to such gross income (referred to in this document as “tested gross income”) as each CFC’s loss (if any) of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property) bears to the aggregate amount of the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property).

The provision is effective for taxable years beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or beginning after December 31, 2017, and for tax years of any CFC that is a U.S. shareholders. The portion of GILTI included under section 951(a)(1)(A) for purposes of applying section 168(h)(2)(B), 535(b)(10), 904(b)(1), 959, 961, 962, 963(a)(1)(B), 996(f)(1), 6654(d)(2)(D), and 6655(e)(4). However, the Secretary may provide rules for coordinating the GILTI inclusion with provisions of law in which the determination of subpart F income is required to be made at the CFC level.

The provision requires that the amount of GILTI included by a U.S. shareholder be allocated across each CFC with respect to which it is a U.S. shareholder. The portion of GILTI treated as being with respect to a CFC with respect to which it is a U.S. shareholder equals zero for a CFC with no tested income and, for a CFC with tested income, the portion of GILTI which bears the same ratio to the total amount of GILTI included by the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to such gross income (referred to in this document as “tested gross income”) as each CFC’s loss (if any) of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property) bears to the aggregate amount of the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property).

The provision is effective for taxable years beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or beginning after December 31, 2017, and for tax years of any CFC that is a U.S. shareholder. The portion of GILTI treated as being with respect to a CFC with respect to which it is a U.S. shareholder equals zero for a CFC with no tested income and, for a CFC with tested income, the portion of GILTI which bears the same ratio to the total amount of GILTI included by the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to such gross income (referred to in this document as “tested gross income”) as each CFC’s loss (if any) of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property) bears to the aggregate amount of the U.S. shareholder’s pro rata amount of deductions (including taxes) properly allocable to the corporation’s gross income (as defined in section 951(a)(2)(C), dual-use property).
CFC's GILTI = GILTI \times \left( \frac{\text{Share of CFC's Tested Income}}{\text{Share of Agg. CFC Tested Income}} \right)

where is the U.S. shareholder's pro rata amount of the tested income of a CFC and is the aggregate amount of the U.S. shareholder’s pro rata amount of the tested income of each CFC with respect to which it is a U.S. shareholder.

For purposes of the GILTI inclusion, a person is treated as a U.S. shareholder of a CFC for any taxable year only if such person owns (within the meaning of section 958(a)) stock in the corporation on the last day, in such year, on which the corporation is a CFC. A corporation is generally treated as a CFC for any taxable year if the corporation is a CFC at any time during the taxable year.

Deemed-paid credit for taxes properly attributable to tested income

For any amount of GILTI included in the gross income of a domestic corporation, the corporation’s deemed-paid credit equals 80 percent of the product of the corporation’s inclusion percentage multiplied by the aggregate tested foreign income taxes paid or accrued, with respect to tested income, by each CFC with respect to which the domestic corporation is a U.S. shareholder.

The inclusion percentage means, with respect to any domestic corporation, the ratio (expressed as a percentage) of such corporation’s GILTI amount divided by the aggregate amount of its pro rata share of the tested income of each CFC with respect to which it is a U.S. shareholder.

The deemed-paid credit with respect to the GILTI inclusion can be expressed in the following formula:

\[
\text{Deemed-Paid Credit} = 80\% \times \frac{\text{GILTI}}{\text{Aggregate Tested Foreign Income Tax}} \times \frac{\text{Aggregate Tested Income}}{\text{Aggregate Tested Foreign Income Tax}}
\]

The provision creates a separate foreign tax credit basket for GILTI, with no carryforward or carryback available for excess credits. For purposes of determining the foreign tax credit limitation, GILTI is not general category income, and income that is both GILTI and passive category income is considered passive category income.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment provision, with clarifications and modifications that include the following.

Net deemed tangible income return

The conference agreement modifies, along lines similar to an approach taken in the House bill provision, the calculation of net deemed tangible income return for purposes of determining the deemed-paid credit. Net deemed tangible income return is, with respect to any U.S. shareholder for a taxable year, the excess (if any) of 10 percent of the aggregate of its pro rata share of the QBAI of each CFC with respect to which it is a U.S. shareholder over the amount of interest expense taken into account in determining its net CFC tested income. As a result, the formula for GILTI in the conference agreement is generally:

\[
\text{GILTI} = \text{Net CFC Tested Income} - (10\% \times \text{QBAI} - \text{Interest Expense})
\]

where Interest Expense is defined and limited in the manner described above.

Compensation of tested income and tested loss

For purposes of computing deductions (including taxes) properly allocable to gross income included in tested income or tested loss with respect to a CFC, the deductions are allocated to such gross income following rules similar to the rules of section 964(b)(5) (or to which such deductions would be allocable if there were such gross income).

Calculation of pro rata shares

For purposes of determining pro rata shares in the computation of a U.S. shareholder's GILTI amount, a person is treated as a U.S. shareholder of a CFC for any taxable year only if the person owns (within the meaning of section 958(a)) stock in the foreign corporation on the last day in the taxable year of the foreign corporation on which the foreign corporation is a CFC.

Qualified business asset investment

For purposes of determining a CFC's QBAI and its adjusted basis in specified tangible property, the adjusted basis is determined by allocating the depreciation deduction with respect to the property ratably to each day during the period in the taxable year to which the depreciation relates. In addition, if a CFC holds an interest in a partnership at the close of the CFC's taxable year, the CFC takes into account its distributive share of the aggregate of the partnership's adjusted bases (determined as of such date in the hands of the partnership) in tangible property held by the partnership up to the extent that the property is used in the trade or business of the partnership, is of a type with respect to which a deduction is allowable under section 167, and is used in the production of tested income (determined with respect to the CFC's distributive share of income with respect to the property). The CFC's distributive share of the adjusted basis of any property is the CFC's distributive share of income with respect to the property.

Regulatory authority to address abuse

The conference intend that non-economic transactions intended to affect tax attributes of CFCs and their U.S. shareholders (including amounts of tested income and tested loss, tested foreign income taxes, net deemed tangible income return, and QBAI) to minimize tax under this provision be disregarded. For example, the conferees expect the Secretary to prescribe regulations to address transactions that occur after the measurement date of post-1986 earnings and profits under amended section 956, but before the first taxable year for which new section 951A applies, if such transactions are undertaken to increase a CFC's QBAI.

9. Limitation on deduction of interest by domestic corporations which are members of an international group

The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

The provision limits the amount of U.S. interest expense that a domestic corporation which is a member of an international financial reporting group can deduct to the sum of the member's interest expense plus the allowable percentage of 110 percent of net interest expense. An international financial reporting group is a group that: (1) includes at least one foreign corporation engaged in a U.S. trade or business or at least one domestic corporation and one foreign corporation that is a member of an international financial reporting group, and (2) is a CFC which has a substantial United States shareholder.
at any time during the group's reporting year, (2) prepares consolidated financial statements in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"); (3) prepares financial statements in accordance with International Financial Reporting Standards ("IFRS"), or any other comparable method identified by the Secretary; and (3) reports in such statements average annual gross receipts of $100,000,000 (determined in the aggregate with respect to all entities which are part of such group) for the three-reporting-year period ending with such reporting year.

The allowable percentage is the ratio of a corporation's allocable share of the international financial reporting group's net interest expense over such corporation's reported net interest expense. A corporation's allocable share of an international financial reporting group's net interest expense is determined based on the corporation's share of the group's earnings (computed by adding back net interest expense, taxes, depreciation, and amortization) as reflected in the group's consolidated financial statements. A corporation's reported net interest expense is its net interest expense reported in the books and records used to prepare the group's consolidated financial statements.

For international financial reporting groups that do not prepare consolidated financial statements under U.S. GAAP, IFRS, or any other comparable method identified by the Secretary and which are filed with the United States Securities and Exchange Commission, the provision provides a hierarchy of other internationally accepted financial statements that may be relied upon by such group.

The provision applies to partnerships at the partnership level under rules similar to the rules of section 3301 of the bill. The provision also applies to foreign corporations engaged in a U.S. trade or business. A U.S. corporation considered a single corporation under this provision.

The amount of any interest not allowed as a deduction for any taxable year as a result of this provision or section 3301 of the bill may be carried forward as interest (and as amortization for the amount allowed as an interest deduction for taxable years beginning after December 31, 2017).

Example

FP, a foreign corporation, wholly owns US$ 2, a domestic corporation. FP and US$ each own 50 percent of PS, a partnership. FP, US$, and PS prepare audited consolidated financial statements in accordance with U.S. GAAP that do not identify the worldwide affiliated group.

The debt-to-equity differential percentage is calculated using the total worldwide indebtedness of the foreign corporation divided by the total worldwide equity of the foreign corporation.

During the current reporting year, the FP-US$-PS group has consolidated EBITDA of 300 and consolidated interest expense of 50. During the same period, US$ has EBITDA of 200 (determined without regard to distributions from PS), reported interest expense of 25, business interest of 30, and adjusted taxable income of $120, without regard to PS's distributive share of PS's non-separately stated taxable income or loss of 40. Also during that period, PS has EBITDA of 150, reported interest expense of 15, business interest of 20, and adjusted taxable income of 120.

FP's business interest is deductible only to the extent that the excess of PS's EBITDA over the taxable income or loss of PS equals 30 percent of its adjusted taxable income of 120 (i.e., 30% × 120 = 36). FP's limitation under section 163(j) is 22, which equals 50% × (20 + 30) / 300 / 30 = 22.

Similarly, US$'s business interest is deductible only to the extent that the excess of US$'s EBITDA over the taxable income or loss of US$ equals 30 percent of its adjusted taxable income of 120 (i.e., 30% × 120 = 36). US$'s limitation under section 163(j) is 22, which equals 50% × (20 + 30) / 300 / 25 = 22.

During that period, the PS has EBITDA of 150; the US$ has EBITDA of 200; and the FP has EBITDA of 300. The FP-US$-PS group has consolidated EBITDA of 300 and consolidated interest expense of 50. Therefore, all 20 of PS's business interest is deductible, PS's excess amount under section 163(j) (i.e., 36 – 20 = 16) and excess EBITDA under section 163(n) (i.e., 150 – 30 = 120) flow through to its partners.

The amount of any interest not allowed as a deduction for any taxable year as a result of this provision or section 3301 of the bill (determined without regard to US$'s distributive share of PS's non-separately stated taxable income) of 50 (determined without regard to US$'s distributive share of PS's non-separately stated taxable income or loss) of 50. Also during that period, PS has EBITDA of 150, reported interest expense of 15, business interest of 20, and adjusted taxable income of 120.
the last sentence thereof or a commodity defined in sections 475(e)(2), that is, a commodity actively traded within the meaning of section 1092(d)(1) or an identified hedge of such a commodity for a payment which has elected to use a services cost method under section 482, an amount paid or incurred for services if such amount is the total of all such payments.

An international financial reporting group is any group of entities that prepares consolidated financial statements. If the group’s annual aggregate payment amount for the group for the three-year period ending in the reporting year exceeds $100,000,000, the annual aggregate payment amount means the aggregate deemed amount attributable by U.S. members of the group to foreign members of the group during the reporting year.

Partnerships and branches

For purposes of this provision, a partnership is treated as an aggregate of its partners. Accordingly, a payment made to a partnership is treated as a payment made to partners, and a payment from a partnership is treated as a payment from the partners, in an amount equal to the partner’s distributive share of the relevant item of income, gain, deduction, or loss.

For purposes of this provision, U.S. branches are treated as separate entities for purposes of the determination of the aggregate payments between a branch and entities other than its owner and for purposes of deemed payments between a branch and its owner.

Election to treat payments as effectively connected income

If a specified amount is paid or incurred by a domestic corporation with respect to a foreign corporation and both the foreign and domestic corporations are members of the same international financial reporting group, the foreign corporation may elect to take into account all such specified amounts as if the foreign corporation were engaged in a U.S. trade or business and had a permanent establishment and as if the payment were effectively connected with that U.S. trade or business and were attributable to the permanent establishment, irrespective of any otherwise applicable treaty. If the foreign corporation makes the election, the amount is not imposed and tax is imposed on a net basis on such specified amounts less deemed expenses.

The election applies for the taxable year in which the election is made and all subsequent taxable years unless revoked with consent of the Secretary of the Treasury.

In general, the amount treated as effectively connected income under this provision is treated as such for all purposes of the Code. For example, it is subject to the branch profit tax (unless otherwise reduced, such as by an applicable treaty) and is not subject to the excise tax under section 337.

However, for purposes of section 245 and new section 245A, these amounts are not treated as effectively connected income. Therefore, a distribution of earnings attributable to the amount is not subject to tax. The election is irrevocable for the participation DRD under new section 245A.

The deemed expenses with respect to any specified amount received by a foreign corporation during any reporting year is the amount of expenses such that the net income ratio of the foreign corporation for the reporting year with respect to the specified amount is equal to the net income ratio of the international financial reporting group determined for the reporting year with respect to the product line to which the specified amount relates. The net income ratio is the ratio of net income determined without regard to income taxes, interest income, and interest expense, divided by revenue. The net income ratio is calculated in accordance with the books and records used in preparing the group’s consolidated financial statements. The net income ratio is determined by taking into account only revenues and expenses of the inter- national financial reporting group (other than the members of the group that are or are treated as domestic corporations for purposes of the provision) derived from, or incurred with respect to, persons that are not members of the group or members of the group that are or are treated as domestic corporations for purposes of the provision.

The following example illustrates the determination of a foreign affiliate’s deemed expenses under the provision:

According to the books and records (after taking into account intercompany transactions otherwise eliminated in consolidation) of an international financial reporting group consisting of US, FS1, and FS2, a domestic corporation, US has third-party revenues of $1,000, incurs third-party expenses of $500, and makes a $500 payment for intercompany services to its foreign affiliate, FS1. FS1, US’s other foreign affiliate, has $300 of revenues, incurs $150 of third-party expenses, and makes a $100 intercompany payment to US. US’s aggregate payment amount to foreign affiliates is $300.

US elects to treat the $300 amount as subject to section 882(g)(1). On a consolidated basis, the US-FS1-FS2 group has third-party revenues of $1,500 and incurs third-party expenses of $900.

To determine the foreign affiliate’s deemed expenses, its foreign profit margin will be determined by reference to ratio of the foreign affiliate’s earnings before interest and taxes (‘EBIT’) against the foreign revenues, with adjustments for related party inbound and outbound payments, the foreign affiliate’s profit margin can be determined as follows:

\[
\text{GEBIT} = \text{USEBIT} + \text{RPOP} - \text{RPFP} = \text{GREV} - \text{USREV + RPFP}
\]

GEBIT is global EBIT (determined on a consolidated basis), USEBIT is the domestic corporation’s EBIT (without regard to related party transactions), RPOP is the group’s related party outbound payments made from domestic corporations to foreign affiliates, and RPFP is the group’s related party inbound payments made from foreign affiliates to domestic corporations.

In the denominator, GREV is global revenues (determined on a consolidated basis) and USREV is the domestic corporation’s revenues (without regard to related party transactions).

Under the aforementioned facts, the foreign affiliate’s profit margin would be 37.5%, or (600 – 500 + 300 – 100) / (1500 – 1000 + 300)

Accordingly, of the $300 payment from US to FS1, $112.50 would be deemed to be income effectively connected to a US trade or business subject to corporate tax. The remaining $187.50 of the payment would be deemed expenses for which FS1 would be allowed a deduction.

Coordination with FDAP

Amounts treated as effectively connected income under this provision are not excluded from the definition of fixed or determinable annual or periodic payments subject to US tax. Payments subject to tax under section 881 do not constitute specified payments under this provision except to the extent that the rate of tax imposed thereby is reduced by a bilateral income tax treaty.

Joint and several liability

If there is an underpayment with respect to any taxable year of an electing foreign corporation with respect to any amount paid or incurred by it during any taxable year, such amount is treated as effectively connected income.

Foreign tax credit

The foreign tax credit allowed under section 901(a) with respect to amounts taken into account as effectively connected income is limited to 80 percent of the amount of taxes paid or accrued (and determined without regard to section 901(b)(1)) on such effectively connected income. Foreign tax credits are effectively separately basketed and may not be carried backwards or forwards.

Regulatory actions

An electing foreign corporation that receives a specified amount is required to report, with respect to each member of the international financial reporting group from which any such amount is received, (1) the name and taxpayer identification number of the member, (2) the aggregate amounts received from each member, (3) the product lines to which such amounts relate, the aggregate amounts relating to each product line, and the net income ratio for each product line, (4) a summary of any changes in financial accounting methods that affect the computation of any net income ratio described above.

A domestic corporation that pays or accrues a specified amount with respect to which a foreign corporation has made the election is required to make a return according to the forms and regulations prescribed by the Secretary of the Treasury containing certain information and to maintain sufficient records to determine the tax liability imposed by this provision. The information required to be provided is as follows: (1) the name and taxpayer identification number of the common parent of the international financial reporting group of which the domestic corporation is a member, and (2) with respect to a specified amount: (A) the name and taxpayer identification number of the recipient of the amount, (B) the aggregate amounts received by the recipient, (C) the product lines to which the amounts relate and the aggregate amounts relating to each product line, and the net income ratio for each product line, and (D) a summary of any changes in financial accounting methods that affect the computation of any net income ratio described in (C).

Treasury may prescribe regulations or other guidance that address reporting requirements under this provision, such as allowing reporting on a group basis.
Under the provision, an applicable taxpayer is required to pay an amount equal to the base erosion minimum tax amount for the taxable year. The base erosion minimum tax amount is the excess of 12.5 percent of the regular tax liability for the taxable year over an amount equal to the regular tax liability (defined in section 26(b)) of the taxpayer for the taxable year reduced (but not below zero) by the excess of the amount equal to the credits allowed under Chapter 1 less the credit allowed under section 38 (general business credits) for the taxable year.

Effective date. The provisions of this section apply to amounts paid or incurred after December 31, 2018.

In general

Under the provision, an applicable taxpayer is required to pay a tax equal to the base erosion minimum tax amount for the taxable year. The base erosion minimum tax amount is the excess of 12.5 percent of the regular tax liability for the taxable year over an amount equal to the regular tax liability (defined in section 26(b)) of the taxpayer for the taxable year reduced (but not below zero) by the excess of the amount equal to the credits allowed under Chapter 1 less the credit allowed under section 38 (general business credits) for the taxable year.

For taxable years beginning after December 31, 2025, two changes are made. (A) the 10 percent provided for above is increased to 12.5 percent. (B) the regular tax liability is reduced by the aggregate amount of the credits allowed under Chapter 1 (and no other adjustment is made).

To the extent the modified taxable income, the applicable taxpayer computes its taxable income for the year without regard to any base erosion tax benefit of a base erosion payment, the applicable taxpayer computes its taxable income as if such payments were treated as a base erosion payment if it were not made pursuant to a derivative, including any interest, royalty, or service payment, or in the case of a contract which has derivative and nonderivative components, the payments are properly allocable to the nonderivative component.

For these purposes, the term "base erosion" generally includes any payment, including any amount treated as a base erosion payment.

Base erosion payments

A base erosion payment generally includes any amount paid or accrued by a taxpayer to a foreign person that is a member of the same expanded affiliated group (defined in section 1564) Described in Treas. Reg. sec. 1.482–9(b).

A base erosion payment does not apply to any amount paid or accrued by a taxpayer to a foreign person that is not a member of the same expanded affiliated group (defined in section 1564) Described in Treas. Reg. sec. 1.482–9(b).

A base erosion payment includes any payment, including any amount treated as a base erosion payment, that constitutes reductions in gross receipts which are taken into account in computing gross income of the taxpayer for the taxable year.

A base erosion tax benefit means: (i) any deduction allowed under Chapter 1 for the taxable year with respect to a base erosion payment, (ii) any evidence of indebtedness, (iii) any commodity which is actively traded, (iv) any currency, (v) any rate, price, amount, index, formula, or algorithm. Exclusions apply to a payment described above with respect to a derivative, any payment described above with respect to a foreign person's gross receipts are aggregated with the conduct of a trade or business within the United States.

A base erosion tax benefit is properly allocable to the nonderivative component.

Any base erosion tax benefit attributable to any base erosion payment which tax is imposed by sections 871 or 881 and with respect to which tax has been deducted and withheld under sections 1441 or 1442, is not taken into account in computing modified taxable income as defined above.

The amount not taken into account in computing modified taxable income is reduced under rules similar to the rules under section 168(j)(5)(B).

The base erosion percentage means for any taxable year, the percentage determined by dividing the aggregate of base erosion tax benefits of the taxpayer for the taxable year by the aggregate amount of the deductions allowed to the taxpayer under section 263(a) for the taxable year.

The base erosion tax benefit equals the amount of base erosion tax benefits described above and by not taking into account any deduction allowed under sections 172, 246A or 268 for the taxable year.

As in effect before the date of enactment of Tax Cuts and Jobs Act.

Applicable taxpayers and related parties

Applicable taxpayer means with respect to any taxable year, a taxpayer: (A) which is a corporation other than a regulated investment company, a real estate investment trust or an S corporation, (B) that has annual gross receipts of the corporation for the three-taxable-year period ending with the preceding taxable year are at least $500 million (or $250 for the taxable year), and (C) the base erosion percentage (as defined above) of the corporation for the taxable year is four percent or higher.

The aggregate amount of the gross receipts of which are taken into account for purposes of this provision, only gross receipts which are taken into account in determining income of any person with respect to a trade or business within the United States are taken into account. If a foreign person's gross receipts are aggregated with a U.S. person's gross receipts for reasons described in the aggregation rules below, the preceding sentence does not apply to the gross receipts of any U.S. person which are aggregated with the taxpayer's gross receipts.

All persons treated as a single employer under section 52(a) are treated as one person for purposes of this provision in applying section 563 for purposes of section 56, the exception for foreign corporations under section 1563(b)(2)(C) is disregarded.

For purposes of this provision, foreign person has the meaning given in section 6038A(c)(3).

Related party means: (i) any 25 percent owner of the taxpayer, (ii) any person who is related to the taxpayer or any 25 percent owner of the taxpayer, within the meaning of sections 267(b) or 707(b)(1), and (iii) any other person related to the taxpayer within the meaning of section 482.

For these purposes, section 318 regarding constructive ownership applies to stock held by a foreign person except that 10 percent is substituted for 50 percent in section 318(a)(2)(C), and for these purposes section 318(a)(3A), (B) and (D) do not cause a United States person to own stock owned by a person who is not a United States person.

The provision provides that the Secretary of the Treasury is to prescribe such regulations or other guidance necessary or appropriate, including regulations providing for such adjustments to the application of this section necessary to prevent avoidance of the provision, including through: (1) the use of unrelated persons, conduit transactions, or other intermediaries, or (2) transactions not attributable to the applicable taxpayer.

Information reporting requirements

The provision authorizes the Secretary of the Treasury to prescribe additional reporting requirements under section 6038A relating to: (A) the name, principal place of business, and country or countries in which organized or resident of each person which is (1) a

Information reporting requirements
a related party to the reporting corporation, and (ii) had any transaction with the reporting corporation during its taxable year, (B) the manner of relation between the reporting corporation and any other person referred to in (a) or (C) transactions between the reporting corporation and each related foreign person.

In addition, for purposes of information reporting under sections 6038A and 6038C, if the reporting corporation or the foreign corporation to which section 6038C applies is an applicable taxpayer under this provision, the information required to be reported under such section includes any amount paid or accrued during the taxable year by the taxpayer to a foreign person which is a related party of the taxpayer, and which is properly allocable to the energy credit allowed under section 45(a), and (C) the investment credit allowed under section 38 for the tax year which is properly allocable to the energy credit allowed under section 45(a), and (C) the investment credit allowed under section 38 for the tax year which is properly allocable to the nonderivative and nonderivative components, the taxpayer does not include any amount that constitutes reductions in gross receipts to the taxpayer (e.g., cost of goods sold). However, base erosion payment includes any amount that constitutes reductions in gross receipts to the taxpayer (e.g., cost of goods sold). If a base erosion payment is properly allocable to the nonderivative and nonderivative components, the taxpayer does not include any amount that constitutes reductions in gross receipts to the taxpayer (e.g., cost of goods sold).

Effective date.—The provision applies to base erosion payments paid or accrued in taxable years beginning after December 31, 2017.

CONFERENCE AGREEMENT

The provision in the conference agreement follows the Senate amendment with some changes as follows.

In general

Under the provision, an applicable taxpayer is required to pay a tax equal to the base erosion minimum tax amount for the taxable year. The base erosion minimum tax amount is the excess of 10 percent of the modified taxable income of the taxpayer for the taxable year over an amount equal to the regular tax liability (defined in section 26(b)) of the taxpayer for the taxable year reduced (but not below zero) by the excess (if any) of the credits allowed under Chapter 1 against such regular tax liability over the sum of: (1) the credit allowed under section 38 for the taxable year which is properly allocable to the research credit determined under section 41(a), plus (2) the portion of the applicable section 38 credits not in excess of 80 percent of the lesser of the amount of such credits or the base erosion minimum tax amount (determined without regard to clause (2)).

For taxable years beginning after December 31, 2025, two changes are made. (A) the 10 percent provided for above is changed to 12.5 percent, (B) the regular tax liability is reduced by the aggregate amount of the credits allowed under Chapter 1 (and no other adjustment is made).

Applicable section 38 credits means the credit allowed under section 38 for the taxable year which is properly allocable to: (A) the increased basis using credit determined under section 42(a), (B) the renewable electric power production credit determined under section 45(a), and (C) the investment credit determined under section 46, but only to the extent allocable to the energy credit determined under section 48.

To determine its modified taxable income, the applicable taxpayer computes its taxable income for the year without regard to any base erosion tax benefit with respect to any that results in a reduction of gross receipts to the taxpayer (e.g., cost of goods sold). However, base erosion payment includes any amount that constitutes reductions in gross receipts to the taxpayer (e.g., cost of goods sold).

For these purposes, the term derivative means any contract (including any option, forward contract, futures contract, swap, or similar contract) the value of which is derived with respect to which, (directly or indirectly) determined by reference to one or more of the following: (i) any share of stock or similar security owned by the taxpayer, including any convertible, including any interest, royalty, or service payment, (or any other payment subject to this provision) or in the case of a contract which has derivative components, the payment is properly allocable to the nonderivative component.

Applicable taxpayers and related parties

Applicable taxpayer means with respect to any taxable year, a taxpayer: (A) which is a corporation other than a regulated investment company, a real estate investment trust, or an S corporation; (B) the average annual gross receipts of the corporation for the three-taxable-year period ending with the taxable year that are not treated as shares of stock in such foreign corporations. The term derivative does not include any item described in paragraphs (i) through (v) above nor shall the term ‘derivative’ include any insurance, annuity, or endowment contract issued by an insurance company to which subchapter L applies (or issued by any foreign corporation to which such subchapter would apply if such foreign corporation were a domestic corporation).

A base erosion tax benefit means: (i) any deduction allowed under Chapter 1 for the taxable year with respect to a base erosion payment, (ii) in the case of a base erosion payment with respect to a base erosion minimum tax amount, the excess of 10 percent of the modified taxable income of the taxpayer for the taxable year over an amount equal to the regular tax liability (defined in section 26(b)) of the taxpayer for the taxable year reduced (but not below zero) by the excess (if any) of the credits allowed under Chapter 1 against such regular tax liability over the sum of: (1) the credit allowed under section 38 for the taxable year which is properly allocable to the research credit determined under section 41(a), plus (2) the portion of the applicable section 38 credits not in excess of 80 percent of the lesser of the amount of such credits or the base erosion minimum tax amount (determined without regard to clause (2)).

The penalties provided for under sections 6038A(D)(1) and (2) are both increased to $25,000.

In the case of an applicable taxpayer that is a member of an affiliated group (defined in section 1504(a)(1)) that includes or at any time includes a regulated investment company, a real estate investment trust, or an S corporation, base erosion payment includes any amount paid or accrued by a taxpayer to a related party in connection with the disposition of the property described above. A related party is any member of an affiliated group (defined in section 1504(a)(1)) that includes the applicable taxpayer (e.g., cost of goods sold). However, base erosion payment includes any amount that constitutes reductions in gross receipts to the taxpayer (e.g., cost of goods sold).
In the case of a foreign person the gross receipts of which are taken into account for purposes of this provision, only gross receipts which are taken into account in determining effectively connected income from the conduct of a trade or business within the United States are taken into account. If a foreign person’s gross receipts are aggregated with those of a reporting corporation, all gross receipts described in the aggregation rules below, the preceding sentence does not apply to the gross receipts of any U.S. person which are aggregated with the taxpayer’s gross receipts.

All persons treated as a single employer under section 414(j)(3), and (C) transactions between the reporting corporation and the person referred to in (A), during its taxable year, (B) a related party to the reporting corporation, and (D) any organization or agency, or political subdivision, of the United States person.

For purposes of this provision, foreign person has the meaning given in section 608A(c)(3).

Related party means: (i) any 25-percent owner of the taxpayer, (ii) any person who is related to the taxpayer or any 25-percent owner of the taxpayer, within the meaning of sections 267(b) or 707(b)(1), and (iii) any other person related to the taxpayer within the meaning of section 318.

The conference agreement follows the Senate amendment.

The conference agreement amends sec. 267A of the Code (as added by sec. 267A of the Senate amendment and section 267A of the Code).

CONFERE...
section 954(d)(3), except that such section applies with respect to the payor as opposed to the CFC otherwise referred to in such section.

A hybrid transaction is any transaction, series of transactions, agreement, or instrument one or more elements with respect to which are treated as interest or royalties for Federal income tax purposes and which are not so treated for purposes of the tax law of the foreign country of which the recipient of such payment is resident for tax purposes or is subject to tax. A hybrid entity is any entity which is either: (1) treated as fiscally transparent for income tax purposes but not so treated for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax, or (2) treated as fiscally transparent for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax but not so treated for Federal income tax purposes.

The provision further provides that the Secretary shall issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of this provision, including regulations or other guidance providing for: (1) denying deductions for conduit arrangements that involve a hybrid transaction or a hybrid entity, (2) the application of this provision to foreign branches, (3) applying this provision to certain structured transactions, (4) denying all or a portion of a deduction claimed for an interest or a royalty payment that, as a result of the hybrid transaction or entity, is included in the recipient's income under a preferential participation exemption system or other system which provides for the exclusion or deduction of a substantial portion of such amount, (6) rules for determining the tax residence of a foreign entity if the foreign entity is otherwise considered a resident of more than one country or of no country, (7) exceptions to the general rule set forth in the provision, and (8) requirements for recordkeeping and information reporting to any requirements imposed by section 6038A.

Effective date.—The provision shall apply to taxable years beginning after December 31, 2017.

The conference agreement follows the Senate amendment with the following modifications. The bill provides that the Secretary shall issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of the provision for branches (domestic and foreign branches), even if such branches or entities do not meet the statutory definition of a hybrid entity.

4. Shareholders of surrogate foreign corporations not eligible not eligible for reduced rates (sec. 12425 of the Senate amendment and sec. 1 of the Code)

No provision.

The conference agreement follows the Senate amendment with the following modifications. The bill provides that the Secretary shall issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of the provision for branches (domestic and foreign branches), even if such branches or entities do not meet the statutory definition of a hybrid entity.

Effective date.—The provision is effective for dividends paid in taxable years beginning after December 31, 2017.

The conference agreement follows the Senate amendment with the following modifications. The conference agreement is that the provision applies to dividends received from foreign corporations that first become surrogate foreign corporations after date of enactment.

Effective date.—The provision is effective for dividends received after date of enactment.

F. Provisions Related to the Possessions of the United States

1. Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico (sec. 4401 of the House bill and sec. 199 of the Code)

Present law

Present law generally provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to nine percent of the lesser of the taxpayer's qualified production activities income or taxable income for the taxable year. For taxpayers at the 35-percent corporate income tax rate, the nine-percent deduction effectively reduces the corporate income tax rate to slightly less than 32 percent on qualified pass-through income.

In general, qualified production activities income is equal to domestic production gross receipts 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 generally are gross receipts of a taxpayer that are derived from: (1) any sale, exchange, or other disposition of any lease, rental, or license of qualified production property 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 of any lease, rental, or license of qualified production property that was manufactured, grown, or extracted by the taxpayer in whole or in significant part with Puerto Rico or the U.S. Virgin Islands; (3) any sale, exchange, or other disposition of any qualified film produced in Puerto Rico or U.S. Virgin Islands by a taxpayer in the ordinary course of a construction trade or business; or (4) any lease, rental, or license of qualified production real property located in the United States.

The amount of the deduction for a taxable year is limited to 50 percent of the wages paid by the taxpayer that are allocable to domestic production gross receipts, during the calendar year that ends in such taxable year. Wages paid to bona fide residents of Puerto Rico generally are not included in the definition of wages for purposes of computing the wage limitation amount.

Rules for Puerto Rico

When used in the Code in a geographical sense, the term “United States” generally means the District of Columbia. A special rule for determining domestic production gross receipts, however, provides that in the case of any taxpayer whose Puerto Rico-sourced domestic production gross receipts are taxable under the Federal income tax for individuals or corporations. In computing the 50-percent wage limitation, the taxpayer is permitted to take into account wages paid to bona fide residents of Puerto Rico for services performed in Puerto Rico.

The special rules for Puerto Rico apply only to the District of Columbia and the U.S. Virgin Islands for taxable years beginning after December 31, 2005 and before January 1, 2017. No provision.

The conference agreement follows the Senate amendment with the following modifications. The conference agreement is that the provision is effective for taxable years beginning after December 31, 2016.

House bill

The provision extends the special domestic production activities rules for Puerto Rico to apply for the first 12 taxable years of a taxpayer beginning after December 31, 2005 and before January 1, 2017.

Senate amendment

No provision.

The conference agreement follows the Senate amendment with the following modifications. The conference agreement is that the provision does not include the House bill provision.

2. Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the U.S. Virgin Islands (sec. 4402 of the House bill and sec. 7652(f) of the Code)

Present law

A $13.50 per proof gallon excise tax is imposed on distilled spirits produced in or imported into the United States. 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 U.S. Virgin Islands).

The Code provides for cover over (payment) to Puerto Rico and the U.S. Virgin Islands of the excise tax imposed (or the amount brought) into the United States, without regard to the country of origin. The amount of the cover over is limited under section 7652(f) to the lesser of (1) the excise tax per proof gallon ($13.25 per proof gallon before January 1, 2017) or (2) the excise tax imposed under section 5001(a)(1) on each proof gallon.

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 U.S. Virgin Islands are covered over to the U.S. Virgin Islands. Tax amounts attributable to shipments to Puerto Rico and the United States of rum produced in neither Puerto Rico nor the U.S. Virgin Islands are retained by the United States.
Virgin Islands are divided and covered over to the two possessions under a formula.\textsuperscript{1567} Amounts covered over to Puerto Rico and the U.S. Virgin Islands are deposited into the treasuries of the two possessions for use as those possessions determine.\textsuperscript{1568} All of the amounts covered over are subject to the limitation.

**HOUSE BILL**

The provision suspends for six years the $10.50 per proof gallon limitation on the amount of excise taxes on rum covered over to Puerto Rico and the U.S. Virgin Islands. Under the provision, the cover-over limitation of $13.25 per proof gallon is extended for rum brought into the United States after December 31, 2022.\textsuperscript{1569} The cover over amount reverts to $10.50 per proof gallon.

Effective date.—The provision applies to distilled spirits brought into the United States after December 31, 2016.

**SENATE AMENDMENT**

No provision.

**CONFERENCE AGREEMENT**

The conference agreement does not include the House bill provision.


**PRESENT LAW**

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 corporation’s economic activity-based limitation with respect to American Samoa. The credit is not part of the Code but is computed based on the rules of sections 30A and 936. The credit is allowed for the first three taxable years of that corporation which begin after December 31, 2005, and before January 1, 2017.

A corporation was an existing credit claimant with respect to American Samoa if (1) the corporation was engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, and (2) the corporation was an existing credit claimant only if, in addition to satisfying those possessions determine.\textsuperscript{1568} All of the corporations determine.\textsuperscript{1568} All of the possessions income, beginning in 1998, the applicable percentage was 40 percent.

To qualify for the possession tax credit for a taxable year, a domestic corporation was required to satisfy two conditions. First, the corporation was actively engaged in the active conduct of a trade or business of an existing credit claimant that was attributable to the corporation’s non-U.S. trade or business. Second, the corporation was provisionally engaged in the active business of an existing credit claimant that was actively conducted in American Samoa.\textsuperscript{1570} The amount of the credit allowed to a qualifying domestic corporation under the provision is equal to the sum of the amounts paid with respect to any tax liability which was the corporation’s economic activity-based limitation with respect to American Samoa, that was attributable to the corporation’s non-U.S. trade or business of an existing credit claimant that was actively conducted in American Samoa. 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.

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

For taxable years beginning after December 31, 2016 and before January 1, 2023, the credit rules are modified in two ways. First, domestic corporations with operations in American Samoa are allowed the credit even if those corporations are not existing credit claimants. Second, the credit is available to a corporation (other than an existing credit claimant or a new credit claimant) only if, in addition to satisfying all the present law requirements for claiming the credit, the corporation also has qualified production activities income as defined in section 199(c) by substituting “American Samoa” for “the United States” in each place that latter term appears.

In the case of a corporation that is an existing credit claimant with respect to American Samoa and that elected the application of section 936 for its last taxable year beginning before January 1, 2006, the credit applies to the first nine taxable years of the corporation which begin after December 31, 2005 and before January 1, 2016. For any other corporation, the credit applies to the first three taxable years of that corporation which begin after December 31, 2011 and before January 1, 2017.

**HOUSE BILL**

The provision extends the credit for five years to apply (a) in the case of a corporation that is an existing credit claimant with respect to American Samoa and that elected for its taxable year that included October 13, 1995, the corporation that began after December 31, 2005, and (2) the corporation was engaged in the active business of an existing credit claimant that 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.

The amount of the credit allowed to a qualifying domestic corporation under the provision is equal to the sum of the amounts paid with respect to any tax liability which was the corporation’s economic activity-based limitation with respect to American Samoa, except that no credit is allowed for the amount of any American Samoa tax credit allowed by the provision.

Effective date.—The provision is effective for taxable years beginning after December 31, 2016.

**SENATE AMENDMENT**

No provision.

**CONFERENCE AGREEMENT**

The conference agreement does not include the House bill provision.

G. Other International Reforms

1. Restriction on insurance business exception to the passive foreign investment company rules (sec. 4501 of the House bill, sec. 14502 of the Senate amendment, and sec. 1297 of the Code)

**PRESENT LAW**

Passive foreign investment companies.

The Tax Reform Act of 1986 established the PFIC anti-deferral regime. A PFIC is generally defined as any foreign corporation if 75 percent or more of its gross income for the taxable year consists of passive income, or 50 percent or more of its assets consists of assets that produce, or are held for the production of, passive income.\textsuperscript{1573} Alternative sets of income inclusion rules apply to U.S. persons that are shareholders in a PFIC, regardless of their percentage ownership in the company.\textsuperscript{1574} One set of rules applies to PFICs that are qualified electing funds, under which electing U.S. shareholders currently include in gross income their respective shares of the company’s earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received.\textsuperscript{1575} A second set of rules applies to PFICs that are not qualified electing funds, under which U.S. shareholders pay tax on certain income or gain realized through the company, plus an interest charge that is attributable to the value of deferred.\textsuperscript{1575} A third set of rules applies to PFIC stock that is marketable, under which electing U.S. shareholders currently take income inclusion each year in proportion to their percentage ownership in the stock as of the close of the taxable year and their adjusted basis in such stock (subject to certain limitations), often referred to as “marking to market.”\textsuperscript{1576}

Under the PFIC regime, passive income is any income which is of a kind that would be personal holding company income, including dividends, interest, royalties, rents, and certain gains on the sale or exchange of property, commodities, or foreign currency. However, among other exceptions, passive income does not include any income derived in the active conduct of an insurance business by a corporation that is predominately engaged in an insurance business and that would be subject to tax under subchapter L if it were a domestic corporation.\textsuperscript{1577} In applying the insurance exception,
the IRS analyzes whether risks assumed under contracts issued by a foreign company organized as an insurer are truly insurance risks, whether the risks are limited under the terms of the contracts, and the status of the company as an insurance company.\footnote{Note 1578}

**HOUSE BILL**

The provision modifies the requirements for a corporation the income of which is not included in passive income for purposes of the PFIC rules. The provision replaces the test based on whether a corporation is predominantly engaged in a regulated insurance business with a test based on the corporation’s insurance liabilities.\footnote{Note 1579} The requirement that the foreign corporation would be subject to tax under the PFIC rules if it were a domestic corporation is retained.

Under the provision, passive income for purposes of the PFIC rules does not include income derived in the active conduct of an insurance business by a corporation (1) that would be subject to tax under subchapter L if it were a domestic corporation; and (2) the applicable insurance liabilities of which constitute more than 25 percent of its total assets as reported on the company’s applicable financial statement for the last year ending with a tax year.

For the purposes of the provision’s exception from passive income, applicable insurance liabilities are (1) with respect to property and casualty risks on its books, such as loss reserves for property and casualty, life, and health insurance contracts and annuity contracts; (2) earned premium reserves with respect to any type of risk and annuity contracts and annuity contracts; and (3) reinsurance liabilities for purposes of the provision. For purposes of the provision, the amount of any applicable insurance liability may not exceed the lesser of such amount (1) as reported to the applicable insurance regulatory body in the applicable financial statement (or, if less, the amount required by applicable law or regulation), or (2) as determined under regulations prescribed by the Secretary.

An applicable financial statement is a statement for financial reporting purposes that (1) is made on the basis of generally accepted accounting principles, (2) is made on the basis of international financial reporting standards, but only if there is no statement made on the basis of generally accepted accounting principles, or (3) except as otherwise provided by the Secretary in regulations, is prepared to be filed with the applicable insurance regulatory body, but only if there is no statement made on either of the foregoing bases. Unless otherwise provided in regulations it is intended that generally accepted accounting principles means U.S. GAAP.

The applicable insurance regulatory body means, with respect to the insurance business, the entity established by law to license, authorize, or regulate such insurance business and to which the applicable financial statement is required to be filed. For example, in the United States, the applicable insurance regulatory body is the State insurance regulator to which the corporation provides its annual statement.

If a corporation fails to qualify solely because its applicable insurance liabilities constitute 25 percent or less of its total assets, a United States person who owns stock of the corporation may elect in such manner as the Secretary prescribes to treat the stock as subject to the PFIC rules if the corporation if (1) the corporation’s applicable insurance liabilities constitute at least 10 percent of its total assets, and (2) based on the applicable financial statement, the corporation is predominantly engaged in an insurance business, and its failure to qualify under the 25 percent threshold is due solely to a greater degree on investment activities than underwriting activities; and low loss exposure. Additional relevant facts for determining whether the firm is predominantly engaged in an insurance business include: claims payment patterns for the current and prior years; the firm’s loss exposure as calculated for a regulator such as the SEC or for a rating agency, or if those are not calculated, for internal pricing purposes; the percentage of gross receipts constituting premiums for the current and prior years, and the number and size of insurance contracts issued or taken on through reinsurance by the firm. The fact that a firm has been holding itself out as an insurer for a long period of time is not determinative.

Runoff-related or rating-related circumstances include, for example, the fact that the company is in runoff, that it is not taking on new insurance business (and consequently has little or no premium income), and is using its remaining assets to pay off claims with respect to pre-existing insurance risks in its books. Such circumstances also include, for example, the application to the company of specific regulatory requirements and surplus and statutory surplus plus relating to insurance liabilities imposed by a rating agency as a condition of obtaining a rating necessary to write new insurance business.

**Effective date.**—The provision applies to taxable years beginning after December 31, 2017.

**SENATE AMENDMENT**

The Senate amendment is the same as the House bill.

**Effective date.**—The provision applies to taxable years beginning after December 31, 2017.

**CONFERENCE AGREEMENT**

The conference agreement follows the Senate amendment.

**Effective date.**—The provision is effective for taxable years beginning after December 31, 2017.

### 3. Modification to source rules involving possessions (sec. 14504 of the Senate amendment and sec. 865 of the Code)

#### PRESENT LAW

In general. U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands have income tax systems that “mirror” the U.S. Code, with the latter two possessions being permitted under current law to delink and use their own tax systems provided certain conditions are met. The U.S. Virgin Islands may also impose certain local taxes, to which the Code provides for coordination under the PFIC rules.\footnote{Note 1580} It permits the U.S. Virgin Islands to reduce or remit tax otherwise imposed by the mirror code if the tax is attributable to U.S. Virgin Islands source income or income effectively connected to the conduct of a trade or business in U.S. Virgin Islands.\footnote{Note 1581} The U.S. Virgin Islands has exercised that authority to provide development incentives for certain types of businesses operating within its borders. Under such initiatives, companies can receive a 90 percent reduction in their tax liability on certain income.

**Taxation of individuals**

Under the mirror Code, U.S. Virgin Islands citizens and residents are taxable on their worldwide income. A foreign tax credit is allowed for income taxes paid to the United States, foreign countries, and other possessions of the United States. In general, a bona fide resident of the U.S. Virgin Islands is required to file and pay tax only to the possession; compliance with U.S. tax obligations satisifies any Federal income tax filing obligation. All other U.S. residents or citizens with income from U.S. Virgin Island sources are subject to a dual filing requirement.

In the case of an individual who is a U.S. citizen or alien residing in the United States or the U.S. Virgin Islands, only one tax is computed under the Code if an individual is a bona fide resident of U.S. Virgin Islands for the entire taxable year, such tax is payable to the U.S. Virgin Islands and no U.S. tax is imposed. Otherwise, a citizen or resident of the United States who has income from U.S. Virgin Islands
sources within the U.S. Virgin Islands must determine the portion of income attributable to the U.S. Virgin Islands and the related tax payable to the U.S. Virgin Islands. The remaining portion is payable to the United States.1582

Concerns that U.S. citizens not resident in the U.S. Virgin Islands were improperly claiming a residence in the U.S. Virgin Islands and the related economic development credit led to legislative changes in 2004.1583 These changes provided a definition of bona fide residence in a possession and rules to determine source of income from possessions. They also impose a requirement that individuals report any change in residency status with respect to a possession during a taxable year.1584

Section 937(b)(3) was added by the Technical and Miscellaneous Revenue Act of 1988 (“TAMRA”),1585 and states that Treasury is authorized to impose additional requirements imposed by sections 865(e)(1)(B) and 865(g)(2) (both of which impose a 10 percent foreign tax requirement for source treatment of sales of personal property) for the purposes of determining Guam, American Samoa, Commonwealth of the Northern Mariana Islands, and Puerto Rico-source income (sections 931 and 933, respectively).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the sourcing rule in section 937(b)(2) by modifying the U.S. income limitation to exclude only U.S. source (or effectively connected) income attributable to a U.S. office or fixed place of business. The provision also modifies section 865(j)(3) by providing Treasury with the authority to waive the 10 percent foreign tax requirement for source treatment of capital gains income earned by a U.S. Virgin Islands resident. Effective date.—The provision shall apply to taxable years beginning after December 31, 2018.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

TITLE II

Section 20001. Oil and Gas Program

Section 20001 directs the Secretary of the Interior to establish and administer all aspects of a competitive oil and gas program in the non-wilderness portion of the Arctic National Wildlife Refuge, known as the “1002 Area” or Coastal Plain. The legislation defines the term “Coastal Plain” by referencing Plate 1 and Plate 2 of the October 24, 2017 Map prepared by the United States Geological Survey.

The legislation repeals the prohibition on development on the Coastal Plain contained in section 1003 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3133), and directs the Secretary to manage the oil and gas program on the Coastal Plain in a manner similar to what is required by the Naval Petroleum Reserves Production Act of 1976 (2 U.S.C. 6501 et seq.). The legislation sets a 16.67 percent royalty rate for leases and allocates 50 percent of the revenue derived from the program to the State of Alaska, with the remainder going to the Federal Treasury.

Section 20001 further requires the Secretary to conduct at least two area-wide lease sales within the 10-year budget window—the first lease sale within four years of the Act’s enactment and the second lease sale within seven years of enactment. Each lease sale must contain not fewer than 400,000 acres and be comprised of those areas that have the potential to produce oil.

The legislation directs the Secretary to issue any necessary rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation associated with the oil and gas program. Additionally, the section authorizes the development of up to 2,000 surface acres of federal land on the Coastal Plain.

Section 20002. Limitations on Amount of Distributed Qualified Outer Continental Shelf Revenues

Section 20002 temporarily increases the annual limitation on Amount of Distributed Qualified Outer Continental Shelf Revenues under section 105(c)(1) of the Gulf of Mexico Energy Security Act of 2006 (Public Law 109–432) for the states of Alabama, Louisiana, Mississippi, and Texas, uniformly classified as an annual amount for FY 2020 and FY 2021, to $650 million annually for those two fiscal years.

Section 20003. Strategic Petroleum Reserve

Section 20003 directs the Secretary of Energy to drawdown on sale and sell a total of seven million barrels of crude oil from the Strategic Petroleum Reserve during FY 2026 through FY 2027. The section prohibits the Secretary from taking actions that would limit the President’s authority to direct a drawdown and sale of petroleum products to address a domestic or international energy supply shortage pursuant to section 161(h) of the Energy Policy and Conservation Act (42 U.S.C. 6241). The Secretary is further directed to stop the drawdown or sale of crude oil after the date on which a total of $650 million has been deposited in the general fund of the Federal Treasury.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any joint committee of conference if the legislation includes a provision that directly or indirectly amends the Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that the provisions of the bill are of widespread applicability to individuals or small businesses.

1. Temporary modification of tax rates, tax brackets, standard deduction, personal exemptions, and repeal of personal exemptions (secs. 11001, 11002, 11021 and 11041 of the bill)

Summary description of the provisions

The bill temporarily changes the structure of individual income tax rates by modifying the rate structure such that the tax brackets are 10-percent, 12-percent, 22-percent, 24-percent, 32-percent, 35-percent and 37-percent. The bill temporarily increases the size of the standard deduction (for 2018 the standard deduction is $24,000 for joint filers, $18,000 for heads of household and $12,000 for other filers) and permanently eliminates personal exemptions. These provisions sunset for taxable years beginning after December 31, 2025.

Number of affected taxpayers

It is estimated that the provision will affect approximately 120 million tax returns.

Discussion

It is not anticipated that individuals will need to keep additional records due to these provisions. It should not result in an increase of dispute resolution. Appropriate regulatory guidance is necessary to implement this provision.
The IRS will need to adjust its wage withholding tables to reflect the repeal of personal exemptions. Because revised wage withholding will occur within the first month of 2018, the IRS should require taxpayers to switch to new withholding tables somewhat quickly, which can be expected to result in a one-time additional burden for employers. Potentially, additional costs for employers that rely on a bookkeeping or payroll service.

The IRS will need to modify its forms and publications. The temporary nature of the provision will necessitate that the IRS do this again once the temporary provision expires.

Some taxpayers who currently itemize deductions may respond to the provision by claiming the increased standard deduction in lieu of itemizing. According to estimates by the staff of the Joint Committee on Taxation, approximately 94 percent of taxpayers will claim the standard deduction under the bill, up from approximately 70 percent under present law. These taxpayers will no longer have to file Schedule A to Form 1040, a significant number of which will no longer need to engage in the time-consuming task of itemizing below-the-line deductions. Moreover, by claiming the standard deduction, such taxpayers may qualify to use simpler versions of Form 1040 (i.e., Form 1040EZ or Form 1040A) that are not available to individuals who itemize their deductions.

These forms simplify the return preparation process by eliminating from the Form 1040 those items that do not apply to particular taxpayers.

This reduction in complexity and record keeping may result in a decline in the number of individuals using a tax preparation service, or tax preparation software, or a decline in the cost of such service or software. The provision also should reduce the number of disputes between taxpayers and the IRS regarding the substantiation of itemized deductions.

2. Temporary deduction for qualified business income (sec. 11011 of the bill)

Summary description of the provisions

For taxable years beginning after December 31, 2017, and before January 1, 2026, an individual taxpayer generally may deduct 20 percent of qualified business income from a partnership, S corporation, or sole proprietorship. Special rules apply to specified agricultural or horticultural cooperatives permitting the cooperative a deduction. The IRS will need to modify its forms and publications to reflect this change. The temporary nature of the provision will necessitate that the IRS do this again once the temporary provision expires.

A limitation based on the greater of 50 percent of W–2 wages paid, or the sum of 25 percent of W–2 wages plus a capital allowance, is phased in above a threshold amount of taxable income. A disallowance of the deduction with respect to specified service trades or businesses also phases in above the same threshold amount of taxable income. The threshold amount is $157,500 (twice that amount or $315,000 in the case of a joint return), indexed. This increased volume of questions could have an adverse impact on the IRS’s operation, such as the level of taxpayer service. The provision should not increase the tax preparation costs for most individuals.

The IRS will need to add to the individual income tax forms package a new worksheet so that taxpayers can calculate their qualified business income, as well as the phases in. This worksheet will require a series of calculations.

3. Temporary increase in child tax credit (sec. 11022 of the bill)

Summary description of the provisions

The bill temporarily increases the value of the child tax credit to $2,000, providing that no more than $1,400 per child shall be refundable. This $1,400 limitation is indexed for inflation. In order to qualify for the child tax credit, a Social Security number must be provided for the qualifying child for whom such credit is claimed. These provisions are set for taxable years beginning after December 31, 2025.

Number of affected taxpayers

It is estimated that the provision will affect approximately 90 million tax returns.

Discussion

It is not anticipated that individuals will need to keep additional records due to these provisions. It should not result in an increase in disputes with the IRS, nor will regulatory guidance be necessary to implement this provision. However, the increase in the number of questions that taxpayers ask the IRS, such as how to calculate qualified business income and how to apply the phases in of the W–2 wage (or W–2 wage and capital) limit and of the exclusion of service business income in the case of taxpayers with taxable income exceeding the threshold amount of $107,500 (twice that amount or $215,000 in the case of a joint return), indexed. This increased volume of questions could have an adverse impact on the IRS’s operation, such as the level of taxpayer service. The provision should not increase the tax preparation costs for most individuals.

The IRS will need to add to the individual income tax forms package a new worksheet so that taxpayers can calculate their qualified business income, as well as the phases in. This worksheet will require a series of calculations.

4. Temporary suspension of the deduction for State and local income taxes (sec. 11042 of the bill)

Summary description of the provisions

The bill provides that, in the case of an individual, a general matter, State, local, and property taxes are not deductible for purposes of applying the dollar limitation applicable for taxable years beginning after December 31, 2017.

Number of affected taxpayers

It is estimated that the provision will affect approximately 44 million tax returns.

Discussion

It is not anticipated that individuals will need to keep additional records due to this provision. Because the temporary provision expires, the IRS will need to modify its forms and publications to reflect this change. The temporary nature of the provision will necessitate that the IRS do this again once the temporary provision expires.

5. Modifications of rules for expenses depreciable business assets (sec. 13101 of the bill)

The bill increases the maximum amount a taxpayer may expense under section 179 to $1,000,000, and increases the phase-out threshold amount to $2,500,000. The $1,000,000 and $2,500,000 amounts, as well as the $250,000 sport utility vehicle limitation, are indexed for inflation for taxable years beginning after 2018.

The bill expands the definition of qualified real property eligible for section 179 expensing to include any of the following...
end year for property placed in service, the 50-percent allowance is increased to 100 percent for property acquired before January 1, 2023. Thus, the bill follows the present-law phase-down of bonus depreciation for new and used property.

6. Temporary 100-percent expensing for certain business assets (sec. 13201 of the bill)
The bill extends and modifies the additional first-year depreciation deduction (through 2026 (through 2027 for longer production period property) and certain aircraft). The 50-percent allowance is increased to 100 percent for property acquired and placed in service after January 1, 2023 (January 1, 2024, for longer production period property and certain aircraft), as well as for specified plants planted or grafted after September 27, 2017, and before January 1, 2023. Thus, the bill follows the present-law phase-down of bonus depreciation for property acquired before September 27, 2017. The 100-percent allowance is phased down by 20 percent per calendar year for property placed in service, and specified plants planted or grafted, in taxable years beginning after 2022 (after 2023 for longer production period property and certain aircraft).

The bill removes the requirement that the original use of qualified property must commence with the taxpayer (i.e., it allows the additional first-year depreciation deduction for new and used property). As a conforming amendment to the repeal of corporate AMT, the election to accelerate AMT credits in lieu of bonus depreciation is repealed.

The bill maintains the section 280F increase amount of $8,000 for passenger automobiles placed in service after December 31, 2017. However, the bill follows the present-law phase-down of the section 280F increase amount in the limitation on the depreciation deduction allowed with respect to certain passenger automobiles acquired before September 28, 2017, and placed in service after September 27, 2017.

The bill extends the special rule under the percentage-of-completion method for the allocation of bonus depreciation to a long-term contract for property placed in service before January 1, 2027 (January 1, 2028, in the case of longer production period property).

The bill expands the definition of qualified property eligible for the additional first-year depreciation allowance to include qualified film, television and live theatrical productions (as defined in section 181(d) and (e)) for which a deduction otherwise would have been allowable under section 181 without regard to the dollar limitation or termination of such section, effective for productions placed in service after September 27, 2017, and before January 1, 2027. For purposes of this provision, a production is considered placed in service at the time of initial release, broadcast, or live staged performance (i.e., at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience).

The bill excludes from the definition of qualified property any property which is primarily used in the trade or business of the furnishing or sale of (1) electrical energy, water, or sewage disposal services, (2) gas or steam through a local distribution system, or (3) transportation of gas or steam by pipeline, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.

The bill excludes from the definition of qualified property any property used in a trade or business that has had floor plan financing indebtedness, unless the taxpayer with such trade or business is not a tax shelter prohibited from using the cash method and is exempt from the interest limitation rules by meeting a small business $25 million gross receipts test.

Number of affected taxpayers
It is estimated that the provision will affect over ten percent of small business tax returns.

Discussion
The reporting requirements are unchanged by this provision. Capital assets purchased during the tax year will still need to be reported on Form 4562, Depreciation and Amortization (Including Information on Listed Property); however, the current year tax deduction associated with such assets will increase.
### ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 1,
THE "TAX CUTS AND JOBS ACT"

**Fiscal Years 2018 - 2027**

[Billions of Dollars]

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<td>I. Individual Tax Reform</td>
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<td>A. Simplification and Reform of Rates, Standard Deductions, and Exemptions</td>
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<td>1. 10%, 12%, 22%, 24%, 32%, 35%, and 37% income tax rate brackets (sunset 12/31/25) [1][2]</td>
<td>tyba 12/31/17</td>
<td>-94.1</td>
<td>-135.3</td>
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<td>-146.4</td>
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<td>-171.1</td>
<td>-52.0</td>
<td>[3]</td>
<td>-668.7</td>
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<td>2. Modify standard deduction ($12,000 for singles, $24,000 for married filing jointly, $18,000 for H&amp;H) (sunset 12/31/25) [2]</td>
<td>tyba 12/31/17</td>
<td>-57.2</td>
<td>-82.6</td>
<td>-84.7</td>
<td>-87.5</td>
<td>-90.7</td>
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<td>-30.0</td>
<td>[3]</td>
<td>-402.6</td>
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<td>3. Repeal of deduction for personal exemptions (sunset 12/31/25)</td>
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<td>93.3</td>
<td>137.1</td>
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<td>151.8</td>
<td>157.6</td>
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<td>4. Alternative inflation measure [2]</td>
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<td>B. Treatment of Business Income of Individuals, Trusts, and Estates</td>
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<tr>
<td>1. Allow 20 percent deduction of qualified business income and certain dividends for individuals and for gross income of agricultural or horticultural cooperatives (sunset 12/31/25) [4]</td>
<td>tyba 12/31/17</td>
<td>-27.7</td>
<td>-47.1</td>
<td>-49.9</td>
<td>-51.8</td>
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<tr>
<td>2. Disallow active pass-through losses in excess of $500,000 for joint filers, $250,000 for all others (sunset 12/31/25)</td>
<td>tyba 12/31/17</td>
<td>9.5</td>
<td>16.2</td>
<td>17.2</td>
<td>18.0</td>
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<td>C. Reform of the Child Tax Credit</td>
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<tr>
<td>1. Modification of child tax credit: $2,000 not indexed; refundable up to $1,400 indexed down to nearest $100 base year 2018, $2,500 refundability threshold not indexed; $500 other dependents not indexed; phase outs $200K/$400K not indexed (sunset 12/31/25) [2]</td>
<td>tyba 12/31/17</td>
<td>-29.3</td>
<td>-67.7</td>
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<tr>
<td>2. Require valid Social Security number of each child to claim refundable and non-refundable portions of child credit, non-child dependents and any child without a valid Social Security number still receives $500 non-refundable credit (sunset 12/31/25) [2]</td>
<td>tyba 12/31/17</td>
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<td>3.9</td>
<td>3.8</td>
<td>3.8</td>
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### D. Simplification and Reform of Deductions and Exclusions

1. Repeal of itemized deductions for taxes not paid or accrued in a trade or business (except for up to $10,000 in State and local taxes), interest on mortgage debt in excess of $750K, interest on home equity debt, non-disaster casualty losses, and certain miscellaneous expenses (sunset 12/31/25) [2]...]

   - generally
   - tyba 12/31/17
   - 43.5 70.4 72.0 77.1 82.3 87.9 94.0 100.2 41.1 --- 345.3 668.4

2. Increase percentage limit for charitable contributions of cash to public charities (sunset 12/31/25) ....................... cmi tyba 12/31/17

   - --- Estimate Included in Item I.D.1. -

3. Repeal of overall limitation on itemized deductions (sunset 12/31/25) ................................................................. tyba 12/31/17

   - --- Estimate Included in Item I.D.1. -

4. Repeal exclusion for employer-provided bicycle commuter fringe benefit (sunset 12/31/25)...]

   - tyba 12/31/17

5. Repeal exclusion for employer-provided qualified moving expense reimbursements (other than members of the Armed Forces) (sunset 12/31/25) [6][7] ..................... tyba 12/31/17

   - 0.4 0.6 0.6 0.6 0.6 0.6 0.7 0.2 --- 2.7 4.8

6. Repeal of deduction for moving expenses (other than members of the Armed Forces) (sunset 12/31/25) ...]

   - tyba 12/31/17

7. Limitation on wagering losses (sunset 12/31/25) .................. tyba 12/31/17

   - --- Negligible Revenue Effect

### E. Retirement Savings

1. Repeal of special rule permitting recharacterization of Roth conversions...]

   - tyba 12/31/17

2. Length of service awards for public safety volunteers [8]...]

   - tyba 12/31/17

3. Extended rollover period for certain plan loan offsets...]

   - tyba 12/31/17
   - ---

### F. Double Estate, Gift, and GST Tax Exemption Amount (sunset 12/31/25)...

   - dda & gma 12/31/17
   - -1.2 -8.1 -8.8 -9.1 -9.6 -10.1 -10.7 -11.1 -11.0 -3.3 -36.8 -83.0

### G. Increase the Individual AMT Exemption Amounts and Phase-out Thresholds (sunset 12/31/25)....................... tyba 12/31/17

   - -6.9 -82.5 -69.9 -74.9 -80.5 -81.6 -85.6 -90.1 -65.2 [3] -314.7 -637.1

### H. Reduce ACA Individual Shared Responsibility Payment Amount to Zero [2][9][10]............. mba 12/31/18

   - --- 6.0 9.7 28.4 37.0 40.7 43.5 46.1 49.6 53.3 80.8 314.1

### I. Other Provisions

1. Restore a medical expense deduction for expenses in excess of 7.5 percent of adjusted gross income (sunset 12/31/18)...]

   - tyba 12/31/16
   - -3.8 -1.4 --- --- --- --- --- --- --- --- -5.2 -5.2

2. Allow for increased contributions to ABLE accounts; allow saver's credit for ABLE contributions (sunset 12/31/25)........]


3. Allow rollovers from 529 accounts to ABLE accounts (sunset 12/31/25)...

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<tr>
<td>8. Retirement plan and casualty loss relief for any area with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Relief and Emergency Assistance Act during 2016...........</td>
<td>DOE</td>
<td>-3.2</td>
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<td>[5]</td>
<td>[5]</td>
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<td>9. Repeal of deduction for alimony payments and generally corresponding inclusion in income..................................</td>
<td>dosa 12/31/18</td>
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<td>0.1</td>
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<td><strong>Total of Individual Tax Reform</strong>.........................................................</td>
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<td>-75.3</td>
<td>-188.8</td>
<td>-171.9</td>
<td>-156.3</td>
<td>-150.8</td>
<td>-144.0</td>
<td>-140.9</td>
<td>-139.2</td>
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<td>83.0</td>
<td>744.0</td>
<td>-1,126.6</td>
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**II. Business Tax Reform**

A. Repeal of Alternative Minimum Tax on Corporations [2]... tyba 12/31/17 | -6.8 | -6.9 | -6.6 | -6.8 | -7    | -1.3 | -1.3 | -1.3 | -1.2 | -1.1 | -34.0 | -40.3   |

B. 21 Percent Corporate Tax Rate............................................................ tyba 12/31/17 | -101.3 | -125.3 | -130.5 | -131.1 | -132.6 | -136.2 | -140.7 | -144.7 | -149.7 | -156.3 | -620.8 | -1,348.5 |

C. Small Business Reforms

1. Increase section 179 expensing to $1 million with a phaseout range beginning at $2.5 million and expand definition of qualified property.......................... ppisi tyba 12/31/17 | -4.7 | -7.4 | -4.1 | -2.6 | -2.0 | -1.5 | -1.0 | -0.9 | -0.9 | -0.9 | -20.8 | -25.9   |

2. Simplified accounting for small business................................................. [12] | -7.6 | -7.5 | -3.3 | -2.1 | -1.7 | -1.5 | -1.6 | -1.7 | -1.8 | -22.1 | -30.5   |

D. Cost Recovery, etc.

1. Extension, expansion, and phase down of bonus depreciation (sunset 12/31/26) [13]...... paa 9/27/17 apisaed & spoga 9/27/17 | -32.5 | -36.5 | -24.6 | -14.2 | -11.6 | -4.9 | 3.3  | 8.4  | 12.5  | 13.7  | -119.4 | -86.3   |

2. Limit net interest deductions to 30 percent of adjusted taxable income, carryforward of denied deduction.............. tyba 12/31/17 | 8.4  | 17.7  | 19.7  | 19.6  | 24.9  | 30.2  | 29.6  | 31.8  | 34.7  | 36.9  | 90.2   | 253.4   |

3. Modify treatment of S corporation conversions into C corporations............... DOE | -0.5 | -0.5 | -0.6 | -0.6 | -0.6 | -0.6 | -0.7 | -0.7 | -0.7 | -2.8  | -6.1    |

4. Modifications to depreciation limitations on luxury automobiles and personal use property.............................. ppisa 12/31/17 | -0.1 | -0.2 | -0.3 | -0.2 | -0.1 | -0.1 | -0.1 | -0.2 | -0.1 | -0.1  |         |         |


6. Modification of net operating loss deduction....................................... lal tyba 12/31/17 | 6.4  | 10.0  | 11.1  | 15.9  | 25.2  | 34.1  | 36.0  | 30.2  | 20.8  | 11.4  | 68.5   | 201.1   |

7. Repeal like-kind exchanges except for real property................................ generally eca 12/31/17 | 0.5  | 0.9  | 1.3  | 1.7  | 2.2  | 2.9  | 3.8  | 4.7  | 5.8  | 7.2   | 7.6    | 31.0    |

8. Applicable recovery period for real property........................................ ppisa 12/31/17 | -0.1 | -0.1 | -0.3 | -0.4 | -0.5 | -0.7 | -0.6 | -0.7 | -0.9 | -0.6  | -1.4   | -4.9    |

9. Amortization of research and experimental expenditures........................ apoi 12/31/21 | ---  | ---  | ---  | 24.2 | 32.9  | 26.0  | 18.9  | 11.4  | 6.3   | 24.2  | 119.7   |


**Estimate Included in Item II.D.1.**
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<tr>
<td><strong>B. Business-Related Deductions</strong></td>
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<tr>
<td>1. Repeal of deduction for income attributable to domestic production activities</td>
<td>tyba 12/31/17</td>
<td>4.3</td>
<td>8.9</td>
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<td>2. Limitation on deduction by employers of expenses for fringe benefits:</td>
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<tr>
<td>a. Meals and entertainment expenses, including meals for the convenience of the employer [16].</td>
<td>apoia 12/31/17 &amp; apoia 12/31/25</td>
<td>1.6</td>
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<td>b. Repeal deduction for qualified transportation fringes, including commuting except as necessary for employee's safety [15].</td>
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<td>4. UBTI increased by amount of certain fringe benefit expenses for which deduction is disallowed.</td>
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<td>5. Repeal of rollover of publicly traded securities gain into specialized small business investment companies.</td>
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<td>1. Certain special rules for taxable year of inclusion (in general).</td>
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<td>2. Certain special rules for taxable year of inclusion (related to original issue discount and other similar items).</td>
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<td>2. Modify rehabilitation credit to provide 20 percent historic credit ratably over 5 years, repeal credit for pre-1936 property.</td>
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<td>1. Modification of limitation on excessive employee remuneration, with transition rule [18].</td>
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*Estimate Included in items II.E.2.b.*
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<td>2. 21-percent excise tax on excess tax-exempt organization executive compensation (certain exceptions provided to non-highly compensated employees, and for certain medical services)</td>
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<td>11. Clarification of tax basis of life insurance contracts</td>
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<td>teia 8/25/09</td>
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<td>13. Modification of property and casualty insurance company discounting rules</td>
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<td>K. Partnerships</td>
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<tr>
<td>1. Tax gain on the sale of a partnership interest on look-thru basis</td>
<td>seada 11/27/17 &amp; seada 12/31/17</td>
<td>[5]</td>
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<td>1. Excise tax based on investment income of private colleges and universities with endowment per student</td>
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<td>M. Other Provisions</td>
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<td>2. Expansion of qualifying beneficiaries of an electing small business trust, and modify charitable contribution deduction for electing small business trusts</td>
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<td>3. Craft beverage modernization and tax reform</td>
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<td>5. Create qualified opportunity zones</td>
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<td>8. Repeal of deduction for local lobbying expenses</td>
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<td>9. Revision of treatment of contributions to capital</td>
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### III. International Tax Reform

#### A. Establishment of Participation Exemption System for Taxation of Foreign Income

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<td>2. Special rules relating to sales or transfers involving certain foreign corporations</td>
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<td>3. Treatment of deferred foreign income upon transition to participation exemption system of taxation and mandatory inclusion at two-tier rate (8-percent rate for illiquid assets, 15.5-percent rate for liquid assets)</td>
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### Table:Provision and Effective Dates

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Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is generally assumed to be December 22, 2017.

Legend for "Effective" column:
- apa = amounts paid after
- apised = and placed in service after such date
- apoa = amounts paid or accrued after
- apoa = amounts paid or accrued after
- apoi = amounts paid or accrued in
- apoa/a = amounts paid or incurred on or after
- ar = advance refunding
- bia = bonds issued after
- cmi = contributions made in
- da = distributions after
- Da = disposions after
- dda = decedents dying after
- DOE = date of enactment
- doia = discharges of indebtedness after
- dosaeia = divorce or separation agreements entered into after
- eca = exchanges completed after
- fc = for charitable
- fecqb = for expansion of qualifying beneficiaries
- gma = gifts made after
- lai = losses accrued in
- mba = months beginning after
- paa = property acquired after
- ppisa = property placed in service after
- piyba = partnership taxable years beginning after
- sa = sales after
- seada = sales exchanges and dispositions after
- seado/a = sales, exchanges and dispositions on or after
- spo/a = service provided on or after
- sppoga = specified plants planted or grafted after
- ta = transactions after
- Ta = transfers after
- teia = transactions entered into after
- ti = transfers in
- topia = transfers of partnership interests after
- tyba = taxable years beginning after

[Footnotes for Table #17-3 128 R3 appear on the following pages]
Footnotes for Table #17-2 128 R3:

[1] The parameters for the beginning of the 24%, 32%, 35%, and 37% rate brackets, and the standard deduction amount use 2018 as the base year. Other indexed parameters are adjusted for inflation from their 2017 values using the chained CPI-U as the inflation measure to determine 2018 values.

[2] Estimate includes the following outlay effects:

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<td>Modification of child tax credit</td>
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<td>24.1</td>
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<td>87.9</td>
<td>181.3</td>
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<tr>
<td>Require valid Social Security number of each child to claim refundable and non-refundable portions of child credit, non-child dependents and any child without a valid Social Security number still receives $500 non-refundable credit.</td>
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<td>-3.0</td>
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<tr>
<td>Repeal of itemized deductions for taxes not paid or accrued in a trade or business (except for up to $10,000 in State and local taxes), interest on mortgage debt in excess of $750K, interest on home equity debt, non-disaster casualty losses and certain miscellaneous expenses</td>
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<td>Reduce ACA individual shared responsibility payment amount to zero</td>
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<td>Repeal of tax credit bonds</td>
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<tr>
<td>Total Revenue Effect (SECA interaction)</td>
<td>-1.4</td>
<td>-1.9</td>
<td>-1.7</td>
<td>-1.5</td>
<td>-1.1</td>
<td>1.5</td>
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<td>1.7</td>
<td>1.2</td>
<td>0.8</td>
<td>-7.7</td>
<td>[3]</td>
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<tr>
<td>On-budget effects</td>
<td>-0.3</td>
<td>-0.4</td>
<td>-0.4</td>
<td>-0.3</td>
<td>-0.2</td>
<td>0.3</td>
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<td>-1.6</td>
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<tr>
<td>Off-budget effects</td>
<td>-1.1</td>
<td>-1.5</td>
<td>-1.4</td>
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<td>-0.9</td>
<td>1.2</td>
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<td>1.3</td>
<td>0.9</td>
<td>0.6</td>
<td>-6.1</td>
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<tr>
<td>Total Revenue Effect</td>
<td>0.4</td>
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<tr>
<td>Off-budget effects</td>
<td>0.1</td>
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<td>0.1</td>
<td>0.6</td>
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<tr>
<td>[7] Estimate includes policy that retains exclusion under section 217(g) (related to members of the Armed Forces).</td>
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<tr>
<td>[9] Estimate provided by the Joint Committee on Taxation staff in collaboration with the Congressional Budget Office.</td>
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</table>

[Footnotes for Table #17-2 128 R3 continue on the following page]
Footnotes for Table #17-2 128 R3 continued:

[10] Estimate includes the following budget effects:

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<tbody>
<tr>
<td>Total Revenue Effect</td>
<td>---</td>
<td>6.0</td>
<td>9.7</td>
<td>28.4</td>
<td>37.0</td>
<td>40.7</td>
<td>43.5</td>
<td>46.1</td>
<td>49.6</td>
<td>53.3</td>
<td>80.8</td>
<td>314.1</td>
</tr>
<tr>
<td>Off-budget effects</td>
<td>---</td>
<td>5.9</td>
<td>9.0</td>
<td>26.5</td>
<td>34.8</td>
<td>38.3</td>
<td>40.8</td>
<td>43.3</td>
<td>46.7</td>
<td>50.5</td>
<td>76.1</td>
<td>295.6</td>
</tr>
</tbody>
</table>

[11] Effective with respect to: (1) levies made after the date of enactment; and (2) levies made on or before the date of enactment provided that the nine-month period has not expired as of the date of enactment.

[12] The expansion of the threshold allowing the use of the cash method, the creation of an exemption from the requirement to use inventories, and the expansion of the exception from the uniform capitalization rules are effective for taxable years beginning after December 31, 2017. The expansion of the exception from the requirement to use the percentage of completion method is effective for contracts entered into after December 31, 2017, in taxable years ending after such date. The threshold applicable to each provision is indexed for inflation for taxable years beginning after December 31, 2018.

[13] The percentage is phased down from 100 percent by 20 percent per calendar year beginning in 2023 (2024 for certain longer production period property and certain aircraft).

[14] Estimate includes the following budget effects:

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<tr>
<td>Total Revenue Effect</td>
<td>1.6</td>
<td>2.2</td>
<td>2.2</td>
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<td>2.4</td>
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<td>2.8</td>
<td>10.6</td>
<td>23.5</td>
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<td>On-budget effects</td>
<td>1.3</td>
<td>1.8</td>
<td>1.9</td>
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<td>2.0</td>
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<td>8.8</td>
<td>19.7</td>
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<tr>
<td>Off-budget effects</td>
<td>0.3</td>
<td>0.4</td>
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<td>0.4</td>
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<td>1.8</td>
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</table>

[15] Estimate includes the following budget effects:

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<tbody>
<tr>
<td>Total Revenue Effect</td>
<td>1.2</td>
<td>1.6</td>
<td>1.7</td>
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<td>1.8</td>
<td>1.9</td>
<td>1.9</td>
<td>2.0</td>
<td>2.0</td>
<td>8.1</td>
<td>17.7</td>
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<tr>
<td>On-budget effects</td>
<td>1.0</td>
<td>1.3</td>
<td>1.4</td>
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<td>14.2</td>
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<tr>
<td>Off-budget effects</td>
<td>0.2</td>
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<td>0.4</td>
<td>0.4</td>
<td>1.6</td>
<td>3.5</td>
</tr>
</tbody>
</table>


[17] Generally effective for amounts paid or incurred after December 31, 2017, with a transition rule providing that for buildings owned or leased at all times after December 31, 2017, the 24-month or 60-month period for making qualified rehabilitation expenditures begins no later than 180 days after the date of enactment, and the repeal is effective for such expenditures paid or incurred after the end of the taxable year in which such 24-month or 60-month period ends.

[18] Transition rule for any remuneration under a written binding contract which was in effect on November 2, 2017, and which was not modified thereafter in any material respect.

[19] Effective for options exercised or restricted stock units settled after December 31, 2017. The penalty for failure to provide a notice is effective for failures after December 31, 2017.

[20] Generally, taxable years beginning after December 31, 2016. The deduction for contributions to a Settlement Trust is effective for taxable years for which the Native Corporation’s refund statute of limitations period has not expired, with a one-year waiver of the refund statute of limitations period in the event that the period expires before the end of the one-year period beginning on the date of enactment.

[21] Effective for contributions made after date of enactment, except that the provision does not apply to contributions pursuant to plans approved prior to date of enactment.

[22] Effective for distributions made (and for purposes of deterring a taxpayer’s foreign tax credit limitation under section 904, deductions in taxable years ending) after December 31, 2017.

[23] Effective for the last taxable year beginning before January 1, 2018, of a foreign corporation and with respect to U.S. shareholders for the taxable years in which or with which such taxable year of the foreign corporation ends.

[24] Effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

[25] Effective for the last taxable year beginning before January 1, 2018, of a foreign corporation and all subsequent years, and with respect to U.S. shareholders for the taxable years in which or with which such taxable year of the foreign corporation ends.

[26] Decrease in outlays of less than $50 million.
COMMUNICATION FROM THE
CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,

Hon. PAUL D. RYAN,
The Speaker, House of Representatives,
Washington, DC.

Dear Mr. Speaker: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on December 14, 2017, at 5:58 p.m.:

That the Senate passed S. 654. With best wishes, I am,
Sincerely,

KAREN L. HAAS.

COMMUNICATION FROM THE
CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,

H. R. 2266. An Act making additional supplemental appropriations for emergency or disaster.

H. R. 1117. An Act to require the Administrator of the Federal Emergency Management Agency to submit a report regarding certain plans regarding assistance to applicants and grantees during the response to an emergency or disaster.

H. R. 2360. An Act making additional supplemental appropriations for disaster relief requirements for the fiscal year ending September 30, 2018, and for other purposes.

H. J. Res. 111. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Bureau of Consumer Financial Protection relating to “Arbitration Agreement”.

H. R. 1329. An Act to increase, effective as of December 1, 2017, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

H. R. 1618. An Act to amend the Homeland Security Act of 2002 to authorize the National Computer Forensics Institute, and for other purposes.


H. R. 304. An Act to amend the Controlled Substances Act with regard to the provision of emergency medical services.

H. R. 3031. An Act to amend title 5, United States Code, to provide for flexibility in making withdrawals from a Thrift Savings Plan account, and for other purposes.

H. R. 194. An Act to ensure the effective processing of mail by Federal agencies, and for other purposes.

H. R. 1454. An Act to amend title 38, United States Code, to clarify the authority of the Secretary of Veterans Affairs to disclose certain patient information to State controlled substance monitoring programs, and for other purposes.

H. R. 1679. An Act to ensure that the Federal Emergency Management Agency’s current efforts to modernize its grant management system includes applicant accessibility and transparency, and for other purposes.

H. R. 3243. An Act to amend title 40, United States Code, to eliminate the sunset of certain provisions relating to information technology, to amend the National Defense Authorization Act for Fiscal Year 2015 to extend the sunset relating to the Federal Data Center Consolidation Initiative, and for other purposes.

H. R. 3949. An Act to amend title 38, United States Code, to provide for the designation of State approving agencies for multi-State apprenticeship programs for purposes of the educational assistance programs of the Department of Veterans Affairs.

H. R. 2810. An Act to authorize appropriations for fiscal year 2018 for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

H. R. 4374. An Act to amend the Federal Food, Drug, and Cosmetic Act to authorize additional emergency uses for medical products to reduce deaths and severity of injuries caused by agents of war, and for other purposes.

H. R. 327. An Act to direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

S. 819. An Act to facilitate construction of a bridge on certain property in Christian County, Missouri, and for other purposes.

S. 1141. An Act to ensure that the United States promotes the meaningful participation of women in mediation and negotiation processes seeking to prevent, mitigate, or resolve violent conflict.

S. 178. An Act to prevent elder abuse and exploitation and improve the justice system’s response to victims in elder abuse and exploitation cases.

S. 652. An Act to amend the Public Health Service Act to authorize a program for early detection, diagnosis, and treatment regarding deaf and hard-of-hearing newborns, infants, and young children.

October 26, 2017:
S. 585. An Act to provide greater whistleblower protections for Federal employees, increased awareness of Federal whistle-blower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistle-blowers, and for other purposes.

November 2, 2017:
S. 190. An Act to provide for consideration of the extension under the Energy Policy and Conservation Act of nonapplication of No-Load Mode energy efficiency standards to certain security or life safety alarms or surveillance systems, and for other purposes.

S. 504. An Act to permanently authorize the Asia-Pacific Economic Cooperation Business Travel Card Program.

S. 782. An Act to reauthorize the National Internet Crimes Against Children Task Force Program, and for other purposes.


S. 1617. An Act to designate the checkpoint of the United States Border Patrol located on United States Highway 77 North in Scurry County, Texas, as the Javier Vega, Jr. Border Patrol Checkpoint.”

SENATE BILL REFERRED
A bill of the Senate of the following title was taken from the Speaker’s table and, under the rule, referred as follows:
S. 654. An act to revise section 48 of title 18, United States Code, and for other purposes; to the Committee on the Judiciary.

HOUSE BILLS AND JOINT RESOLUTIONS APPROVED BY THE PRESIDENT
The President notified the Clerk of the House that on the following dates he had approved and signed bills and joint resolutions of the following titles:

October 6, 2017:
H. R. 2019. An Act to require the Secretary of the Treasury to mint commemorative coins in recognition of the 100th anniversary of The American Legion.

October 18, 2017:
H. R. 1117. An Act to require the Administrator of the Federal Emergency Management Agency to submit a report regarding certain plans regarding assistance to applicants and grantees during the response to an emergency or disaster.

October 26, 2017:
H. R. 2360. An Act making additional supplemental appropriations for disaster relief requirements for the fiscal year ending September 30, 2018, and for other purposes.

H. J. Res. 111. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Bureau of Consumer Financial Protection relating to “Arbitration Agreement”.

December 2, 2017:
H. R. 2810. An Act to authorize appropriations for fiscal year 2018 for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

H. R. 4374. An Act to amend the Federal Food, Drug, and Cosmetic Act to authorize additional emergency uses for medical products to reduce deaths and severity of injuries caused by agents of war, and for other purposes.

SENATE BILLS APPROVED BY THE PRESIDENT
The President notified the Clerk of the House that on the following dates he had approved and signed bills of the Senate of the following titles:

October 6, 2017:
S. 327. An Act to direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

S. 819. An Act to facilitate construction of a bridge on certain property in Christian County, Missouri, and for other purposes.

S. 1141. An Act to ensure that the United States promotes the meaningful participation of women in mediation and negotiation processes seeking to prevent, mitigate, or resolve violent conflict.

S. 178. An Act to prevent elder abuse and exploitation and improve the justice system’s response to victims in elder abuse and exploitation cases.

S. 652. An Act to amend the Public Health Service Act to authorize a program for early detection, diagnosis, and treatment regarding deaf and hard-of-hearing newborns, infants, and young children.

October 26, 2017:
S. 585. An Act to provide greater whistleblower protections for Federal employees, increased awareness of Federal whistle-blower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistle-blowers, and for other purposes.

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S. 504. An Act to permanently authorize the Asia-Pacific Economic Cooperation Business Travel Card Program.

S. 782. An Act to reauthorize the National Internet Crimes Against Children Task Force Program, and for other purposes.


S. 1617. An Act to designate the checkpoint of the United States Border Patrol located on United States Highway 77 North in Scurry County, Texas, as the Javier Vega, Jr. Border Patrol Checkpoint.”

ADJOURNMENT
Mr. BRADY of Texas. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o’clock and 33 minutes p.m.), under its previous order, the House adjourned until Monday, December 18, 2017, at noon for morning-hour debate.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker’s table and referred as follows:
S. 310. A letter from the Acting Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, transmitting the Department’s final rule—Oklahoma Regulatory Program [SATS Nos.: OK-037-FOR; Docket ID: OSM-2015-0006; SDIDS S0800111000; SX6041100 18SX605130]; received December 13, 2017, pursuant to 5
This table belongs to Footnote 520

Recovery method

200-percent declining balance .......................................................... 288.71 204.08 145.77 104.12 86.77 86.77 86.77 1,000.00

150-percent declining balance .......................................................... 214.29 168.37 132.29 121.26 121.26 121.26 121.26 1,000.00

Straight-line .................................................................................. 142.86 142.86 142.86 142.86 142.86 142.86 142.86 1,000.00

This table belongs to Footnote 540

Recovery method

200-percent declining balance .......................................................... 285.71 204.08 145.77 104.12 86.77 86.77 86.77 1,000.00

150-percent declining balance .......................................................... 214.29 168.37 132.29 121.26 121.26 121.26 121.26 1,000.00

Straight-line .................................................................................. 142.86 142.86 142.86 142.86 142.86 142.86 142.86 1,000.00

This table belongs to Footnote 573

Recovery method

200-percent declining balance .......................................................... 285.71 204.08 145.77 104.12 86.77 86.77 86.77 1,000.00

150-percent declining balance .......................................................... 214.29 168.37 132.29 121.26 121.26 121.26 121.26 1,000.00

Straight-line .................................................................................. 142.86 142.86 142.86 142.86 142.86 142.86 142.86 1,000.00

ENDNOTES

December 15, 2017

CONGRESSIONAL RECORD — HOUSE

H.R. 392: Mr. CURTIS.

H.R. 807: Mr. MEKK and Mr. WELCH.

H.R. 1159: Mr. ZELDIN.

H.R. 1318: Mr. DENHAM.

H.R. 1569: Mr. DESAULNIER and Ms. MICHELLE LUJAN GRISHAM of New Mexico.

H.R. 1691: Ms. SPEIER.

H.R. 2234: Mr. DESAULNIER.

H.R. 2687: Mrs. BUSTOS, Mr. DESAULNIER, and Mr. POLIQUIN.

H.R. 2839: Mr. SOTO.

H.R. 3264: Ms. ROYBAL-ALLARD.

H.R. 3632: Mr. MEEKS and Mr. PANETTA.

H.R. 3730: Mr. EMER, Mr. JOHNSON of Georgia, Mr. PAUSE, Mr. RODNEY DAVIS of Illinois, Mr. SWALWELL of California, Mr. WALZ, and Mr. OLSON.

H.R. 3770: Mr. MARINO, Mr. CICILLINE, Mr. FRANKEL of Florida, Mr. WILSON of South Carolina, and Mrs. MURPHY of Florida.

H.R. 3881: Mr. DEFAZIO.

H.R. 4007: Ms. SHEA-PORTER, Ms. JUDY CHU of California, Mr. CLAY, Mr. CONNOLLY, Mr. COURTNEY, Mr. ENGEL, Mr. HANABUSA, Ms. JACKSON-LEE, Mr. KEATING, Mr. KRISHNAMOORTHI, Mr. TED LIEU of California, Mr. LIPINSKI, Ms. MCCOLLUM, Mr. MENG, Mr. NICHOLSON, Mr. PALLONE, Mr. RUPPERSBERGER, Ms. SCHAKOWSKY, Mrs. MURPHY of Florida, Ms. TSONGAS, Mrs. VELAZQUEZ, Mr. YARMUTH, and Ms. SEWELL of Alabama.

H.R. 4217: Mr. BISHOP of Michigan.

H.R. 4271: Mr. EMER, Mr. JOHNSON of Georgia, Mr. PAUSE, Mr. RODNEY DAVIS of Illinois, Mr. SWALWELL of California, Mr. WALZ, and Mr. OLSON.

H.R. 4293: Mr. DAVID SCOTT of Georgia.

H.R. 4318: Mr. RATCLIFFE, Mr. G AETZ, Mr. MCCLINTOCK, Ms. MCSALLY, and Mr. BANKS of Indiana.

H.R. 4375: Mrs. BUSTOS.

H.R. 4396: Mr. KILDEE, Mr. HOYER, and Mr. SCHRAEDER.

H.R. 4513: Mr. SOTO.

H.R. 4541: Mrs. DAVIS of California, Mr. CRIST, Mr. TAKANO, Mr. AL GREEN of Texas, Mr. BRENDAN F. BOYLE of Pennsylvania, Ms. WASSERMAN SCHULTZ, Mr. BERA, Mr. HASTINGS, Mr. SCHRAEDER, Ms. ROSEN, Mr. FOSTER, Ms. MENG, Mr. KEATING, Mrs. MOORE, Mr. DELANEY, and Mrs. LAWRENCE.

H.R. 4547: Mr. BACON and Mr. SMITH of Washington.

H.R. 4585: Mr. LEVIN, Mr. COHEN, Mrs. NAPOLITANO, Mr. SERRANO, Mrs. DAVIS of California, and Mr. SMITH of Washington.

H. Res. 199: Mr. GAETZ.

H. Res. 318: Mr. KINZINGER.

H. Res. 466: Mr. MCHENRY and Ms. SHEA-PORTER.

DISCHARGE PETITIONS—

ADDITIONS AND WITHDRAWALS

The following Member added his name to the following discharge petition:

Petition 3 by Mr. GARRETT on House Resolution 458: Mr. Mooney of West Virginia.