GENERAL EXPLANATION OF
TAX LEGISLATION ENACTED IN THE
116TH CONGRESS

Prepared by the Staff
of the
Joint Committee on Taxation

February 2022
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INTRODUCTION

This document, prepared by the staff of the Joint Committee on Taxation in consultation with the staffs of the House Committee on Ways and Means and the Senate Committee on Finance, provides an explanation of certain tax legislation enacted in the 116th Congress.

For each provision, this document includes a description of present law, an explanation of the provision, and the effective date. Present law describes the law in effect immediately before enactment of the provision and does not reflect changes to the law made by the enacting legislation or by subsequent legislation. For a bill with a Committee report (or, in the absence of one, a contemporaneous technical explanation prepared and published by the staff of the Joint Committee on Taxation), this document is based on the language of the report (or explanation). This document follows the chronological order of the tax legislation as signed into law.

Section references are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

Part One is an explanation of the Taxpayer First Act (Pub. L. No. 116–25).

Part Two is an explanation of certain provisions of the Fostering Undergraduate Talent by Unlocking Resources for Education ("FUTURE") Act (Pub. L. No. 116–91).


Part Four is an explanation of the Virginia Beach Strong Act (Pub. L. No. 116–98).

Part Five is an explanation of Division G of the Families First Coronavirus Response Act (Pub. L. No. 116–127).


Part Seven is an explanation of the revenue provisions of the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. No. 116–159).


The Appendix provides the estimated budget effects of tax legislation described in this document.

The first footnote in each Part gives the legislative history of the Act explained in that Part.

1This document may be cited as follows: Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 116th Congress (JCS–1–22), February 2022.
PART ONE: THE TAXPAYER FIRST ACT
(PUBLIC LAW 116–25)

TITLE I—PUTTING TAXPAYERS FIRST
Subtitle A—Independent Appeals Process

1. Establishment of Internal Revenue Service Independent Office of Appeals (sec. 1001 of the Act and sec. 7803 of the Code)

Present Law

The IRS Reform and Restructuring Act of 1998 (“RRA98”) directed the Commissioner of Internal Revenue (the “Commissioner”) to restructure the Internal Revenue Service (“IRS”) by establishing and implementing an organizational structure that features operating units serving particular groups of taxpayers with similar needs and ensures an independent appeals function within the IRS. Although the Code does not mandate the existence of an independent office within the IRS to review administrative determinations, it does require an independent administrative review of certain determinations, and further requires that the Commissioner ensure that the duties of IRS employees are executed in a manner consistent with rights inferred from other Code provisions.

Under the general authority of the Secretary of the Treasury (“Secretary”) to interpret the Code and that of the Commissioner to administer the Code and to employ the persons necessary to do so, the IRS operates an Office of Appeals (“Appeals”) headed by a Chief, Appeals. That office traditionally functions as the settle-
ment arm of the IRS. In doing so, it reviews administrative determinations arising both from collection and examination activities, and attempts to resolve them without need for litigation, including by using alternative dispute resolution methods. As a result, review of administrative actions is generally available prior to payment of any tax underlying the controversy. Exceptions occur, and include cases in which inadequate time remains on the limitations period for assessment and collection or those in which the only arguments raised by the taxpayer are frivolous positions.8

Similarly, if a case has reached a point at which litigation is initiated, the availability of consideration by Appeals may be limited. First, authority to settle cases referred to the Department of Justice for defense or initiation of litigation rests solely with that Department. Such cases are therefore ineligible for referral to Appeals.9 The terms under which a case pending in the United States Tax Court (“Tax Court”) may be referred to Appeals are described in published guidance that centralizes the decision to withhold a case from Appeals to assure consistent standards are applied.10 Employees of Appeals are compensated in accordance with the rules governing Federal employment generally.11

**Explanation of Provision**

The provision codifies the requirement of an independent administrative appeals function by establishing within the IRS an office to be known as the Internal Revenue Service Independent Office of Appeals (“Independent Appeals”) and to be headed by an official known as the Chief of Appeals, as described below. The purposes and duties of the office as well as the taxpayers’ general right to seek consideration by that office, subject to certain limitations, are described below.

**Chief of Appeals and staff**

The provision grants authority to the Commissioner to appoint the Chief of Appeals, who is to be compensated at the same rate as the highest rate of basic pay established for the Senior Executive Service.12 The appointment is not subject to the rules under Title 5 of the United States Code that govern competitive service or the Senior Executive Service. The Chief of Appeals reports directly to the Commissioner of the IRS. The person appointed to the position is required to have experience in a broad range of Federal tax law controversies and management of large service organizations.

The provision also confirms that the Chief of Appeals and her employees are to have access to legal assistance and advice from staff within the Office of Chief Counsel about cases pending at Independent Appeals. Chief Counsel is responsible for ensuring

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8See section 6702(c), which requires that the Secretary periodically review and list positions that have been identified as frivolous for purposes of the frivolous return penalty.
9Sec. 7122.
10Rev. Proc. 2016–22, 26 C.F.R. sec. 601.106. Exceptions to the general rule in favor of requiring Appeals consideration include cases that are withheld in the interests of sound tax administration, among other reasons.
11Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.
that the attorneys are able to provide independent advice. In doing so, to the extent practicable, staff assigned to answer inquiries from Independent Appeals should not include those involved in advising the IRS employees working directly on the case prior to its referral to Independent Appeals or in preparation of the case for litigation.

**Functions of Independent Appeals**

Independent Appeals is intended to perform functions similar to those of the current Appeals. Independent Appeals is to resolve tax controversies and review administrative decisions of the IRS in a fair and impartial manner, for the purposes of enhancing public confidence, promoting voluntary compliance, and ensuring consistent application and interpretation of Federal tax laws. Resolution of tax controversies in this manner is generally available to all taxpayers, subject to reasonable exceptions that the Secretary may provide. Thus, cases of a type that are referred to Appeals under present law remain eligible for referral to Independent Appeals.

The provision includes a savings clause that requires application of rules similar to those in RRA98 to ensure continuity of the validity of administrative and legal proceedings, including legal documents related to such proceedings and existing delegations of authority.

**Enhancement of taxpayer access to Independent Appeals**

In making access to Independent Appeals generally available to all taxpayers, the establishment of the new office clarifies the rights of taxpayers to review administrative case files and to protest denial of access to Independent Appeals.

**Taxpayer access to case files**

The provision requires that the administrative case file referred to Independent Appeals be available to certain individual and small business taxpayers. The specified taxpayers that are eligible are (1) individuals with adjusted gross incomes not exceeding $400,000 and (2) entities with gross receipts not exceeding $5 million for the taxable year to which the dispute relates. In determining whether persons are within the scope of the latter category, rules similar to those used to determine whether persons should be treated as a single employer for purposes of cash method accounting are to be applied.13 Eligible taxpayers must be able to review the non-privileged portions of materials developed by the IRS not later than 10 days prior to the requested conference with Independent Appeals. In providing the materials, the IRS need not produce for the taxpayer the documents that were initially provided to the IRS by the taxpayer. In addition, the taxpayer may elect to waive the 10-day period and accept access to the materials on the date of the scheduled conference.

**Cases not referred to Independent Appeals**

In cases in which the IRS has issued a notice of deficiency to a taxpayer, the Commissioner must prescribe notice and protest pro-

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13 The aggregation rules are found at section 448(c)(2).
procedures for taxpayers whose request for Independent Appeals consideration is denied. Such protest procedures will be available to taxpayers who have received a notice of deficiency in cases other than those involving only frivolous positions within the meaning of the Code. The procedures must include a requirement that the Commissioner notify a taxpayer of the denial in a written statement that includes a statement of the facts underlying the basis for the denial of the request together with a detailed explanation of the reasons for denying the request for referral to Independent Appeals. In addition, the written notice must advise the taxpayer of the right to protest the denial of the request to the Commissioner and include information about how to lodge such a protest.

The Commissioner must provide to Congress an annual written report detailing the number of denials of access to Independent Appeals and the reasons for such denials.

Effective Date

The provision is generally effective upon the date of enactment (July 1, 2019), except with regard to the portion of the provision allowing taxpayer access to case files, which is effective for cases in which the conference occurs more than one year after the date of enactment.

Subtitle B—Improved Service

1. Comprehensive customer service strategy (sec. 1101 of the Act)

Present Law

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage its resources. In the current strategic plan, adding and enhancing tools and support to improve taxpayers and tax professionals’ interactions with the IRS to meet their tax obligations is identified as one of the IRS’s six strategic goals.

Explanation of Provision

The provision requires the Secretary to develop a comprehensive strategy for customer service and to submit such plan to Congress not later than the date which is one year after the date of enactment. The strategy will include: (1) a plan to determine appropriate levels of online services, telephone call back services, and training of employees providing customer services, based on best practices of businesses and designed to meet reasonable customer expecta-
tions; (2) an assessment of all services that the IRS can co-locate with other Federal services or offer as self-service options; (3) proposals for long-term improvements over the next 10 fiscal years, with appropriate short-term goals over the current and following fiscal year and mid-term goals over the next three to five fiscal years; (4) a plan to update guidance and training materials, including the Internal Revenue Manual, for customer service employees of the IRS to reflect such strategy; and (5) metrics for measuring the IRS’s progress in implementing its strategy. Within two years after the date of enactment, the Secretary or the Secretary’s delegate is required to make public the updated guidance and training materials in a user-friendly fashion.

Effective Date
The provision is effective on the date of enactment (July 1, 2019).

2. Low-income exception for payments otherwise required in connection with a submission of an offer-in-compromise (sec. 1102 of the Act and sec. 7122 of the Code)

Present Law
The IRS is authorized to enter into offers-in-compromise under which the taxpayer and Federal government agree that a tax liability may be satisfied by payment of less than the full amount owed. An offer-in-compromise may be accepted on one of three grounds: (1) doubt as to liability, available in cases in which the validity of the actual tax liability is in question; (2) doubt as to collectability based on lack of sufficient assets from which the tax, interest, and penalties can be paid in full; or (3) effective tax administration, applicable in a case in which collection in full would cause the taxpayer economic hardship such that compromise rather than collection would better encourage tax compliance. If the unpaid tax liabilities total $50,000 or more, an offer-in-compromise can be accepted only if a public report is filed, supported by a written opinion from the IRS Chief Counsel, stating the reasons for the compromise, the amounts of assessed tax, penalties and interest, and the amounts actually paid pursuant to the offer-in-compromise.

Taxpayers making a lump sum offer-in-compromise must include a nonrefundable payment of 20 percent of the lump sum with the initial offer (herein, “upfront partial payment”). The IRS waives this upfront partial payment when an offer is submitted by a low-income taxpayer, defined as an individual who falls at or below 250 percent of the poverty guidelines published by the Department of Health and Human Services, or such other measure that is adopted by the Secretary (herein, “low-income taxpayer”). Taxpayers seeking an offer-in-compromise involving periodic payments must pro-

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17 Sec. 7122.
18 Treas. Reg. sec. 1.7122–1(b). For this purpose, economic hardship is defined under Treas. Reg sec. 301.6343–1.
19 Sec. 7122(b); Treas. Reg. sec. 1.7122–1(e)(6). The $50,000 threshold was raised from $500 in 1996. Sec. 503 of the Taxpayer Bill of Rights 2, Pub. L. No. 104–168.
20 Sec. 7122(c)(1)(A).
vide a nonrefundable payment of the first installment that would be due if the offer were accepted.\footnote{Sec. 7122(c)(1)(B).}

In general, a taxpayer is required to provide a user fee for processing the offer-in-compromise.\footnote{Treas. Reg. sec. 300.3(b).} However, no fee will be charged if an offer either is based solely on doubt as to liability or is made by a low-income taxpayer.\footnote{Treas. Reg. sec. 300.3(b)(i) and (ii).}

**Explanation of Provision**

The provision codifies the current low-income taxpayer exception with respect to any user fee or upfront partial payment imposed with respect to any offer-in-compromise. The provision makes clear that the determination of low-income is based on the individual's adjusted gross income as determined for the most recent tax year for which such information is available.

**Effective Date**

The provision applies to offers-in-compromise submitted after the date of enactment (July 1, 2019).

**Subtitle C—Sensible Enforcement**

1. **Internal Revenue Service seizure requirements with respect to structuring transactions (sec. 1201 of the Act)**

**Present Law**

The Bank Secrecy Act of 1970 ("BSA") mandates a reporting and recordkeeping system that assists Federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions.\footnote{The Bank Secrecy Act, 31 U.S.C. secs. 5311–5332.} The reporting requirements are imposed on individuals, financial institutions, and non-financial trades and businesses that act similar to financial institutions.\footnote{31 U.S.C. sec. 5312(a)(1).} The requirements include reporting currency transactions exceeding $10,000.

To circumvent these reporting requirements, individuals sometimes structure cash transactions to fall below the $10,000 reporting threshold (referred to as "structuring"). In other words, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a financial institution, an individual conducts a series of currency transactions, willfully keeping each individual transaction at an amount below $10,000 to evade reporting or recording. Structuring can be used to conceal illegal cash-generating activities, such as the selling of narcotics, and to conceal income earned legally in order to evade the payment of taxes. Structuring (or attempts to structure) for the
purpose of evading the reporting and recordkeeping requirements is subject to both civil and criminal penalties.

Present law authorizes forfeiture of property involved in transactions or attempted transactions in violation of these rules in accordance with the procedures governing civil forfeitures in money laundering cases.

The Secretary has delegated responsibility for implementing and enforcing the BSA to the Director, Financial Crimes Enforcement Network (“FinCEN”), who in turn re-delegated responsibility for civil compliance with the law to various Federal agencies including the IRS. The scope of that delegation of authority was expanded by the USA PATRIOT Act of 2001 and includes authority to determine and enforce civil penalties. The IRS administers its delegated authority under the BSA through the IRS Small Business/Self-Employed Division, with assistance from the IRS Criminal Investigation Division (“IRS–CID”).

If a person prevails in a civil forfeiture proceeding involving seizure of currency, the United States is liable for reasonable attorney fees and other litigation costs reasonably incurred by the claimant, post-judgment interest, and interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument as well as imputed interest for any period for which no interest was paid.

Prior to October 2014, the IRS provided partial relief in structuring transactions involving a first offense, a legitimate funding source, and no criminal conviction. The IRS procedures also required its criminal investigation division to consider additional mitigating or aggravating factors. On October 17, 2014, IRS–CID issued guidance on how it will conduct seizures and forfeitures in its structuring cases. Pursuant to this guidance, the IRS will not

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27 U.S.C. sec. 5324(a); 31 U.S.C. sec 5322. 28 A person who willfully violates the law is subject to a fine of not more than $250,000, or imprisonment for not more than five years, or both. 31 U.S.C. sec. 5324(a); 31 U.S.C. sec. 5322. 29 31 U.S.C. sec. 5317(c)(2). 30 See 18 U.S.C. sec. 981. 31 Treasury Order 180–01, available at https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx, delegating authority to FinCEN. 31 C.F.R. sec. 103.56(b)(8). At the time of the initial delegation, FinCEN was an entity created by regulatory action, but has since been explicitly authorized by statute. 31 U.S.C. sec. 310. 32 Treasury Order 180-01. For a discussion of the relationship between FinCEN and the agencies to which it re-delegated authority, see, Office of Inspector General, “TERRORIST FINANCING/MONEY LAUNDERING: Responsibility for Bank Secrecy Act Is Spread Across Many Organizations,” OIG-08-030 (April 9, 2008), available at https://www.treasury.gov/about/organizational-structure/ig/Documents/oig08030.pdf. 33 A penalty may be assessed before the end of the six-year period beginning on the date of the transaction with respect to which the penalty is assessed. 31 U.S.C. sec. 5321(b)(1). A civil action for collection may be commenced within two years of the later of the date of assessment and the date a judgment becomes final in any a related criminal action. 31 U.S.C. sec. 5321(b)(2). 34 28 U.S.C. sec. 2465(b)(1). The imputed interest that may be paid under that section is the amount that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period for which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

pursue seizure and forfeiture of funds associated only with so-called “legal source” structuring unless (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

**Explanation of Provision**

The provision provides that in the case of a suspected structuring violation, the IRS may only pursue seizure or forfeiture of assets if either the property to be seized was derived from an illegal source or the transactions were structured for the purpose of concealing a violation of a criminal law or regulation other than rules against structuring.

The provision establishes post-seizure notice and review procedures for IRS seizures based on suspected structuring violations. The IRS must, within 30 days, make a good faith effort to find all persons with an ownership interest in the property seized and inform him or her of certain post-seizure hearing rights provided under the provision. This 30-day notice requirement may be extended an additional 30 days if the IRS can establish to a court probable cause of an imminent threat to national security or personal safety. If a notice recipient requests a court hearing within 30 days of the notice, the property is required to be returned unless the court finds that there is probable cause to believe that a structuring violation occurred involving such property and the property to be seized was derived from an illegal source or the funds were structured for the purpose of concealing the violation of a criminal law or regulation other than the structuring provisions of the BSA.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

2. Exclusion of interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction (sec. 1202 of the Act and new sec. 139H of the Code)

**Present Law**

Nothing in the BSA or the administrative guidance issued by the IRS affects the Federal tax treatment of the interest that may be paid to a successful litigant in civil asset forfeiture proceedings. The Code provides no specific exclusion from gross income or deduction from adjusted gross income for interest received by a successful litigant pursuant to an action to recover property seized by the IRS pursuant to the BSA. Accordingly, the interest received is includable in gross income under the Code.
Explanation of Provision

The provision amends the Code to exclude from gross income any interest received from the Federal Government in connection with an action to recover property seized by the IRS pursuant to a claimed violation of the structuring provisions of the BSA.

Effective Date

The provision applies to interest received on or after the date of enactment (July 1, 2019).

3. Clarification of equitable relief from joint liability (sec. 1203 of the Act and sec. 6015 of the Code)

Present Law

If a married couple elects to file a tax return on which they report their income jointly, they are generally jointly and severally liable for the entire tax liability that should have been reported on the joint return. A spouse may be entitled to relief from joint liability, in whole or in part, under the innocent spouse relief provisions of the Code.

Grounds for relief from joint liability

There are three types of relief: general innocent spouse relief; relief for spouses no longer married or legally separated (separation of liabilities); and equitable relief. The grounds for relief and its scope differ among these three types of relief. In addition, the first two types of relief must be sought no later than two years after the date the IRS began collection activities against the electing spouse. For equitable relief, there is no limitations period in the statute.

General relief from joint liability with respect to an understatement of tax is available to all joint filers who make a timely election for such relief and who are able to establish the following three elements. First, the electing spouse must establish that the underpayment is attributable to the erroneous items of the other spouse. Second, the electing spouse must show that at the time of signing the return, he or she neither knew nor had reason to know that there was an understatement of tax. Finally, relief is granted only if it is inequitable to hold the electing spouse liable for the deficiency in tax, based on all facts and circumstances.

Separation of liabilities relief from joint liability with respect to a deficiency is available to persons who are no longer married, are legally separated, or were no longer living together in the 12 months ending with the date innocent spouse relief is elected. The individual electing relief on this basis must establish the portion of any deficiency that is appropriately allocable to him or her. Special rules are provided in the Code for determining allocation of items that benefit one spouse more than the other, property transfers, and children’s liability. Relief otherwise available is not
permitted with respect to items of which a spouse was aware at the time the return was signed and which contributed to a deficiency.

Equitable relief from joint liability may be available to those spouses who are ineligible under the provisions for general relief or separation of liabilities relief. Such relief is granted only if, taking into account all facts and circumstances, it is inequitable to hold the individual liable for the unpaid portion of tax or for a deficiency with respect to the joint return.

**Availability and scope of judicial review**

If an individual elects to have the general relief provision or the separation of liabilities relief provision apply with respect to a deficiency, the individual may petition the Tax Court to review unfavorable determinations by the IRS with respect to the claimed relief. The Tax Court has held that its authority to review such IRS determinations is under a *de novo* standard.

The claim for relief from joint liability must be filed no later than 90 days after the notice of final determination on relief from joint liability and no earlier than the earlier of the mailing of such notice of final determination or the date which is six months after electing such relief. During the pendency of the Tax Court proceeding, or during the period in which a petition may be filed, collection action is restricted.

In contrast to claims under the general relief or separation of liabilities provisions described above, the extent to which a denial of a claim for equitable relief from joint liability is also subject to judicial review by the Tax Court, the scope of that review, and the standard for any review have been the subject of conflicting appellate decisions. An abuse of discretion standard based on court review of the administrative record was held to be the correct standard in some instances, but other courts have permitted review of information beyond the administrative record while applying an abuse of discretion standard. Still others have applied a *de novo* standard to both the scope of the review and the standard of review.

**Explanation of Provision**

Under the provision, Tax Court review of innocent spouse equitable relief cases is not limited to the administrative record, but it may consider evidence that is newly discovered or was previously unavailable. The provision also clarifies that the Tax Court has jurisdiction to review a denial of equitable claims for relief from joint liability and that such review is not limited to a review for abuse of discretion by the IRS.

The provision allows taxpayers to request equitable relief with respect to any unpaid liability before the expiration of the collection

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39 Sec. 6015(f).
40 Sec. 6015(e)(1).
41 Jonson v. Commissioner, 118 T.C. 106, 125 (2002), aff’d on other grounds, 353 F.3d 1181 (10th Cir. 2003); Mitchell v. Commissioner, 292 F.3d 800, 807 (D.C. Cir. 2002); Cheshire v. Commissioner, 282 F.3d 326, 337–38 (5th Cir. 2002).
42 Commissioner v. Neal, 557 F.3d 1262 (11th Cir. 2009).
period or, if paid, before the expiration of the applicable limitations period for claiming a refund or credit.

**Effective Date**

The provision applies to petitions or requests filed or pending on or after the date of enactment (July 1, 2019).44

4. Modification of procedures for issuance of third-party summons (sec. 1204 of the Act and sec. 7609 of the Code)

**Present Law**

The IRS has broad statutory authority to require production of information in the course of an examination.45 A request for information in the form of an administrative summons is enforceable if the IRS establishes its good faith, as evidenced by the factors enunciated by the Supreme Court in *United States v. Powell*.46 The U.S. Supreme Court articulated four basic elements necessary to establish that the government issued a summons in good faith: (1) the investigation must be conducted for a legitimate purpose; (2) the information sought is relevant to and “may shed light on” that legitimate purpose; (3) the requested information is not already in the possession of the IRS; and (4) the IRS complied with all statutorily required administrative steps.47 Subsequent to *United States v. Powell*, the legitimacy of using an administrative summons in furtherance of an investigation into criminal violations was validated in *United States v. LaSalle National Bank*,48 in which the Supreme Court determined that the dual civil and criminal purpose was legitimate, so long as there had not yet been a commitment to refer the case for prosecution.

The use of this summons authority to obtain information from third-parties is subject to certain procedural safeguards,49 but otherwise the same good faith elements are analyzed to determine whether the summons should be enforced.50 When the existence of a possibly non-compliant taxpayer is known but not his identity, as in the case of holders of offshore bank accounts or investors in particular abusive transactions, the IRS is able to issue a summons (referred to as a “John Doe” summons) to learn the identity of the taxpayer, but must first meet significantly greater statutory requirements to guard against fishing expeditions.

An effort to learn the identity of unnamed John Does requires that the United States seek judicial review in an ex parte proceeding prior to issuance of the John Doe summons. In its application and supporting documents,51 the United States must establish that the information sought pertains to an ascertainable group of

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44 Commissioner v. Sutherland, 155 T.C. No. 6, Slip Opinion at pp. 15–16 (September 8, 2020) (holding that the changes to section 6105(f)(7) are effective for petitions filed on or after the date of enactment and that changes to subsection 6105(f)(7) are effective for requests pending with the IRS on or after the date of enactment).
45 Sec. 7602.
48 437 U.S. 298 (1978); codified in section 7609(c).
49 Sec. 7609.
51 Sec. 7609(b)(12) provides that the determination will be made *ex parte*, solely on the pleadings.
persons, that there is a reasonable basis to believe that taxes have been avoided, and that the information is not otherwise available. The reviewing court does not determine whether the John Doe summons will ultimately be enforceable. Once a court has determined that the predicate for issuance of a summons is met, the summons is served, and the summoned party served may challenge enforcement of the summons, based on the Powell factors. It is not entitled to judicial review of the ex parte ruling that permitted issuance of the summons. Nevertheless, enforcement of a John Doe summons is likely to be subject to time-consuming challenges, possibly warranting an extension of the limitations period.

**Explanation of Provision**

The provision prevents the Secretary from issuing a John Doe summons unless the information sought to be obtained is narrowly tailored and pertains to the failure (or potential failure) of the person or group or class of persons referred to in the statute to comply with one or more provisions of the Code which have been identified. The provision is not intended to change the Powell standard or otherwise affect the IRS's burden of proof.

**Effective Date**

The provision applies to summonses served after the date that is 45 days after the date of enactment (45 days after July 1, 2019).

**5. Private debt collection and special compliance personnel program (sec. 1205 of the Act and sec. 6306 of the Code)**

**Present Law**

**Qualified tax collection contracts**

The Code permits the IRS to use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type and to arrange payment of those taxes by the taxpayers. For this purpose, the Secretary enters into qualified tax collection contracts for the collection of inactive tax receivables. Under these contracts, if the taxpayer cannot pay in full immediately, the private debt collection company offers the taxpayer an installment agreement providing for full payment of the taxes over a period of as long as five years.

Inactive tax receivables are defined as any tax receivable (i) removed from the active inventory for lack of resources or inability to locate the taxpayer, (ii) for which more than 1/3 of the applicable limitations period has lapsed and no IRS employee has been assigned to collect the receivable, and (iii) for which a receivable has been assigned for collection but more than 365 days have passed without interaction with the taxpayer or a third party for purposes

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52 Sec. 7609(e).
53 United States v. Samuels, Kramer & Co., and First Western Government Securities, Inc., 712 F.2d 1342 (9th Cir. 1983), which affirmed a lower court determination that the issuance of the John Doe summons was not subject to review, but reversed and remanded to permit a limited evidentiary hearing on whether the Powell standard was met.
54 This provision generally applies to any type of tax imposed under the Internal Revenue Code.
55 Sec. 6306.
of furthering the collection. Tax receivables are defined as any outstanding assessment which the IRS includes in potentially collectible inventory.

Certain tax receivables are not eligible for collection under qualified tax collection contracts, if such receivable: (i) is subject to a pending or active offer-in-compromise or installment agreement; (ii) is classified as an innocent spouse case; (iii) involves a taxpayer identified by the Secretary as being (a) deceased, (b) under the age of 18, (c) in a designated combat zone, or (d) a victim of tax-related identity theft; (iv) is currently under examination, litigation, criminal investigation, or levy; or (v) is currently subject to a proper exercise of a right of appeal.

**Special compliance personnel program**

An amount not greater than 25 percent of the amount collected under any qualified tax collection contract is to be used to fund a special compliance personnel program. The Secretary is required to establish an account for the hiring, training, and employment of special compliance personnel. No other source of funding for the program is permitted, and funds deposited in the special account are restricted to use for the program, including reimbursement of the IRS and other agencies for the cost of administering the qualified debt collection program and all costs associated with employment of special compliance personnel and the retraining and reassignment of other personnel as special compliance personnel. Special compliance personnel are individuals employed by the IRS to serve either as revenue officers performing field collection functions, or as persons operating the automated collection system.

**Explanation of Provision**

The provision makes certain additional tax receivables of individual taxpayers ineligible for collection under qualified tax collection contracts. Such receivables involve a taxpayer (1) substantially all of whose income consists of disability insurance benefits under section 233 of the Social Security Act (referred to as Social Security Disability Insurance or SSDI) or supplemental security income benefits under title XVI of the Social Security Act (referred to as Supplemental Security Income or SSI) or (2) whose adjusted gross income, as determined for the most recent taxable year for which information is available, does not exceed 200 percent of the applicable poverty level (as determined by the Secretary).

The provision also modifies the definition of inactive tax receivable by replacing the condition that more than 1/3 of the applicable limitations period has lapsed with the requirement that “more than two years has passed since assessment.” The provision retains the requirement that no IRS employee has been assigned to collect the receivable.

The provision also modifies the definition of a qualified tax collection contract to allow the private debt collection company to offer the taxpayer an installment agreement providing for full payment of the taxes over a period of as long as seven years, replacing the current law period of five years.

The provision clarifies that the IRS may use funds from the special compliance personnel program account for various program
costs, including the costs of hiring any personnel, communications, software, technology, and reimbursement of the IRS or other government agencies for the cost of administering the qualified tax collection program.

**Effective Date**

The provision to make certain tax receivables of individual taxpayers ineligible for collection under qualified tax collection contracts and the provision to modify the definition of inactive tax receivables applies to tax receivables identified by the Secretary (or the Secretary’s delegate) after December 31, 2020.

The provision to modify the definition of a qualified tax collection contract applies to contracts entered into after the date of enactment (July 1, 2019).

The provision relating to the use of the special compliance personnel program account applies to amounts expended from the account after the date of enactment (July 1, 2019).

**6. Reform of notice of contact of third parties (sec. 1206 of the Act and sec. 7602 of the Code)**

**Present Law**

The IRS may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of the taxpayer without providing reasonable notice in advance to the taxpayer that the IRS may contact persons other than the taxpayer. The IRS is required to provide periodically to the taxpayer a record of persons contacted during the prior period by the IRS with respect to the determination or collection of that taxpayer’s tax liability. This record is also required to be provided upon request of the taxpayer. This notice requirement does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, if the Secretary determines for good cause shown that disclosure may involve reprisal against any person, or if the taxpayer authorized the contact.

**Explanation of Provision**

The provision replaces the requirement that the IRS provide reasonable notice in advance to the taxpayer with a requirement that the taxpayer be provided, at least 45 days before the beginning of the period of contact, notice that contacts with persons other than the taxpayer are intended. The period of contact may not be greater than one year. However, notices are permitted to be issued to the same taxpayer with respect to the same tax liability with periods specified that, in the aggregate, exceed one year. The provision requires the notice to be provided only if there is a present intent at the time such notice is given for the IRS to make such contacts. This intent can be met on the basis of the assumption that the information sought to be obtained will not be obtained by other means before such contact.
Effective Date

The provision applies to notices provided and contacts made after the date which is 45 days after the date of enactment (45 days after July 1, 2019).

7. Modification of authority to issue designated summons (sec. 1207 of the Act and sec. 6503(j) of the Code)

**Present Law**

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate with such requests, whether by failing to respond or by providing inadequate or incomplete responses. In such cases, if the necessary information cannot be developed from other witnesses or sources, the IRS seeks information by issuing an administrative summons.66 If the taxpayer does not cooperate with the request in the summons, the IRS may refer the summons to the Department of Justice to seek and obtain an order for enforcement in Federal court. If the summons in question was issued to a third-party rather than the taxpayer, the taxpayer may petition the court to quash an administrative summons.57

In United States v. Powell,58 the U.S. Supreme Court articulated four basic elements necessary to establish that the government issued a summons in good faith: (1) the investigation must be conducted for a legitimate purpose; (2) the information sought is relevant to and “may shed light on” that legitimate purpose; (3) the requested information is not already in the possession of the IRS; and (4) the IRS complied with all statutorily required administrative steps. All petitions to enforce an administrative summons must include allegations and supporting declarations to establish that the good faith standards are met.59 Although the good faith standards established in United States v. Powell apply to all administrative summonses, they are not the sole source of limitations on the IRS’s ability to compel production of information during an examination.60

Neither service of an administrative summons nor government-initiated action for judicial enforcement is sufficient to suspend the limitations period.61 As a result, in the case of an examination of complicated issues of a large corporation, involving voluminous records, numerous witness interviews, and possible expert reports,
the general three-year period for assessment may be inadequate to allow for completion of an examination. In such cases, the limitations period is often but not always extended by agreement of the parties. An uncooperative taxpayer could force a premature conclusion to an audit by delaying responses and allowing the statute to expire. To guard against such situations in cases in which the IRS requires additional information and time to complete its work, the Code authorizes issuance of a designated summons that triggers suspension of the limitations period if judicial enforcement proceedings are initiated.

A designated summons is an administrative summons that is issued to a large corporation (or person to whom the corporation has transferred the requested books and records) with respect to one or more taxable periods currently under examination in the Coordinated Industry Case program and meets three conditions. First, it must be reviewed and approved by the Division Commissioner and Division Counsel of the relevant IRS operating division or organization with jurisdiction over the return. Second, it must be issued at least 60 days before the expiration of the assessment limitations period (as extended). Finally, it must clearly state that it is a “designated summons.”

If a designated summons is issued, and the taxpayer complies without any judicial enforcement proceeding, no suspension of the limitations period occurs. If the government initiates enforcement proceedings, the limitations period is suspended for the judicial enforcement period of that summons and any related summonses, i.e., summonses relating to the same return and issued within 30 days after the issuance of the designated summons. If the court proceeding results in an order to comply with the summons, the limitations period is also suspended for a period of 120 days from the first day after the close of the judicial enforcement period. In addition, the limitations period expires no earlier than 60 days after the close of the judicial enforcement period, if the court does not order compliance with the summons.

Since enactment of the designated summons provision in 1990, few such summonses have been issued. The IRS is now required
to submit annual reports to Congress on the number of designated summonses issued each year. Since 1995, three have been issued, most recently in 2014.

**Explanation of Provision**

Under the provision, issuance of a designated summons must be preceded by review and written approval of the summons by the head of the relevant operating division and the Chief Counsel. The written approval must state facts establishing that the IRS had previously made reasonable requests for the information and must be attached to the summons. In subsequent judicial proceedings concerning the enforceability of the summons, the IRS must establish that the prior reasonable requests for information were made.

**Effective Date**

The provision applies to summonses issued after the date that is 45 days after the date of enactment (45 days after July 1, 2019); that is, summonses issued after August 15, 2019.

**8. Limitation on access of non-Internal Revenue Service employees to returns and return information (sec. 1208 of the Act and sec. 7602 of the Code)**

**Present Law**

**Returns and return information**

*General rule of confidentiality*

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code. The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability under the Code of any person for any tax, penalty, interest or offense. The term “return information” includes, among other items:

- a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax,
penalty, interest, fine, forfeiture, or other imposition, or offense.

Disclosure exception for tax administration contracts (section 6103(n))

There are several exceptions to the general rule of confidentiality. One exception permits the disclosure of returns and return information in connection with written contracts or agreements for the acquisition of property or services for tax administration purposes (“tax administration contractor”).

Summons authority

In general

For the purposes of ascertaining the correctness of any return, making a return when none has been made, determining the liability of any person for any internal revenue tax, and certain other purposes, the Secretary is authorized to examine any books, records, or other data which may be relevant or material to such inquiry, and to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. The Secretary also is authorized to issue summonses to appear before the Secretary at the time and place named in the summons to produce books, records and other data and to give testimony, under oath, as may be relevant or material to such inquiry.

Summons interview regulations

Under the Treasury regulations, a person authorized to receive returns and return information as a tax administration contractor may receive and examine books, papers, records, or other data produced to comply with the summons, and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath. An exception to this general exclusion is provided with respect to non-government attorneys hired for their expertise in an area other than Federal tax law. The proposed regulations would allow the IRS to hire an attorney who has specialized knowledge of foreign, state, or local law, including tax law, or in non-tax substantive law, such as patent law, property law, or environmental law. It would not permit the IRS to hire an attorney for non-substantive specialized knowledge, such as civil litigation skills. These changes are proposed to be effective for examinations begun and summonses served by the IRS on or after March 27, 2018.

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70 Sec. 6103(b)(2)(A).
71 Sec. 6103(n).
72 Treas. Reg. sec. 301.7602–1(b)(3).
**Explanation of Provision**

The provision provides that the Secretary shall not, under the authority of section 6103(n) (relating to tax administration contracts), provide to a tax administration contractor any books, papers, records or other data obtained by summons, except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the IRS (including, for example, access to such information by translators). Further, no person other than an officer or employee of the IRS or Office of Chief Counsel may on behalf of the Secretary question a witness under oath whose testimony was obtained by summons. The provision is not intended to restrict the Office of Chief Counsel’s ability to use court reporters, translators or interpreters, photocopy services, and other similar ancillary contractors.

**Effective Date**

The provision takes effect on the date of enactment (July 1, 2019) and shall not fail to apply to a contract in effect under section 6103(n) merely because such contract was in effect before the date of enactment.

**Subtitle D—Organizational Modernization**

1. **Office of the National Taxpayer Advocate (sec. 1301 of the Act and sec. 7803(c) of the Code)**

   **Present Law**

   **In general**

   The Office of the Taxpayer Advocate is expected to represent taxpayer interests independently in disputes with the IRS. The National Taxpayer Advocate (“NTA”) supervises the Office of the Taxpayer Advocate. The NTA reports directly to the Commissioner and is entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of Title 5 of the United States Code, or if the Secretary so determines, at a rate fixed under section 9503 of such title.

   The Office of the Taxpayer Advocate has four principal functions:
   1. to assist taxpayers in resolving problems with the IRS;
   2. to identify areas in which taxpayers have problems in dealing with the IRS;
   3. to propose changes in the administrative practices of the IRS to mitigate problems identified in (2); and
   4. to identify potential legislative changes that may be appropriate to mitigate such problems.

   **Taxpayer Assistance Orders**

   A taxpayer can request a Taxpayer Assistance Order (“TAO”) if the taxpayer is suffering or about to suffer a “significant hardship” as a result of the manner in which the internal revenue laws are
being administered by the IRS.\footnote{Sec. 7811(a)(1)(A). Significant hardship is deemed to occur if one of four factors exists: (1) there is an immediate threat of adverse action; (2) there has been a delay of more than 30 days in resolving the taxpayer's problems; (3) the taxpayer will have to pay significant costs (including fees for professional services) if relief is not granted; or (4) the taxpayer will suffer irreplicable injury, or a long term adverse impact if relief is not granted. Sec. 7811(a)(2). The NTA may also issue a TAO if the taxpayer meets requirements to be set forth in regulations. Sec. 7811(a)(1)(B).} A TAO may require the IRS within a specified time period, to release property of the taxpayer that has been levied upon, or to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer under specified provisions.\footnote{Sec. 7811(b). The provisions specified in 7811(b) are: (1) chapter 64 (relating to collection), (2) subchapter B of chapter 70 (relating to bankruptcy and receiverships), chapter 78 (relating to discovery of liability and enforcement of title) or any other provision of law which is specifically described by the NTA in such order. The content of this report is set by statute.\footnote{Sec. 7803(c)(2)(B)(ii)(I) through (XI).} Generally, the report must cover initiatives taken to improve taxpayer services and problems encountered, as well as the actions taken to resolve them and the results. Specifically, the report must cover the 20 most serious problems experienced by taxpayers. The report also must identify the 10 most litigated issues for each category of taxpayer and the areas of the tax law that impose significant compliance burdens on taxpayers or the IRS. Recommendations received from individuals with the authority to issue TAOs, and any TAO not promptly honored by the IRS, must also be included in the report. The report must also set

The Commissioner, or the Deputy Commissioner may rescind a TAO issued by the NTA, only if a written explanation of the reasons for the modification or rescission is provided to the NTA.\footnote{Delegation Order 13–3, Internal Revenue Manual 1.2.50.4 (January 17, 2001).}

**Taxpayer Assistance Directives**

While a TAO is specific to a particular taxpayer, a Taxpayer Assistance Directive ("TAD") is systemic, intended to address groups of taxpayers. Delegation Order 13–3 authorizes the NTA to issue TADs to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.\footnote{Sec. 7803(c)(2).} The authority to modify or rescind a TAD is delegated to Deputy Commissioner for Operations Support, Deputy Commissioner for Services and Enforcement, and to the NTA.

**Annual Reports**

The NTA is required to submit two reports annually to the House Committee on Ways and Means and to the Senate Finance Committee.\footnote{Sec. 7811(a)(2).} One report, due June 30 of each year, covers the Office of the Taxpayer Advocate’s objectives for the fiscal year beginning in that calendar year. Besides statistical information, the report must contain a full and substantive analysis of the objectives.

The other report, due December 31 of each year, concerns the activities of the Office of the Taxpayer Advocate. The content of this report is set by statute.\footnote{Sec. 7811(c).} Generally, the report must cover initiatives taken to improve taxpayer services and problems encountered, as well as the actions taken to resolve them and the results. Specifically, the report must cover the 20 most serious problems experienced by taxpayers. The report also must identify the 10 most litigated issues for each category of taxpayer and the areas of the tax law that impose significant compliance burdens on taxpayers or the IRS. Recommendations received from individuals with the authority to issue TAOs, and any TAO not promptly honored by the IRS, must also be included in the report. The report must also set
forth recommendations for administrative and legislative action to resolve problems encountered by taxpayers.

The NTA, is required by statute to submit the reports directly to the Congressional committees without prior review of the Commissioner, the Secretary, or any officer or employee of the Treasury, the Oversight Board, or the Office of Management and Budget (“OMB”).

Explanation of Provision

Taxpayer Advocate Directives

In the case of any TAD issued by the NTA pursuant to a delegation of authority from the Commissioner, the Commissioner or Deputy Commissioner shall modify, rescind or ensure compliance with such directive not later than 90 days after issuance of such directive. If the TAD is modified or rescinded by a Deputy Commissioner, the NTA may (not later than 90 days after such modification or rescission) appeal to the Commissioner and the Commissioner must (not later than 90 days after such appeal is made) either (1) ensure compliance with such directive as issued by the NTA, or (2) provide the NTA with the reasons for any modification or rescission made or upheld by the Commissioner pursuant to such appeal.

The NTA’s annual report is to identify any TAD that is not honored by the IRS in a timely manner.

Annual Reports to Congress

The provision modifies requirements of the annual report on NTA activities to require a summary of the 10 most serious problems encountered by taxpayers. Before beginning any research or study, the NTA is required to coordinate with the TIGTA to ensure that the NTA does not duplicate any action that TIGTA has already undertaken or has a detailed plan to undertake. The provision requires the IRS provide the NTA, upon request and to the extent practicable, with statistical support in connection with the preparation of the annual report on NTA activities. Such support is to include statistical studies, compilations and the review of information provided by the NTA for statistical validity and sound statistical methodology. With respect to any statistical information included in such report, the report is to include a statement of whether such statistical information was reviewed or provided by the IRS, and if so whether the IRS determined such information to be statistically valid and based on sound statistical methodology. The IRS’s review and provision of statistical support does not violate the requirement that the report be submitted directly without prior review or comment from any officer or employee of the Department of the Treasury or specified other persons.

Salary of the National Taxpayer Advocate

The provision eliminates the provision relating to the determination of the NTA’s salary under section 9503 of Title 5 of the United States Code. As under present law, the NTA is entitled to com-

80 Sec. 7803(c)(2)(B)(iii).
Compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of Title 5 of the United States Code.

**Effective Date**

The provision is generally effective on the date of enactment (July 1, 2019). The provision as it relates to the salary of the NTA applies to appointments to the position of the NTA made after March 31, 2019.

2. Modernization of Internal Revenue Service organizational structure (sec. 1302 of the Act)

**Present Law**

RRA98 directed the Commissioner to restructure the IRS by eliminating or substantially modifying the three-tier geographic structure (national, regional, and district) in place at the time and replacing it with an organizational structure that features operating units serving particular groups of taxpayers with similar needs.81

**Explanation of Provision**

The Secretary (or the Secretary’s delegate) is required to submit to Congress by September 30, 2020, a comprehensive written plan to redesign the organization of the IRS. The comprehensive plan will: (1) ensure the successful implementation of the priorities specified by Congress in this bill; (2) prioritize taxpayer services to ensure that all taxpayers easily and readily receive the assistance they need; (3) streamline the structure of the agency including minimizing the duplication of services and responsibilities; (4) best position the IRS to combat cybersecurity and other threats to the IRS; and (5) address whether the Criminal Division of the IRS should report directly to the Commissioner.

Beginning one year after the date on which a comprehensive plan to modify the organization of the IRS is submitted to Congress, the provision removes the RRA98 requirement of an organizational structure that features operating units serving particular groups of taxpayers with similar needs.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

**Subtitle E—Other Provisions**

1. Return preparation programs for applicable taxpayers (sec. 1401 of the Act and new sec. 7526A of the Code)

**Present Law**

The Code provides that the Secretary may allocate up to $6 million per year for matching grants to certain qualified low-income

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Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. No clinic can receive more than $100,000 per year.

A qualified low-income taxpayer clinic includes (1) a clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers, or (2) an organization exempt from tax under Code section 501(c) that either represents low-income taxpayers or provides referral to qualified representatives. A clinic is treated as representing low-income taxpayers if (i) at least 90 percent of the taxpayers represented by the clinic have income that does not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the OMB, and (ii) the amount in controversy for any taxable year is $50,000 or less.

While the Code does not provide funding for matching grants, funding for such grants was provided by the Consolidated Appropriations Act, 2019. Congress appropriated approximately $2.492 billion to the IRS for taxpayer services, of which not less than $18 million is to be made available for a Community Volunteer Income Tax Assistance ("VITA") matching grants program for tax return preparation assistance. VITA is a program that was created by the IRS in 1969 that utilizes volunteers to provide tax return preparation and filing service assistance to certain low-income taxpayers and members of underserved populations.

**Explanation of Provision**

The provision codifies the VITA program and provides that the Secretary, unless otherwise provided by specific appropriation, may allocate from otherwise appropriated funds up to $30 million per year in matching grants to qualified entities for the development, expansion, or continuation of qualified tax return preparation programs assisting applicable taxpayers and members of underserved populations. The Secretary is authorized to award a multi-year grant not to exceed three years.

The grant funds may be used for ordinary and necessary operation costs (including for wages or salaries of persons coordinating the activities of the program; to develop training materials, conduct training, and perform quality reviews of the returns for which assistance has been provided under the program; for equipment purchases; and for vehicle-related expenses associated with remote or rural tax preparation services), outreach and educational activities relating to the eligibility and availability of income supports available to such taxpayers.
able through the Code, and services related to financial education and capability, asset development, and the establishment of savings accounts in connection with tax return preparation.

Matching funds are required to be provided on a dollar-for-dollar basis for all grants provided. Matching funds may include: (1) the salary (including fringe benefits) of individuals performing services for the program; (2) the cost of equipment used in the program; and (3) other ordinary and necessary costs that may be associated with the program. Indirect expenses, including general overhead of any entity administering the program, are not counted as matching funds.

In awarding grants, priority is given to applications that (1) demonstrate assistance to certain applicable taxpayers with an emphasis on outreach, (2) demonstrate taxpayer outreach and education around available income supports available through the Code, and (3) demonstrate specific outreach and focus on one or more underserved populations.

The provision requires the Secretary to establish procedures for periodic site visits not less than once every five calendar years (i) to ensure the program is carrying out the stated purpose and (ii) to determine whether the VITA grant program meets certain program adherence standards as the Secretary will require. If any qualified return preparation program is awarded a grant and is subsequently determined not to meet the adherence standards or not to be carrying out the stated purposes, such program will not be eligible for additional grants unless the program provides sufficient documentation of corrective measures established to address any deficiencies determined.

Qualified return preparation program means any program (1) that provides assistance to individuals, at least 90 percent of whom are applicable taxpayers, in preparing and filing Federal income tax returns, (2) that is administered by a qualified entity, (3) in which all volunteers who assist in the preparation of Federal income tax returns meet the training requirements prescribed by the Secretary, and (4) that uses a quality review process which reviews 100 percent of all returns. Qualified entity means any entity that (1) is an eligible organization (as defined), (2) is in compliance with Federal tax filing and payment requirements, (3) is not debarred or suspended from Federal contracts, grants, or cooperative agreements, and (4) agrees to provide documentation to substantiate any matching funds provided under the VITA grant program. Eligible organization means (1) an institution of higher education described in section 102 (other than subsection (a)(1)(C) thereof) of the Higher Education Act of 1965, as in effect on the date of enactment, and that has not been disqualified from participating in a program under Title IV of such Act, (2) an exempt organization described in Code section 501(c), (3) a local government agency, including a county or municipal government agency, and an Indian tribe, as defined in section 4(13) of the Native American Housing Assistance and Self-Determination Act of 1996 (“Act”), including any tribally designated housing entity (as defined in such Act), tribal subsidiary, subdivision, or other wholly owned tribal entity, or (4) a local, State, regional, or national coalition (with one lead organization that meets the eligibility requirements described above acting
as the applicant organization). If no eligible organization is available to assist the targeted population or community, the eligible organization includes a State government agency and a Cooperative Extension Service office.

Applicable taxpayer means a taxpayer who has income for the taxable year that does not exceed an amount equal to the completed phaseout amount under section 32(b) for a married couple filing a joint return with three or more qualifying children, as determined in a revenue procedure or other published guidance. For 2019, the amount is $55,952. Rev. Proc. 2018–57, 2018–49 I.R.B. 827, 832, December 3, 2018. For 2020, the amount is $56,844. Rev. Proc. 2019–44, 2019–47 I.R.B. 1093, 1097, November 18, 2019.

Underserved population includes populations of persons with disabilities, persons with limited English proficiency, Native Americans, individuals living in rural areas, members of the Armed Forces and their spouses, and the elderly.

The provision allows the IRS to use mass communications and other means to promote the benefits and encourage the use of the program. The Secretary can provide taxpayers information regarding qualified return preparation programs receiving grants and those programs are encouraged to advise taxpayers of the availability of, and eligibility requirements for receiving, advice and assistance from local or regional low-income taxpayer clinics. The programs are also encouraged to provide taxpayers information regarding the location and contact information for the low-income taxpayer clinics.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

### 2. Provision of information regarding low-income taxpayer clinics (sec. 1402 of the Act and sec. 7526 of the Code)

**Present Law**

The Code provides that the Secretary is authorized to provide up to $6 million per year in matching grants to certain qualified low-income taxpayer clinics. Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. No clinic can receive more than $100,000 per year.

A qualified low-income taxpayer clinic includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization exempt from tax under Code section 501(c) that either represents low-income taxpayers or provides referral to qualified representatives. A low-income taxpayer is an individual whose income does not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the OMB.

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87 Sec. 7526.
The Department of the Treasury prohibits its officers and employees from referring taxpayers to qualified low-income taxpayer clinics for advice and assistance.88

**Explanation of Provision**

The provision allows officers and employees of the Department of the Treasury to advise taxpayers of the availability of, and eligibility requirements for receiving, advice and assistance from qualified low-income taxpayer clinics that receive funding under the Code, and to provide location and contact information for such clinics.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

3. Notice from IRS regarding closure of Taxpayer Assistance Centers (sec. 1403 of the Act)

**Present Law**

The IRS operates Taxpayer Assistance Centers around the country to provide face-to-face assistance with preparing tax returns and understanding tax laws.

The IRS is not currently required to publish information to the public or give notice to Congress before closing a Taxpayer Assistance Center.

**Explanation of Provision**

The provision requires the IRS to publish (including by non-electronic means such as local press and other media), 90 days in advance, a notice containing information identifying the Taxpayer Assistance Center proposed for closure, the date of the proposed closure, and the relevant alternative sources of assistance that may be utilized by affected taxpayers. The provision also requires the IRS to provide, 90 days in advance, a report to Congress containing the information in the notice, the reasons for a proposed closure of the Taxpayer Assistance Center, and other information as the Secretary may find appropriate.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

4. Rules for seizure and sale of perishable goods restricted to only perishable goods (sec. 1404 of the Act and sec. 6336 of the Code)

**Present Law**

Under the Code, if it is determined that any tangible property seized to satisfy unpaid taxes (1) is liable to perish, (2) is liable to become greatly reduced in price or value by keeping, or (3) cannot be kept without great expense, the property may be sold after it

88 5 C.F.R. sec. 3101.106(a).
has been appraised and the owner has been given an opportunity to pay the appraised value or furnish bond for payment. The general procedures governing the sale of seized property that are set forth in the Code (e.g., requiring 10-day notice before sale and the determination of a minimum bid) are not applicable to sales of perishables. Instead, the streamlined procedures referred to above apply to the sale of perishable goods.

**Explanation of Provision**

The provision limits the property that may be sold pursuant to the streamlined procedures to property that is liable to perish.

**Effective Date**

The provision applies to property seized after the date of enactment (July 1, 2019).

5. **Whistleblower reforms (sec. 1405 of the Act and secs. 6103 and 7623 of the Code)**

**Present Law**

**In general**

Under section 7623, individuals who submit information leading to detection of underpayment of tax or to detection, trial, and punishment of persons guilty of violating internal revenue laws, may file a claim for an award of 15 to 30 percent of recovered funds resulting from such action.

**Disclosure rules for whistleblowers**

Section 6103 provides a general rule of confidentiality for returns and return information: “returns and return information shall be confidential and except as authorized by this Title . . . [none of the specified recipients] shall disclose any return or return information obtained by him.” One of the exceptions to the general rule of confidentiality permits the IRS to make investigative disclosures of return information to third parties. The disclosures, subject to the conditions provided in regulations, are to be made to the extent necessary to obtain information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, the amount to be collected, or with respect to the enforcement of any provision of Title 26. The third party recipient of the return information furnished during an investigative disclosure is not subject to the general rule of confidentiality provided by section 6103.

There is no provision of section 6103 to provide whistleblowers with status updates regarding what the IRS has done with the information provided by the whistleblower. Such status information would be the return information of the taxpayer being audited/investigated for additional tax liability.

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89 Sec. 6336.
90 Sec. 6335.
91 Sec. 6336; Treas. Reg. sec. 301.6336–1.
92 Sec. 6103(a).
93 Treas. Reg. sec. 301.6103(k)(6)–1.
A taxpayer can file or sue for civil damages for the unauthorized disclosure and/or inspection of returns and return information. In addition, criminal penalties apply for the willful unauthorized disclosure or inspection of returns and return information.

**Protection against retaliation**

Though other statutes such as the False Claims Act currently protect some individuals from employer retaliation, those who file claims under the Code are not explicitly afforded these same protections.

**Explanation of Provision**

This provision amends section 6103 to: (1) allow the IRS to exchange information with whistleblowers to the extent disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax liability or the amount to be collected with respect to the enforcement of any other provision of the Code; and (2) require the Secretary to notify the whistleblower as to the status of their case not later than 60 days after: (i) the case has been referred for an audit or examination; and (ii) the taxpayer makes a payment of tax with respect to the tax liability to which the information provided by the whistleblower relates. Subject to such requirements and conditions prescribed by the Secretary, upon written request by the whistleblower and so long as the disclosure would not seriously impair Federal tax administration, the Secretary is to provide information on the status and stage of any investigation, and in the case of a determination of the amount of any award, the reasons for such determination. To ensure taxpayer information is protected, whistleblowers receiving information under this provision are subject to the general rule of confidentiality and criminal penalties for unauthorized disclosure of taxpayer information.

The provision adds to section 7623, anti-retaliation whistleblower protections for employees. A person who alleges discharge or other reprisal by any person in violation of these protections may file a complaint with the Secretary of Labor (within 180 days after the date on which the violation occurs), and if the Secretary of Labor has not issued a final decision on such complaint within 180 days (and the delay is not due to the bad faith of the claimant), an action may be brought in the appropriate district court. The remedies provided are consistent with those currently available under the False Claims Act, including compensatory damages of reinstatement, 200 percent of back pay and all lost benefits, with interest, and compensation for other special damages including litigation costs, expert witness fees, and reasonable attorney fees.

**Effective Date**

The modifications made to the disclosure rules apply to disclosures made after the date of enactment (July 1, 2019). The protections from retaliation take effect on the date of enactment.

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94 Sec. 7431.
95 Secs. 7213 and 7213A.
6. Customer service information (sec. 1406 of the Act)

**Present Law**

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage IRS’s resources. In the current strategic plan, empowering and enabling all taxpayers to meet their tax obligations is identified as one of the IRS’s six strategic goals.

**Explanation of Provision**

The provision requires the IRS to provide the following information over the telephone, while taxpayers are on hold with the IRS’s call center: information about common tax scams, direction to the taxpayer on where and how to report such activity, and tips on how to protect against identity theft and tax scams.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

7. Misdirected tax refund deposits (sec. 1407 of the Act and sec. 6402 of the Code)

**Present Law**

The Internal Revenue Manual (“IRM”) defines an erroneous refund as the receipt of any money from the IRS to which the recipient is not entitled. The IRM provides procedures for IRS employees to identify and recover such erroneous refunds. In addition, the IRS website provides information to taxpayers who wish to return an erroneous refund that was issued to them, either by paper check or direct deposit.

The Code provides that any tax refunds which are erroneously made may be recovered by civil action brought in the name of the United States. Recovery of an erroneous refund by civil action is allowed if the action is begun within two years after the refund is made, or five years if it appears that any part of the refund was induced by fraud or misrepresentation.
Explanation of Provision

The provision requires the Secretary to prescribe regulations within six months of the date of enactment of this Act to establish procedures to allow taxpayers to report instances in which a refund made by the Secretary by electronic funds transfer was not transferred to the account of the taxpayer, to coordinate with financial institutions to identify and recover these payments, and to deliver refunds to the correct accounts of taxpayers.

Effective Date

The provision is effective on the date of enactment (July 1, 2019).

TITLE II—21ST CENTURY IRS

Subtitle A—Cybersecurity and Identity Protection

1. Public-private partnership to address identity theft tax refund fraud (sec. 2001 of the Act)

Present Law

The Security Summit, formed in 2015, is a partnership of the IRS, State tax agencies, and the private-sector tax industry to address tax refund fraud caused by identity theft. In 2016, the Security Summit group members identified and agreed to share more than 20 data components relating to Federal and State returns to improve fraud detection and prevention. For example, group members are sharing computer device identification data tied to the return’s origin, as well as the improper or repetitive use of the numbers that identify the internet address from where the return originates.\textsuperscript{103} Tax software providers agreed to enhance identity requirements and strengthen validation procedures for new and returning customers to protect their accounts from theft. Along with the IRS, 40 State departments of revenue, and 21 tax industry members have signed onto a Memorandum of Understanding regarding roles, responsibilities and information sharing pathways among the IRS, States and industry.\textsuperscript{104} In 2017, the IRS reported there was a 40 percent decline in the number of taxpayers reporting to the IRS that they are victims of identity theft, attributing the decline to the initiatives of the Security Summit.\textsuperscript{105}

Explanation of Provision

The provision requires the Secretary (or the Secretary’s delegate) to work collaboratively with the public and private sectors to protect taxpayers from identity theft tax refund fraud.

Effective Date

The provision is effective on the date of enactment (July 1, 2019).

\textsuperscript{104} Ibid.
\textsuperscript{105} Internal Revenue Service, IR-2018-21, Key IRS Identity Theft Indicators Continue Dramatic Decline in 2017; Security Summit Marks 2017 Progress Against Identity Theft (February 8, 2018).
2. Recommendations of Electronic Tax Administration Advisory Committee regarding identity theft refund fraud (sec. 2002 of the Act)

Present Law

RRA98 authorized the Electronic Tax Administration Advisory Committee (“ETAAC”). ETAAC was intended to provide input to the IRS on electronic tax administration. ETAAC’s responsibilities involve researching, analyzing, and making recommendations on a variety of electronic tax administration issues. Pursuant to RRA98, ETAAC reports to Congress annually concerning:

- IRS’s progress on reaching its goal to electronically receive 80 percent of tax and information returns;
- Legislative changes assisting the IRS in meeting the 80 percent goal;
- Status of the IRS’s strategic plan for electronic tax administration; and
- Effects of e-filing tax and information returns on small businesses and the self-employed.

ETAAC members come from State departments of revenue, large tax preparation companies, solo tax practitioners, tax software companies, financial services industry and low income and consumer advocacy groups.106

Explanation of Provision

In addition to the requirements under present law, the provision requires ETAAC to study (including through organized public forums) and make recommendations to the Secretary regarding methods to prevent identity theft and refund fraud.

Effective Date

The provision is effective on the date of enactment (July 1, 2019).

3. Information sharing and analysis center (sec. 2003 of the Act and sec. 6103 of the Code)

Present Law

Information Sharing and Analysis Center

The Security Summit, formed in 2015, is a partnership of the IRS, State tax agencies, and the private-sector tax industry to address tax refund fraud caused by identity theft. In 2016, the Security Summit created an Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (“ISAC”).107 The ISAC is a secure, web-based venue for States, industry and the IRS to share and exchange information. The ISAC enables the IRS and the States to work together with external third parties to serve as an early warning system for tax refund fraud, identity theft schemes, and cybersecurity issues. A third-party contractor hosts, maintains,
Confidentiality and disclosure of return information

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code. The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability under the Code of any person for any tax, penalty, interest or offense. The term “return information” includes, among other items:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

There are several exceptions to the general rule of confidentiality. Such exceptions include provisions to permit disclosures to State tax administration officials, for IRS employees and officers to make investigative disclosures, and rules to allow one authorized party to disclose to another authorized party with the permission of the Commissioner.

The IRS exchanges confidential information with State tax agencies under the authority of section 6103(d). The disclosures are made pursuant to written request from the head of the State tax agency, which designates the State tax officials who can receive the information. The information can only be used for State tax purposes, not for general State civil or criminal law enforcement. The State officials can redisclose the information to other officers and employees of the State tax agency, the agency's legal representative, or the agency's contractors (but only for State tax administration purposes). The IRS uses this authority to alert State tax administration officials to tax refund fraud schemes.

IRS officers and employees may disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected, or with respect to the enforcement of any other provision of Title 26. Such disclosures are to be made only in such situations and under such conditions as the Secretary may prescribe by regulation. This provision generally cannot be used to provide

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108 Sec. 6103(a).
109 Sec. 6103(b)(2)(A).
110 Sec. 6103(d) (disclosures to States), 6103(k)(6) (investigative disclosures) and the Treasury regulations under sec. 6103(p)(2)(B).
111 Sec. 6103(k)(6); Treas. Reg. sec. 301.6103(k)(6)–1.
confidential return information on an industry-wide basis to alert return preparers to potential fraud schemes.

Under the Treasury regulations, returns or return information that have been obtained by a Federal, State, or local agency, or its agents or contractors, in accordance with section 6103 (the first recipient) may be disclosed by the first recipient to another recipient authorized to receive such returns or return information under section 6103 (the second recipient).\textsuperscript{112} The disclosure must be approved by the Commissioner. The second recipient may receive only such returns or return information as authorized by the provision of section 6103 applicable to such recipient and only for a purpose authorized by and subject to any conditions imposed by section 6103, including applicable safeguards.

**Preparer disclosure penalties**

The Code provides for a civil penalty for a tax return preparer who (i) discloses any information furnished to the preparer for, or in connection with, the preparation of such return or (ii) uses such information for any purpose other than to prepare or assist in preparing any such return.\textsuperscript{113} There is a corresponding criminal penalty under section 7216 of the Code for knowing or reckless conduct. The same exceptions from the imposition of the criminal penalty apply for purposes of the civil penalty. In general, the penalty does not apply for disclosures permitted by the Code or pursuant to an order of a court. Further, the penalty does not apply to the use of information in the preparation of, or in connection with the preparation of State and local tax returns and declarations of estimated tax of the person to whom the information relates. The Code also permits the Secretary to provide additional exceptions through regulations. The Secretary has prescribed by regulation the circumstances not involving tax preparation in which disclosure and use of a taxpayer’s information by a tax return preparer is permitted.\textsuperscript{114}

**Penalties for the unauthorized disclosure or inspection of return information**

The unauthorized disclosure of a return or return information is a felony punishable by fine of up to $5,000, five years imprisonment or both. Unauthorized inspection is a misdemeanor, punishable by a fine of up to $1,000, one year imprisonment, or both.

**Explanation of Provision**

**ISAC participation and performance metrics**

The provision provides that the Secretary (or the Secretary’s delegate) may participate in an information sharing and analysis center. The purpose of such participation is to centralize, standardize and enhance data compilation and analysis to facilitate sharing actionable data and information with respect to identity theft tax refund fraud. The provision requires the Secretary (or the Secretary’s\textsuperscript{112} Treas. Reg. sec. 301.6103(p)(2)(B)–1.

\textsuperscript{113} Sec. 6713.

\textsuperscript{114} Treas. Reg. secs. 301.7216–1, 301.7216–2 and 301.7216–3.
delegate) to develop metrics for measuring the success of such center in detecting and preventing identity theft tax refund fraud.

**Disclosure of return information to certain ISAC participants**

**In general**

The provision authorizes the disclosure of specified return information to ISAC participants who have entered into a written information sharing agreement with the Secretary. Under such procedures and subject to such conditions as the Secretary may prescribe, the Secretary may disclose specified return information to specified ISAC participants if such disclosure is in furtherance of effective Federal tax administration relating to the following: (1) the detection or prevention of identity theft tax refund fraud; (2) validation of taxpayer identity; (3) authentication of taxpayer returns; or (4) the detection or prevention of cybersecurity threats to the IRS.

**Terminology**

**Specified ISAC participant**

The term “specified ISAC participant” means any person designated by the Secretary as having primary responsibility for a function performed by the ISAC and any return preparer (or other person) subject to section 7216 and who is a participant in the ISAC. A person is only a specified ISAC participant if such person has entered into a written information sharing agreement with the Secretary. The information sharing agreement must set forth the terms and conditions for the disclosure of information to such person, including the requirements imposed on such person for the protection and safeguarding of such information. The information sharing agreement must require that recipients of return information under the provision are required to affirmatively report to TIGTA any unauthorized access or disclosure of information and any breaches of any system holding the information.

**Specified return information**

For purposes of the provision, the term “specified return information” means, in the case of a return filed electronically, which is in connection with a case of potential identity theft tax refund fraud, return information related to the electronic filing characteristics of such return. Such characteristics include: internet protocol address, device identification, email domain name, speed of completion, method of authentication, refund method, and such other return information relating to the electronic filing characteristics of such return as the Secretary may identify. In addition, with respect to a return prepared by a tax return preparer in connection with a case of potential identity theft refund fraud, “specified return information” also includes identifying information with respect to such tax return preparer, including the preparer taxpayer identification number (“PTIN”) and electronic filer identification number (“EFIN”) of such preparer.

With respect to a return for which identity theft refund fraud has been confirmed by the Secretary (pursuant to such procedures as
the Secretary may provide), “specified return information” also includes the name and taxpayer identification number of the taxpayer as it appears on the return, and any bank account and routing information provided for making a refund in connection with such return.

Finally, in the case of any cybersecurity threat to the IRS, information similar to that associated with cases of potential identity theft refund fraud (e.g., electronic characteristics and preparer identifying information) are considered specified return information with respect to such threat.

Restriction on use of disclosed information

Any return information received by a specified ISAC participant under the provision is to be used only for the purposes of and to the extent necessary in (1) performing the function the person is designated to perform with respect to the ISAC, (2) facilitating authorized disclosures to return preparers who are specified ISAC participants, and (3) facilitating disclosures authorized under section 6103(d) to State tax authorities who are participants in the ISAC. Return information received by specified ISAC participants who are return preparers is treated for purposes of section 7216 as information furnished to such person for, or in connection with, the preparation of a return of tax.

Data protection, safeguards, penalties

As noted above, to be a specified ISAC participant, the person must enter into an information sharing agreement that includes, among other responsibilities, requirements for the protection and safeguarding of information received under the provision. The return information disclosed under the provision is subject to such protections and safeguards as the Secretary may require by regulations, other guidance, or written information sharing agreement. Recipients of return information under the provision are subject to civil and criminal penalties for the unauthorized disclosure or inspection of returns or return information.

Effective Date

The provision is generally effective on the date of enactment (July 1, 2019). The disclosure provisions are effective for disclosures made on or after the date of enactment.

4. Compliance by contractors with confidentiality safeguards (sec. 2004 of the Act and sec. 6103 of the Code)

Present Law

Section 6103 permits the disclosure of returns and return information to State agencies, as well as to other Federal agencies for specified purposes. Section 6103(p)(4) requires, as a condition of receiving returns and return information, that State agencies (and others) provide safeguards as prescribed by the Secretary of the Treasury by regulation that are necessary or appropriate to protect
the confidentiality of returns or return information. It also requires that a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary regarding the procedures established and utilized for ensuring the confidentiality of returns and return information. After an administrative review, the Secretary may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information.

Under present law, employees of a State tax agency may disclose returns and return information to contractors for tax administration purposes. These disclosures can be made only to the extent necessary to procure contractually equipment, other property, or services, related to tax administration. The contractors can make redisclosures of returns and return information to their employees as necessary to accomplish the tax administration purposes of the contract, but only to contractor personnel whose duties require disclosure. Treasury regulations prohibit disclosure to anyone other than contractor personnel without the written approval of the IRS.

By regulation, all contracts must provide that the contractor will comply with all applicable restrictions and conditions for protecting confidentiality prescribed by regulation, published rules or procedures, or written communication to the contractor. Failure to comply with such restrictions or conditions may cause the IRS to terminate or suspend the duties under the contract or the disclosures of returns and return information to the contractor. In addition, the IRS can suspend disclosures to the State tax agency until the IRS determines that the conditions are or will be satisfied. The IRS may take such other actions as are deemed necessary to ensure that such conditions or requirements are or will be satisfied.

**Explanation of Provision**

The provision requires that a State, local, or Federal agency conduct on-site reviews every three years of all its contractors or other agents receiving Federal returns and return information. If the duration of the contract or agreement is less than three years, a review is required at the mid-point of the contract. The purpose of the review is to assess the contractor’s efforts to safeguard Federal

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115 Sec. 6103(p)(4)(D).
116 Sec. 6103(p)(4)(E).
117 Sec. 6103(p)(4) (flush language) and (7); Treas. Reg. sec. 301.6103(p)(7)–1.
118 Sec. 6103(n) and Treas. Reg. sec. 301.6103(n)–1(a). ‘‘Tax administration’’ includes ‘‘the administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws or related statutes (or equivalent laws and statutes of a State).’’ Sec. 6103(b)(4).
119 Treas. Reg. sec. 301.6103(n)–1(a).
120 Treas. Reg. sec. 301.6103(n)–1(a) and (b). A disclosure is necessary if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically accomplished without such disclosure. Treas. Reg. sec. 301.6103(n)–1(b). The regulations limit the quantity of information to that needed to perform the contract.
121 Treas. Reg. sec. 301.6103(n)–1(a) and (b).
122 Treas. Reg. sec. 301.6103(n)–1(e)(3).
123 Treas. Reg. sec. 301.6103(n)–1(e)(4).
124 Ibid.
125 Ibid.
returns and return information. This review is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the provision, the State, local, or Federal agency is required to submit a report of its findings to the IRS and certify annually that such contractors and other agents are in compliance with the requirements to safeguard the confidentiality of Federal returns and return information. The certification is required to include the name and address of each contractor or other agent with the agency, the duration of the contract, and a description of the contract or agreement with the State, local, or Federal agency.

The provision does not apply to contracts for purposes of Federal tax administration. The provision does not alter or affect in any way the right of the IRS to conduct safeguard reviews of State, local, or Federal agency contractors or other agents. It also does not affect the right of the IRS to initially approve the safeguard language in the contract or agreement and the safeguards in place prior to any disclosures made in connection with such contracts or agreements.

**Effective Date**

The provision is effective for disclosures made after December 31, 2022.

5. **Identity protection personal identification numbers (sec. 2005 of the Act)**

**Present Law**

In 2011, the IRS launched a pilot program to test the Identity Protection Personal Identification Number (“IP PIN”). The IP PIN is a unique six-digit identifier that authenticates a return filer as the legitimate taxpayer at the time the return is filed. The IP PIN allows taxpayers affected by identity theft to avoid delays in filing returns and receiving refunds. The IRS verifies the presence of the IP PIN at the time of filing, and rejects returns associated with a taxpayer’s account where an IP PIN has been assigned but is missing. For the 2018 filing season, the IRS issued IP PINs to almost 3.5 million taxpayers who had identity theft markers on their tax accounts.126

In January 2014, the IRS also started a limited pilot program under which taxpayers who obtained an electronic filing PIN through an IRS authentication website and live in the District of Columbia, Florida, or Georgia were provided an opportunity to obtain an IP PIN.127 These locations were selected because they had the highest per capita rate of tax-related identity theft when the initiative was piloted. Residents in these places do not need to be identity theft victims to participate. Recently, the IRS expanded the program to allow taxpayer who filed their federal tax return

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last year as a resident of Michigan, California, Maryland, Nevada, Delaware, Illinois, or Rhode Island to be eligible for an IP PIN.\footnote{In 2020, the IRS further expanded the IP PIN program to 10 additional States (Arizona, Colorado, Connecticut, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Texas, and Washington). In 2020, 49,296 individual taxpayers obtained an IP PIN through the opt-in program which enables taxpayers who are concerned about becoming a victim of identity theft to proactively request an IP PIN. Inspector General for Tax Administration, Department of the Treasury, Taxpayer First Act: Implementation of Identity Theft Victim Assistance Provisions (TIGTA 2020–45–070), September 10, 2020, available at https://www.oversight.gov/sites/default/files/oig-reports/202045070fr.pdf (last visited October 23, 2020).}

**Explanation of Provision**

Within five years of the date of enactment, the Secretary or the Secretary’s delegate is required to establish a program to issue an IP PIN to any individual residing in the United States who requests one to assist the Secretary in verifying the individual’s true identity. For each calendar year beginning after the date of enactment, the Secretary is required to expand the issuance of IP PINs to individuals residing in such States as the Secretary deems appropriate, provided that the total number of States served by the program continues to increase.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

6. **Single point of contact for tax-related identity theft victims (sec. 2006 of the Act)**

**Present Law**

Tax-related identity theft generally takes one of two forms: refund fraud or employment fraud. In refund fraud, a perpetrator may obtain a taxpayer’s identifying information, submit an individual income tax return using a falsified Form W–2, Wage and Tax Statement, and fraudulently claim a refund. In employment fraud, the stolen identifying information is used in order to obtain employment. The returns then filed using the stolen identity may be based on the actual wages and withholding of the identity thief. Victims of the employment fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that personal information.

The IRS describes its procedures for addressing both types of fraud in the Internal Revenue Manual.\footnote{Internal Revenue Service, Internal Revenue Manual, Identity Protection and Victim Assistance, Ch. 23, sec. 25.23.1 et seq. (October 2018).} The IRS initially established the Identity Protection Specialized Unit (“IPSU”) to assist victims of identity theft, but taxpayers were also referred to other operating units of the IRS to deal with various aspects of their cases.\footnote{Inspector General for Tax Administration, Department of the Treasury, Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service (TIGTA 2012–40–050), May 2012.} Subsequently reorganized and renamed the Identity Theft Victim Assistance (“IDTVA”) organization, the unit is staffed with specially trained employees who are able to assess each case, identify issues, and assist the taxpayer in getting the correct return
filed, refunds issued, etc. The IDTVA organization’s work is coordinated by the IRS’s Identity Protection Program through the auspices of an oversight office within the Wage and Investment Operating Division.

If a victim thinks he or she is not being properly served by the IRS or the IDTVA organization, the victim may be eligible for assistance from the TAS. In such instances, the TAS will assign a case advocate to the taxpayer’s account.

**Explanation of Provision**

The provision requires the Secretary to establish procedures to implement a single point of contact for taxpayers adversely affected by identity theft. The single point of contact consists of a team of specially trained employees who can work across functions within the IRS to resolve problems for the victim and who are accountable for handling the case to completion. The makeup of the team may change as required to meet IRS’s needs, but the procedures must ensure continuity of records and case history and may require notice to the taxpayer in appropriate instances.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

7. **Notification of suspected identity theft (sec. 2007 of Act and new sec. 7529 of the Code)**

**Present Law**

Section 6103 provides that returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Code. The definition of “return information” is very broad and includes any information gathered by the IRS with respect to a person’s liability or possible liability under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense. Thus, information gathered by the IRS in connection with an investigation of a person for a Title 26 offense, such as fraud, is the return information of the person being investigated and is subject to the confidentiality restrictions of section 6103.

As an exception to section 6103’s general rule of confidentiality, the Code permits a taxpayer to receive his or her own tax return, and also can receive his or her return information if the Secretary determines that such disclosure would not seriously impair Federal tax administration. With respect to fraudulent tax returns, if the

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132 Internal Revenue Service, Internal Revenue Manual, Identity Protection and Victim Assistance, Ch. 23, sec. 25.23.1 et seq. (October 2018).

133 Sec. 6103(a).

134 Sec. 6103(b)(2).

135 Sec. 6103(c)(1) and (7). The Code also permits the disclosure of returns and return information to such persons or persons the taxpayer may designate, if the request meets the require-
victim’s name and Social Security number ("SSN") are listed as either the primary or secondary taxpayer on a fraudulent return, a victim of identity theft, or a person authorized to obtain the identity theft victim’s tax information, may request a redacted copy (one with some information blacked-out) of a fraudulent return that was filed and accepted by the IRS using the identity theft victim’s name and SSN. 136

In cases not involving violations of Title 26, under a Privacy Act Notice, TIGTA is allowed to disclose information to complainants, victims, or their representatives (defined to be a complainant’s or victim’s legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of an investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken. 137

Explanation of Provision

If the Secretary determines that there has been or may have been an unauthorized use of the identity of any individual, the provision requires the Secretary to, without jeopardizing an investigation relating to tax administration, as soon as practicable, notify the individual of such determination, and: (1) provide instructions to the individual about filing a report with law enforcement; (2) identify any steps to be taken by the individual to allow investigating law enforcement officials to access the taxpayer’s personal information; (3) provide information regarding actions the individual may take to protect themselves from harm relating to the unauthorized use; and (4) offer identity protection measures to the individual, such as the use of an identity protection personal identification number.

At the time this information is provided (or, if not available at such time, as soon as practicable thereafter), the Secretary shall issue additional notifications to such individual (or such individual’s designee) regarding: (1) whether an investigation has been initiated in regards to such unauthorized use; (2) whether the investigation substantiated an unauthorized use of the taxpayer’s identity; and (3) whether any action has been taken with respect to the individual who committed the substantiated violation, including whether any referral has been made for criminal prosecution of such individual, and, to the extent such information is avail-

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able, whether such person has been criminally charged by indictment or information.

For purposes of this provision, the unauthorized use of the identity of an individual includes the unauthorized use of the identity of the individual to obtain employment (herein “employment-related identity theft”). In making a determination as to whether there may have been an unauthorized use of the identity of an individual to obtain employment, the Secretary shall review certain information returns, as well as information provided to the IRS by the SSA, which indicates that the SSN used does not correspond with either the name on the information return or the name on the tax return reporting the income. This provision requires the Secretary to examine the statements, information returns, and tax returns described in the provision for any evidence of employment-related identity theft, regardless of whether such statements or returns are submitted electronically or on paper. The provision amends the Social Security Act to require the Commissioner of Social Security to request information described in the provision not less than annually. The provision also requires that the IRS establish procedures to ensure that income reported in connection with the unauthorized use of a taxpayer’s identity is not taken into account in determining any penalty for underreporting of income by the victim of identity theft.

**Effective Date**

The provision applies to determinations made after the date that is six months after the date of enactment (July 1, 2019) of this Act.

8. Guidelines for stolen identity theft refund fraud cases (sec. 2008 of the Act)

**Present Law**

Disparate elements in the tax laws and administration are implicated in identity theft. The tax aspects of identity theft can generally occur in one of two ways. In refund fraud, a perpetrator obtains someone else’s identifying information and submits an individual income tax return using the name and Social Security number of the victim, with a falsified Form W–2, Wage and Tax Statement, and fraudulently claims a refund. In other cases, the stolen identifying information is used in order to obtain employment; the returns then filed by the persons employed using the stolen identity may be based on the actual wages and withholding. Victims of the fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that personal information.

The IRS describes its procedures for addressing both types of fraud in its manual. Its work is coordinated by the IRS’s Identity Protection Program through the auspices of an oversight office.138

In the 2014 Annual Report to Congress, the NTA included a review of fraudulent refund claims that included the theft of a tax-

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The review found that such cases involved multiple issues requiring coordination among several business units of the IRS and took approximately six months to resolve. Identity theft victims were required to deal with multiple persons within the IRS to resolve the issues, either because a case involved multiple business units or was transferred among multiple employees within a business unit.

**Explanation of Provision**

The provision requires the Secretary (or the Secretary’s delegate), in consultation with the NTA, to develop and implement publicly available casework guidelines for the handling of refund fraud cases that would have the effect of reducing the administrative burdens on victims of identity theft. The guidelines may address both procedures and metrics for determining whether the procedures are successfully implemented. Among the issues to be considered are the standards for opening, assigning, reassigning or closing a case; the average length of time in which a case with an identity theft issue should be resolved; the average length of time a victim entitled to a tax refund may have to wait to receive such refund; and the number of IRS offices and employees with whom a victim should interact to resolve a case.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019), with guidelines to be implemented within one year of the date of enactment.

9. **Increased penalty for improper disclosure or use of information by preparers of returns (sec. 2009 of the Act and sec. 6713 of the Code)**

**Present Law**

The Code provides both civil and criminal penalties for a tax return preparer who discloses any information furnished to the preparer for, or in connection with, the preparation of such return or uses such information for any purpose other than to prepare or assist in preparing, any such return. The civil penalty is $250 for each unauthorized disclosure or use up to $10,000 per calendar year. The corresponding criminal penalty under section 7216 provides that knowing or reckless conduct is a misdemeanor, subject to a fine up to $1,000, one year of imprisonment, or both, together with the costs of prosecution.

Section 6103(b)(6) defines “taxpayer identity” as the name of the person with respect to whom a return is filed, his mailing address, his taxpayer identifying number or a combination thereof.

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140 Sec. 6713.
Explanation of Provision

The provision increases the civil penalty on the unauthorized disclosure or use of information by tax return preparers from $250 to $1,000 for cases in which the disclosure or use is made in connection with a crime relating to the misappropriation of another person’s taxpayer identity (“taxpayer identity theft”). The provision also increases the calendar year limitation from $10,000 to $50,000. The calendar year limitation is applied separately with respect to disclosures or uses made in connection with taxpayer identity theft.

The provision also increases the criminal penalty for knowing or reckless conduct to $100,000 in the case of disclosures or uses in connection with taxpayer identity theft.

Effective Date

The provision applies to disclosures or uses on or after the date of enactment (July 1, 2019).

Subtitle B—Development of Information Technology

1. Management of IRS information technology (sec. 2101 of the Act and sec. 7803 of the Code)

Present Law

The Code describes duties and responsibilities for the Commissioner, the Chief Counsel, and the OTA of the IRS. It does not presently enumerate duties and responsibilities of an IRS Chief Information Officer (“IRS CIO”).

Also, the Code does not explicitly provide for development and implementation of a multiyear strategic plan for the information technology needs of the IRS, and does not require verification and validation of major acquisitions of information technology by the IRS, including the Customer Account Data Engine 2 (“CADE 2”) and the Enterprise Case Management System (“ECM”).

Explanation of Provision

Under the provision, the Commissioner is required to appoint an IRS CIO. The Commissioner and the Secretary will act through the IRS CIO with respect to the development, implementation, and maintenance of information technology for the IRS. The IRS CIO will be responsible for the development, implementation, and maintenance of information technology for the IRS, for ensuring that the information technology of the IRS is secure and integrated, for maintaining operational control of all information technology for the IRS, for acting as the principal advocate for the information technology needs of the IRS, and for consulting with the Chief Procurement Officer of the IRS to ensure that the information technology acquired for the IRS is consistent with the strategic plan, described below.

The IRS CIO will also be responsible for developing and implementing a multiyear strategic plan for the information technology needs of the IRS. This plan should include performance measures

141 Sec. 7803.
of such technology and its implementation, and a plan for an inte-
gerated enterprise architecture of the information technology of the
IRS. It should take into account the resources needed to accomplish
such a plan, as well as planned major acquisitions of information
technology by the IRS. The plan should also align with the needs
and strategic plan of the IRS. The IRS CIO will review and update
this plan at least once a year, taking into account the development
of new information technology and the needs of the IRS.

Under the provision, the Commissioner will develop plans for
each phase of CADE 2, except phase one, and enter into a contract
with an independent reviewer to verify and validate implementa-
 tion plans developed for each phase, except phase one, and for the
ECM. Furthermore, the Chief Procurement Officer of the IRS is di-
rected to regularly consult with the IRS CIO and to identify all sig-
nificant IRS information technology acquisitions in excess of
$1,000,000, providing written notification to the IRS CIO of each
such acquisition in advance of acquisition.

The verification and validation of phase two of CADE 2 and the
ECM are to be completed within one year after the date of enact-
ment. The development of plans for all subsequent phases of CADE
2 should be completed within one year after the date of enactment
and the verification and validation of each phase should be com-
pleted within one year after the date on which the plan for such
phase is completed.

Effective Date

The provision is generally effective on the date of enactment
(July 1, 2019).

2. Internet platform for Form 1099 filings (sec. 2102 of the
Act)

Present Law

The Code does not presently require the IRS to make available
an internet platform for the preparation or filing of information re-
turns, such as the Form 1099 series.

Explanation of Provision

The provision requires the Secretary of the Treasury (or his or
her delegate) to make available, by January 1, 2023, an internet
website or other electronic medium (the “website”), with a user
interface and functionality similar to the Business Services Online
Suite of Services provided by the Social Security Administration.\textsuperscript{142}
The website will allow persons, with access to resources and guid-
ance provided by the IRS, to prepare, file, and distribute Forms
1099, and maintain a record of completed, filed, and distributed
Forms 1099. The Secretary is required to ensure that the services
provided on the website are not a replacement for services cur-
rently provided by the IRS and that the website comply with applic-
able security standards.

\textsuperscript{142} Available at http://www.ssa.gov/bso/bsowelcome.htm (last visited October 23, 2020).
Effective Date

The provision is effective on the date of enactment (July 1, 2019).

3. Streamlined critical pay authority for information technology positions (sec. 2103 of the Act and new sec. 7812 of the Code)

Present Law

The IRS is currently subject to the personnel rules and procedures set forth in Title 5 of the United States Code. Under these rules, IRS employees generally are classified under the General Schedule or the Senior Executive Service.

The RRA98 provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay authority.143 This authority was originally provided for 10 years; it was extended on two occasions and ultimately expired on September 30, 2013.144

Under RRA98, the Secretary of the Treasury, or his delegate, was authorized to fix the compensation of, and appoint up to 40 individuals to, designated critical technical and professional positions, provided that: (1) the positions require expertise of an extremely high level in a technical or professional field and are critical to the IRS; (2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position; (3) designation of such positions is approved by the Secretary; (4) the terms of such appointments are limited to no more than four years; (5) appointees to such positions are not IRS employees immediately prior to such appointment; and (6) the total annual compensation for any position (including performance bonuses) does not exceed the rate of pay of the Vice President of the United States.

These appointments would not be subject to the otherwise applicable requirements under Title 5. All such appointments would be excluded from the collective bargaining unit and the appointments would not be subject to approval of the OMB or the Office of Personnel Management.

Also, OMB was authorized to approve increases in the pay level for certain critical pay positions requested by the Secretary. These critical pay positions would be critical, technical and professional positions other than those designated under the streamlined authority described above. OMB was authorized to approve requests for critical position pay up to the highest total compensation that does not exceed the rate of pay of the Vice President of the United States.

According to TIGTA, during the years in which it had streamlined critical pay authority, the IRS exercised that authority to fill

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168 positions, the majority of which were in the Information Technology function of the IRS.145

**Explanation of Provision**

The provision reinstates streamlined critical pay authority at IRS for positions in its information technology operations that are necessary to ensure the functionality of such operations. Such authority is reinstated during the period beginning on the date of the enactment of section 7812 of the Code, and ending on September 30, 2025, for appointees to such positions who were not IRS employees prior to the date of enactment of this Act.

The provision reinstates the ability to provide payment for recruitment, retention, relocation incentives, and relocation expenses for positions in information technology operations at the IRS. Such authority is reinstated during the period beginning on the date of the enactment of section 7812 of the Code and ending on September 30, 2025.

The provision also reinstates the ability to pay performance bonuses for senior executives who have program management responsibility over the information technology operations at the IRS. Such authority is reinstated during the period beginning on the date of the enactment of section 7812 of the Code and ending on September 30, 2025.

**Effective Date**

The provision is effective for payments made on or after the date of enactment (July 1, 2019).

**Subtitle C—Modernization of Consent-Based Income Verification System**

1. Disclosure of taxpayer information for third-party income verification (sec. 2201 of the Act and sec. 6103 of the Code)

**Present Law**

**Disclosure of return information with consent of the taxpayer**

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26.146 Under section 6103(c), the IRS may disclose the return or return information of a taxpayer to a third party designated by the taxpayer in a request for or consent to such disclosure. Treasury regulations set forth the requirements for such consent.147 A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure. At the time the con-
sent is signed and dated by the taxpayer, the written document must indicate: (1) the taxpayer’s taxpayer identity information; (2) the identity of the person(s) to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year(s) covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer.

**Income Verification Express Service (IVES)**

Mortgage lenders and others in the financial community use the IRS’s Income Verification Express Service (“IVES”) to confirm the income of a borrower during the processing of a loan application.\textsuperscript{148} Customers of IVES fax to a specified IRS office a signed Form 4506-T (“Request for Transcript of Tax Return”) or Form 4506T-EZ (“Short Form Request for Individual Tax Return Transcript”). The IRS provides three types of transcript information as part of the IVES program: (1) a return transcript; (2) Form W–2 (“Wage and Tax Statement”) transcript information; and (3) Form 1099\textsuperscript{149} transcript information.

The IRS imposes a $2.00 fee for each transcript requested. The requested transcript information is delivered to a secure mailbox on the IRS's e-Services electronic platform, generally within two to three business days.

To participate in the IVES program, companies must register and identify employees to act as agents to receive transcripts on the company’s behalf.\textsuperscript{150} According to the Form 13803 (“Application to Participate in the Income Verification Express Services (IVES) Program”), the IRS conducts a suitability check on the applicant and all the principals listed on the application to determine the applicant’s suitability to be an IVES participant. After an applicant passes the suitability check and the IRS completes processing the application, the IRS notifies the applicant of acceptance to participate in the program.

**Explanation of Provision**

As noted above, the current IVES program requires that transcript information requests be submitted to the IRS by fax and then the transcripts are furnished electronically to a secure mailbox. After a specified time period, the provision requires the Secretary (or his delegate) to implement a qualified disclosure program that is fully automated, accomplished through the Internet, and through which disclosures are accomplished in as close to real-time as is practicable. The program is to comply with applicable security standards and guidelines. The term “qualified disclosure” means a disclosure made pursuant to section 6103(c) to a person seeking to


\textsuperscript{149} There are various Forms 1099: Form 1099-B, Proceeds From Broker or Barter Exchange Transactions; Form 1099-DIV, Dividends and Distributions; 1099-INT, Interest Income; 1099-MISC, Miscellaneous Income; 1099-OID, Original Issue Discount; or 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

\textsuperscript{150} Applicants also must choose one or more of the reasons listed on the form as the basis for using the IVES program: mortgage services, background check, credit check, banking service, licensing requirement, or other (must be specified).
verify the income of a taxpayer who is a borrower in the process of a loan application. “Qualified disclosure” is intended as a reference to the types of disclosures made under the current IVES program. The provision is not intended to exclude current uses of the IVES program.

To cover the costs of implementing such a program, for a two-year period beginning six months after the date of enactment, the Secretary is authorized to assess and collect a fee for qualified disclosures at such rates as the Secretary determines are sufficient to cover the costs related to implementing the program, including the costs of any necessary infrastructure or technology. Such fees are in addition to any other fee assessed and collected for such disclosures. The amounts received from the fees assessed and collected are to be deposited in and credited to an account solely for the purpose of carrying out the activities associated with implementing the qualified disclosure program. Not later than one year after the close of the two-year period, the Secretary is required to implement the program.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

2. Limit redisclosures and uses of consent-based disclosures of tax return information (sec. 2202 of the Act and sec. 6103 of the Code)

**Present Law**

**In general**

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26. Under section 6103(c), a taxpayer may designate in a request or consent to the disclosure by the IRS of his or her return or return information to a third party. Treasury regulations set forth the requirements for such consent. The request or consent may be in written or non-written form. The Treasury regulations require that the taxpayer sign and date a written consent. At the time the consent is signed and dated by the taxpayer, the written document must indicate (1) the taxpayer's identity information; (2) the identity of the person to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer. Present law does not require that a recipient receiving returns or return information by consent maintain the confidentiality of the information received. Under present law, the recipient is also free to use the information for purposes other than for which the information was solicited from the taxpayer.

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151 Sec. 6103(a).
152 Treas. Reg. sec. 301.6103(c)-1.
Criminal penalties

Under section 7206, it is a felony to willfully make and subscribe any document that contains or is verified by a written declaration that it is made under penalties of perjury and which such person does not believe to be true and correct as to every material matter. Upon conviction, such person may be fined up to $100,000 ($500,000 in the case of a corporation) or imprisoned up to three years, or both, together with the costs of prosecution.

Under section 7213, criminal penalties apply to: (1) willful unauthorized disclosures of returns and return information by Federal and State employees and other persons; (2) the offering of any item of material value in exchange for a return or return information and the receipt of such information pursuant to such an offer; and (3) the unauthorized disclosure of return information received by certain shareholders under the material interest provision of section 6103. Under section 7213, a court can impose a fine up to $5,000, up to five years imprisonment, or both, together with the costs of prosecution. If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

Under section 7213A, the willful and unauthorized inspection of returns and return information can subject Federal and State employees and others to a maximum fine of $1,000, up to a year in prison, or both, in addition to the costs of prosecution. If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

Civil damage remedies for unauthorized disclosure or inspection

If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of $1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.
The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal, projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, Annual Report to Congress, June 2017, IRS Pub. 3415, page 5.

**Sec. 6011(e).** Sec. 6011(e) uses the term "magnetic media" and Treasury regulation section 301.6011–2 defines this term to include electronic filing.

**Section 6011(e)(3)(B) defines a "specified tax return preparer" as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.**

**Treas. Reg. secs. 301.6011–5 and 301.6033–4.**

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**Explanation of Provision**

Under the provision, persons designated by the taxpayer to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.

**Effective Date**

The provision is effective for disclosures made six months after the date of enactment (July 1, 2019).

**Subtitle D—Expanded Use of Electronic Systems**

1. **Electronic filing of returns (sec. 2301 of the Act and sec. 6011 of the Code)**

**Present Law**

RRA98 states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA98 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007. The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically, and further requires that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at a reasonable cost.

The regulations require corporations that have assets of $10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns (U.S. Corporation Income Tax Return/U.S. Income Tax Return for an S Corporation) and Form 990 information returns (Return of Organization Exempt from Income Tax) for tax years ending on or after December 31, 2006. In determining whether the 250 returns threshold is met, income tax, excise tax, employment tax and information returns filed within one calendar year are counted.

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154 The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal, projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, Annual Report to Congress, June 2017, IRS Pub. 3415, page 5.

155 Sec. 6011(e), Sec. 6011(e) uses the term “magnetic media” and Treasury regulation section 301.6011–2 defines this term to include electronic filing.

156 Sec. 6011(e)(3)(B) defines a “specified tax return preparer” as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

The Code provides that failure to comply with information reporting requirements is subject to a failure to file correct information return penalty but provides a *de minimis* exception for failures that are attributable solely to noncompliance with the electronic filing requirements. Under the *de minimis* exception, failure to satisfy the electronic filing requirements results in imposition of a failure to file penalty if a failure arises with respect to: (1) more than 250 information returns; (2) more than 100 information returns in the case of a partnership having more than 100 partners; or (3) a return described in Section 6011(e)(4). Accordingly, there is a penalty waiver on the electronic filing requirements on the first 250 information returns or in the case of the first 100 information returns in partnerships with more than 100 partners.

**Explanation of Provision**

The provision relaxes the current restrictions on the authority of the Secretary to mandate electronic filing based on the number of returns required to be filed by a taxpayer in a given taxable period. First, it phases in a reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns and statements during a calendar year in order to be subject to a regulatory mandate. That threshold is reduced from 250 to 100 in the case of calendar year 2021, and from 100 to 10 in the case of calendar years after 2021. Notwithstanding these thresholds, in the case of a partnership the applicable number is 200 in the case of calendar year 2018, 150 in the case of calendar year 2019, 100 in the case of calendar year 2020, and 50 in the case of calendar year 2021.

The provision authorizes the Secretary to waive the requirement that a Federal income tax return prepared by a specified tax return preparer be filed electronically if a tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to lack of internet availability (other than dial-up or satellite service) in the geographic location in which the return preparation business is operated.

The provision modifies the special rule for failure to meet magnetic media requirements to conform to the changes made above.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

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158 Sec. 6721.
159 Sec. 6724.
160 There is no change to the requirement that partnerships having more than 100 partners must file electronic returns notwithstanding these thresholds.
2. Uniform standards for the use of electronic signatures for disclosure authorizations to, and other authorizations of, practitioners (sec. 2302 of the Act and sec. 6061 of the Code)

Present Law

Disclosure of return information by consent of the taxpayer

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.161 Under section 6103(c), the IRS may disclose the return or return information of a taxpayer to a third party designated by the taxpayer in a request for or consent to such disclosure. Treasury regulations set forth the requirements for such consent.162 A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure. At the time the consent is signed and dated by the taxpayer, the written document must indicate (1) the taxpayer’s taxpayer identity information; (2) the identity of the person(s) to whom disclosure is to be made; and (3) sufficient facts underlying the request for information or assistance to enable the IRS to determine the nature and extent of the information or assistance requested and the return or return information to be disclosed in order to comply with the taxpayer's request. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer.

Electronic signatures

The Secretary is required to develop procedures for the acceptance of signatures in digital and other electronic form.163 Until such time as such procedures are in place, the Secretary may waive the requirement of a signature for, or provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement or other document required or permitted to be made or written under the internal revenue laws and regulations. The Secretary is required to publish guidance as appropriate to define and implement any waiver of the signature requirements or alternative method of signing or subscribing. The IRS currently accepts electronic signatures for some applications, such as the Income Verification Express Services (“IVES”) program.164 Section 12.101 of the Federal Acquisition Regulations require all Federal agencies to consider commercially available items in the acquisition process.165

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161 Sec. 12.101 of the Federal Acquisition Regulations.
162 Sec. 6061.
163 Sec. 6103(a).
165 Specifically, section 12.101 of the Federal Acquisition Regulations provides that agencies: (1) conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency’s requirements; (2) acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and (3) require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.
IRS Forms

Form 2848 (Power of Attorney and Declaration of Representative) is used to authorize an individual to represent the taxpayer before the IRS. The individual must be eligible to practice before the IRS.

Form 8821 (Tax Information Authorization) authorizes an individual or organization to request and inspect a taxpayer’s confidential tax return information. Form 4506–T (Request for Transcript of Tax Return) authorizes an individual or organization to request and inspect transcripts of a taxpayer’s confidential return information. These forms do not authorize an individual to represent the taxpayer before the IRS.

Explanation of Provision

For a request under section 6103(c) for disclosure of a taxpayer’s return or return information to a practitioner, or for any power of attorney granted by a taxpayer to a practitioner, the provision requires the Secretary to publish guidance to establish uniform standards and procedures for the acceptance of taxpayers’ signatures appearing in electronic form with respect to such requests or power of attorney. Such guidance must be published within six months of the date of enactment. For purposes of the provision, a “practitioner” means an individual in good standing who is regulated under 31 U.S.C. sec. 330 (relating to practice before the Department of the Treasury).

Effective Date

The provision is effective on the date of enactment (July 1, 2019).

3. Payment of taxes by debit and credit cards (sec. 2303 of the Act and sec. 6311 of the Code)

Present Law

The Code generally permits the payment of taxes by commercially acceptable means such as credit cards. The Secretary may not pay any fee or provide any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes.

Explanation of Provision

The provision removes the prohibition on paying any fees or providing any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes to the extent taxpayers paying in this manner are fully responsible for any fees or consideration incurred. The provision requires the Secretary to seek to minimize the amount of any fee or other consideration that the Secretary pays under any contract.

\[166\) Sec. 6311.
\[167\) Sec. 6311(d)(2).
4. Authentication of users of electronic services accounts (sec. 2304 of the Act)

**Present Law**

The IRS has developed a suite of web-based products, called e-Services Online Tools for Tax Professionals, which provides multiple electronic products and services to tax professionals.

**Explanation of Provision**

The provision requires the IRS to verify the identity of any individual opening an e-Services account before such individual is able to use such services.

**Effective Date**

The provision is effective not later than 180 days after the date of enactment (July 1, 2019).

**Subtitle E—Other Provisions**

1. Repeal of provision regarding certain tax compliance procedures and reports (sec. 2401 of the Act)

**Present Law**

Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations.\(^{168}\) Section 2004 of RRA98 requires the Secretary of the Treasury or his delegate (“Secretary”) to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007.\(^{169}\) The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system. The Secretary was required to make the first report on the development of the return-free filing system to the tax-writing committees by June 30, 2000.

**Explanation of Provision**

The provision repeals section 2004 of RRA98.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

2. Comprehensive training strategy (sec. 2402 of the Act)

**Present Law**

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary.\(^{170}\) Unless otherwise speci-
fied by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage its resources. In the current strategic plan, cultivating a well-equipped, diverse, flexible and engaged workforce is identified as one of the IRS’s six strategic goals.171

Within the IRS, the OTA is expected to represent taxpayer interests independently in disputes with the IRS. The OTA has four principal functions: (1) to assist taxpayers in resolving problems with the IRS; (2) to identify areas in which taxpayers have problems in dealing with the IRS; (3) to propose changes in the administrative practices of the IRS to mitigate problems in areas in which taxpayers have issues in dealing with the IRS; and (4) to identify potential legislative changes which may be appropriate to mitigate such problems.172 The NTA supervises the OTA. The NTA reports directly to the Commissioner.

**Explanation of Provision**

The provision requires that the Commissioner submit to Congress a written report providing a comprehensive training strategy for employees of the IRS. The report is to be submitted not later than one year after the date of enactment of this Act, and is to include: a plan to streamline current training processes, including an assessment of the utility of further consolidating internal training programs, technology, and funding; a plan to develop annual training regarding taxpayer rights, including the role of the OTA, for employees that interface with taxpayers and the direct managers of such employees; a plan to improve technology-based training; proposals to focus employee training on early, fair, and efficient resolution of taxpayer disputes for employees that interface with taxpayers and the direct managers of such employees, as well as ensure consistency of skill development and employee evaluation throughout the IRS; and a thorough assessment of the funding necessary to implement such a strategy.

**Effective Date**

The provision is effective on the date of enactment (July 1, 2019).

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172 Sec. 7803(c).
TITLE III—MISCELLANEOUS PROVISIONS

Subtitle A—Reform of Laws Governing Internal Revenue Service Employees

1. Prohibition on rehiring any employee of the Internal Revenue Service who was involuntarily separated from service for misconduct (sec. 3001 of the Act and sec. 7804 of the Code)

Present Law

Employees of the IRS are subject to rules governing Federal employment generally, as well as rules of conduct specific to Department of the Treasury and the IRS. Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury.

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend any removal of the Chief Counsel). Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons, including determination and designation of posts of duty.

RRA98 requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties. The violations include: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under Titles VI or VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer...

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173 Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.
174 Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635; Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury, 5 CFR Part 3101; Department of the Treasury Employee Rules of Conduct, 31 CFR Part 0.
175 Sec. 7803(a).
176 Sec. 7804.
representative; (5) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

RRA98 provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Act also provides that the Commissioner, in his sole discretion, may establish a procedure to determine whether an individual should be referred for such a determination by the Commissioner. TIGTA is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in TIGTA's annual report to Congress.

**Explanation of Provision**

Under the provision, a former employee of the IRS who was involuntarily separated due to misconduct under subchapter A of Chapter 80 of the Code, under chapters 43 or 75 of Title 5 of the United States Code, or whose employment was terminated under section 1203 of RRA98, cannot be reemployed by the IRS.

**Effective Date**

The provision is effective with respect to the hiring of employees after the date of enactment (July 1, 2019).

2. **Notification of unauthorized inspection or disclosure of returns and return information (sec. 3002 of the Act and sec. 7431 of the Code)**

**Present Law**

Section 7431 provides for civil damages resulting from an unauthorized disclosure of inspection of return information. If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of $1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclo-
sure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.

**Explanation of Provision**

The provision requires the Secretary to notify a taxpayer if the IRS or a Federal or State agency (upon notice to the Secretary by such Federal or State agency) proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee’s unauthorized inspection or disclosure of the taxpayer’s return or return information. The provision requires the notice to include the date of the unauthorized inspection or disclosure and the rights of the taxpayer as a result of such administrative determination.

**Effective Date**

The provision is effective for determinations proposed after 180 days after the date of enactment (180 days after July 1, 2019).

**Subtitle B—Provisions Relating to Exempt Organizations**

1. Mandatory e-filing by exempt organizations (sec. 3101 of the Act and secs. 6033 and 6104 of the Code)

**Present Law**

RRA98 states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA98 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007. Section 2001(b) of RRA98 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations. The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically, and that all partnerships with more than 100 partners file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the

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178 The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, Annual Report to Congress, June 2017, IRS Pub. 3415, page 5.

179 Sec. 6011(e). Section 6011(e) uses the term “magnetic media,” which the Treasury regulation section 301.6011-2 defines to include electronic filing.

180 Section 6011(e)(3)(B) defines a “specified tax return preparer” as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.
Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at reasonable cost.

The regulations require corporations that have assets of $10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns and Form 990 information returns for tax years ending on or after December 31, 2006.181 In determining whether the 250 return threshold is met, income tax, information, excise tax, and employment tax returns filed within one calendar year are counted.

**Tax-exempt organizations**

Most tax-exempt organizations are required to file an annual information return or notice in the Form 990 series. Since 2007, the smallest organizations—generally, those with gross receipts of less than $50,000—may provide an abbreviated notice on Form 990-N, sometimes referred to as an “e-postcard.” Which form to file depends on the annual receipts, value of assets, and types of activities of the exempt organization. The public can view electronic images of Forms 990, 990–EZ, and 990–PF online, or purchase hard or soft copies from the IRS.182

In general, only the largest and smallest tax-exempt organizations are required to electronically file their annual information returns. First, as indicated above, tax-exempt corporations that have assets of $10 million or more and that file at least 250 returns during a calendar year must electronically file their Form 990 information returns. Private foundations and charitable trusts, regardless of asset size, that file at least 250 returns during a calendar year are required to file electronically their Form 990–PF information returns.183 Finally, organizations that file Form 990–N (the e-postcard) also must electronically file.184

**Explanation of Provision**

The provision extends the requirement to e-file to all tax-exempt organizations required to file statements or returns in the Form 990 series (including Form 990–T (“Exempt Organization Business Income Tax Return”)) or Form 8872 (“Political Organization Report of Contributions and Expenditures”). The provision also requires that the IRS make the information provided on the forms available to the public (consistent with the disclosure rules of section 6104 of the Code) in a machine-readable format as soon as practicable.

**Effective Date**

The provision generally is effective for taxable years beginning after the date of enactment (July 1, 2019). Transition relief is pro-
vided for certain organizations. First, for certain small organizations or other organizations for which the Secretary determines that application of the e-filing requirement would constitute an undue hardship in the absence of additional transitional time, the requirement to file electronically must be implemented not later than taxable years beginning two years following the date of enactment. For this purpose, small organization means any organization: (1) the gross receipts of which for the taxable year are less than $200,000; and (2) the aggregate gross assets of which at the end of the taxable year are less than $500,000. In addition, the provision grants IRS the discretion to delay the effective date not later than taxable years beginning two years after the date of enactment for the filing of Form 990–T (for reports of unrelated business taxable income or the payment of proxy tax under section 6033(e)).

2. Notice required before revocation of tax-exempt status for failure to file return (sec. 3102 of the Act and sec. 6033(j) of the Code)

Present Law

Applications for tax exemption

Section 501(c)(3) organizations

Section 501(c)(3) organizations (with certain exceptions) are required to seek formal recognition of tax-exempt status by filing an application with the IRS (Form 1023 (Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code) or Form 1023–EZ (Streamlined Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code)). In response to the application, the IRS issues a determination letter or ruling either recognizing the applicant as tax-exempt or not. Certain organizations are not required to apply for recognition of tax-exempt status in order to qualify as tax-exempt under section 501(c)(3) but may do so. These organizations include churches, certain church-related organizations, organizations (other than private foundations) the gross receipts of which in each taxable year are normally not more than $5,000, and organizations (other than private foundations) subordinate to another tax-exempt organization that are covered by a group exemption letter.

A favorable determination by the IRS on an application for recognition of tax-exempt status generally will be retroactive to the date that the section 501(c)(3) organization was created if it files a completed Form 1023 within 15 months of the end of the month in which it was formed. If the organization does not file Form 1023 or files a late application, it will not be treated as tax-exempt under section 501(c)(3) for any period prior to the filing of an application for recognition of tax exemption. Contributions to section

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185 See sec. 508(a).
186 Pursuant to Treas. Reg. sec. 301.9100–2(a)(2)(iv), organizations are allowed an automatic 12-month extension as long as the application for recognition of tax exemption is filed within the extended, i.e., 27-month, period. The IRS also may grant an extension beyond the 27-month period if the organization is able to establish that it acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Treas. Reg. secs. 301.9100–1 and 301.9100–3.
501(c)(3) organizations that are subject to the requirement that the organization apply for recognition of tax-exempt status generally are not deductible from income, gift, or estate tax until the organization receives a determination letter from the IRS.\textsuperscript{188}

\textit{Other section 501(c) organizations}

Most other types of section 501(c) organizations—including organizations described within sections 501(c)(4) (social welfare organizations, etc.), 501(c)(5) (labor organizations, etc.), or 501(c)(6) (business leagues, etc.)—are not required to apply for recognition of tax-exempt status. Rather, organizations are exempt under these subsections if they satisfy the requirements applicable to such organizations. However, an organization that intends to operate as a section 501(c)(4) organization must notify the Secretary no later than 60 days after its formation that it is operating as such by filing form 8976 (Notice of Intent to Operate Under Section 501(c)(4)). In addition, in order to obtain certain benefits such as public recognition of tax-exempt status, exemption from certain State taxes, and nonprofit mailing privileges, such organizations voluntarily may request a formal recognition of exempt status by filing a Form 1024 (Application for Recognition of Exemption under Section 501(a)) or Form 1024–A (Application for Recognition of Exemption under Section 501(c)(4) of the Internal Revenue Code).

\textit{Annual information returns}

Exempt organizations are required to file an annual information return, Form 990 (Return of Organization Exempt From Income Tax), stating specifically the items of gross income, receipts, disbursements, and such other information as the Secretary may prescribe.\textsuperscript{189} Exempt from the requirement are churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; certain institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.\textsuperscript{190}

An organization that is required to file an information return, but that has gross receipts of less than $200,000 during its taxable year, and total assets of less than $500,000 at the end of its taxable year, may file Form 990–EZ. If an organization normally has gross receipts of $50,000 or less, it must file Form 990–N (“e-postcard”), if it chooses not to file Form 990 or Form 990–EZ. Private foundations are required to file Form 990–PF rather than Form 990.

\textsuperscript{188} Sec. 508(d)(2)(B). Contributions made prior to receipt of a favorable determination letter may be deductible prior to the organizations receipt of such favorable determination letter if the organization has timely filed its application to be recognized as tax-exempt. Treas. Reg. secs. 1.508–1(a) and 1.508–2(b)(1)(i)(b).

\textsuperscript{189} Sec. 6033(a). An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a tax-exemption determination.

\textsuperscript{190} Sec. 6033(a)(3); Treas. Reg. secs. 1.6033–2(a)(2)(i) and (g)(1).
Revocation of exempt status

In general

An organization that has received a favorable tax-exemption determination from the IRS generally may continue to rely on the determination as long as “there are no substantial changes in the organization's character, purposes, or methods of operation.” A ruling or determination letter concluding that an organization is exempt from tax may, however, be revoked or modified: (1) by notice from the IRS to the organization to which the ruling or determination letter was originally issued; (2) by enactment of legislation or ratification of a tax treaty; (3) by a decision of the United States Supreme Court; (4) by issuance of temporary or final Regulations by the Treasury Department; (5) by issuance of a revenue ruling, a revenue procedure, or other statement in the Internal Revenue Bulletin; or (6) automatically, in the event the organization fails to file a required annual return or notice for three consecutive years (discussed in greater detail below). A revocation or modification of a determination letter or ruling may be retroactive if, for example, there has been a change in the applicable law, the organization omitted or misstated a material fact, or the organization has operated in a manner materially different from that originally represented. Upon revocation of tax-exemption or change in the classification of an organization (e.g., from public charity to private foundation status), the IRS publishes an announcement of such revocation or change in the Internal Revenue Bulletin.

Automatic revocation for failure to file information returns

If an organization fails to file a required Form 990-series return or notice for three consecutive years, the organization’s tax-exempt status is automatically revoked. A revocation for failure to file is effective from the date that the Secretary determines was the last day the organization could have timely filed the third required information return or notice. To again be recognized as tax-exempt, the organization must apply to the Secretary for recognition of tax-exemption, irrespective of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax exemption originally. An organization may not challenge under the Code’s declaratory judgment procedures (section 7428) a revocation of tax exemption made for failure to file annual information returns.
The Secretary is authorized to publish a list of organizations whose exempt status is automatically revoked.

**Explanation of Provision**

The provision requires that the IRS provide notice to an organization that fails to file a Form 990-series return or notice for two consecutive years. The notice must state that the IRS has no record of having received such a return or notice from the organization for two consecutive years and inform the organization about the revocation of the organization’s tax-exempt status that will occur if the organization fails to file such a return or notice by the due date for the next such return or notice. The notice must also contain information about how to comply with the annual information return and notice requirements under sections 6033(a)(1) and 6033(i).

**Effective Date**

The provision applies to failures to file returns or notices for two consecutive years if the return or notice for the second year is required to be filed after December 31, 2019.

**Subtitle C—Revenue Provision**

1. Increase in penalty for failure to file (sec. 3201 of the Act and sec. 6651(a) of the Code)

**Present Law**

The Federal tax system is one of “self-assessment,” i.e., taxpayers are required to declare their income, expenses, and ultimate tax due, while the IRS has the ability to propose subsequent changes. This voluntary system requires that taxpayers comply with deadlines and adhere to the filing requirements. While taxpayers may obtain extensions of time in which to file their returns, the Federal tax system consists of specific due dates of returns. In order to foster compliance in meeting these deadlines, Congress has enacted a penalty for the failure to timely file tax returns.197

A taxpayer who fails to file a tax return on or before its due date is subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 25 percent of the net amount.198 If the failure to file a return is fraudulent, the taxpayer is subject to a penalty equal to 15 percent of the net amount of tax due for each month the return is not filed, up to a maximum of 75 percent of the net amount.199 The net amount of tax due is the amount of tax required to be shown on the return reduced by the amount of any part of the tax that is paid on or before the date prescribed for payment of the tax and by the amount of any credits against tax that may be claimed on the return.200 The penalty will not apply if it is shown that the failure to file was due to reasonable cause and not willful neglect.201

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198 Sec. 6651(a)(1).
199 Sec. 6651(b)(1).
200 Sec. 6651(b)(1).
201 Sec. 6651(a)(1).
If a return is filed more than 60 days after its due date, and unless it is shown that such failure is due to reasonable cause, then the failure to file penalty may not be less than the lesser of $205 or 100 percent of the amount required to be shown as tax on the return. If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax shown on a return. If a return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of $205 or 100 percent of the amount required to be shown on the return.

The failure to file penalty applies to all returns required to be filed under subchapter A of Chapter 61 (relating to income tax returns of an individual, fiduciary of an estate or trust, or corporation; self-employment tax returns; and estate and gift tax returns), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), and subchapter A of chapter 53 (relating to machine guns and certain other firearms). The failure to file penalty is adjusted annually to account for inflation. The failure to file penalty does not apply to any failure to pay estimated tax required to be paid by sections 6654 or 6655.

**Explanation of Provision**

Under the provision, if a return is filed more than 60 days after its due date, then the failure to file penalty may not be less than the lesser of $330 (adjusted for inflation) or 100 percent of the amount required to be shown as tax on the return.

**Effective Date**

The provision applies to returns with filing due dates (including extensions) after December 31, 2019.
PART TWO: FOSTERING UNDERGRADUATE TALENT
BY UNLOCKING RESOURCES FOR EDUCATION
("FUTURE") ACT (PUBLIC LAW 116–91) 208

1. Secure disclosure of tax-return information to carry out the Higher Education Act of 1965 (sec. 3 of the Act and section 6103(l)(13) of the Code)

Present Law

Disclosures of return information to carry out income contingent repayment of student loans

Present law prohibits the disclosure of returns and return information, except to the extent specifically authorized by the Code. Under prior law section 6103(l)(13), an exception was provided for disclosure to the Department of Education (but not to contractors thereof) of a taxpayer’s filing status, adjusted gross income and identity information (i.e., name, mailing address, taxpayer identifying number) to establish an appropriate repayment amount for an applicable student loan. This disclosure authority for officers and employees of the Department of Education expired after December 31, 2007.

The Department of Education uses contractors to carry out its income contingent loan program. As noted above, prior law did not permit disclosure of return information to the Department’s contractors. The IRS subsequently developed the IRS Data Retrieval Tool, which is currently used by taxpayers to access their own tax information for purposes of completing the Department of Education’s income-driven repayment (“IDR”) plan applications and the Free Application for Federal Student Aid (“FAFSA”).

Accountings and Safeguards

Accountings

Unless specifically listed in the statute as excluded from the accounting requirement, section 6103(p)(3) requires the IRS to maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and

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208 H.R. 5363. The bill was introduced in the House of Representatives on December 9, 2019, and was passed by the House on December 10, 2019. The Senate passed the bill without amendment by voice vote the same day. The President signed the bill on December 19, 2019.

209 Sec. 6103(a).

210 IRS Offers Help to Students, Families to Get Tax Information for Student Financial Aid Applications. https://www.irs.gov/individuals/irs-offers-help-to-students-families-to-get-tax-information-for-student-financial-aid-applications (September 23, 2020). Section 6103(e) authorizes the IRS to allow taxpayers to access their own returns and return information and there are no restrictions on the information once received under this authority. Thus, by using the IRS Data Retrieval Tool, the disclosure is first to the taxpayer rather than directly to the contractors of the Department of Education.
of returns and return information inspected or disclosed under section 6103 (and section 6104(c)).

Safeguards

Section 6103(p)(4) requires, as a condition of receiving returns and return information, that Federal and State agencies and specified other recipients provide safeguards to the satisfaction of the Secretary of the Treasury as necessary or appropriate to protect the confidentiality of returns or return information. It also requires that a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary, regarding the procedures established and utilized for ensuring the confidentiality of returns and return information. The Secretary, after an administrative review, may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information.

Explanation of Provision

The Fostering Undergraduate Talent by Unlocking Resources for Education ("FUTURE") Act amended and rewrote section 6103(l)(13) to authorize the disclosure of certain return information for purposes of administering student financial aid and loan programs.

The provision requires the IRS to disclose certain return information to the Department of Education and others for the purpose of administering financial aid and loan programs. Upon receiving a written request from the Secretary of Education, the IRS must disclose specified return information to authorized persons for the purposes of (1) determining eligibility for, and repayment obligations under, income-contingent or income-based repayment plans; (2) monitoring and reinstating loans that were discharged based on a total and permanent disability; and (3) determining the eligibility for, and the amount of, awards of Federal student financial aid. Authorized persons may only use the disclosed information for the purposes above and for three additional purposes related to the programs. These additional purposes are (1) reducing the net cost of improper payments under such plans, relating to such awards, or relating to such discharges; (2) oversight activities by the Office of Inspector General of the Department of Education as authorized by the Inspector General Act of 1978; and (3) conducting analyses and forecasts for estimating costs related to such plans, discharges, or awards. The additional purposes do not include conducting criminal investigations or prosecutions.

An "authorized person" is any person who is an officer, employee, or contractor of the Department of Education, and is specifically authorized and designated by the Secretary of Education for purposes of the specific disclosure authority programs (income-contingent or income-based repayment plans, loans discharged based on a total and permanent disability, awards of Federal student financial aid (the designation is applied separately with respect to each

212 The Secretary of Education can make a request for disclosure under section 6103(l)(13) with respect to an individual only if the Secretary of Education has obtained approval from the individual for such disclosure.
The provision requires the Secretary of Education to designate the Inspector General of the Department of Education as an authorized person.

With the consent of the taxpayer, authorized persons may redisclose the return information received from the IRS to certain institutions of higher education, State higher education agencies, and scholarship organizations solely for use in financial aid programs.

The IRS is required to account for all disclosures made under section 6103(l)(13), including those made to the Department of Education and its contractors, as well as redisclosures made by authorized persons to institutions of higher education, State higher education agencies, and scholarship organizations. The Secretary of Education is required to annually submit a written report to the Secretary of the Treasury regarding: (1) redisclosures of return information to institutions of higher education, State higher education agencies, and scholarship organizations, including the number of such redisclosures; and (2) any unauthorized use, access, or disclosure of the return information under section 6103(l)(13).

All agencies and other persons described in section 6103(l)(13) as authorized to receive confidential return information (i.e., the Department of Education, its contractors, certain institutions of higher education, State higher education agencies, and scholarship organizations) are required to safeguard such information to the satisfaction of the Secretary.

Annually, the Secretary of the Treasury (or his designee) is to report to Congress a written report regarding disclosures using the authority of section 6103(l)(13), to include the information above that is reported by the Secretary of Education to the Secretary of the Treasury.

**Effective Date**

The provision is effective for disclosures after December 19, 2019.
PART THREE: FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020 (PUBLIC LAW 116–94) 213

DIVISION M—BIPARTISAN AMERICAN MINERS ACT OF 2019

1. Transfers to 1974 UMWA pension plan and inclusion in multiemployer health benefit plan (secs. 102 and 103 of the Act and sec. 402 of the Surface Mining Control and Reclamation Act of 1977)

Present Law

United Mineworkers of America (“UMWA”) retiree health benefits

In general

Three multiemployer plans provide retiree health benefits for employees in the coal industry (and their beneficiaries): the UMWA Combined Benefit Fund (“Combined Fund”), the UMWA 1992 Benefit Plan (“1992 Benefit Plan”), and the UMWA 1993 Benefit Plan (“1993 Benefit Plan”). In addition, retiree health benefits are provided to some retirees through plans maintained by their particular employers (“individual employer plans”). Moreover, pension benefits are provided by the UMWA 1974 Pension Plan (the “Pension Plan”).

The Combined Fund and the 1992 Benefit Plan were established under the Coal Industry Retiree Health Benefit Act of 1992 (the “Coal Act”). The Combined Fund provides health benefits with respect to retirees (and related beneficiaries) who, on July 20, 1992, were receiving health benefits under previous UMWA plans. The 1992 Benefit Plan provides benefits with respect to participants (and related beneficiaries) who were eligible for health benefits under previous UMWA plans based on age and service earned as of February 1, 1993, or to whom coverage was required to be provided by an individual employer plan but who does not receive cov-

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213 H.R. 1865. The bill was introduced in the House of Representatives on March 25, 2019 and was passed by the House on October 28, 2019. The Senate passed the bill with an amendment by unanimous consent on November 12, 2019. The House agreed to the Senate amendment with an amendment on December 17, 2019, and the Senate agreed to the House amendment on December 19, 2019. The President signed the bill the next day.

214 Another plan, the UMWA 1950 Pension Plan, generally covering employees who retired before 1976, was merged into the Pension Plan on June 30, 2007. Section 9701(a)(3) refers to the Pension Plan as the “1974 UMWA Pension Plan” and describes participation in the Pension Plan as being substantially limited to individuals who retired in 1976 and thereafter.


216 The previous plans were the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan.
The 1993 Benefit Plan was established under the National Bituminous Coal Wage Agreement of 1993. Generally, the 1993 Benefit Plan provides health benefits to certain retired and disabled mine workers who are not eligible for benefits under the Combined Fund or the 1992 Benefit Plan and would have been eligible for benefits under the previous UMWA plans, but for enactment of the Coal Act. The UMWA 1993 Benefit Plan also provides benefits to certain retirees under the Pension Plan whose last employer contributed to the 1993 Benefit Plan and whose retiree health benefits would end because, inter alia, the employer is no longer engaged in mining operations, is financially unable to provide the benefits, and has no related entity that is financially able to provide the benefits.

Retiree health plan funding

The Combined Fund and the 1992 Benefit Plan are funded in part by premiums required under the Code to be paid by coal mining operators. The 1993 Benefit Plan is funded in part by contributions by employers that are bargaining agreement signatories. The three plans (collectively, the “UMWA Health Plans”) are funded also in part by transfers under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”).

Under SMCRA, coal mining operators are required to pay certain fees to the Secretary of the Interior, which are deposited in the Abandoned Mine Reclamation Fund (commonly referred to as the “Abandoned Mine Land Fund” or the “AML Fund”). In addition to transfers to States and Indian tribes relating to mining reclamation, the Secretary of the Treasury (“Secretary”) is authorized to transfer interest earned on the AML Fund to the UMWA Health Plans for financial assistance. To the extent interest transferred from the AML Fund is not sufficient to provide benefits under the UMWA Health Plans, the Secretary is authorized under SMCRA to make supplemental payments on an annual basis from the General Fund of the U.S. Treasury. The supplemental payments to the UMWA Health Plans, together with payments from the General Fund for certain States and Indian Tribes, are subject to a combined annual limit of $490 million.

In the case of transfers of interest from the AML Fund to the 1993 Benefit Plan, the benefits due under the plan are determined by taking into account those retirees (and related beneficiaries) who were actually enrolled in the plan as of December 31,

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217 Section 9711 requires coverage under individual employer plans to be provided to participants (and related beneficiaries) receiving benefits as of February 1, 1993, or with respect to whom the age and service requirements for eligibility were met as of that date and who retired by September 30, 1994.

218 Secs. 9704 and 9712(d). Failure to pay the required premiums under section 9704 may result in the imposition of a penalty under section 9707. In addition, under section 9721, a civil action may be brought by a plan fiduciary, employer, or plan participant or beneficiary with respect to an obligation to pay the required premiums, in the same manner as a claim arising from an employer’s obligation to pay withdrawal liability under section 4301 of the Employee Retirement Income Security Act of 1974 (“ERISA”).


220 Sec. 402(i)(3) of SMCRA; 30 U.S.C. sec. 1232(i)(3). Amounts to be transferred to the recipients are adjusted as needed to come within this limit.

221 Under SMCRA, the 1993 Benefit Plan is referred to as the “Multiemployer Health Benefit Plan.”
2006, and who are eligible for benefits on the first day of the calendar year for which the transfer is made, even though those benefits were provided to the individual pursuant to a settlement agreement approved by order of a bankruptcy court entered on or before September 30, 2004; in other words, those individuals are considered to be actually enrolled in the Plan and receive benefits under the Plan beginning on December 31, 2006.

In 2016, SMCRA was amended to authorize the transfer of federal funds to the 1993 Benefit Plan through April 30, 2017, for an expanded group, including (1) retirees (and related beneficiaries) actually enrolled in the 1993 Benefit Plan as of the date of enactment of the Continued Health Benefits for Miners Act (the “2016 Act”), and who are eligible for benefits on the first day of the calendar year for which the transfer is made, and (2) retirees (and related beneficiaries) whose health benefits would be denied or reduced as a result of a bankruptcy proceeding commenced in 2012 or 2015.

In 2017, SMCRA was further amended to permanently authorize the annual transfer of funds to the 1993 Plan for those retirees.

The 2016 Act also contains additional rules with respect to a voluntary employees’ beneficiary association (“VEBA”) established as a result of a bankruptcy proceeding described in (2). The administrator of the VEBA is directed to transfer to the 1993 Benefit Plan any amounts received as a result of the bankruptcy proceeding, reduced by the amount of the VEBA’s administrative costs. Further, the amount that would otherwise be transferred by the Secretary to the 1993 Benefit Plan under SMCRA, as amended by the 2016 Act, is reduced by any amount transferred to the 1993 Benefit Plan by the VEBA.

**UMWA 1974 Pension Plan**

The Pension Plan is a multiemployer defined benefit plan established by the National Bituminous Coal Wage Agreement of 1974 between the United Mine Workers of America (“UMWA”) and the Bituminous Coal Operators Association (“BCOA”), effective December 6, 1974. The Pension Plan provides retirement, disability, and survivors’ benefits to employees in the coal industry and their beneficiaries in accordance with plan terms. SMCRA does not provide for funds to be transferred to the Pension Plan.

Like other pension plans, the Pension Plan is subject to various annual reporting and notice requirements under the Code and ERISA. Some of these reporting requirements are met by the filing of Form 5500, Annual Return/Report of Employee Benefit Plan.

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223 However, this group does not include individuals (and related beneficiaries) enrolled in the 1993 Benefit Plan under the terms of a participation agreement with the current or former employer of the individuals.

224 The Act further provides that individuals described in (2) are to be treated as eligible to receive health benefits under the 1993 Benefit Plan for the plan year that includes April 1, 2017.

225 A VEBA is an organization exempt from tax under section 501(c)(9).


227 In a multiemployer defined benefit pension, participants typically receive a monthly payment in retirement that is based on a formula that uses the participant’s length of service and a benefit rate.

228 See, for example, secs. 6057–6059 and ERISA secs. 101(f), 103 and 104.
Additional requirements apply in the case of an underfunded multi-employer defined benefit plan in endangered or critical status, including with respect to a funding improvement or rehabilitation plan.\footnote{For a discussion of the rules relating to plans in endangered or critical status, see Part I.D.3 of Joint Committee on Taxation, \textit{Present Law, Data, and Selected Proposals Relating to Multiemployer Defined Benefit Plans (JCX–9–16)}, February 26, 2016, available at www.jct.gov.}

\textbf{Explanation of Provisions}

\textit{Multiemployer health plan benefits and increase in cap}

\textit{Expanded coverage of bankruptcies}

Under the provision, transfers from the General Fund to the 1993 Benefit Plan are expanded to cover beneficiaries who are enrolled in the plan as of the date of enactment of the Act (December 20, 2019),\footnote{These beneficiaries must also be eligible to receive health benefits under the 1993 Benefit Plan on the first day of the calendar year for which the transfer is made, other than those beneficiaries enrolled in the plan under the terms of a participation agreement with the current or former employer of such beneficiaries.} as well as beneficiaries whose health benefits, which are payable following death or retirement or upon a finding of disability directly by an employer in the bituminous coal industry under a coal wage agreement,\footnote{Defined in sec. 9701(b)(1).} or a related coal wage agreement, would otherwise be denied or reduced as a result of a coal industry bankruptcy in 2018 or 2019.

\textit{Determination of the amount of the excess.}

In determining the amount of the excess that may be transferred to the multiemployer health benefit plan, the costs of administering the dispute resolution process (as of December 31, 2019) by the Trustees of the plan are to be taken into account. In addition, a related coal wage agreement taken into account in determining such excess is defined as an agreement between the UMWA and an employer in the bituminous coal industry that (1) is a signatory operator, or (2) is, or was, a debtor in a bankruptcy proceeding that was consolidated, administratively or otherwise, with the bankruptcy proceeding of a signatory operator or a related person to a signatory operator.

\textit{Increase in cap}

The combined annual limit on supplemental payments to the UMWA Health Plans, together with payments from the General Fund for certain States and Indian Tribes is increased from $490 million to $750 million under the provision.

\textbf{Transfers to the UMWA 1974 Pension Plan}

If amounts available for transfer under the revised $750 million annual limit exceed the amounts required to be transferred for other purposes (including to the UMWA Health Plans), the provision directs the Secretary to transfer the excess to the Pension Plan to pay plan benefits.\footnote{The provision describes the Pension Plan as the 1974 UMWA Pension Plan under section 9701(a)(5), but without regard to the limitation on participation to individuals who retired in 1976 and thereafter, thereby reflecting the merger of the UMWA 1950 Pension Plan into the Pension Plan.} Transfers are to end as of the first fis-
cal year beginning after the first plan year for which the Pension Plan’s funded percentage (as defined under the Code’s funding rules) is at least 100 percent. Until that time, the Pension Plan will be treated as if it is in critical status and will maintain and comply with its rehabilitation plan (including any updates).

During any fiscal year in which the Pension Plan receives a transfer, no plan amendment may be adopted that increases plan liabilities by reason of a benefit increase, a change in the accrual of benefits, or a change in the rate at which benefits vest under the plan unless the amendment is required as a condition for qualified retirement plan status under the Code. In addition, a transfer is not to be made for a fiscal year unless the persons obligated to contribute to the Pension Plan on the date of the transfer are obligated to make contributions at rates that are not less than those in effect on the date 30 days before the date of enactment of the provision (December 20, 2019). Any amounts transferred to the Pension Plan are disregarded in determining the unfunded vested benefits of the Pension Plan and the allocation of unfunded vested benefits to an employer for withdrawal liability purposes.

The provision applies additional reporting requirements to the Pension Plan. Not later than the 90th day of each plan year beginning after the date of enactment, the Pension Plan trustees must file with the Secretary and the Pension Benefit Guaranty Corporation ("PBGC") a report (including appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary) that provides—

- Whether the Pension Plan is in endangered or critical status;
- The Pension Plan’s funded percentage as of the first day of the plan year and the underlying actuarial value of assets and liabilities taken into account in determining the funded percentage;
- The market value of plan assets as of the last day of the preceding plan year;
- The total of all plan contributions made during the preceding plan year;
- The total benefits paid during the preceding plan year;
- Cash flow projections for the plan year and either the six or 10 succeeding plan years, at the election of the trustees, and the assumptions relied on in making the projections;
- Funding standard account projections for the plan year and the nine succeeding plan years, and the assumptions relied on in making the projections;
- The total investment gains or losses during the preceding plan year;
- Any significant reduction in the number of active participants during the preceding plan year and the reason for the reduction;

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233 See sec. 432(j)(2).
234 For purposes of secs. 412(b)(3), 432(e)(3) and 4971(g) and secs. 302(b)(3) and 305(e)(3) of ERISA.
235 However, the provisions of section 432(c) and (d) and section 305(c) and (d) of ERISA will not apply.
236 References in this description to "Secretary" include the Secretary’s delegate, for this purpose, the Internal Revenue Service.
• A list of employers that withdrew from the Pension Plan in the preceding plan year and the resulting reduction in contributions;
• A list of employers that paid withdrawal liability to the Pension Plan during the preceding plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to the withdrawal liability;
• Any material changes to benefits, accrual rates, or contribution rates during the preceding plan year;
• Any scheduled benefit increase or decrease in the preceding plan year having a material effect on plan liabilities;
• Details of any funding improvement plan or rehabilitation plan and updates;
• The number of participants and beneficiaries during the preceding plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries;
• The information contained in the Pension Plan’s most recent annual funding notice;
• The information contained in the Pension Plan’s most recent Form 5500; and
• Copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the Pension Plan and contribution obligations under those plans, a breakdown of the Pension Plan’s administrative expenses, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary may require, in consultation with the Secretary of Labor and the Director of the PBGC.

This report must be submitted electronically, and the Secretary is directed to share the information in the report with the Secretary of Labor. A failure to file the report on or before the date required results in a tax reporting penalty of $100 per day while the failure continues unless the Secretary determines that reasonable diligence was exercised by the plan sponsor in attempting to timely file the report.

**Effective Date**

The provision generally applies to fiscal years beginning after September 30, 2016. The reporting requirements relating to the Pension Plan apply to plan years beginning after the date of enactment.

The provisions relating to the expanded coverage of bankruptcies and the changes to the determination of the excess that may be transferred to the multiemployer health benefit plan are effective upon the date of enactment.
2. Reduction in minimum age for allowable in-service distributions (sec. 104 of the Act and secs. 401 and 457 of the Code)

Present Law

Overview

There are three basic types of funded tax-favored employer-sponsored defined contribution retirement plans: qualified employer plans, section 403(b) plans, and governmental section 457(b) plans. Under these plans, most contributions, earnings on contributions, and benefits are not included in gross income until amounts are distributed, even if the arrangement is funded and benefits are vested. Additionally, many distributions can be rolled over to another plan for further deferral of income inclusion. Defined contribution plans may provide for nonelective contributions and matching contributions by employers and elective deferrals or after-tax contributions by employees. Elective deferrals are contributions made pursuant to an election by an employee between cash compensation and a contribution to the plan.

Elective deferrals under a qualified plan may only be made under a section 401(k) plan. A section 401(k) plan is a profit-sharing or stock bonus plan that contains a qualified cash or deferred arrangement. Thus, such arrangements are subject to the rules generally applicable to qualified defined contribution plans. In addition, special rules apply to such arrangements. One requirement is that no distributions prior to severance from employment generally may be made for amounts attributable to elective deferrals unless the employee has attained age 591/2.

Section 403(b) plans are another form of tax-favored employer-sponsored plan that provide tax benefits similar to qualified retirement plans. Section 403(b) plans may be maintained only by (1) charitable organizations that are tax-exempt under section 501(c)(3), and (2) educational institutions of State or local governments (i.e., public schools, including colleges and universities). Elective deferrals are also permitted under section 403(b) plans and are subject to the same requirement that, generally, no distributions are permitted prior to severance from employment unless the employee has attained age 591/2.

Governmental section 457(b) plans

In the case of a State or local government employer, a section 457(b) plan is generally limited to elective deferrals and provides tax benefits similar to a section 401(k) or 403(b) plan in that deferrals are contributed to a trust or custodial account for the exclusive benefit of participants, but are not included in income until distributed (and may be rolled over to another tax-favored plan). However, distributions from a governmental section 457(b) plan prior to
severance from employment are generally not permitted until the employee attains age 70½.

**Distributions from a pension plan prior to a severance in employment**

For purposes of the qualification requirements applicable to pension plans, stock bonus plans, and profit-sharing plans under the Code, a pension plan is a plan established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. However, a pension plan does not fail to be a qualified retirement plan solely because the plan provides that a distribution may be made to an employee who has attained age 62 and who is not separated from employment at the time of the distribution.

**Explanation of Provision**

In the case of a section 457(b) plan maintained by a State or local government, the provision changes the age at which distributions are permitted prior to severance from employment to age 59½ to be consistent with the rules for section 401(k) plans and section 403(b) plans.

The provision also modifies the age at which a distribution may be made from a pension plan to an employee who has not separated from employment at the time of the distribution by reducing it from age 62 to age 59½.

**Effective Date**

The provision is effective for plan years beginning after December 31, 2019.

**DIVISION N—HEALTH AND HUMAN SERVICES EXTENDERS**

**TITLE I—HEALTH AND HUMAN SERVICES EXTENDERS**

**Subtitle A—Medicare Provisions**

1. Extension of appropriations to the Patient-Centered Outcomes Research Trust Fund; extension of certain health insurance fees (sec. 104 of Div. N of the Act and secs. 4375, 4376, and 9511 of the Code)

**Present Law**

**Patient-Centered Outcomes Research Trust Fund**

The Patient Centered Outcomes Research Trust Fund ("PCORTF") is a trust fund established by statute in the U.S. Treasury to carry out the provisions of the Patient Protection and Affordable Care Act relating to comparative effectiveness research.

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240 Sec. 401(a)(36).
241 Sec. 9511.
research. The PCORTF is funded in part from fees imposed on health plans.243

**Fee on insured and self-insured health plans**

**Insured plans**

A fee is imposed on each specified health insurance policy equal to $2.00 ($1.00 in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the policy.244 For any policy year beginning after September 30, 2014, the dollar amount is increased based on increases in health care spending. Specifically, the adjusted applicable dollar amount is equal to the sum of: (1) the dollar amount for policy years ending in the preceding fiscal year, plus (2) an amount equal to the product of (A) the dollar amount for policy years ending in the preceding fiscal year, multiplied by (B) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.245 The issuer of the policy is liable for payment of the fee. A specified health insurance policy includes any accident or health insurance policy246 issued with respect to individuals residing in the United States.247 An arrangement under which fixed payments of premiums are received as consideration for a person’s agreement to provide, or to arrange for the provision of, accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided, is treated as a specified health insurance policy. The person agreeing to provide or arrange for the provision of coverage is treated as the issuer.

**Self-insured plans**

In the case of an applicable self-insured health plan, a fee is imposed equal to $2.00 ($1.00 in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the plan.248 For any policy year beginning after September 30, 2014, the dollar amount is increased based on increases in health care spending. Specifically, the adjusted applicable dollar amount is equal to the sum of: (1) the dollar amount for policy years ending in the preceding fiscal year, plus (2) an amount equal to the product of (A) the dollar amount for policy years ending in the preceding fiscal year, multiplied by (B) the percentage increase

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243 Secs. 4375–4377.
244 Sec. 4375.
246 A specified health insurance policy does not include insurance if substantially all of the coverage provided under such policy consists of excepted benefits described in section 9832(c). Examples of excepted benefits described in section 9832(c) are coverage for only accident, or disability insurance, or any combination thereof; liability insurance, including general liability insurance and automobile liability insurance; workers’ compensation or similar insurance; automobile medical payment insurance; coverage for on-site medical clinics; limited scope dental or vision benefits; benefits for long term care, nursing home care, community based care, or any combination thereof; coverage only for a specified disease or illness; hospital indemnity or other fixed indemnity insurance; and Medicare supplemental coverage.
247 Under the provision, the United States includes any possession of the United States.
248 Sec. 4376.
in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.\textsuperscript{249} The plan sponsor is liable for payment of the fee. For purposes of the provision, the plan sponsor is the employer in the case of a plan established or maintained by a single employer or the employee organization in the case of a plan established or maintained by an employee organization. In the case of: (1) a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, (2) a multiple employer welfare arrangement, or (3) a voluntary employees’ beneficiary association (“VEBA”),\textsuperscript{250} the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. In the case of a rural electric cooperative or a rural telephone cooperative, the plan sponsor is the cooperative or association.

Under the provision, an applicable self-insured health plan is any plan providing accident or health coverage if any portion of such coverage is provided other than through an insurance policy and such plan is established or maintained: (1) by one or more employers for the benefit of their employees or former employees, (2) by one or more employee organizations for the benefit of their members or former members, (3) jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees, (4) by a VEBA, (5) by any organization described in section 501(c)(6) of the Code, or (6) in the case of a plan not previously described, by a multiple employer welfare arrangement,\textsuperscript{251} a rural electric cooperative,\textsuperscript{252} or a rural telephone cooperative association.\textsuperscript{253}

\textbf{Other special rules}

Governmental entities are generally not exempt from the fees imposed under the provision. There is an exception for exempt governmental programs, including Medicare, Medicaid, SCHIP, and any program established by Federal law for providing medical care (other than through insurance policies) to members of the Armed Forces, veterans, or members of Indian tribes.

No amount collected from the fee on health insurance and self-insured plans is covered over to any possession of the United States. For purposes of the Code’s procedure and administration rules, the fee imposed under the provision is treated as a tax.

\textbf{Termination}

The fees do not apply to plan years ending after September 31, 2019.


\textsuperscript{250} VEBAs are described in sec. 501(c)(9).

\textsuperscript{251} Defined in sec. 3(40) of ERISA.

\textsuperscript{252} Defined in sec. 3(40)(B)(iv) of ERISA.

\textsuperscript{253} Defined in sec. 3(40)(B)(v) of ERISA.

The provision makes corresponding changes to the rules under which PCORTF was established and is funded.255

Effective Date

The fee on specified health insurance policies and self-insured health plans applies to policy and plan years ending after September 30, 2019.

Subtitle E—Revenue Provisions


Medical device excise tax

An excise tax equal to 2.3 percent of the sale price is imposed on the sale of any taxable medical device by the manufacturer, producer, or importer of such device.256 As enacted in 2010, the excise tax applied to sales after December 31, 2012.257 A taxable medical device is any device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act,258 intended for humans. Regulations further define a medical device as one that is listed by the Food and Drug Administration (“FDA”) under section 510(j) of the Federal Food, Drug, and Cosmetic Act and 21 C.F.R. Part 807, pursuant to FDA requirements.259

The excise tax does not apply to sales of eyeglasses, contact lenses, hearing aids, or any other medical device determined by the Secretary to be of a type that is generally purchased by the general public at retail for individual use (“retail exemption”). Regulations provide guidance on the types of devices that are exempt under the

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255 See sec. 104(a) of Division N of Pub. L. No. 116–94.
256 Sec. 4191.
258 21 U.S.C. sec. 321. Section 201(h) defines device as “an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.”
259 Treas. Reg. sec. 48.4191–2(a). The regulations also include as devices items that should have been listed as a device with the FDA as of the date the FDA notifies the manufacturer or importer that corrective action with respect to listing is required.
retail exemption. A device is exempt under these provisions if: (1) it is regularly available for purchase and use by individual consumers who are not medical professionals; and (2) the design of the device demonstrates that it is not primarily intended for use in a medical institution or office or by a medical professional. Additionally, the regulations provide certain safe harbors for devices eligible for the retail exemption.

The medical device excise tax is generally subject to the rules applicable to other manufacturers excise taxes. These rules include certain general manufacturers excise tax exemptions, including the exemption for sales for use by the purchaser for further manufacture (or for resale to a second purchaser in further manufacture) or for export (or for resale to a second purchaser for export). If a medical device is sold free of tax for resale to a second purchaser for further manufacture or for export, the exemption does not apply unless, within the six-month period beginning on the date of sale by the manufacturer, the manufacturer receives proof that the medical device has been exported or resold for use in further manufacturing. In general, the exemption does not apply unless the manufacturer, the first purchaser, and the second purchaser are registered with the Secretary. Foreign purchasers of articles sold or resold for export are exempt from the registration requirement.

The lease of a medical device is generally considered to be a sale of such device. Special rules apply for the imposition of tax to each lease payment. The use of a medical device subject to tax by manufacturers, producers, or importers of such device, is treated as a sale for the purpose of imposition of excise taxes.

There are also rules for determining the price of a medical device on which the excise tax is imposed. These rules provide for (1) the inclusion of containers, packaging, and certain transportation charges in the price, (2) determining a constructive sales price if a medical device is sold for less than the fair market price, and (3) determining the tax due in the case of partial payments or installment sales.

Temporary suspension

In 2015, the medical device excise tax was suspended for a period of two years, for sales on or after January 1, 2016 and before January 1, 2018. This moratorium was extended for an additional period of two years, to include sales after December 31, 2017, and before January 1, 2020.
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_Explanation of Provision_

The provision repeals the medical device excise tax for sales after December 31, 2019.

_Effective Date_

The provision applies to medical device sales after December 31, 2019.

2. Repeal of annual fee on health insurance providers (sec. 502 of Div. N of the Act)

_Present Law_

An annual fee applies to any covered entity engaged in the business of providing health insurance with respect to United States health risks ("U.S. health risks"). The aggregate annual fee for all covered entities is the applicable amount. The applicable amount is $8 billion for calendar year 2014, $11.3 billion for calendar years 2015 and 2016, $13.9 billion for calendar year 2017, and $14.3 billion for calendar year 2018. For calendar years after 2018, the applicable amount is indexed to the rate of premium growth. However, a one-year moratorium applies to the annual fee on health insurance providers for calendar years 2017 and 2019.

The aggregate annual fee is apportioned among the providers based on a ratio designed to reflect relative market share of U.S. health insurance business. For each covered entity, the fee for a calendar year is an amount that bears the same ratio to the applicable amount as (1) the covered entity’s net premiums written during the preceding calendar year with respect to health insurance for any U.S. health risk, bears to (2) the aggregate net written premiums of all covered entities during such preceding calendar year with respect to such health insurance.

_Explanation of Provision_

The provision repeals the annual fee on health insurance providers for calendar years beginning after December 31, 2020.

_Effective Date_

The provision is effective for calendar years beginning after December 31, 2020.

3. Repeal of excise tax on high cost employer-sponsored health coverage (sec. 503 of Div. N of the Act and sec. 4980I of the Code)

_Present Law_

_In general_

Effective for taxable years beginning after December 31, 2019, an excise tax was imposed on the provider of applicable employer-sponsored health coverage (the “coverage provider”) if the aggregate cost of the coverage for an employee (including a former em-
employee, surviving spouse, or any other primary insured individual) exceeds a threshold amount (referred to as “high cost health coverage”). The tax was 40 percent of the amount by which the aggregate cost exceeds the threshold amount (the “excess benefit”).

The annual threshold amount for 2018 was $10,200 for self-only coverage and $27,500 for other coverage (such as family coverage), multiplied by a one-time health cost adjustment percentage. This threshold was then adjusted annually by an age and gender adjusted excess premium amount. The age and gender adjusted excess premium amount was the excess, if any, of (1) the premium cost of standard Federal Employees Health Benefit Program (“FEHBP”) coverage for the type of coverage provided to an individual if priced for the age and gender characteristics of all employees of the employer, over (2) the premium cost of standard FEHBP coverage if priced for the age and gender characteristics of the national workforce. For this purpose, standard FEHBP coverage means the per employee cost of Blue Cross/Blue Shield standard benefit coverage under FEHBP.

The excise tax was determined on a monthly basis, by reference to the monthly aggregate cost of applicable employer-sponsored coverage for the month and \(\frac{1}{12}\) of the annual threshold amount.

Applicable employer-sponsored coverage and determination of cost

Subject to certain exceptions, applicable employer-sponsored coverage is coverage under any group health plan offered to an employee by an employer that is excludible from the employee’s gross income or that would be excludible if it were employer-sponsored coverage. Thus, applicable employer-sponsored coverage includes coverage for which an employee pays on an after-tax basis. Applicable employer-sponsored coverage includes coverage under any group health plan established and maintained primarily for its civilian employees by the Federal government or any Federal agency or instrumentality, or the government of any State or political subdivision thereof or any agency or instrumentality of a State or political subdivision.

Applicable employer-sponsored coverage includes both insured and self-insured health coverage, including, in general, coverage under a health flexible spending arrangement (“health FSA”), a health reimbursement arrangement, a health savings account (“HSA”), or Archer medical savings account (“Archer MSA”). Some types of coverage are not included in applicable employer-sponsored coverage, such as long-term care coverage, separate insurance coverage substantially all the benefits of which are for treatment of the mouth (including any organ or structure within the mouth) or of the eye, and certain excepted benefits. Excepted benefits for this purpose include (whether through insurance or otherwise) coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers’ compensation or similar insurance; automobile medical payment insurance; credit-only insurance; and other similar insurance coverage (as specified in regulations), under which benefits for medical care are secondary or incidental to other insurance benefits. Applicable employer-sponsored coverage does not include coverage only for a specified disease or illness or hospital indemnity or other fixed indemnity insurance if the cost of the coverage is not excludible from an employee’s income or deductible by a self-employed individual.

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270 The health cost adjustment percentage is 100 percent plus the excess, if any, of (1) the percentage by which the cost of standard FEHBP coverage for 2018 (determined according to specified criteria) exceeds the cost of standard FEHBP coverage for 2010, over (2) 55 percent.

271 Section 106 provides an exclusion for employer-provided coverage.

272 Some types of insurance coverage are not included in applicable employer-sponsored coverage, such as long-term care coverage, separate insurance coverage substantially all of the benefits of which are for treatment of the mouth (including any organ or structure within the mouth) or of the eye, and certain excepted benefits. Excepted benefits for this purpose include (whether through insurance or otherwise) coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers’ compensation or similar insurance; automobile medical payment insurance; credit-only insurance; and other similar insurance coverage (as specified in regulations), under which benefits for medical care are secondary or incidental to other insurance benefits. Applicable employer-sponsored coverage does not include coverage only for a specified disease or illness or hospital indemnity or other fixed indemnity insurance if the cost of the coverage is not excludible from an employee’s income or deductible by a self-employed individual.
the case of a self-employed individual, coverage is treated as applicable employer-sponsored coverage if the self-employed individual is allowed a deduction for all or any portion of the cost of coverage.273

For purposes of the excise tax, the cost of applicable employer-sponsored coverage is generally determined under rules similar to the rules for determining the applicable premium for purposes of COBRA continuation coverage,274 except that any portion of the cost of coverage attributable to the excise tax is not taken into account. Cost is determined separately for self-only coverage and other coverage. Special valuation rules apply to retiree coverage, certain health FSAs, contributions to HSAs and Archer MSAs, and qualified small employer health reimbursement arrangements ("QSEHRAs").

Calculation of excess benefit and imposition of excise tax

In determining the excess benefit with respect to an employee (i.e., the amount by which the cost of applicable employer-sponsored coverage for the employee exceeds the threshold amount), the aggregate cost of all applicable employer-sponsored coverage of the employee is taken into account. The threshold amount for other than self-only coverage applies to an employee. The threshold amount for other coverage applies to an employee only if the employee and at least one other beneficiary are enrolled in coverage other than self-only coverage under a group health plan that provides minimum essential coverage and under which the benefits provided do not vary based on whether the covered individual is the employee or the other beneficiary. For purposes of the threshold amount, any coverage provided under a multiemployer plan is treated as coverage other than self-only coverage.275

The excise tax was imposed on the coverage provider.276 In the case of insured coverage (i.e., coverage under a policy, certificate, or contract issued by an insurance company), the health insurance issuer is liable for the excise tax. In the case of self-insured coverage, the person that administered the plan benefits ("plan administrator") was generally liable for the excise tax. However, in the case of employer contributions to an HSA or an Archer MSA, the employer was liable for the excise tax.

The employer was generally responsible for calculating the amount of excess benefit allocable to each coverage provider and notifying each coverage provider (and the Internal Revenue Service) of the coverage provider's allocable share. In the case of applicable employer-sponsored coverage under a multiemployer plan,
the plan sponsor was responsible for the calculation and notification.\textsuperscript{277}

The provision implementing the excise tax on high cost employer-sponsored health coverage was delayed until taxable years beginning after December 31, 2021.

**Explanation of Provision**

Under the provision, implementation of the excise tax on high cost employer-sponsored health coverage is repealed.

**Effective Date**

The provision is effective for taxable years beginning after December 31, 2019.

**DIVISION O—SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT OF 2019**

**TITLE I—EXPANDING AND PRESERVING RETIREMENT SAVINGS**

1. Multiple employer plans; pooled employer plans (sec. 101 of the Act, secs. 3, 103, and 104 of ERISA, and sec. 413 of the Code)

**Present Law**

**Retirement savings under the Code and ERISA**

**Tax-favored arrangements**

The Internal Revenue Code ("Code") provides two general vehicles for tax-favored retirement savings: employer-sponsored plans and individual retirement arrangements ("IRAs"). Code provisions are generally within the jurisdiction of the Secretary of the Treasury ("Secretary"), through his or her delegate, the Internal Revenue Service ("IRS").

The most common type of tax-favored employer-sponsored retirement plan is a qualified retirement plan,\textsuperscript{278} which may be a defined contribution plan or a defined benefit plan. Under a defined contribution plan, separate individual accounts are maintained for participants, to which accumulated contributions, earnings, and losses are allocated, and participants' benefits are based on the value of their accounts.\textsuperscript{279} Defined contribution plans commonly allow participants to direct the investment of their accounts, usually by choosing among investment options offered under the plan. Under a defined benefit plan, benefits are determined under a plan formula and paid from general plan assets, rather than individual...
Besides qualified retirement plans, certain tax-exempt employers and public schools may maintain tax-deferred annuity plans. An IRA is generally established by the individual for whom the IRA is maintained. However, in some cases, an employer may establish IRAs on behalf of employees and provide retirement contributions to the IRAs. In addition, IRA treatment may apply to accounts maintained for employees under a trust created by an employer (or an employee association) for the exclusive benefit of employees or their beneficiaries, provided that the trust complies with the relevant IRA requirements and separate accounting is maintained for the interest of each employee or beneficiary (referred to herein as an “IRA trust”). In that case, the assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

**ERISA**

Retirement plans of private employers, including qualified retirement plans and tax-deferred annuity plans, are generally subject to requirements under the Employee Retirement Income Security Act of 1974 (“ERISA”). A plan covering only business owners (or business owners and their spouses)—that is, it covers no other employees—is exempt from ERISA. Thus, a plan covering only self-employed individuals is exempt from ERISA. Tax-deferred annuity plans that provide solely for salary reduction contributions by employees may be exempt from ERISA. IRAs are generally exempt from ERISA.

The provisions of Title I of ERISA are under the jurisdiction of the Secretary of Labor. Many of the requirements under Title I of ERISA parallel Code requirements for qualified retirement plans. Under ERISA, in carrying out provisions relating to the same subject matter, the Secretary (of the Treasury) and the Secretary of Labor are required to consult with each other and develop rules, regulations, practices, and forms that, to the extent appropriate for efficient administration, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping re-

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280 Sec. 414(j).
281 Sec. 403(b). Private and governmental employers that are exempt from tax under section 501(c)(3), including tax-exempt private schools, may maintain tax-deferred annuity plans. State and local governmental employers may maintain another type of tax-favored retirement plan, an eligible deferred compensation plan under section 457(b).

282 Sections 219, 408, and 408A provide rules for IRAs. Under section 408(a)(2) and (n), only certain entities are permitted to be the trustee of an IRA. The trustee of an IRA generally must be a bank, an insured credit union, or a corporation subject to supervision and examination by the Commissioner of Banking or other officer in charge of the administration of the banking laws of the State in which it is incorporated. Alternatively, an IRA trustee may be another person who demonstrates to the satisfaction of the Secretary that the manner in which the person will administer the IRA will be consistent with the IRA requirements.

283 Simplified employee pension (‘‘SEP’’) plans under section 408(k) and SIMPLE IRA plans under section 408(p) are employer-sponsored retirement plans funded using IRAs for employees.

284 Sec. 408(c).

285 ERISA applies to employee welfare benefit plans, such as health plans, of private employers, as well as to employer-sponsored retirement (or pension) plans. Employer-sponsored welfare and pension plans are both referred to under ERISA as employee benefit plans. Under ERISA, in carrying out provisions relating to the same subject matter, the Secretary (of the Treasury) and the Secretary of Labor are required to consult with each other and develop rules, regulations, practices, and forms that, to the extent appropriate for efficient administration, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping re-

286 29 C.F.R. 2510.3–3(b)–(c).

287 29 C.F.R. §10.3–2(f).

288 The provisions of Title of ERISA are codified at 29 U.S.C. 1001–734. Under Title of ERISA, defined benefit plans of private employers are generally covered by the Pension Benefit Guaranty Corporation’s pension insurance program.
requirements, and the burden of compliance by plan administrators, employers, and participants and beneficiaries. In addition, interpretive jurisdiction over parallel Code and ERISA provisions relating to retirement plans is divided between the two Secretaries by Executive Order, referred to as the Reorganization Plan No. 4 of 1978.

**Multiple employer plans under the Code**

In general

Qualified retirement plans, either defined contribution or defined benefit plans, are categorized as single employer plans or multiple employer plans. A single employer plan is a plan maintained by one employer. For this purpose, businesses and organizations that are members of a controlled group of corporations, a group under common control, or an affiliated service group are treated as one employer (referred to as “aggregation”).

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). Multiple employer plans (“MEPs”) are commonly maintained by employers in the same industry and are used also by professional employer organizations (“PEOs”) to provide qualified retirement plan benefits to employees working for PEO clients.

**Application of Code requirements to multiple employer plans and EPCRS**

Some requirements are applied to a multiple employer plan on a plan-wide basis. For example, all employees covered by the plan are treated as employees of all employers participating in the plan for purposes of the exclusive benefit rule. Similarly, an employee’s service with all participating employers is taken into account in applying the minimum participation and vesting requirements. In applying the limits on contributions and benefits, compensation, contributions, and benefits attributable to all employers are taken into account. Other requirements are applied separately, including the minimum coverage requirements, non-discrimination requirements (both the general requirements and the special tests for section 401(k) plans), and the top-heavy rules. However, the qualified status of the plan as a whole is determined with respect to all employers maintaining the plan, and the failure by one employer (or by the plan itself) to satisfy an applicable qualification requirement may result in disqualification of

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289 ERISA sec. 3004.
291 Secs. 414(b), (c), (m) and (o).
292 Sec. 413(c). Multiple employer plan status does not apply if the plan is a multiemployer plan. Multiemployer plans are different from single employer plans and multiple employer plans. A single employer plan is a plan maintained by one employer. For this purpose, businesses and organizations that are members of a controlled group of corporations, a group under common control, or an affiliated service group are treated as one employer (referred to as “aggregation”).
294 Sec. 413(c).
295 Treas. Reg. sec. 1.415(a)–1(e).
the plan with respect to all employers (sometimes referred to as the “one bad apple” rule).297

Because of the complexity of the requirements for qualified retirement plans, errors in plan documents, as well as plan operation and administration, commonly occur. Under a strict application of these requirements, such an error would cause a plan to lose its tax-favored status, which would fall most heavily on plan participants because of the resulting current income inclusion of vested amounts under the plan. As a practical matter, therefore, the IRS rarely disqualifies a plan. Instead, the IRS has established the Employee Plans Compliance Resolution System (“EPCRS”), a formal program under which employers and other plan sponsors can correct compliance failures and continue to provide their employees with retirement benefits on a tax-favored basis.298

EPCRS has three components, providing for self-correction, voluntary correction with IRS approval, and correction on audit. The Self-Correction Program (“SCP”) generally permits a plan sponsor that has established compliance practices and procedures to correct certain insignificant failures at any time (including during an audit), and certain significant failures generally within a two-year period, without payment of any fee or sanction. The Voluntary Correction Program (“VCP”) permits an employer, at any time before an audit, to pay a limited fee and receive IRS approval of a correction. For a failure that is discovered on audit and corrected, the Audit Closing Agreement Program (“Audit CAP”) provides for a sanction that bears a reasonable relationship to the nature, extent, and severity of the failure and that takes into account the extent to which correction occurred before audit.

Multiple employer plans are eligible for EPCRS, and certain special procedures apply.299 A VCP request with respect to a MEP must be submitted to the IRS by the plan administrator, rather than an employer maintaining the plan, and must be made with respect to the entire plan, rather than a portion of the plan affecting any particular employer. In addition, if a failure applies to fewer than all of the employers under the plan, the plan administrator may choose to have a VCP compliance fee or audit CAP sanction calculated separately for each employer based on the participants attributable to that employer, rather than having the compliance fee calculated based on the participants of the entire plan. For example, the plan administrator may choose this option when the failure is attributable to the failure of an employer to provide the plan administrator with full and complete information.

Executive Order 13847300 (issued on August 31, 2018) directed the Secretary to consider proposing amendments to regulations or other guidance regarding the circumstances under which a MEP may satisfy the tax qualification requirements, including the consequences if one or more employers that sponsored or adopted the plan fails to take one or more actions necessary to meet those requirements.

297 Treas. Reg. secs. 1.413–2(a)x3(iv) and 1.416–1, G–2.
300 83 FR 45321, September 6, 2018.
IRS issued proposed regulations\textsuperscript{301} that would provide an exception to the “one bad apple” rule where the following conditions are satisfied: (1) the MEP satisfies certain eligibility requirements (including having established practices and procedures (formal or informal) reasonably designed to promote compliance and a requirement to adopt relevant plan language); (2) the section 413(c) plan administrator provides (up to three separate) notice(s) and an opportunity for the unresponsive participating employer to take remedial action with respect to the failure of the participating employer; (3) if the unresponsive participating employer fails to take appropriate remedial action or initiate a spinoff with respect to the failure, the section 413(c) plan administrator implements a spinoff of the plan assets and account balances held on behalf of employees of the unresponsive participating employer that are attributable to their employment with that employer to a separate plan, followed by a termination of that plan; and (4) the section 413(c) plan administrator complies with any information request that the IRS or a representative of the spun-off plan makes in connection with an IRS examination of the spun-off plan, including any information request related to the participation of the unresponsive participating employer in the MEP for years prior to the spinoff. If the MEP is under examination at the time the first notice is provided to an unresponsive participating employer, the MEP is not eligible for the exception. These proposed regulations have not been finalized.

**ERISA**

*Fiduciary and bonding requirements*

Among other requirements, ERISA requires a plan to be established and maintained pursuant to a written instrument (that is, a plan document) that contains certain terms.\textsuperscript{302} The terms of the plan must provide for one or more named fiduciaries that jointly or severally have authority to control and manage the operation and administration of the plan.\textsuperscript{303} Among other required plan terms are a procedure for the allocation of responsibilities for the operation and administration of the plan and a procedure for amending the plan and for identifying the persons who have authority to amend the plan. Among other permitted terms, a plan may provide that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator) and that a person who is a named fiduciary with respect to the control or management of plan assets may appoint an investment manager or managers to manage plan assets.

In general, a plan fiduciary is responsible for the investment of plan assets. However, ERISA section 404(c) provides a special rule in the case of a defined contribution plan that permits participants to direct the investment of their individual accounts.\textsuperscript{304} Under the special rule, if various requirements are met, a participant is not

\textsuperscript{301} 84 FR 31777, July 3, 2019.
\textsuperscript{302} ERISA sec. 402.
\textsuperscript{303} Fiduciary is defined in ERISA section 3(21), and named fiduciary is defined in ERISA section 402(a)(21).
\textsuperscript{304} ERISA sec. 404(c). Under ERISA, a defined contribution plan is also referred to as an individual account plan.
deemed to be a fiduciary by reason of directing the investment of the participant’s account and no person who is otherwise a fiduciary is liable for any loss, or by reason of any breach, that results from the participant’s investments. Defined contribution plans that provide for participant-directed investments commonly offer a set of investment options among which participants may choose. The selection of investment options to be offered under a plan is subject to ERISA fiduciary requirements.

Under ERISA, any plan fiduciary or person that handles plan assets is required to be bonded, generally for an amount not to exceed $500,000. In some cases, the maximum bond amount is $1 million, rather than $500,000.

Multiple employer plan status under ERISA

Like the Code, ERISA contains rules for multiple employer retirement plans. However, a different concept of multiple employer plan applies under ERISA.

Under ERISA, an employee benefit plan (whether a pension plan or a welfare plan) must be sponsored by an employer, by an employee organization, or by both. The definition of employer is any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan, and includes a group or association of employers acting for an employer in such capacity.

Historically, these definitional provisions of ERISA have been interpreted as only permitting a multiple employer plan to be established or maintained by a cognizable, bona fide group or association of employers, acting in the interests of its employer members to provide benefits to their employees. This approach is based on the premise that the person or group that maintains the plan is tied to the employers and employees that participate in the plan by some common economic or representational interest or genuine organizational relationship unrelated to the provision of benefits. Based on the facts and circumstances, the employers that participate in the benefit program must, either directly or indirectly, exercise control over that program, both in form and in substance, in order to act as a bona fide employer group or association with respect to the program, or the plan is sponsored by one or more employers as defined in section 3(5) of ERISA. However, an employer association does not exist where several unrelated employers merely execute participation agreements or similar documents as a means to fund benefits, in the absence of any genuine organizational relationship between the employers. In that case, each participating employer establishes and maintains a separate employee benefit plan for the benefit of its own employees, rather than a multiple employer plan.

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305 ERISA sec. 412.
306 ERISA sec. 201(a).
307 ERISA secs. 3(1) and (2).
308 ERISA sec. 3(5).
310 See, e.g., Department of Labor Advisory Opinion 2017–02AC.
On July 31, 2019, the Department of Labor ("DOL") issued final regulations311 pursuant to Executive Order 13847312 which had directed the DOL to consider within 180 days whether to issue a notice of proposed rulemaking, other guidance, or both, that would clarify when a group or association of employers or other appropriate business or organization could be an "employer" within the meaning of ERISA section 3(5). The final regulation focuses its scope on MEPs sponsored by either a group or association of employers or by a PEO and is limited to defined contribution plans as defined in section 3(34) of ERISA. The final regulation does not deal with pooled employer plans.

The final regulation recognizes that a bona fide group or association of employers may establish a MEP if such group or association meets the following requirements: (1) the primary purpose of the group or association may be to provide MEP coverage to its employer members and their employees, but there must also be at least one substantial business purpose unrelated to offering and providing MEP coverage or other employee benefits to the employer members and their employees; (2) each employer member of the group or association is a person acting directly as an employer of at least one employee who is a participant covered under the plan; (3) the group or association has a formal organizational structure with a governing body and has by-laws or other similar indications of formality; (4) the functions and activities of the group or association are controlled by its employer members, and the group's or association's employer members that participate in the plan control (in form and in substance) the plan; (5) the employer members have a commonality of interest; (6) plan participation is only permitted to employees and former employees of employer members, and their beneficiaries; and (7) the group or association is not a bank or trust company, insurance issuer, broker-dealer or other similar financial services firm. Under the final regulation, a bona fide PEO may establish a MEP. Certain "working owners" may also establish a MEP.

Form 5500 reporting

Under the Code, an employer maintaining a qualified retirement plan generally is required to file an annual return containing information required under regulations with respect to the qualification, financial condition, and operation of the plan.313 ERISA requires

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311 84 FR 37504, July 31, 2019. The DOL noted in the preamble to the final regulations that these final regulations differ significantly from the legislative proposals introduced in Congress, including H.R. 1994, “Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”)” which was passed unanimously by the House of Representatives on May 23, 2019 (and which subsequently was enacted into law as part of Pub. L. No. 116–94, Further Consolidated Appropriations Act, 2020 on December 20, 2019) which "makes comprehensive changes to ERISA and the Code to facilitate open MEPs." DOL indicates that the final rule is significantly more limited in scope because it relies solely on the Department's authority to promulgate regulations administering title I of ERISA, and unlike Congress, DOL does not have the authority to make statutory changes to ERISA and other areas of law that govern retirement savings such as the Code.

312 See footnote 23, supra. The Executive Order was issued on August 31, 2018.

313 Sec. 6058. In addition, under section 6059, the plan administrator of a defined benefit plan subject to the minimum funding requirements is required to file an annual actuarial report. Under section 414(g) and ERISA section 3(16), plan administrator generally means the person specifically so designated by the terms of the plan document. In the absence of a designation, the plan administrator generally is (1) in the case of a plan maintained by a single employer, the employer, (2) in the case of a plan maintained by an employee organization, the employee organization, or (3) in the case of a plan maintained by two or more employers or jointly by
the plan administrator of certain pension and welfare benefit plans to file annual reports disclosing certain information to the DOL. These filing requirements are met by filing a completed Form 5500, Annual Return/Report of Employee Benefit Plan. Forms 5500 are filed with DOL, and information from Forms 5500 is shared with the IRS. In the case of a multiple employer plan, the annual report must include a list of participating employers and a good faith estimate of the percentage of total contributions made by the participating employers during the plan year. Certain small plans, that is, plans covering fewer than 100 participants, are eligible for simplified reporting requirements, which are met by filing Form 5500–SF, Short Form Annual Return/Report of Small Employee Benefit Plan.

Explanation of Provision

In general

The provision amends the Code rules relating to multiple employer plans to provide relief from the “one-bad-apple” rule for certain plans (referred to herein as “covered multiple employer plans”). A covered multiple employer plan is a multiple employer qualified defined contribution plan or a plan that consists of IRAs (referred to herein as an “IRA plan”), including under an IRA trust, that either (1) is maintained by employers which have a common interest other than having adopted the plan, or (2) in the case of a plan not described in (1), has a pooled plan provider (referred to herein as a “pooled provider plan”), and which meets certain other requirements as described below.

The provision outlines various requirements that apply to a pooled provider plan under the Code. It also outlines various requirements that apply under ERISA to a qualified defined contribution plan that is established or maintained for the purpose of providing benefits to the employees of two or more employers and that meets certain requirements to be a “pooled employer plan,” and provides that a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan.

Tax-favored status under the Code

In general

The provision provides relief from disqualification (or other loss of tax-favored status) of the entire plan merely because one or more
participating employers fail to take actions required with respect to the plan (that is, relief from the "one-bad-apple" rule).

Such relief under the provision does not apply to a plan unless the terms of the plan provide that, in the case of any employer in the plan failing to take required actions (referred to herein as a "noncompliant employer"):  
- Plan assets attributable to employees of the noncompliant employer (or beneficiaries of such employees) will be transferred to a plan maintained only by that employer (or its successor), to a tax-favored retirement plan for each individual whose account is transferred,\textsuperscript{320} or to any other arrangement that the Secretary determines is appropriate, unless the Secretary determines it is in the best interests of the employees of the noncompliant employer (and beneficiaries of such employees) to retain the assets in the plan, and
- The noncompliant employer (and not the plan with respect to which the failure occurred or any other employer in the plan) is, except to the extent provided by the Secretary, liable for any plan liabilities attributable to employees of the noncompliant employer (or beneficiaries of such employees).

In addition, in the case of a pooled provider plan, if the pooled plan provider does not perform substantially all the administrative duties required of the provider (as described below) for any plan year, the Secretary may provide that the determination as to whether the plan meets the Code requirements for tax-favored treatment will be made in the same manner as would be made without regard to the relief under the provision.

\textit{Pooled plan provider}

Under the provision, "pooled plan provider" with respect to a plan means a person who:
- Is designated by the terms of the plan as a named fiduciary under ERISA,\textsuperscript{321} as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and the employees of each employer in the plan) that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions as the Secretary or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements, including providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements,
- Registers with the Secretary as a pooled plan provider and provides any other information that the Secretary may require, before beginning operations as a pooled plan provider,

\textsuperscript{320} For this purpose, a tax-favored retirement plan means an eligible retirement plan as defined in section 402(c)(8)(B), that is, an IRA, a qualified retirement plan, a tax-deferred annuity plan under section 403(b), or an eligible deferred compensation plan of a State or local governmental employer under section 457(b).

\textsuperscript{321} Within the meaning of ERISA section 402(a)(2).
• Acknowledges in writing its status as a named fiduciary under ERISA and as the plan administrator, and
• Is responsible for ensuring that all persons who handle plan assets or are plan fiduciaries are bonded in accordance with ERISA requirements.

The provision specifies that the Secretary may perform audits, examinations, and investigations of pooled plan providers as may be necessary to enforce and carry out the purposes of the provision.

In addition, the provision provides that in determining whether a person meets the requirements to be a pooled plan provider with respect to any plan, all persons who perform services for the plan and who are treated as a single employer are treated as one person.

Plan sponsor

The provision also provides that, except with respect to the administrative duties (as a named fiduciary, as the plan administrator, and as the person responsible for the performance of all administrative duties) for which the pooled plan provider is responsible as described above, each employer in a plan which has a pooled plan provider will be treated as the plan sponsor with respect to the portion of the plan attributable to that employer’s employees (or beneficiaries of such employees).

Guidance

The provision directs the Secretary to issue guidance that the Secretary determines appropriate to carry out the provision, including guidance (1) to identify the administrative duties and other actions required to be performed by a pooled plan provider, (2) that describes the procedures to be taken to terminate a plan that fails to meet the requirements to be a covered multiple employer plan, including the proper treatment of, and actions needed to be taken by, any employer in the plan and plan assets and liabilities attributable to employees of that employer (or beneficiaries of such employees), and (3) to identify appropriate cases in which corrective action will apply with respect to noncompliant employers. For purposes of (3), the Secretary is to take into account whether the failure of an employer or pooled plan provider to provide any disclosures or other information, or to take any other action, necessary to administer a plan or to allow a plan to meet the Code requirements for tax-favored treatment, has continued over a period of time that demonstrates a lack of commitment to compliance. An employer or pooled plan provider is not treated as failing to meet a requirement of guidance issued by the Secretary if, before the issuance of such guidance, the employer or pooled plan provider complies in good faith with a reasonable interpretation of the provisions to which the guidance relates.

The provision also directs the Secretary to publish model plan language that meets the Code and ERISA requirements under the provision and that may be adopted in order to be treated as a pooled employer plan under ERISA.

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322 Under subsection (b), (c), (m), or (o) of section 414.
Pooled employer plans under ERISA

In general

As described above, under the provision, a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan. A “pooled employer plan” is defined as a plan (1) that is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers, (2) that is a qualified retirement plan or an IRA plan, and (3) the terms of which meet the requirements described below. A pooled employer plan does not include a plan maintained by employers that have a common interest other than having adopted the plan.

In order for a plan to be a pooled employer plan, the plan terms must:

- Designate a pooled plan provider and provide that the pooled plan provider is a named fiduciary of the plan,
- Designate one or more trustees (other than an employer in the plan)\(^{323}\) to be responsible for collecting contributions to, and holding the assets of, the plan, and require the trustees to implement written contribution collection procedures that are reasonable, diligent, and systematic,
- Provide that each employer in the plan retains fiduciary responsibility for the selection and monitoring, in accordance with ERISA fiduciary requirements, of the person designated as the pooled plan provider and any other person who is also designated as a named fiduciary of the plan, and, to the extent not otherwise delegated to another fiduciary by the pooled plan provider (and subject to the ERISA rules relating to self-directed investments), the investment and management of the portion of the plan’s assets attributable to the employees of that employer (or beneficiaries of such employees) in the plan,
- Provide that employers in the plan, and participants and beneficiaries, are not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or otherwise transferring assets of the plan in accordance with applicable rules for plan mergers and transfers,
- Require the pooled plan provider to provide to employers in the plan any disclosures or other information that the Secretary of Labor may require, including any disclosures or other information to facilitate the selection or any monitoring of the pooled plan provider by employers in the plan, and require each employer in the plan to take any actions that the Secretary of Labor or pooled plan provider determines are necessary to administer the plan or to allow for the plan to meet the ERISA and Code requirements applicable to the plan, including providing any disclosures or other information that the Secretary of Labor may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet such ERISA and Code requirements, and

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\(^{323}\) Any trustee must meet the requirements under the Code to be an IRA trustee.
• Provide that any disclosure or other information required to be provided as described above may be provided in electronic form and will be designed to ensure only reasonable costs are imposed on pooled plan providers and employers in the plan.

In the case of a fiduciary of a pooled employer plan or a person handling assets of a pooled employer plan, the maximum bond amount under ERISA is $1 million.

The term “pooled employer plan” does not include a multiple-employer plan. Such term also does not include a plan established before the date of enactment of the SECURE Act unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date.

Pooled plan provider

The definition of pooled plan provider for ERISA purposes is generally similar to the definition under the Code portion of the provision, described above. The ERISA definition requires a person to register as a pooled plan provider with the Secretary of Labor and provide any other information that the Secretary of Labor may require before beginning operations as a pooled plan provider.

The provision specifies that the Secretary of Labor may perform audits, examinations, and investigations of pooled plan providers as may be necessary to enforce and carry out the purposes of the provision.

Plan sponsor

The provision also provides that except with respect to the administrative duties (as a named fiduciary, as the plan administrator, and as the person responsible for the performance of all administrative duties) for which the pooled plan provider is responsible as described above, each employer in a pooled employer plan will be treated as the plan sponsor with respect to the portion of the plan attributable to that employer’s employees (or beneficiaries of such employees).

Guidance

The provision directs the Secretary of Labor to issue guidance that such Secretary determines appropriate to carry out the provision, including guidance (1) to identify the administrative duties and other actions required to be performed by a pooled plan provider, and (2) that requires, in appropriate cases of a noncompliant employer, plan assets attributable to employees of the noncompliant employer (or beneficiaries of such employees) to be transferred to a plan maintained only by that employer (or its successor), to a tax-favored retirement plan for each individual whose account is transferred, or to any other arrangement that the Secretary of

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324 The provision does not change existing law and guidance with respect to furnishing documents through electronic media to participants and beneficiaries.
325 In determining whether a person meets the requirements to be a pooled plan provider with respect to a plan, all persons who perform services for the plan and who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 are treated as one person.
Labor determines in the guidance is appropriate, and the noncompliant employer (and not the plan with respect to which the failure occurred or any other employer in the plan) to be liable for any plan liabilities attributable to employees of the noncompliant employer (or beneficiaries of such employees), except to the extent provided in the guidance. For purposes of (2), the Secretary of Labor is to take into account whether the failure of an employer or pooled plan provider to provide any disclosures or other information, or to take any other action, necessary to administer a plan or to allow a plan to meet the requirements of ERISA and the Code requirements for tax-favored treatment, has continued over a period of time that demonstrates a lack of commitment to compliance. An employer or pooled plan provider is not treated as failing to meet a requirement of guidance issued by the Secretary if, before the issuance of such guidance, the employer or pooled plan provider complies in good faith with a reasonable interpretation of the provisions to which the guidance relates.

**Form 5500 reporting**

Under the provision, the Form 5500 filing for a multiple employer plan (including a pooled employer plan) must include a list of the employers in the plan, a good faith estimate of the percentage of total contributions made by such employers during the plan year, and the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of each employer (and the beneficiaries of such employees)); and with respect to a pooled employer plan, the identifying information for the person designated under the terms of the plan as the pooled plan provider. In addition, the provision adds to the list of pension plans to which simplified reporting may be prescribed by the Secretary of Labor, a multiple employer plan that covers fewer than 1,000 participants, but only if no single employer in the plan has 100 or more participants covered by the plan.

**Effective Date**

The provision applies to plan years beginning after December 31, 2020, including reporting for purposes of Forms 5500 for plan years beginning after December 31, 2020.

Nothing in the Code amendments made by the provision is to be construed as limiting the authority of the Secretary (or the Secretary's delegate) to provide for the proper treatment of a failure to meet any Code requirement with respect to any employer (and its employees) in a multiple employer plan.

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326 The Secretary of Labor may waive the requirement to transfer assets to another plan or arrangement in appropriate circumstances if the Secretary of Labor determines it is in the best interests of the employees of the noncompliant employer (and the beneficiaries of such employees) to retain the assets in the pooled employer plan.
2. Increase in 10 percent cap for automatic enrollment safe harbor after first plan year (sec. 102 of the Act and sec. 401(k) of the Code)

Present Law

Section 401(k) plans

A qualified defined contribution plan may include a qualified cash or deferred arrangement, under which employees may elect to have contributions made to the plan (referred to as “elective deferrals”) rather than receive the same amount as current compensation (referred to as a “section 401(k) plan”). The maximum annual amount of elective deferrals that can be made by an employee for a year is $19,000 (for 2019) or, if less, the employee’s compensation. For an employee who attains age 50 by the end of the year, the dollar limit on elective deferrals is increased by $6,000 (called catch-up contributions). An employee’s elective deferrals must be fully vested. A section 401(k) plan may also provide for employer matching and nonelective contributions.

Automatic enrollment

A section 401(k) plan must provide each eligible employee with an effective opportunity to make or change an election to make elective deferrals at least once each plan year. Whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including the adequacy of notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections.

Section 401(k) plans are generally designed so that an employee will receive cash compensation unless the employee affirmatively elects to make elective deferrals to the section 401(k) plan. Alternatively, a plan may provide that elective deferrals are made at a specified rate (referred to as a “default rate”) when an employee becomes eligible to participate unless the employee elects otherwise (that is, affirmatively elects not to make contributions or to make contributions at a different rate). This plan design is referred to as automatic enrollment.

Nondiscrimination test and automatic enrollment safe harbor

An annual nondiscrimination test, called the actual deferral percentage test (the “ADP” test) applies to elective deferrals under a section 401(k) plan. The ADP test generally compares the average rate of deferral for highly compensated employees to the average rate of deferral for nonhighly compensated employees and re-
quires that the average deferral rate for highly compensated employees not exceed the average rate for nonhighly compensated employees by more than specified amounts. If a plan fails to satisfy the ADP test for a plan year based on the deferral elections of highly compensated employees, the plan is permitted to distribute deferrals to highly compensated employees (“excess deferrals”) in a sufficient amount to correct the failure. The distribution of the excess deferrals must be made by the close of the following plan year.334

The ADP test is deemed to be satisfied if a section 401(k) plan includes certain minimum matching or nonelective contributions under either of two plan designs (a “401(k) safe harbor plan”), as well as certain required rights and features and satisfies a notice requirement.335 One type of 401(k) safe harbor includes automatic enrollment.

An automatic enrollment safe harbor plan must provide that, unless an employee elects otherwise, the employee is treated as electing to make elective deferrals at a default rate equal to a percentage of compensation as stated in the plan and at least (1) three percent of compensation through the end of the first plan year that begins after the first deemed election applies to the participant, (2) four percent during the second plan year, (3) five percent during the third plan year, and (4) six percent during the fourth plan year and thereafter. Although an automatic enrollment safe harbor plan generally may provide for default rates higher than these minimum rates, the default rate cannot exceed 10 percent for any year.

**Explanation of Provision**

Under the provision, the 10-percent limitation on the default rates under an automatic enrollment safe harbor plan is increased to 15 percent after the first plan year that begins after an employee’s deemed election applies.

**Effective Date**

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

3. Rules relating to election of safe harbor 401(k) status (sec. 103 of the Act and sec. 401(k) of the Code)

**Present Law**

**Section 401(k) plans**

A qualified defined contribution plan may include a qualified cash or deferred arrangement, under which employees may elect to have contributions made to the plan (referred to as “elective deferrals”) rather than receive the same amount as current compensation (referred to as a “section 401(k) plan”).336 The maximum an-
ual amount of elective deferrals that can be made by an employee for a year is $19,000 (for 2019)\textsuperscript{337} or, if less, the employee’s compensation.\textsuperscript{338} For an employee who attains age 50 by the end of the year, the dollar limit on elective deferrals is increased by $6,000 (for 2019)\textsuperscript{339} (called catch-up contributions).\textsuperscript{340} An employee’s elective deferrals must be fully vested. A section 401(k) plan may also provide for employer matching and nonelective contributions.

**Automatic enrollment**

A section 401(k) plan must provide each eligible employee with an effective opportunity to make or change an election to make elective deferrals at least once each plan year.\textsuperscript{341} Whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including the adequacy of notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections.

Section 401(k) plans are generally designed so that an employee will receive cash compensation unless the employee affirmatively elects to make elective deferrals to the section 401(k) plan. Alternatively, a plan may provide that elective deferrals are made at a specified rate when an employee becomes eligible to participate unless the employee elects otherwise (that is, affirmatively elects not to make contributions or to make contributions at a different rate). This plan design is referred to as automatic enrollment.

**Nondiscrimination test**

*General rule and design-based safe harbors*

An annual nondiscrimination test, called the actual deferral percentage test (the “ADP” test) applies to elective deferrals under a section 401(k) plan.\textsuperscript{342} The ADP test generally compares the average rate of deferral for highly compensated employees to the average rate of deferral for nonhighly compensated employees and requires that the average deferral rate for highly compensated employees not exceed the average rate for nonhighly compensated employees by more than certain specified amounts. If a plan fails to satisfy the ADP test for a plan year based on the deferral elections of highly compensated employees, the plan is permitted to distribute deferrals to highly compensated employees (“excess deferrals”) in a sufficient amount to correct the failure. The distribution of the excess deferrals must be made by the close of the following plan year.\textsuperscript{343}

The ADP test is deemed to be satisfied if a section 401(k) plan includes certain minimum matching or nonelective contributions under either of two plan designs (“401(k) safe harbor plan”), de-
scribed below, as well as certain required rights and features and satisfies a notice requirement.\footnote{Sec. 401(k)(12) and (13). If certain additional requirements are met, matching contributions under 401(k) safe harbor plan may also satisfy a nondiscrimination test applicable under section 401(m).}

**Safe harbor contributions**

Under one type of 401(k) safe harbor plan ("basic 401(k) safe harbor plan"), the plan either (1) satisfies a matching contribution requirement ("matching contribution basic 401(k) safe harbor plan") or (2) provides for a nonelective contribution to a defined contribution plan of at least three percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the plan ("nonelective basic 401(k) safe harbor plan"). The matching contribution requirement under the matching contribution basic 401(k) safe harbor requires a matching contribution equal to at least 100 percent of elective contributions of the employee for contributions not in excess of three percent of compensation, and 50 percent of elective contributions for contributions that exceed three percent of compensation but do not exceed five percent, for a total matching contribution of up to four percent of compensation. The required matching contributions and the three percent nonelective contribution under the basic 401(k) safe harbor must be immediately nonforfeitable (that is, 100 percent vested) when made.

Another safe harbor applies for a section 401(k) plan that includes automatic enrollment ("automatic enrollment 401(k) safe harbor"). Under an automatic enrollment 401(k) safe harbor, unless an employee elects otherwise, the employee is treated as electing to make elective deferrals equal to a percentage of compensation as stated in the plan, not in excess of 10 percent and at least (1) three percent of compensation for the first year the deemed election applies to the participant, (2) four percent during the second year, (3) five percent during the third year, and (4) six percent during the fourth year and thereafter.\footnote{These automatic increases in default contribution rates are required for plans using the safe harbor. Rev. Rul. 2009–30, 2009–39 I.R.B. 391, provides guidance for including automatic increases in other plans using automatic enrollment, including under a plan that includes an eligible automatic contribution arrangement.} Under the automatic enrollment 401(k) safe harbor, the matching contribution requirement is 100 percent of elective contributions of the employee for contributions not in excess of one percent of compensation, and 50 percent of elective contributions for contributions that exceed one percent of compensation but do not exceed six percent, for a total matching contribution of up to 3.5 percent of compensation ("matching contribution automatic enrollment 401(k) safe harbor"). The rate of nonelective contribution under the automatic enrollment 401(k) safe harbor plan is three percent, as under the basic 401(k) safe harbor ("nonelective contribution automatic enrollment 401(k) safe harbor"). However, under the automatic enrollment 401(k) safe harbors, the matching and nonelective contributions are allowed to become 100 percent vested only after two years of service (rather than being required to be immediately vested when made).
Safe harbor notice

The notice requirement for a 401(k) safe harbor plan is satisfied if each employee eligible to participate is given, within a reasonable period before any year, written notice of the employee's rights and obligations under the arrangement and the notice meets certain content and timing requirements ("safe harbor notice"). To meet the content requirements, a safe harbor notice must be sufficiently accurate and comprehensive to inform an employee of the employee's rights and obligations under the plan, and be written in a manner calculated to be understood by the average employee eligible to participate in the plan. A safe harbor notice must provide certain information, including the plan's safe harbor contributions, any other plan contributions, the type and amount of compensation that may be deferred under the plan, how to make cash or deferred elections, the plan's withdrawal and vesting provisions, and specified contact information. In addition, a safe harbor notice for an automatic enrollment 401(k) safe harbor must describe certain additional information, including the deemed deferral elections under the plan if the employee does not make an affirmative election and how contributions will be invested.

Delay in adopting nonelective 401(k) safe harbor

Generally, the plan provisions for the requirements that must be satisfied to be a 401(k) safe harbor plan must be adopted before the first day of the plan year and remain in effect for an entire 12-month plan year. However, in the case of a nonelective 401(k) safe harbor plan (but not the matching contribution 401(k) safe harbor), a plan may be amended after the first day of the plan year but no later than 30 days before the end of the plan year to adopt the safe harbor plan provisions including providing the 3 percent of compensation nonelective contribution. The plan must also provide a contingent and follow-up notice. The contingent notice must be provided before the beginning of the plan year and must specify that the plan may be amended to include the safe harbor nonelective contribution and that, if it is so amended, a follow-up notice will be provided. If the plan is amended, the follow-up notice must be provided no later than 30 days before the end of the plan year stating that the safe harbor nonelective contribution will be provided.

Explanation of Provision

In general

The provision makes a number of changes to the rules for the nonelective contribution 401(k) safe harbor.

Elimination of notice requirement

The provision eliminates the safe harbor notice requirement with respect to nonelective 401(k) safe harbor plans. However, the general rule under present law requiring a section 401(k) plan to provide each eligible employee with an effective opportunity to make or change an election to make elective deferrals at least once each plan year still applies. As described above, relevant factors used in determining if this requirement is satisfied include the adequacy of
notice of the availability of the election and the period of time during which an election may be made.

**Delay in adopting provisions for nonelective 401(k) safe harbor**

Under the provision, a plan can be amended to become a nonelective 401(k) safe harbor plan for a plan year (that is, amended to provide the required nonelective contributions and thereby satisfy the safe harbor requirements) at any time before the 30th day before the close of the plan year.

Further, the provision allows a plan to be amended after the 30th day before the close of the plan year to become a nonelective contribution 401(k) safe harbor plan for the plan year if (1) the plan is amended to provide for a nonelective contribution of at least four percent of compensation (rather than at least three percent) for all eligible employees for that plan year and (2) the plan is amended no later than the last day for distributing excess contributions for the plan year (generally, by the close of following plan year).

**Effective Date**

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

4. **Increase in credit limitation for small employer pension plan startup costs (sec. 104 of the Act and sec. 45E of the Code)**

**Present Law**

A nonrefundable income tax credit is available for qualified startup costs of an eligible small employer that adopts a new qualified retirement plan, SIMPLE IRA plan, or SEP (referred to as an “eligible employer plan”), provided that the plan covers at least one nonhighly compensated employee.\textsuperscript{346} Qualified startup costs are expenses connected with the establishment or administration of the plan or retirement-related education for employees with respect to the plan. The credit is the lesser of (1) a flat dollar amount of $500 per year or (2) 50 percent of the qualified startup costs. The credit applies for up to three years beginning with the year the plan is first effective, or, at the election of the employer, with the year preceding the first plan year.

An eligible employer is an employer that, for the preceding year, had no more than 100 employees, each with compensation of $5,000 or more. In addition, the employer must not have had a plan covering substantially the same employees as the new plan during the three years preceding the first year for which the credit would apply. Members of controlled groups and affiliated service groups are treated as a single employer for purposes of these requirements.\textsuperscript{347} All eligible employer plans of an employer are treated as a single plan.

\textsuperscript{346} A nonhighly compensated employee is an employee who is not a highly compensated employee as defined under section 414(q).

\textsuperscript{347} Secs. 52(a) or (b) and 414(m) or (o).
No deduction is allowed for the portion of qualified startup costs paid or incurred for the taxable year equal to the amount of the credit.

Explanation of Provision

The provision changes the calculation of the flat dollar amount limit on the credit. The flat dollar amount for a taxable year is the greater of (1) $500 or (2) the lesser of (a) $250 multiplied by the number of nonhighly compensated employees of the eligible employer who are eligible to participate in the plan or (b) $5,000. As under present law, the credit applies for up to three years.

Effective Date

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

5. Small employer automatic enrollment credit (sec. 105 of the Act and new sec. 45T of the Code)

Present Law

Small employer startup credit

A nonrefundable income tax credit is available for qualified startup costs of an eligible small employer that adopts a new qualified retirement plan, SIMPLE IRA plan or SEP (referred to as an eligible employer plan), provided that the plan covers at least one nonhighly compensated employee.348 Qualified startup costs are expenses connected with the establishment or administration of the plan or retirement-related education for employees with respect to the plan. The credit is the lesser of (1) a flat dollar amount of $500 per year or (2) 50 percent of the qualified startup costs. The credit applies for up to three years beginning with the year the plan is first effective, or, at the election of the employer, with the year preceding the first plan year.

An eligible employer is an employer that, for the preceding year, had no more than 100 employees with compensation of $5,000 or more. In addition, the employer must not have had a plan covering substantially the same employees as the new plan during the three years preceding the first year for which the credit would apply. Members of controlled groups and affiliated service groups are treated as a single employer for purposes of these requirements.349 All eligible employer plans of an employer are treated as a single plan.

No deduction is allowed for the portion of qualified startup costs paid or incurred for the taxable year equal to the amount of the credit.

Automatic enrollment

A qualified defined contribution plan may include a qualified cash or deferred arrangement under which employees may elect to have plan contributions (“elective deferrals”) made rather than re-

348 Sec. 45E. A nonhighly compensated employee is an employee who is not a highly compensated employee as defined under section 414(q).
349 Secs. 52(a) or (b) and 414(m) or (o).
cope cash compensation (commonly called a “section 401(k) plan”). A SIMPLE IRA plan is an employer-sponsored retirement plan funded with individual retirement arrangements (“IRAs”) that also allows employees to make elective deferrals. Section 401(k) plans and SIMPLE IRA plans may be designed so that the employee will receive cash compensation unless the employee affirmatively elects to make elective deferrals to the plan. Alternatively, a plan may provide that elective deferrals are made at a specified rate (when the employee becomes eligible to participate) unless the employee elects otherwise (i.e., affirmatively elects not to make contributions or to make contributions at a different rate). This alternative plan design is referred to as automatic enrollment.

**Explanation of Provision**

Under the provision, an eligible employer is allowed a credit of $500 per year for up to three years for startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment, in addition to the plan startup credit allowed under present law. An eligible employer is also allowed a credit of $500 per year for up to three years if it converts an existing plan to an automatic enrollment design.

**Effective Date**

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

6. Certain taxable non-tuition fellowship and stipend payments treated as compensation for IRA purposes (sec. 106 of the Act and sec. 219 of the Code)

**Present Law**

There are two general types of individual retirement arrangements (“IRAs”): traditional IRAs and Roth IRAs. The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($6,000 for 2019) and (2) the amount of the individual’s compensation that is includible in gross income for the year. In the case of an individual who has attained age 50 by the end of the year, the dollar amount is increased by $1,000. 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 that is includible in gross income is at least equal to the contributed amount. An individual may make contributions to a traditional IRA (up to the contribution limit) without regard to his or her adjusted gross income.

An individual may deduct his or her contributions to a traditional IRA if neither the individual nor the individual’s spouse is an active participant in an employer-sponsored retirement plan. If

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350 Sec. 408(p).
351 Secs. 408 and 408A.
352 The limit in 2020 and 2021 is also $6,000.
353 Sec. 219(b)(2) and (5), as referenced in secs. 408(a)(1) and (b)(2)(B) and 408A(c)(2). Under section 973, IRA contributions in excess of the applicable limit are generally subject to an excise tax of six percent per year until withdrawn.
an individual or the individual's spouse is an active participant in an employer-sponsored retirement plan, the deduction is phased out for taxpayers with adjusted gross income over certain levels.\footnote{Sec. 219(g).}

Individuals with adjusted gross income below certain levels may make contributions to a Roth IRA (up to the contribution limit).\footnote{Sec. 408A(c)(3).} Contributions to a Roth IRA are not deductible.

As described above, an individual's IRA contributions generally cannot exceed the amount of his or her compensation that is includible in gross income. Subject to the rule for spouses, described above, an individual who has no includible compensation income generally is not eligible to make IRA contributions, even if the individual has other income that is includible in gross income.\footnote{Sec. 219(f)(1).}

\textit{Explanation of Provision}

Under the provision, an amount includible in an individual's income and paid to the individual to aid the individual in the pursuit of graduate or postdoctoral study or research (such as a fellowship, stipend, or similar amount) is treated as compensation for purposes of IRA contributions.

\textit{Effective Date}

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

\textbf{7. Repeal of maximum age for traditional IRA contributions (sec. 107 of the Act and sec. 219 of the Code)}

\textit{Present Law}

\textit{IRA rules}

An individual may make deductible contributions to a traditional IRA up to the IRA contribution limit if neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan.\footnote{Sec. 219(g).} If an individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan, the deduction is phased out for taxpayers with adjusted gross income ("AGI") for the taxable year over certain indexed levels.\footnote{Sec. 408A(c)(3).} To the extent an individual cannot or does not make deductible contributions to a traditional IRA, the individual may make nondeductible contributions to a traditional IRA (without regard to AGI limits). Alternatively, subject to AGI limits, an individual may make nondeductible contributions to a Roth IRA.\footnote{Sec. 408A(a).}

An individual who has attained age 70½ by the close of a year is not permitted to make contributions to a traditional IRA.\footnote{Sec. 219(d)(1).}
restriction does not apply to contributions to a Roth IRA. In addition, employees over age 70½ are not precluded from contributing to employer-sponsored plans.

**Qualified charitable distributions**

Otherwise taxable IRA distributions from a traditional or Roth IRA are excluded from gross income to the extent they are qualified charitable distributions. The exclusion may not exceed $100,000 per taxpayer per taxable year. Special rules apply in determining the amount of an IRA distribution that is otherwise taxable. The otherwise applicable rules regarding taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable distributions.

A qualified charitable distribution is any distribution from an IRA directly by the IRA trustee to an organization described in section 170(b)(1)(A) (generally, public charities) other than a supporting organization or a donor advised fund. Distributions are eligible for the exclusion only if made on or after the date the owner attains age 70½ and only to the extent the distribution would be includible in gross income (without regard to this provision).

The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Distributions that are excluded from gross income by reason of the qualified charitable distribution provision are not taken into account in determining the deduction for charitable contributions under section 170.

**Explanation of Provision**

The provision repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70½.

The provision also amends the rules relating to qualified charitable distributions to coordinate with this repeal so that an individual who receives a deduction for a contribution to a traditional IRA for years ending on or after age 70½ is not eligible to exclude such amount from income as a qualified charitable distribution. Thus, under the provision, the amount of qualified charitable distributions otherwise excludable from an individual's gross income for a taxable year is reduced (but not below zero) by the excess of (i) the aggregate amount of deductions allowed to the taxpayer for contributions to a traditional IRA for taxable years ending on or after the individual attains age 70½, over (ii) the aggregate amount of reductions for all taxable years preceding the current year.

361 Sec. 408A(c)(4).
362 Sec. 408(d)(8). The exclusion does not apply to distributions from employer-sponsored retirement plans, including SIMPLE IRAs and simplified employee pensions ("SEPs").
363 Supporting organizations are described in sec. 509(a)(3).
364 Defined in section 4966(d)(2).
Effective Date

The repeal of the prohibition on contributions to a traditional IRA by an individual who has attained age 70 1/2 applies to contributions made for taxable years beginning after December 31, 2019. The coordinating provision related to qualified charitable distributions is effective for distributions made for taxable years beginning after December 31, 2019.

8. Qualified employer plans prohibited from making loans through credit cards and other similar arrangements (sec. 108 of the Act and sec. 72(p) of the Code)

Present Law

Employer-sponsored retirement plans may provide loans to participants. Unless a retirement plan loan satisfies certain requirements in both form and operation, the amount of the loan is a deemed distribution from the retirement plan. There are certain requirements that the loan must satisfy for a retirement plan to be able to make a loan to a participant. First, the loan amount must not exceed the lesser of 50 percent of the participant’s account balance or $50,000 (generally taking into account outstanding balances of previous loans). Second, the loan’s terms must provide for a repayment period of not more than five years (except for a loan specifically designated to purchase a home). Third, level amortization of loan payments must be made not less frequently than quarterly. 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 generally is taxed as though an actual distribution occurred, including being subject to a 10-percent early distribution tax, if applicable. A deemed distribution is not eligible for rollover to another eligible retirement plan. Subject to the limit on the amount of loans, which precludes any additional loan that would cause the limit to be exceeded, the rules relating to loans do not limit the number of loans an employee may obtain from a plan. Some arrangements have developed under which an employee can access plan loans through the use of a credit card or similar mechanism.

Explanation of Provision

Under the provision, a plan loan that is made through the use of a credit card or similar arrangement does not meet the requirements for loan treatment applicable to qualified retirement plans and is therefore a deemed distribution.

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365 There are certain exceptions to this rule for loans, for example, individuals eligible to receive a coronavirus-related distribution under section 2202 of the CARES Act (Pub. L. No. 116–136) may take a loan during a specified period of time equal to the lesser of the present value of the nonforfeitable accrued benefit of the employee under the plan or $100,000 (and certain other rules apply to such loans). Special rules for loans also apply for certain individuals impacted by specified disasters. See, e.g., section 302 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of Pub. L. No. 116–260).

366 Sec. 72(p).
Effective Date

The provision applies to loans made after the date of enactment.

9. Portability of lifetime income options (sec. 109 of the Act and secs. 401(a), 401(k), 403(b), and 457(d) of the Code)

Present Law

Distribution restrictions for accounts under employer-sponsored plans

Types of plans and contributions

Tax-favored employer-sponsored retirement plans under which individual accounts are maintained for employees include qualified defined contribution plans, tax-deferred annuity plans (referred to as “section 403(b)” plans), and eligible deferred compensation plans of State and local government employers (referred to as “governmental section 457(b)” plans).

Contributions to a qualified defined contribution plan or section 403(b) plan may include some or all of the following types of contributions:

- Pretax elective deferrals (that is, pretax contributions made at the election of an employee in lieu of receiving cash compensation),
- After-tax designated Roth contributions (that is, elective deferrals made on an after-tax basis to a Roth account under the plan),
- After-tax employee contributions (other than designated Roth contributions),
- Pretax employer matching contributions (that is, employer contributions made as a result of an employee’s elective deferrals, designated Roth contributions, or after-tax contributions), and
- Pretax employer nonelective contributions (that is, employer contributions made without regard to whether an employee makes elective deferrals, designated Roth contributions, or after-tax contributions).

Contributions to a governmental section 457(b) plan generally consist of pretax elective deferrals and, if provided for under the plan, designated Roth contributions.

Restrictions on in-service distributions

The terms of an employer-sponsored retirement plan generally determine when distributions are permitted. However, in some cases, statutory restrictions on distributions may apply.

Elective deferrals under a qualified defined contribution plan are subject to statutory restrictions on distribution before severance from employment, referred to as “in-service” distributions. In-service distributions of elective deferrals (and related earnings) generally are permitted only after attainment of age 59½ or termi-
nation of the plan. In-service distributions of elective deferrals (but not related earnings) are also permitted in the case of hardship.\(^{369}\)

Other distribution restrictions may apply to contributions under certain types of qualified defined contribution plans. A profit-sharing plan generally may allow an in-service distribution of an amount contributed to the plan only after a fixed number of years (not less than two).\(^{370}\) A money purchase pension plan generally may not allow an in-service distribution before attainment of age 59½ (or attainment of normal retirement age under the plan if earlier) or termination of the plan.\(^{371}\)

Elective deferrals under a section 403(b) plan are subject to in-service distribution restrictions similar to those applicable to elective deferrals under a qualified defined contribution plan, and, in some cases, other contributions to a section 403(b) plan are subject to similar restrictions.\(^{372}\) Deferrals under a section 457(b) plan are subject to in-service distribution restrictions similar to those applicable to elective deferrals under a qualified defined contribution plan. In-service distribution restrictions apply under a section 457(b) plan until age 70½, except that, in the case of a governmental section 457(b) plan, in-service distribution restrictions apply until attainment of age 59½).\(^{373}\)

**Distributions and rollovers**

A distribution from an employer-sponsored retirement plan is generally includible in income except for any portion attributable to after-tax contributions, which result in basis.\(^{374}\) Unless an exception applies, in the case of a distribution before age 59½ from a qualified retirement plan or a section 403(b) plan, any amount included in income is subject to an additional 10-percent tax, referred to as the “early withdrawal” tax.\(^{375}\)

A distribution from an employer-sponsored retirement plan generally may be rolled over on a nontaxable basis to another such plan or to an individual retirement arrangement (“IRA”), either by a direct transfer to the recipient plan or IRA or by contributing the distribution to the recipient plan or IRA within 60 days of receiving the distribution.\(^{376}\) If the distribution from an employer-sponsored retirement plan consists of property, the rollover is accomplished by a transfer or contribution of the property to the recipient plan or IRA.

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\(^{369}\) The Bipartisan Budget Act of 2018, Pub. L. No. 115–123 ("BBA"), amends certain hardship distribution rules applicable to 401(k) plans, effective for plan years beginning after December 31, 2018. One such amendment under BBA section 41114 permits earnings on elective deferrals under a section 401(k) plan, as well as qualified nonelective contributions and qualified matching contributions (and attributable earnings), to be distributed on account of hardship.


\(^{371}\) Sec. 402(a)(36) as modified by sec. 104(b) of the Bipartisan American Miners Act of 2019 (Division M of Pub. L. No. 116–94).

\(^{372}\) Sec. 403(b)(7)(A)(ii) and (11).


\(^{374}\) Secs. 402(a), 403(b)(1), and 457(a)(1). Under section 402A(d), a qualified distribution from a designated Roth account under an employer-sponsored plan is not includible in income.

\(^{375}\) Sec. 72(t).

\(^{376}\) Secs. 402(c), 402A(c)(3), 403(b)(8), and 457(eX16).
Investment of accounts under employer-sponsored plans

Qualified defined contribution plans, section 403(b) plans, and governmental section 457(b) plans commonly allow employees to direct the manner in which their accounts are invested. Employees may be given a choice among specified investments, such as a choice of specified mutual funds, and, in some cases, may be able to direct the investment of their accounts in any product, instrument, or investment offered in the market.

The investment options under a particular employer-sponsored retirement plan may change at times. Similarly, a plan that allows employees to direct the investment of their accounts in any product, instrument, or investment offered in the market may be amended to limit the investments that can be held in the plan. In these cases, employees may be required to change the investments held within their accounts.

The terms of some investments impose a charge or fee when the investment is liquidated, particularly if the investment is liquidated within a particular period after acquisition. For example, a lifetime income product, such as an annuity contract, may impose a surrender charge if the investment is discontinued.

If an employee must liquidate an investment held in an employer-sponsored retirement plan because of a change in investment options or a limit on investments held in the plan, the employee may be subject to a charge or fee as described above. In addition, restrictions on in-service distributions may prevent the employee from preserving the investment through a rollover.

Explanation of Provision

Under the provision, if a lifetime income investment is no longer authorized to be held as an investment option under a qualified defined contribution plan (including a section 401(k) plan), a section 403(b) plan, or a governmental section 457(b) plan, except as otherwise provided in guidance, the plan does not fail to satisfy the Code requirements applicable to the plan solely by reason of allowing (1) qualified distributions of a lifetime income investment, or (2) distributions of a lifetime income investment in the form of a qualified plan distribution annuity contract. Such a distribution must be made within the 90-day period ending on the date when the lifetime income investment is no longer authorized to be held as an investment option under the plan.

For purposes of the provision, a qualified distribution is a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA. A lifetime income investment is an investment option designed to provide an employee with election rights (1) that are not uniformly available with respect to other investment options under the plan, and (2) that are rights to a lifetime income product.
income feature available through a contract or other arrangement offered under the plan (or under another employer-sponsored retirement plan or IRA through a direct trustee-to-trustee transfer). A lifetime income feature is (1) a feature that guarantees a minimum level of income annually (or more frequently) for at least the remainder of the life of the employee or the joint lives of the employee and the employee’s designated beneficiary, or (2) an annuity payable on behalf of the employee under which payments are made in substantially equal periodic payments (not less frequently than annually) over the life of the employee or the joint lives of the employee and the employee’s designated beneficiary. Finally, a qualified plan distribution annuity contract is an annuity contract purchased for a participant and distributed to the participant by an employer-sponsored retirement plan or an employer-sponsored retirement plan contract.\textsuperscript{379}

**Effective Date**

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

10. Treatment of custodial accounts on termination of section 403(b) plans (sec. 110 of the Act and sec. 403(b) of the Code)

**Present Law**

*Tax-sheltered annuities (section 403(b) plans)*

Section 403(b) plans are a form of tax-favored employer-sponsored plan that provide tax benefits similar to qualified retirement plans. Section 403(b) plans may be maintained only by (1) charitable tax-exempt organizations, and (2) educational institutions of State or local governments (that is, public schools, including colleges and universities). Many of the rules that apply to section 403(b) plans are similar to the rules applicable to qualified retirement plans, including section 401(k) plans. Employers may make nonelective or matching contributions to such plans on behalf of their employees, and the plans may provide for employees to make pretax elective deferrals, designated Roth contributions (held in designated Roth accounts)\textsuperscript{380} or other after-tax contributions. Generally, section 403(b) plans provide for contributions toward the purchase of annuity contracts or provide for contributions to be held in custodial accounts for each employee. In the case of contributions to custodial accounts under a section 403(b) plan, the amounts must be invested only in regulated investment company stock.\textsuperscript{381} Contributions to a custodial account are not permitted to be distributed before the employee dies, attains age 59 ½, has a severance from employment, or, in the case of elective deferrals, encounters financial hardship.

A section 403(b) plan is permitted to contain provisions that provide for plan termination and that allow accumulated benefits to

\textsuperscript{379} For this purpose, an employer-sponsored retirement plan contract is an annuity contract distributed from an eligible retirement plan described in section 402(c)(8)(B) other than an IRA or individual retirement annuity.

\textsuperscript{380} Sec. 405A.

\textsuperscript{381} Sec. 403(b)(7).
be distributed on termination.\textsuperscript{382} In order for a plan termination to be effectuated, however, all plan assets must be distributed to participants.

**Rollovers**

A distribution from a section 403(b) plan that is an eligible rollover distribution may be rolled over to an eligible retirement plan (which include another 403(b) plan, a qualified retirement plan, and an IRA).\textsuperscript{383} The rollover generally can be achieved by direct rollover (direct payment from the distributing plan to the recipient plan) or by contributing the distribution to the eligible retirement plan within 60 days of receiving the distribution (“60-day rollover”).\textsuperscript{384}

Amounts that are rolled over are usually not included in gross income. Generally, a distribution of any portion of the balance to the credit of a participant is an eligible rollover distribution with exceptions, for example, certain periodic payments, required minimum distributions, and hardship distributions are not eligible rollover distributions.\textsuperscript{385}

**Roth conversions**

Distributions from section 403(b) plans may be rolled over into a Roth IRA.\textsuperscript{386} Distributions from these plans that are rolled over into a Roth IRA and that are not distributions from a designated Roth account must be included in gross income. Further, a section 403(b) plan that allows employees to make designated Roth contributions may allow employees to elect to transfer amounts held in accounts that are not designated Roth accounts into designated Roth accounts, but the amount transferred must be included in income as though it were distributed.\textsuperscript{387}

**Approved nonbank trustees required for IRAs**

An IRA can be a trust, a custodial account, or an annuity contract. The Code requires that the trustee or custodian of an IRA be a bank (which is generally subject to Federal or State supervision) or an IRS-approved nonbank trustee, that an annuity contract be issued by an insurance company (which is subject to State supervision), and that an IRA trust or custodial account be created and organized in the United States.

In order for a trustee or custodian that is not a bank to be an IRA trustee or custodian, the entity must apply to the IRS for approval. Treasury Regulations list a number of factors that are taken into account in approving an applicant to be a nonbank

\textsuperscript{382}Treas. Reg. sec. 1.403(b)–10(a).
\textsuperscript{383}Sec. 403(b)(8). Similar rules apply to distributions from qualified retirement plans and governmental section 457(b) plans.
\textsuperscript{384}Under section 402(c)(11), any distribution to a beneficiary other than the participant’s surviving spouse is only permitted to be rolled over to an IRA using a direct rollover; 60-day rollovers are not available to nonspouse beneficiaries.
\textsuperscript{385}Sec. 402(c)(4). Treas. Reg. sec. 1.402(c)–1 identifies certain other payments that are not eligible for rollover, including, for example, certain corrective distributions, loans that are treated as deemed distributions under section 72(p), and dividends on employer securities as described in section 404(k).
\textsuperscript{386}Sec. 408A(d)(3). Similar rules apply to qualified retirement plans and governmental section 457(b) plans.
\textsuperscript{387}Sec. 402A(d)(4). Similar rules apply to qualified retirement plans and governmental section 457(b) plans.
The applicant must demonstrate fiduciary ability (ability to act within accepted rules of fiduciary conduct including continuity and diversity of ownership), capacity to account (experience and competence with respect to accounting for the interests of a large number of individuals), fitness to handle funds (experience and competence with respect to other activities normally associated with handling of retirement funds), and ability to satisfy other rules of fiduciary conduct, which includes a net worth requirement. Because it is an objective requirement that may be difficult for some applicants to satisfy, the net worth requirement may be the most significant of the requirements for nonbank trustees.

To be approved, the entity must have a net worth of at least $250,000 at the time of the application. There is a maintenance rule that varies depending on whether the trustee is an active trustee or a passive trustee and that includes minimum dollar amounts and minimum amounts as a percentage of assets held in fiduciary accounts. A special rule is provided for nonbank trustees that are members of the Security Investor Protection Corporation ("SIPC").

**Explanation of Provision**

Under the provision, the Secretary of the Treasury is directed to issue guidance within six months after the date of enactment to provide that, if an employer terminates a section 403(b) plan under which amounts are contributed to custodial accounts, the plan administrator or custodian may distribute an individual custodial account in kind to a participant or beneficiary of the plan, and the distributed custodial account must be maintained by the custodian on a tax-deferred basis as a section 403(b)(7) custodial account, similar to the treatment of fully-paid individual annuity contracts under Revenue Ruling 2011–7, until amounts are actually paid to the participant or beneficiary. In addition, such guidance must provide that (1) the section 403(b)(7) status of the distributed custodial account is generally maintained if such account thereafter adheres to the requirements of section 403(b) in effect at the time of the account’s distribution, and (2) a custodial account is not considered distributed to the participant or beneficiary if the employer has any material retained rights under the account (the employer, however, is not treated as retaining material rights simply because the custodial account was originally opened under a group contract).

The provision directs such guidance to apply retroactively for taxable years beginning after December 31, 2008.

**Effective Date**

The provision is effective upon date of enactment.

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\[388\] Treas. Reg. sec. 1.408–2(e).

11. Clarification of retirement income account rules relating to church-controlled organizations (sec. 111 of the Act and sec. 403(b)(9) of the Code)

**Present Law**

A plan sponsor or administrator generally must invest assets of a tax-sheltered annuity plan (a “section 403(b)” plan) in annuity contracts or mutual funds. However, the restrictions on investments do not apply to a retirement income account, which is a defined contribution program established or maintained by a church, or a convention or association of churches, to provide benefits under the plan to employees of a religious, charitable or similar tax-exempt organization.

Certain rules prohibiting discrimination in favor of highly compensated employees, which apply to section 403(b) plans generally, do not apply to a plan maintained by a church or qualified church-controlled organization. For this purpose, the term “church” includes a church, a convention or association of churches, or an elementary or secondary school that is controlled, operated, or principally supported by a church or by a convention or association of churches, and includes a qualified church-controlled organization (“QCCO”). A QCCO is any church-controlled tax-exempt organization other than an organization that: (1) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities that are sold at a nominal charge substantially less than the cost of providing the goods, services, or facilities; and (2) normally receives more than 25 percent of its support from either governmental sources, or receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities that are not unrelated trades or businesses, or from both. Church-controlled organizations that are not QCCOs are generally referred to as “non-QCCOs.”

In recent years, a question has arisen as to whether employees of non-QCCOs may be covered under a section 403(b) plan that consists of a retirement income account.

**Explanation of Provision**

The provision clarifies that a retirement income account may cover (1) a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, regardless of the source of his or her compensation; (2) an employee of an organization, whether a civil law corporation or otherwise, that is exempt from tax under section 501 and is controlled by or associated with a church or a convention or association of churches; and (3) an employee who is included in a church plan under certain circumstances after separation from the service of a church, a conven-
These individuals are described in section 414(e)(3)(B) and (E). 393

**Effective Date**

The provision applies to years beginning before, on, or after the date of enactment.

12. **Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate (sec. 112 of the Act and secs. 401(k) and 410 of the Code)**

**Present Law**

Qualified retirement plans

 Qualified retirement plans are of two general types: defined benefit plans, under which benefits are determined under a plan formula and paid from general plan assets, rather than individual accounts; and defined contribution plans which include section 401(k) plans, under which benefits are based on a separate account for each participant, to which are allocated contributions, earnings, and losses.

A section 401(k) plan is a profit-sharing or stock bonus plan 394 that contains a qualified cash or deferred arrangement under which employees may make elective deferrals. 395 Section 401(k) plans may be designed so that elective deferrals are made only if the employee affirmatively elects them. Alternatively, a section 401(k) plan may provide for “automatic enrollment,” under which elective deferrals are made at a specified rate (referred to as a “default rate”) when an employee becomes eligible to participate unless the employee affirmatively elects not to make contributions or to make contributions at a different rate. Other special rules apply to such arrangements. The maximum annual amount of elective deferrals that can be made by an employee to a section 401(k) plan for a year is $19,000 (for 2019) 396 plus $6,000 397 for employees age 50 or older (catch-up contribution amount) or, if less, the employee’s compensation. 398 Section 401(k) plans may provide for match-

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393 These individuals are described in section 414(e)(3)(B) and (E).
394 Defined contribution plans include money purchase pension plans, profit-sharing plans, and stock bonus plans. Certain pre-ERISA money purchase plans and rural cooperative plans may also include a qualified cash or deferred arrangement. Except for certain grandfathered plans, a State or local governmental employer may not maintain a section 401(k) plan.
395 Elective deferrals are generally made on a pretax basis, excludable from the participant’s gross income when contributed but includable with attributable earnings when distributed. However, under section 402A, a section 401(k) plan is permitted to include a “qualified Roth contribution program” that permits a participant to elect to have all or a portion of the participant’s elective deferrals under the plan treated as designated Roth contributions. Designated Roth contributions are not excludable from the participant’s gross income when contributed, but qualified distributions of designated Roth contributions and attributable earnings are excluded from gross income (even though the earnings are not previously taxed). A qualified distribution is a distribution made after the end of a specified period (generally five years after the participant attains age 59 1/2), (2) made to a beneficiary (or to the estate of the participant) on or after the death of the participant, or (3) attributable to the participant’s being disabled.
396 For 2020 and 2021, this amount is $19,500.
397 For 2020 and 2021, this amount is $6,500.
398 Secs. 402(g) and 414(v).
ing contributions, which are made on account of elective deferrals, and may provide for employer nonelective contributions.

**Participation requirement**

A qualified retirement plan generally can delay participation in the plan based on attainment of age or completion of years of service but not beyond the later of completion of one year of service (that is, a 12-month period with at least 1,000 hours of service) or attainment of age 21. A plan also cannot exclude an employee from participation (on the basis of age) when that employee has attained a specified age. Employees can be excluded from plan participation on other bases, such as job classification, as long as the other basis is not an indirect age or service requirement. A plan can provide that an employee is not entitled to an allocation of employer nonelective or matching contributions for a plan year unless the employee completes either 1,000 hours of service during the plan year or is employed on the last day of the year even if the employee previously completed 1,000 hours of service in a prior year. However, once an employee has completed 1,000 hours of service during a plan year, an employee cannot be precluded from making elective deferrals based on a service requirement.

**Vesting**

Qualified retirement plans are subject to requirements as to the period of service after which a participant’s right to his or her accrued benefit must be nonforfeitable (that is, “vested”). Generally, a year of vesting service is only required to be credited if an employee completes 1,000 hours of service during the year.

In the case of a defined contribution plan, a participant’s accrued benefit is the balance of his or her account under the plan. The portion of an employee’s account balance attributable to employee after-tax contributions and elective deferrals must be nonforfeitable at all times. Generally, the portion of an employee’s account balance attributable to nonelective or matching contributions must become nonforfeitable after the completion of a specified number of years of service in accordance with one of two minimum vesting schedules. Under the first vesting schedule, the participant’s accrued benefit derived from employer contributions must become 100 percent vested upon completion of no more than three years of service (often referred to as “three year cliff vesting”). Under the

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399 Sec. 401(m). Matching contributions can also be made on account of after-tax employee contributions.

400 Secs. 401(a)(3) and 410(a)(1). Parallel requirements generally apply to plans of private employers under section 202 of the Employee Retirement Income Security Act of 1974 (“ERISA”). Governmental plans under section 414(d) and church plans under section 414(e) are generally exempt from these Code requirements and from ERISA.

401 Sec. 410(a)(2).

402 Sec. 401(k)(2)(D).

403 Secs. 401(a)(7) and 411. Governmental plans and church plans are generally exempt from these Code requirements. Parallel requirements generally apply to plans of private employers under sections 203–204 of ERISA.

404 Secs. 411(a)(1) and 401(k)(2)(C). Certain nonelective contributions under a section 401(k) plan and employer matching contributions with respect to elective deferrals must also be nonforfeitable at all times.

405 Sec. 411(a)(2)(B). Section 411(a)(3) provides certain permitted forfeitures for accrued benefits that are otherwise 100 percent vested, including, for example, forfeiture upon the participant’s death or withdrawal of mandatory employee contributions and suspension of benefits upon reemployment.
second vesting schedule (referred to as “graduated vesting”), the participant’s accrued benefit derived from employer contributions must become vested ratably at least over the period from two to six years of service.

**Minimum coverage and nondiscrimination requirements**

**In general**

A qualified retirement plan is prohibited from discriminating in favor of highly compensated employees, referred to as the nondiscrimination requirements. These requirements are intended to ensure that a qualified retirement plan provides meaningful benefits to an employer’s rank-and-file employees, so that qualified retirement plans achieve the goal of retirement security for both lower-paid and higher-paid employees. The nondiscrimination requirements consist of a minimum coverage requirement and general nondiscrimination requirements.  

For purposes of these requirements, an employee generally is treated as highly compensated if the employee (1) was a five-percent owner of the employer at any time during the year or the preceding year, or (2) had compensation for the preceding year in excess of $125,000 (for 2019).

The minimum coverage and general nondiscrimination requirements apply annually on the basis of the plan year. In applying these requirements, employees of all members of a controlled group or affiliated service group are treated as employed by a single employer. Employees who have not satisfied minimum age and service conditions under the plan, certain nonresident aliens, and employees covered by a collective bargaining agreement are generally disregarded. However, a plan that covers employees with less than a year of service or who are under age 21 must generally include those employees in any nondiscrimination test for the year but can test the plan for nondiscrimination in two parts: (1) by separately testing the portion of the plan covering employees who have not completed a year of service or are under age 21 and treating all of the employer’s employees with less than a year of service or under age 21 as the only employees of the employer; and (2) then testing the rest of the plan taking into account the rest of the employees of the employer and excluding those employees. If a plan does not satisfy the nondiscrimination requirements on its own, it may in some circumstances be aggregated with another plan, and the two plans tested together as a single plan.

**Minimum coverage requirement**

Under the minimum coverage requirement, the plan’s coverage of employees must be nondiscriminatory. This is determined by calcu-
lating the plan's ratio percentage, that is, the ratio of the percentage of nonhighly compensated employees (of all nonhighly compensated employees in the workforce) covered under the plan to the percentage of highly compensated employees covered. In the case of a section 401(k) plan, the right to make elective deferrals, the right to receive matching contributions, and the allocation of nonelective contributions are each tested separately for nondiscriminatory coverage as though provided under separate plans.

If the plan's ratio percentage is 70 percent or greater, the plan satisfies the minimum coverage requirement. If the plan's ratio percentage is less than 70 percent, a multi-part test applies. First, the plan must cover a group (or "classification") of employees that is reasonable and established under objective business criteria, such as hourly or salaried employees (referred to as a reasonable classification), and the plan's ratio percentage must be at or above a specific level specified in the regulations. In addition, the average benefit percentage test must be satisfied. Under the average benefit percentage test, the average rate of contributions or benefit accruals for all nonhighly compensated employees in the workforce (taking into account all plans of the employer) must be at least 70 percent of the average contribution or accrual rate of all highly compensated employees.

General nondiscrimination requirements

Nondiscrimination in the amount of contributions or benefits

There are two general approaches to testing the amount of contributions or benefits under a qualified retirement plan: 409 (1) design-based safe harbors under which the benefit formula under a defined benefit plan, or the formula for allocating employer nonelective contributions under a defined contribution plan to participants' accounts, satisfies certain uniformity standards; and (2) a mechanical general test under which the distribution of the rates of benefit among highly compensated and nonhighly compensated employees within a plan is tested for nondiscrimination by applying a modified version of the minimum coverage requirement. 410 The safe harbors and general test may include cross-testing of equivalent accruals or allocations. 411 A plan is not discriminatory merely because benefit accruals or allocations for highly compensated and nonhighly compensated employees are provided as a percentage of compensation (up to $280,000 for 2019). 412 Thus, the various testing approaches are generally applied to the amount of

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409 Treas. Reg. sec. 1.401(a)(4)–1. With respect to the amount of contributions, employee elective deferrals under a section 401(k) plan and employer matching contributions and after-tax employee contributions to a defined contribution plan are subject to special testing rules, rather than being included in applying the general nondiscrimination requirements. In addition, the amount of employer contributions to an ESOP is tested separately from other employer contributions. Rules applicable to benefits, rights and features and the timing of plan amendments are provided in Treas. Reg. secs. 1.401(a)(4)–4 and –5 respectively.

410 These approaches are explained in Treas. Reg. secs. 1.401(a)(4)–2, –3, and –8. Sections 401(a)(5)(C)–(D) and 401(l) and Treas. Reg. secs. 1.401(a)(4)–7 and 1.401(l)–1 through –6 provide rules under which nondiscrimination testing may take into account the employer-paid portion of social security taxes or benefits, referred to as permitted disparity.

411 Sec. 401(a)(5)(B); sec. 401(a)(17). The limit on compensation that may be taken into account is $285,000 for 2020, and $290,000 for 2021.
contributions or benefits provided as a percentage of compensation (expressed as allocation or accrual rates).

**Special nondiscrimination tests for section 401(k) plans**

A special annual nondiscrimination test, called the actual deferral percentage test (the “ADP” test) applies to test the amount of elective deferrals under a section 401(k) plan.\(^{413}\) The ADP test generally compares the average rate of deferral for highly compensated employees to the average rate of deferral for nonhighly compensated employees. The ADP test allows the average deferral rate for highly compensated employees to exceed that for nonhighly compensated employees within limits: (1) the average deferral rate for highly compensated employees can be up to 125 percent of the average deferral rate for nonhighly compensated employees; or (2) the average deferral rate for highly compensated employees can be two percentage points greater than the average deferral rate for nonhighly compensated employees or, if less, twice the average deferral rate for nonhighly compensated employees. Employer matching contributions and after-tax employee contributions are subject to a similar special nondiscrimination test (the actual contribution percentage test or “ACP test”) which compares the average rate of matching and after-tax contributions to the plan of the two groups.\(^{414}\)

If the ADP test is not satisfied, end-of-year correction mechanisms are available for the employer to make immediately vested additional contributions for nonhighly compensated employees (and certain other corrections) or to distribute deferrals of highly compensated employees to such employees, so that the ADP test is satisfied. Similar correction mechanisms are available for purposes of satisfying the ACP test.

There are also designed-based safe harbor methods of satisfying the ADP and ACP tests. These safe harbors are based on the premise that, for a 401(k) plan with certain design features with respect to contributions (elective, matching, and nonelective) and enrollment (with or without automatic enrollment), satisfaction of the minimum coverage requirement is a sufficient test of whether the elective deferrals and matching contributions are nondiscriminatory.\(^{415}\)

**Top-heavy rules**

Top-heavy rules apply to limit the extent to which accumulated benefits or account balances under a qualified retirement plan can be concentrated with key employees.\(^{416}\) Whereas the general nondiscrimination requirements are designed to test annual contributions or benefits for highly compensated employees, compared to

\(^{413}\) Sec. 401(k)(3).

\(^{414}\) Sec. 401(m)(2).

\(^{415}\) The safe harbors that only require certain matching contributions potentially allow satisfaction of the nondiscrimination requirement with respect to elective and matching contributions under a 401(k) plan for a year even though no contributions are ultimately provided to nonhighly compensated employees under the plan for the year due to a lack of voluntary participation.

\(^{416}\) Secs. 401(a)(10)(B) and 416. The nature of the top-heavy test is such that a plan of a large business with many employees is unlikely to be top-heavy. The top-heavy requirements are therefore viewed as primarily affecting plans of smaller employers in which the owners participate.
those of nonhighly compensated employees, the top-heavy rules test the portion of the total plan contributions or benefits that have accumulated for the benefit of key employees as a group. If a plan is determined to be top-heavy, minimum contributions or benefits are required for participants who are non-key employees, and, in some cases, faster vesting is required. Non-key employees who have become participants in a defined contribution plan, but who subsequently fail to complete 1,000 hours of service (or the equivalent) for an accrual computation period must receive the top-heavy defined contribution minimum.

For this purpose, a key employee is an officer with annual compensation greater than $180,000 (for 2019), a five-percent owner, or a one-percent owner with compensation in excess of $150,000. A defined benefit plan generally is top-heavy if the present value of cumulative accrued benefits for key employees exceeds 60 percent of the cumulative accrued benefits for all employees. A defined contribution plan is top-heavy if the aggregate of accounts for key employees exceeds 60 percent of the aggregate accounts for all employees.

Section 403(b) and governmental 457(b) plans

Tax-deferred annuity plans (referred to as section 403(b) plans) are generally similar to qualified defined contribution plans, but may be maintained only by (1) tax-exempt charitable organizations, and (2) educational institutions of State or local governments (that is, public schools, including colleges and universities). Section 403(b) plans may provide for employees to make elective deferrals (in pretax or designated Roth form), including catch-up contributions, or other after-tax employee contributions, and employers may make nonelective or matching contributions on behalf of employees. Contributions to a section 403(b) plan are generally subject to the same contribution limits applicable to qualified defined contribution plans, including the limits on elective deferrals.

Contributions to a section 403(b) plan must be fully vested. The minimum coverage and general nondiscrimination requirements applicable to a qualified retirement plan generally apply to a section 403(b) plan and to employer matching and nonelective contributions and after-tax employee contributions to the plan. If a section 403(b) plan provides for elective deferrals, the plan is subject to a “universal availability” requirement under which all employees must be given the opportunity to make deferrals of more than $200. In applying this requirement, nonresident aliens, students, and employees who normally work less than 20 hours per week may be excluded.

Footnotes:

417 For 2020 and 2021, this amount is $185,000.
418 These are organizations exempt from tax under section 501(c)(3). Section 403(b) plans of private, tax-exempt employers may be subject to ERISA as well as the requirements of section 403(b).
419 Sec. 403(b).
420 These requirements do not apply to a governmental section 403(b) plan or a section 403(b) plan maintained by a church or a qualified church-controlled organization as defined in section 3121(w).
421 For this purpose, nonresident has the meaning in section 419(b)(3)(C), and student has the meaning in section 3121(b)(10). The universal availability requirement does not apply to a section 403(b) plan maintained by a church or a qualified church-controlled organization.
An eligible deferred compensation plan of a governmental employer (referred to as a governmental section 457(b) plan) is generally similar to a qualified cash or deferred arrangement under a section 401(k) plan in that it consists of elective deferrals, that is, contributions (in pretax or designated Roth form) made at the election of an employee, including catch-up contributions. Deferrals under a governmental section 457(b) plan are generally subject to the same limits as elective deferrals under a section 401(k) plan or a section 403(b) plan.

**Explanation of Provision**

The provision requires a section 401(k) plan to permit an employee to make elective deferrals if the employee has worked at least 500 hours per year with the employer for at least three consecutive years and has met the age requirement (age 21) by the end of the three consecutive year period (for this provision, an employee is referred to as a “long-term part-time employee” after having completed this period of service). Thus, a long-term part-time employee could not be excluded from the plan because the employee has not completed a year of service as defined under the participation requirements described above (a 12-month period with at least 1,000 hours of service). Once a long-term part-time employee meets the age and service requirements, such employee must be able to commence participation no later than the earlier of (1) the first day of the first plan year beginning after the date on which the employee satisfied the age and service requirements or (2) the date 6 months after the date on which the individual satisfied those requirements. Employers may, but are not required to, allow long-term part-time employees to participate in the design based safe harbors (including the automatic enrollment safe harbor). If an employer does permit a long-term part-time employee to participate in such an automatic enrollment 401(k) plan, that employee would have elective deferrals automatically made at the default rate unless the employee affirmatively elects not to make contributions or to make contributions at a different rate.

The provision does not require a long-term part-time employee to be otherwise eligible to participate in the plan. Thus, the plan can continue to treat a long-term part-time employee as ineligible under the plan for employer nonelective and matching contributions based on not having completed a year of service. However, for a plan that does provide employer contributions for long-term part-time employees, the provision requires a plan to credit, for each year in which such an employee worked at least 500 hours, a year of service for purposes of vesting in any employer contributions. If a long-term part-time employee under such a plan becomes a full-time employee (meaning that the employee completes a 12-month period with at least 1,000 hours of service), the plan must continue to determine the employee’s years of service using the special rule for long-term part-time employees.

With respect to long-term part-time employees, employers would receive nondiscrimination testing relief (similar to the present-law rules for plans covering otherwise excludable employees), including permission to exclude these employees from top-heavy vesting and top-heavy benefit requirements. However, the relief from the non-
discrimination rules ceases to apply to any employee who becomes a full-time employee (as of the first plan year beginning after the plan year in which the employee becomes a full-time employee). This provision does not apply to collectively bargained employees.

**Effective Date**

The provision applies to plan years beginning after December 31, 2020, except that for determining whether the three consecutive year period has been met, 12-month periods beginning before January 1, 2021 are not taken into account.

13. **Penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption (sec. 113 of the Act and secs. 72(t), 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”), an eligible deferred compensation plan of a State or local government employer (a “governmental section 457(b) plan”), or an IRA generally is included in income for the year distributed. These plans are referred to collectively as “eligible retirement plans.” In addition, unless an exception applies, a distribution from a qualified retirement plan, a section 403(b) plan, or an IRA received before age 59½ is subject to a 10-percent additional tax (referred to as the “early withdrawal tax”) on the amount includible in income.

In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster or other events beyond the reasonable control of the individual.

The terms of a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan generally determine when distributions are permitted. However, in some cases, restrictions may apply to distributions before an employee’s termination of employment, referred to as “in-service” distributions. Despite such restrictions, an in-service distribution may be permitted in the case of financial hardship or an unforeseeable emergency.

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422 Secs. 401(a), 403(a), 403(b), 457(b), and 408. Under section 3405, distributions from these plans are generally subject to income tax withholding unless the recipient elects otherwise. In addition, certain distributions from a qualified retirement plan, a section 403(b) plan, or a governmental section 457(b) plan are subject to mandatory income tax withholding at a 20-percent rate unless the distribution is rolled over.

423 Sec. 72(t). Under present law, the 10-percent early withdrawal tax does not apply to distributions from a governmental section 457(b) plan.
Explanation of Provision

In general

Under the provision, an exception to the 10-percent early withdrawal tax applies in the case of a qualified birth or adoption distribution from an applicable eligible retirement plan (as defined). In addition, qualified birth or adoption distributions may be re-contributed to an individual's applicable eligible retirement plans, subject to certain requirements.

Distributions from applicable eligible retirement plans

A qualified birth or adoption distribution is a permissible distribution from an applicable eligible retirement plan which, for this purpose, encompasses eligible retirement plans other than defined benefit plans, including qualified retirement plans, section 403(b) plans, governmental section 457(b) plans, and IRAs.424

A qualified birth or adoption distribution is a distribution from an applicable eligible retirement plan to an individual if made during the one-year period beginning on the date on which a child of the individual is born or on which the legal adoption by the individual of an eligible adoptee is finalized. An eligible adoptee means any individual (other than a child of the taxpayer's spouse) who has not attained age 18 or is physically or mentally incapable of self-support. The provision requires the name, age, and taxpayer identification number of the child or eligible adoptee to which any qualified birth or adoption distribution relates to be provided on the tax return of the individual taxpayer for the taxable year.

The maximum aggregate amount which may be treated as qualified birth or adoption distributions by any individual with respect to a birth or adoption is $5,000. The maximum aggregate amount applies on an individual basis. Therefore, each spouse separately may receive a maximum aggregate amount of $5,000 of qualified birth or adoption distributions (with respect to a birth or adoption) from applicable eligible retirement plans in which each spouse participates or holds accounts.

An employer plan is not treated as violating any Code requirement merely because it treats a distribution (that would otherwise be a qualified birth or adoption distribution) to an individual as a qualified birth or adoption distribution, provided that the aggregate amount of such distributions to that individual from plans maintained by the employer and members of the employer's controlled group425 does not exceed $5,000. Thus, under such circumstances an employer plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $5,000 as a result of distributions from plans of other employers or IRAs.

Recontributions to applicable eligible retirement plans

Generally, any portion of a qualified birth or adoption distribution may, at any time after the date on which the distribution was

424 A qualified birth or adoption distribution is subject to income tax withholding unless the recipient elects otherwise. Mandatory 20-percent withholding does not apply.

425 The term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.
received, be recontributed to an applicable eligible retirement plan to which a rollover can be made. Such a recontribution is treated as a rollover and thus is not includable in income. If an employer adds the ability for plan participants to receive qualified birth or adoption distributions from a plan, the plan must permit an employee who has received qualified birth or adoption distributions from that plan to recontribute only up to the amount that was distributed from that plan to that employee, provided the employee otherwise is eligible to make contributions (other than recontributions of qualified birth or adoption distributions) to that plan. Any portion of a qualified birth or adoption distribution from an individual’s applicable eligible retirement plans (whether employer plans or IRAs) may be recontributed to an IRA held by such an individual which is an applicable eligible retirement plan to which a rollover can be made.

**Effective Date**

The provision applies to distributions made after December 31, 2019.

14. Increase in age for required beginning date for mandatory distributions (sec. 114 of the Act and sec. 401(a)(9) of the Code)

**Present Law**

**Required minimum distributions**

Employer-provided qualified retirement plans, traditional IRAs, and individual retirement annuities are subject to required minimum distribution rules. A qualified retirement plan for this purpose means a tax-qualified plan described in section 401(a) (such as a defined benefit pension plan or a section 401(k) plan), an employee retirement annuity described in section 403(a), a tax-sheltered annuity described in section 403(b), and a plan described in section 457(b) that is maintained by a governmental employer.426

An employer-provided qualified retirement plan that is a defined contribution plan is a plan which provides (1) an individual account for each participant and (2) for benefits based on the amount contributed to the participant’s account and any income, expenses, gains, losses, and forfeitures of accounts of other participants which may be allocated to such participant’s account.427

Required minimum distributions generally must begin by April 1 of the calendar year following the calendar year in which the individual (employee or IRA owner) reaches age 70½. However, in the case of an employer-provided qualified retirement plan, the required minimum distribution date for an individual who is not a five-percent owner of the employer maintaining the plan may be delayed to April 1 of the year following the year in which the individual retires if the plan provides for this later distribution date. For all subsequent years, including the year in which the individual was paid the first required minimum distribution by April

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426 The required minimum distribution rules also apply to section 457(b) plans maintained by tax-exempt employers other than governmental employers.

427 Sec. 414(i).
1, the individual must take the required minimum distribution by December 31 of the year.

For IRAs and defined contributions plans, the required minimum distribution for each year generally is determined by dividing the account balance as of the end of the prior year by the number of years in the distribution period.428 The distribution period is generally derived from the Uniform Lifetime Table.429 This table is based on the joint life expectancies of the individual and a hypothetical beneficiary 10 years younger than the individual. For an individual with a spouse as designated beneficiary who is more than 10 years younger, the joint life expectancy of the couple is used (because the couple’s remaining joint life expectancy is longer than the length provided in the Uniform Lifetime Table). There are special rules in the case of annuity payments from an insurance contract.

If an individual dies on or after the individual’s required beginning date, the required minimum distribution is also determined by dividing the account balance as of the end of the prior year by a distribution period. The distribution period is equal to the remaining years of the beneficiary’s life expectancy or, if there is no designated beneficiary, a distribution period equal to the remaining years of the deceased individual’s single life expectancy, using the age of the deceased individual in the year of death.430

In the case of an individual who dies before the individual’s required beginning date, there are two methods for satisfying the after death required minimum distribution rules, the life-expectancy rule or the five-year rule. Under the life-expectancy rule, annual required minimum distributions must begin no later than December 31 of the calendar year immediately following the calendar year in which the individual died. This rule is only available if the designated beneficiary is an individual (e.g., not the individual’s estate or a charity). If the designated beneficiary is the individual’s spouse, commencement of distributions can be delayed until December 31 of the calendar year in which the deceased individual would have attained age 70½. The required minimum distribution for each year is also determined by dividing the account balance as of the end of the prior year by a distribution period, which is determined by reference to the beneficiary’s life expectancy.431 Under the five-year rule, the individual’s entire account must be distributed no later than December 31 of the calendar year containing the fifth anniversary of the individual’s death.432

A special after-death rule applies for an IRA if the beneficiary of the IRA is the surviving spouse. The surviving spouse is permitted to choose to calculate required minimum distributions both while the surviving spouse is alive and after death as though the surviving spouse is the IRA owner, rather than a beneficiary.433

Roth IRAs are not subject to the minimum distribution rules during the IRA owner’s lifetime. However, Roth IRAs are subject to the post-death minimum distribution rules that apply to traditional

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428 Treas. Reg. sec. 1.401(a)(9)–5.
432 Treas. Reg. sec. 1.401(a)(9)–3, Q&As 1, 2.
433 Treas. Reg. sec. 1.408–8, Q&A 5.
IRAs. For Roth IRAs, the IRA owner is treated as having died before the individual's required beginning date. Thus, only the life-expectancy rule and the five-year rule apply.

Failure to make a required minimum distribution triggers a 50-percent excise tax, payable by the individual or the individual's beneficiary. The tax is imposed during the taxable year that begins with or within the calendar year during which the distribution was required.\textsuperscript{434} The tax may be waived if the distribution did not occur because of reasonable error and reasonable steps are taken to remedy the violation.\textsuperscript{435}

**Eligible rollover distributions**

With certain exceptions, distributions from an employer-provided qualified retirement plan are eligible to be rolled over tax free into another employer-provided qualified retirement plan or an IRA. This can be achieved by contributing the amount of the distribution to the other plan or IRA within 60 days of the distribution, or by a direct payment by the plan to the other plan or IRA (referred to as a “direct rollover”). Distributions that are not eligible for rollover include (i) any distribution that is one of a series of periodic payments generally for a period of 10 years or more (or a shorter period for distributions made for certain life expectancies) and (ii) any distribution to the extent that the distribution is a required minimum distribution.\textsuperscript{436}

For any distribution that is eligible for rollover, an employer-provided qualified retirement plan must offer the distributee the right to have the distribution made in a direct rollover.\textsuperscript{437} Before making the distribution, the plan administrator must provide the distributee with a written explanation of the direct rollover right and related tax consequences.\textsuperscript{438} Unless a distributee elects to have the distribution made in a direct rollover, the distribution is generally subject to mandatory 20-percent income tax withholding.\textsuperscript{439}

**Explanation of Provision**

The provision changes the age on which the required beginning date for required minimum distributions is based. The required beginning date is changed from April 1 following the calendar year in which the employee or IRA owner attains 70\(\frac{1}{2}\) years to April 1 following the calendar year in which the employee or IRA owner attains 72 years.\textsuperscript{440} Under the provision, present law continues to apply to employees and IRA owners who attain age 70\(\frac{1}{2}\) prior to January 1, 2020.

In addition, the present law requirement to actuarially adjust an employee’s accrued benefit for an employee who retires in a calendar year after the year the employee attains age 70\(\frac{1}{2}\), to take

\textsuperscript{434}Sec. 4974(a).
\textsuperscript{435}Sec. 4974(d).
\textsuperscript{436}Sec. 402(c)(4). Distributions that are not eligible rollover distributions also include distributions made upon hardship of the employee.
\textsuperscript{437}Sec. 401(a)(31).
\textsuperscript{438}Sec. 402(f).
\textsuperscript{439}Sec. 3405(c). This mandatory withholding does not apply to a distributee that is a beneficiary other than a surviving spouse of an employee.
\textsuperscript{440}For an employee who is not a 5-percent owner of the employer maintaining a plan, the required beginning date is no earlier than April 1 of the calendar year following the calendar year in which the employee retires.
into account the period after age 70 1/2 in which the employee was not receiving any benefits under the plan, is not changed.

**Effective Date**

The provision is effective for distributions required to be made after December 31, 2019, for employees and IRA owners who attain age 70 1/2 after December 31, 2019.

**15. Special rules for minimum funding standards for community newspaper plans (sec. 115 of the Act, sec. 303 of ERISA, and sec. 450 of the Code)**

**Present Law**

The Code and the Employee Retirement Income Security Act of 1974 ("ERISA") apply minimum funding requirements to defined benefit retirement plans maintained by private-sector employers for their employees (referred to as "single employer" plans), for purposes of which employers that are members of a controlled group are considered a single employer.

Under these rules, a minimum contribution is required for a plan year if the value of the plan's assets is less than the plan's "funding target," that is, the present value, determined actuarially, of all benefits earned as of the beginning of the year. If the value of plan assets is less than the plan's funding target, such that the plan has a funding shortfall, the shortfall is generally required to be funded by contributions, with interest, over seven years, taking into account the remaining installments attributable to shortfalls from preceding years. In addition, the required contribution must include the amount of the plan's "target normal cost," that is, the present value, determined actuarially, of any benefits expected to be earned for the year plus the plan-related expenses expected to be paid from plan assets during the plan year. In the case of a plan funded below a certain level, referred to as an "at-risk" plan, specified assumptions must be used in determining the plan's funding target and target normal cost.

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441 Secs. 412 and 430–433 and ERISA secs. 301–306. Unless a funding waiver is obtained, an employer may be subject to a two-tier excise tax under section 4971 if the funding requirements are not met.

Special funding rules may apply to certain categories of single employer plans. For example, special rules apply to certain plans maintained by commercial passenger airlines, under section 402 of the Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109–280. If an election is made by a commercial passenger airline described in section 402(a)(1) of PPA, then in determining the plan's minimum required contribution under section 430, the airline may use an interest rate of 8.85% to amortize the unfunded liability of the plan in equal installments over the remaining part of the 17-year amortization period. See Treas. Reg. sec. 1.430(a)–1(b)(4)(ii).

In some cases, a plan may be "frozen" as to service and/or compensation. When a plan is frozen with respect to both service and compensation, participants are entitled to previously earned benefits but do not accrue or earn additional benefits.

443 For an at-risk plan, the specified assumptions generally are as follows: All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the next 10 plan years must be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the "at-risk funding target" and "at-risk normal cost" are being determined. Also, all employees must be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined as above) that would result in the highest present value of benefits. The at-risk funding target is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year using the actuarial assumptions set forth in the Code and regulations for single employer plans, with the addition of a loading factor which arises when the plan has been in at-risk status for at least two of the four preceding plan years. This loading factor

Continued
The minimum funding rules enacted in the Pension Protection Act of 2006 ("PPA") specify the interest rates used to determine a plan’s funding target and target normal cost for a year, consisting of three “segment” rates, each of which applies to benefit payments expected to be made from the plan during a certain period. The first segment rate applies to benefits reasonably determined to be payable during the five-year period beginning on the first day of the year; the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable at the end of the 15-year period. The first, second, and third segment rates are based on the corresponding portion of a corporate bond yield curve with certain adjustments.

Under the Moving Ahead for Progress in the 21st Century Act, for plan years beginning after December 31, 2011, a segment rate determined under the PPA rules is adjusted if it falls outside a specified percentage range of the average segment rates for a preceding period. In particular, if a segment rate determined under the PPA rules is less than the applicable minimum percentage in the specified range, the segment rate is adjusted upward to match the minimum percentage. If a segment rate determined under the PPA rules is more than the applicable maximum percentage in the specified range, the segment rate is adjusted downward to match the maximum percentage.

The specified percentage range (that is, the range from the applicable minimum percentage to the applicable maximum percentage of average segment rates), as most recently modified in the Bipartisan Budget Act of 2015, for determining whether a segment rate must be adjusted upward or downward for a plan year is determined by the sum of (1) $700 multiplied by the number of participants in the plan and (2) four percent of the funding target (determined without regard to the definition of at-risk funding target). The at-risk normal cost for a plan year generally represents the excess of the sum of (1) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year using the at-risk assumptions described above plus (2) the amount of plan related expenses expected to be paid from plan assets during the plan year, over (3) the amount of mandatory employee contributions expected to be made during the plan year. In addition, where the plan has been in at-risk status for at least two of the four preceding plan years, a loading factor is added, which is equal to four percent of the target normal cost (the excess of the sum of (1) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year plus (2) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over (3) the amount of mandatory employee contributions expected to be made during the plan year) with respect to the plan for the plan year.
terminated by reference to the calendar year in which the plan year begins as follows:

- 90 percent to 110 percent for 2012 through 2020,
- 85 percent to 115 percent for 2021,
- 80 percent to 120 percent for 2022,
- 75 percent to 125 percent for 2023, and
- 70 percent to 130 percent for 2024 or later.

For March 2019, the first, second, and third segment rates after adjustment are 2.86 percent, 4.00 percent, and 4.42 percent, respectively.448

**Explanation of Provision**

Under the provision, an employer maintaining a “community newspaper plan” (as defined below) under which no participant has had the participant’s accrued benefit increased (whether because of service or compensation) after December 31, 2017, may elect to apply certain alternative funding rules to the plan and any other plan sponsored by any member of the controlled group (determined as of the date of enactment).449 An election under the provision to apply the alternative funding rules is to be made at such time and in such manner as prescribed by the Secretary of the Treasury, and once made with respect to a plan year, applies to all subsequent years unless revoked with the consent of the Secretary of the Treasury.

Under the alternative funding rules, an interest rate of eight percent is used to determine a plan’s funding target and target normal cost, rather than the first, second, and third segment rates. However, if new benefits are accrued or earned under a plan for a plan year in which the election is in effect, the present value of such benefits must be determined on the basis of the U.S. Treasury obligation yield curve for the day that is the valuation date of such plan for such plan year. In addition, if the value of plan assets is less than the plan’s funding target, such that the plan has a funding shortfall, the shortfall is required to be funded by contributions, with interest, over 30 years, rather than over seven years. The shortfall amortization bases determined450 for all plan years preceding the first plan year to which the election applies (and all related shortfall amortization installments) are reduced to zero. Further, the assumptions applicable to an “at-risk” plan do not apply.

Under the provision, a “community newspaper plan” is a plan to which the new provision applies, which is maintained by an employer that, as of December 31, 2017:

- Publishes and distributes daily, either electronically or in printed form, one or more community newspapers (as defined below) in a single State,
- Is not a company the stock of which is publicly traded on a stock exchange or in an over-the-counter market, and is not controlled, directly or indirectly, by such a company,

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449 For this purpose, the controlled group means all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 as of the date of enactment.

450 Under section 430(c)(3).
• Is controlled, directly or indirectly (a) by one or more persons residing primarily in the State in which the community newspaper is published; (b) for at least 30 years by individuals who are members of the same family; (c) by a trust created or organized in the State in which the community newspaper is published, the sole trustees of which are persons described in (a) or (b); (d) by an entity described in section 501(c)(3) and exempt from tax under section 501(a) that is organized and operated in the State in which the community newspaper is published, and the primary purpose of which is to benefit communities in the State; or (e) by a combination of persons described in (a), (c), or (d), and
• Does not control, directly or indirectly, any newspaper in any other State.

A “community newspaper” means a newspaper that primarily serves a metropolitan statistical area, as determined by the Office of Management and Budget, with a population of not less than 100,000. For purposes of the provision, a person (the “first” person) is treated as controlled by another person if the other person possesses, directly or indirectly, the power to direct or cause the direction and management of the first person (including the power to elect a majority of the members of the board of directors of the first person) through the ownership of voting securities.

The provision makes the above-described amendments to both the Code and ERISA.451

**Effective Date**

The provision applies the amendments to plan years ending after December 31, 2017.

16. Treating excluded difficulty of care payments as compensation for determining retirement contribution limitations (sec. 116 of the Act and secs. 408 and 415 of the Code)

**Present Law**

**Difficulty of care payments**

Gross income does not include amounts received by a foster care provider during the taxable year as qualified foster care payments.452 Qualified foster care payments include any payment made pursuant to a foster care program of a State or political subdivision which is paid by (1) a State or political subdivision thereof or (2) a qualified foster care placement agency, and which is either (1) paid to the foster care provider for caring for a qualified foster individual in the foster care provider’s home, or (2) a “difficulty of care” payment.453 A “qualified foster individual” is any individual

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451 The provision adds a new subsection (m) to section 430, and a new subsection (m) to section 303 of ERISA. However, the term community newspaper plan for ERISA purposes includes one that publishes and distributes daily, either electronically or in printed form, either a community newspaper or one or more community newspapers in the same State. Additionally, in the case of a plan to which the election has been made, the provision does not change the basis for calculating underfunding for purposes of Pension Benefit Guaranty Corporation variable rate premiums.

452 Sec. 131(a)

453 Sec. 131(b)(1).
who is living in a foster family home in which the individual was placed by either an agency of a State (or a political subdivision thereof) or a qualified foster care placement agency.\textsuperscript{454} A qualified foster care placement agency is any placement agency which is licensed or certified by a State (or political subdivision thereof) or an entity designated by a State (or political subdivision thereof).\textsuperscript{455}

A “difficulty of care” payment is compensation for providing the additional care needed for certain qualified foster individuals. Such payments are provided when a qualified foster individual has a physical, mental or emotional disability for which the State has determined that (1) there is a need for additional compensation to care for the individual, (2) the care is provided in the home of the foster care provider, and (3) the payments are designated by the payor as compensation for such purpose.\textsuperscript{456} An applicant must request an assessment of need from the State agency administering the program and submit a medical evaluation which is reassessed every year.

In the case of a tax-qualified defined contribution plan, such a plan will not satisfy the tax qualification requirements unless contributions made by a participant to the plan (as well as other additions such as employer contributions and forfeitures) do not exceed the lesser of (1) $40,000 or (2) 100 percent of the participant’s compensation.\textsuperscript{457} A participant’s compensation is defined generally as the compensation of the participant from the employer for the year.\textsuperscript{458} A special rule applies for self-employed individuals providing that a participant’s compensation is the participant’s earned income.\textsuperscript{459} Similar rules apply for contributions made to an individual retirement account.\textsuperscript{460}

Since “difficulty of care” payments are excluded from gross income, home healthcare workers receiving only such payments are unable to participate in tax-qualified retirement plans or individual retirement accounts because “difficulty of care” payments are not considered compensation or earnings upon which contributions to such plans or accounts may be made.

**Explanation of Provision**

The provision amends sections 415(c)(3) and 408(o) to increase the contribution limit to qualified retirement plans and individual retirement accounts to include “difficulty of care” payments.

**Effective Date**

With respect to defined contribution plans, the provision applies to plan years beginning after December 31, 2015, and with respect to individual retirement accounts, the provision applies to contributions after the date of enactment.

\textsuperscript{454} Sec. 131(b)(2).
\textsuperscript{455} Sec. 131(b)(3).
\textsuperscript{456} Pursuant to section 131(c)(2), in the case of any foster home, difficulty of care payments for any period to which such payments relate are not excludable from gross income to the extent such payments are made for more than 10 qualified foster individuals who have not attained age 19 and five qualified foster individuals who have attained age 19.
\textsuperscript{457} Sec. 415(c)(1).
\textsuperscript{458} Sec. 415(c)(3)(A).
\textsuperscript{459} Sec. 415(c)(3)(B).
\textsuperscript{460} See secs. 219, 408, and 408A.
TITLE II—ADMINISTRATIVE IMPROVEMENTS

1. Plan adopted by filing due date for year may be treated as in effect as of close of year (sec. 201 of the Act and sec. 401(b) of the Code)

Present Law

In order for a qualified retirement plan to be treated as maintained for a taxable year, the plan must be adopted by the last day of the taxable year.461 However, the trust under the plan will not fail to be treated as in existence due to lack of corpus merely because it holds no assets on the last day of the taxable year.462 Contributions made by the due date (plus extensions) of the tax return for the employer maintaining the plan for a taxable year are treated as contributed on account of that taxable year.463 Thus, a plan can be established on the last day of a taxable year even though the first contribution is not made until the due date of the employer's return of tax for the taxable year. Further, if the terms of a plan adopted during an employer's taxable year fail to satisfy the qualification requirements that apply to the plan for the year, the plan may also be amended retroactively by the due date (including extensions) of the employer's return, provided that the amendment is made retroactively effective.464 However, this provision does not allow a plan to be adopted after the end of a taxable year and made retroactively effective, for qualification purposes, for the taxable year prior to the taxable year in which the plan was adopted by the employer.465

Explanation of Provision

Under the provision, if an employer adopts a qualified retirement plan after the close of a taxable year but before the time prescribed by law for filing the return of tax of the employer for the taxable year (including extensions thereof), the employer may elect to treat the plan as having been adopted as of the last day of the taxable year.

The provision does not override rules requiring certain plan provisions to be in effect during a plan year, such as the provision for elective deferrals under a qualified cash or deferral arrangement (generally referred to as a “401(k) plan”).466

Effective Date

The provision applies to plans adopted for taxable years beginning after December 31, 2019.

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463 Sec. 404(a)(6).
464 Treas. Reg. sec. 1.401(b)–1(a).
465 Treas. Reg. sec. 1.401(b)–1(a).
466 Treas. Reg. sec. 1.401(k)–1(e)(2)(ii).
2. Combined annual report for group of plans (sec. 202 of the Act, sec. 104 of ERISA, and sec. 6058 of the Code)

Present Law

An employer maintaining a qualified retirement plan generally is required to file an annual return containing information required under regulations with respect to the qualification, financial condition, and operation of the plan.\(^{467}\) ERISA requires the plan administrator of certain pension and welfare benefit plans to file annual reports disclosing specified information to the Department of Labor ("DOL").\(^{468}\) These filing requirements are met by filing a completed Form 5500, Annual Return/Report of Employee Benefit Plan.\(^{469}\) Forms 5500 are filed with DOL, and information from Forms 5500 is shared with the IRS.\(^{470}\) A separate Form 5500 is required for each plan.\(^{471}\)

Explanation of Provision

The provision directs the IRS and DOL to work together to modify Form 5500 so that all members of a group of plans described below may file a single consolidated Form 5500. In developing the consolidated Form 5500, the IRS and DOL may require members to include sufficient information for each plan in the group as the IRS and DOL determine is necessary or appropriate for the enforcement and administration of the Code and ERISA.\(^{472}\)

For purposes of the provision, a group of plans is eligible for a consolidated Form 5500 if all the plans in the group (1) are defined contribution plans; (2) have the same trustee, the same named fiduciary (or named fiduciaries) under ERISA, and the same administrator and plan administrator; (3) use the same plan year; and (4) provide the same investments or investment options to participants and beneficiaries. A plan not subject to ERISA may be included in

\(^{467}\) Sec. 6058. In addition, under section 6059, the plan administrator of a defined benefit plan subject to the minimum funding requirements is required to file an annual actuarial report. Under section 414(g) and ERISA section 3(16), "plan administrator" generally means the person specifically so designated by the terms of the plan document. In the absence of a designation, the plan administrator generally is (1) in the case of a plan maintained by a single employer, the employer; (2) in the case of a plan maintained by an employee organization, the employee organization; or (3) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties that maintain the plan. Under ERISA, the party described in (1), (2) or (3) is referred to as the "plan sponsor."

\(^{468}\) ERISA secs. 103 and 104. Under ERISA section 4065, the plan administrator of certain defined benefit plans must provide information to the Pension Benefit Guaranty Corporation ("PBGC"). Small plans meeting certain requirements (generally plans with less than 100 employees) must file a Form 5500 SF. The Form 5500–EZ is generally used by "one participant plans" (plans in which the only participants are an individual and spouse who together own the business (whether or not incorporated) for which the plan is established) or certain foreign plans that are not subject to the requirements of section 104(a) of ERISA.

\(^{469}\) Information is shared also with the PBGC, as applicable. Form 5500 filings are also publicly released in accordance with section 6104(b); Treas. Reg. sec. 301.6104(b)–1; and ERISA secs. 104(a)(1) and 106(a).

\(^{470}\) Under section 6011(a) and (e), the IRS is required to provide standards for electronically filed returns, but may not require a person to file a return electronically unless the person is required to file at least 250 returns during the calendar year ("250 return threshold for electronic filing"). Under Treas. Reg. sec. 301.6058–2, Form 5500 for a plan year must be filed electronically if the filer is required to file at least 250 tax returns (including information returns) during the calendar year that includes the first day of the plan year.

\(^{471}\) Under the provision, for purposes of applying the 250-return threshold for electronic filing to Forms 5500 for plan years beginning after December 31, 2019, information regarding each plan for which information is provided on the Form 5500 is treated as a separate return.

\(^{472}\) Under section 6051(a) and (e), the IRS is required to provide standards for electronically filed returns, but may not require a person to file a return electronically unless the person is required to file at least 250 returns during the calendar year ("250 return threshold for electronic filing"). Under Treas. Reg. sec. 301.6058–2, Form 5500 for a plan year must be filed electronically if the filer is required to file at least 250 tax returns (including information returns) during the calendar year that includes the first day of the plan year.
the group if the same person that performs each of the previous functions, as applicable, for all the other plans in the group performs each of the functions for the plan not subject to ERISA.

**Effective Date**

The consolidated Form 5500 is to be implemented not later than January 1, 2022 and shall be effective for returns and reports for plan years beginning after December 31, 2021.

3. **Disclosure regarding lifetime income (sec. 203 of the Act and sec. 105 of ERISA)**

**Present Law**

ERISA requires the administrator of a defined contribution plan to provide benefit statements to participants.\textsuperscript{473} In the case of a participant who has the right to direct the investment of the assets in his or her account, a benefit statement must be provided at least quarterly. Benefit statements must be provided at least annually to other participants.

Among other items, a benefit statement provided with respect to a defined contribution plan generally must include (1) the participant’s total benefits accrued, that is, the participant’s account balance; (2) the vested portion of the account balance or the earliest date on which the account balance will become vested; and (3) the value of each investment to which assets in the participant’s account are allocated. A quarterly benefit statement provided to a participant who has the right to direct investments must provide additional information, including information relating to investment principles.

In May 2013, the Department of Labor issued an advance notice of proposed rulemaking providing rules under which a benefit provided to a defined contribution plan participant would include an estimated lifetime income stream of payments based on the participant’s account balance.\textsuperscript{474} However, information about lifetime income that might be provided by funds in a defined contribution plan is not currently required to be included in a benefit statement.

**Explanation of Provision**

The provision requires a benefit statement provided to a defined contribution plan participant to include a lifetime income disclosure as described in the provision. However, the lifetime income disclosure is required to be included in only one benefit statement during any 12-month period.

A lifetime income disclosure is required to set forth the lifetime income stream equivalent of the participant’s total account balance under the plan. The lifetime income stream equivalent to the account balance is the amount of monthly payments the participant or beneficiary would receive if the total account balance were used to provide lifetime income streams, based on assumptions specified in guidance prescribed by the Secretary of Labor (referred to as the

\textsuperscript{473} ERISA sec. 105. Benefit statements are required also with respect to defined benefit plans.

"Secretary" in this explanation). The required lifetime income streams are (1) a qualified joint and survivor annuity for the participant and the participant’s surviving spouse (or beneficiary and the beneficiary’s surviving spouse), based on assumptions specified in guidance, including the assumption that the participant (or beneficiary) has a spouse of equal age; and (2) a single life annuity. The lifetime income streams may have a term certain or other features to the extent permitted under guidance.

The Secretary is directed to issue, not later than a year after the provision is enacted, a model lifetime income disclosure, written in a manner to be understood by the average plan participant. The model must include provisions to (1) explain that the lifetime income stream equivalent is only provided as an illustration, (2) explain that the actual payments under the lifetime income stream that may be purchased with the account balance will depend on numerous factors and may vary substantially from the lifetime income stream equivalent in the disclosure, (3) explain the assumptions on which the lifetime income stream equivalent is determined, and (4) provide other similar explanations as the Secretary considers appropriate.

In addition, the Secretary is directed, not later than a year after the provision is enacted, (1) to prescribe assumptions that defined contribution plan administrators may use in converting account balances into lifetime income stream equivalents, and (2) to issue interim final rules under the provision. In prescribing assumptions, the Secretary may prescribe a single set of specific assumptions (in which case the Secretary may issue tables or factors that facilitate conversions of account balances) or ranges of permissible assumptions. To the extent that an account balance is or may be invested in a lifetime income stream, the prescribed assumptions are to allow, to the extent appropriate, plan administrators to use the amounts payable under the lifetime income stream as a lifetime income stream equivalent.

Under the provision, no plan fiduciary, plan sponsor, or other person has any liability under ERISA solely by reason of the provision of lifetime income stream equivalents that are derived in accordance with the assumptions and guidance under the provision and that include the explanations contained in model disclosure. This protection applies without regard to whether the lifetime income stream equivalent is required to be provided.

**Effective Date**

The requirement to provide a lifetime income disclosure applies with respect to benefit statements furnished more than 12 months after the latest of the issuance by the Secretary of (1) interim final rules, (2) the model disclosure, or (3) prescribed assumptions.

**4. Fiduciary safe harbor for selection of lifetime income provider (sec. 204 of the Act and sec. 404 of ERISA)**

**Present Law**

ERISA imposes certain standards of care with respect to the actions of a plan fiduciary. Specifically, a fiduciary is required to discharge its duties with respect to the plan solely in the interest of
the participants and beneficiaries; for the exclusive purpose of pro-
viding benefits to participants and beneficiaries and defraying rea-
sonable administration expenses of the plan, with the care, skill, 
prudence, and diligence under the circumstances then prevailing 
that a prudent man acting in a like capacity and familiar with re-
levant matters would use in the conduct of an enterprise of a like 
character and with like aims (the “prudent man” requirement); by 
diversifying plan investments so as to minimize the risk of large 
losses unless, under the circumstances, it is clearly prudent not to 
do so; and in accordance with plan documents and governing in-
struments insofar as the documents and instruments are consistent 
with ERISA. Department of Labor regulations provide a safe harbor for a fidu-
ciary to satisfy the prudent man requirement in selecting an annu-
ity provider and a contract for benefit distributions from a defined 
contribution plan.475

**Explanation of Provision**

The provision specifies measures that a plan fiduciary may take 
with respect to the selection of an insurer for a guaranteed retire-
ment income contract to assure that the fiduciary meets the pru-
dent man requirement. The measures under the provision are an 
optional means by which a fiduciary will be considered to satisfy 
the prudent man requirement with respect to the selection of insur-
ers for guaranteed retirement income contracts and do not estab-
lish minimum requirements or the exclusive means for satisfying 
the prudent man requirement. The provision applies to the selec-
tion of the insurance company for purposes of determining if the 
insurer is financially capable of satisfying its obligations under the 
guaranteed retirement income contract. The provision does not ex-
tend to the underlying insurance contract, and therefore the fidu-
ciary must conduct a separate fiduciary analysis of the prudence 
and terms and conditions of the guaranteed retirement income con-
tract based on present law and guidance.

For purposes of the provision, an insurer is an insurance com-
pany, insurance service or insurance organization qualified to do 
business in a State and includes affiliates of those entities to the 
extent the affiliate is licensed to offer guaranteed retirement in-
come contracts. A guaranteed retirement income contract is an an-
nuity contract for a fixed term or a contract (or provision or feature 
thereof) designed to provide a participant guaranteed benefits an-
nually (or more frequently) for at least the remainder of the life of 
the participant or joint lives of the participant and the participant's 
designated beneficiary as part of a defined contribution plan.

With respect to the selection of an insurer for a guaranteed re-
tirement income contract (as defined below), the prudent man re-
quirement will be deemed met if a fiduciary:

- Engages in an objective, thorough, and analytical search 
  for the purpose of identifying insurers from which to purchase 
  guaranteed retirement income contracts,
- With respect to each insurer identified through the search, 
  considers the financial capability of the insurer to satisfy its

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475 29 C.F.R. sec. 2550.404a–4.
obligations under the guaranteed retirement income contract and considers the cost (including fees and commissions) of the guaranteed retirement income contract offered by the insurer in relation to the benefits and product features of the contract and administrative services to be provided under the contract, and

- On the basis of the foregoing, concludes that, at the time of the selection (as described below), the insurer is financially capable of satisfying its obligations under the guaranteed retirement income contract and that the cost (including fees and commissions) of the selected guaranteed retirement income contract is reasonable in relation to the benefits and product features of the contract and the administrative services to be provided under the contract.

A fiduciary will be deemed to satisfy the requirements above with respect to the financial capability of the insurer if:

- The fiduciary obtains written representations from the insurer that it is licensed to offer guaranteed retirement income contracts; that the insurer, at the time of selection and for each of the immediately preceding seven years operates under a certificate of authority from the Insurance Commissioner of its domiciliary State that has not been revoked or suspended, has filed audited financial statements in accordance with the laws of its domiciliary State under applicable statutory accounting principles, maintains (and has maintained) reserves that satisfy all the statutory requirements of all States where the insurer does business, and is not operating under an order of supervision, rehabilitation, or liquidation; and that the insurer undergoes, at least every five years, a financial examination (within the meaning of the law of its domiciliary State) by the Insurance Commissioner of the domiciliary State (or representative, designee, or other party approved thereby).

- In the case that, following the issuance of the insurer representations described above, there is any change in circumstances that would preclude the insurer from making the same representations at the time of issuance of the guaranteed retirement income contract, the insurer is required to notify the fiduciary, in advance of the issuance of any guaranteed retirement income contract, that the fiduciary can no longer rely on one or more of the representations, and

- The fiduciary has not received such a notification and has no other facts that would cause it to question the insurer representations.

The provision specifies that nothing in these requirements is to be construed to require a fiduciary to select the lowest cost contract. Accordingly, a fiduciary may consider the value, including features and benefits of the contract and attributes of the insurer in conjunction with the contract’s cost. For this purpose, attributes of the insurer that may be considered include, without limitation, the issuer's financial strength.

For purposes of the provision, the time of selection may be either the time that the insurer for the contract is selected for distribution of benefits to a specific participant or beneficiary or the time that the insurer for the contract is selected to provide benefits at
future dates to participants or beneficiaries, provided that the selecting fiduciary periodically reviews the continuing appropriateness of its conclusions with respect to the insurer’s financial capability and cost, taking into account the considerations described above. A fiduciary will be deemed to have conducted a periodic review of the financial capability of the insurer if the fiduciary obtains the written representations described above on an annual basis unless, in the interim, the fiduciary has received notification from the insurer that representations cannot be relied on or the fiduciary otherwise becomes aware of facts that would cause it to question the representations.

A fiduciary that satisfies the requirements of the provision is not liable following the distribution of any benefit, or the investment by or on behalf of a participant or beneficiary pursuant to the selected guaranteed retirement income contract, for any losses that may result to the participant or beneficiary due to an insurer’s inability to satisfy its financial obligations under the terms of the contract.

**Effective Date**

The provision is effective on the date of enactment.

5. **Modification of nondiscrimination rules to protect older, longer service participants (sec. 205 of the Act and sec. 401 of the Code)**

**Present Law**

**In general**

Qualified retirement plans are subject to nondiscrimination requirements, under which the group of employees covered by a plan ("plan coverage") and the contributions or benefits provided to employees, including benefits, rights, and features under the plan, must not discriminate in favor of highly compensated employees. The timing of plan amendments must also not have the effect of discriminating significantly in favor of highly compensated employees. In addition, in the case of a defined benefit plan, the plan must benefit at least the lesser of (1) 50 employees of the employer, or (2) the greater of (a) 40 percent of all employees of the employer or (b) two employees (or one employee if there is only one employee), referred to as the “minimum participation” requirements. These requirements are designed to help ensure that qualified retirement plans achieve the goal of retirement security for both lower and higher paid employees.

For nondiscrimination purposes, an employee generally is treated as highly compensated if the employee (1) was a five-percent owner of the employer at any time during the year or the preceding year,
or (2) had compensation for the preceding year in excess of $125,000 (for 2019). Employees who are not highly compensated are referred to as nonhighly compensated employees.

**Nondiscriminatory plan coverage**

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 this purpose, certain portions of a defined contribution plan 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: the portion of a plan consisting of employee elective deferrals, the portion consisting of employer matching contributions, the portion consisting of employer nonelective contributions, and the portion consisting of an employee stock ownership plan (“ESOP”). Subject to mandatory disaggregation, different qualified retirement plans may otherwise be aggregated and tested together as a single plan, provided they use the same plan year. The plan determined under these rules for plan coverage purposes generally is 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, a multi-part test applies, referred to as the average benefit test. First, the plan must meet a “nondiscriminatory classification requirement,” that is, it must cover a group of employees that is reasonable and established under objective business criteria and the plan’s ratio percentage must be at or above a level specified in the regulations, which varies depending on the percentage of nonhighly compensated employees in the employer’s 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 contributions or benefit accruals for all nonhighly compensated employees under all plans of the employer must be at least 70 percent of the average contribution or accrual rate of all highly compensated employees. In applying

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479 Sec.A4(q). At the election of the employer, employees who are highly compensated based on the amount of their compensation may be limited to employees who were among the top 20 percent of employees based on compensation.

480 Elective deferrals are contributions that an employee elects to have made to a defined contribution plan that includes a qualified cash or deferred arrangement (a 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 or after-tax employee contributions. Employer nonelective contributions are contributions made by an employer regardless of whether an employee makes elective deferrals or after-tax employee contributions. Under section 4975(e)(7), an ESOP is a defined contribution plan, or portion of a defined contribution plan, that is designated as an ESOP and is designed to invest primarily in employer stock.

481 Contribution and benefit rates are generally determined under the rules for nondiscriminatory contributions or benefit accruals, described below. These rules are generally based on benefit accruals under a defined benefit plan, other than accruals attributable to after-tax employee contributions, and contributions allocated to participants’ accounts under a defined contribution plan, other than allocations attributable to after-tax employee contributions. (Under these rules, contributions allocated to participants’ accounts are referred to as “allocations,” with the related rates referred to as “allocation rates,” but “contribution rates” is used herein for con-
the average benefit percentage test, elective deferrals made by employees, as well as employer matching and nonelective contributions, are taken into account. Generally, all plans maintained by the employer are taken into account, including ESOPs, regardless of whether plans use the same plan year.

Under a transition rule applicable in the case of the acquisition or disposition of a 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 period after the transaction, provided coverage under the plan is not significantly changed during that period.

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 contributions or benefit accruals. Employee elective deferrals and employer matching contributions under defined contribution plans are subject to special testing rules and generally are not permitted to be taken into account in determining whether other contributions or benefits are nondiscriminatory.

The nondiscrimination rules allow contributions and benefit accruals to be provided to highly compensated and nonhighly compensated employees at the same percentage of compensation. Thus, the various testing approaches described below are generally applied to the amount of contributions or accruals provided as a percentage of compensation, referred to as a contribution rate or accrual rate. In addition, under the “permitted disparity” rules, in calculating an employee's contribution or accrual rate, credit may be given for the employer paid portion of Social Security taxes or benefits. The permitted disparity rules do not apply in testing whether elective deferrals, matching contributions, or ESOP contributions are nondiscriminatory.

The general test is generally satisfied by measuring the rate of contribution or benefit accrual for each highly compensated employee to determine if the group of employees with the same or higher rate (a “rate” group) is a nondiscriminatory group, using the nondiscriminatory plan coverage standards described above. For this purpose, if the ratio percentage of a rate group is less than 70 percent, a simplified standard applies, which includes disregarding...
the reasonable classification requirement, but requires satisfaction of the average benefit percentage test.

Cross-testing

Cross-testing involves the conversion of contributions under a defined contribution plan or benefit accruals under a defined benefit plan to actuarially equivalent accruals or contributions, with the resulting equivalencies tested under the general test. However, employee elective deferrals and employer matching contributions under defined contribution plans are not permitted to be taken into account for this purpose, and cross-testing of contributions under a defined contribution plan, or cross-testing of a defined contribution plan aggregated with a defined benefit plan, is permitted only if certain threshold requirements are satisfied.

In order for a defined contribution plan to be tested on an equivalent benefit accrual basis, one of the following three threshold conditions must be met:

- The plan has broadly available allocation rates, that is, each allocation rate under the plan is available to a non-discriminatory group of employees (disregarding certain permitted additional contributions provided to employees as a replacement for benefits under a frozen defined benefit plan, as discussed below);
- The plan provides allocations that meet prescribed designs under which allocations gradually increase with age or service or are expected to provide a target level of annuity benefit; or
- The plan satisfies a minimum allocation gateway, under which each nonhighly compensated employee has an allocation rate of (a) at least one-third of the highest rate for any highly compensated employee, or (b) if less, at least five percent.

In order for an aggregated defined contribution and defined benefit plan to be tested on 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 nonhighly compensated employees under the plan, their accrual rate under the defined benefit plan exceeds their equivalent accrual rate under the defined contribution plan;
- The plan consists of broadly available separate defined benefit and defined contribution plans, that is, the defined benefit plan and the defined contribution plan would separately satisfy simplified versions of the minimum coverage and nondiscriminatory amount requirements; or
- The plan satisfies a 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 highest 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 generally must be available to a group of employees that has a ratio percentage that satisfies the minimum coverage requirements, including the reasonable classification requirement if applicable, except that the average benefit percentage test does not have to be met, even if the ratio percentage is less than 70 percent.

Multiple employer and 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. The plan coverage and other nondiscrimination requirements are applied separately to the portions of a multiple employer plan covering employees of different employers.

Certain tax-exempt charitable organizations 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. However, a section 403(b) plan and qualified retirement plan may not be treated 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 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 also to maintain a defined contribution plan and to provide employer matching or nonelective contributions only to employees not covered by the defined benefit plan or at a higher rate to such employees.

Over time, the group of employees continuing to accrue benefits under the defined benefit plan may come to consist more heavily of highly compensated employees, for example, because of greater turnover among nonhighly compensated employees or because increasing compensation causes nonhighly compensated employees to become highly compensated. In that case, the defined benefit plan may have to be combined with the defined contribution plan and tested on a benefit accrual basis. However, under the regulations, if none of the threshold conditions is met, testing on a benefits

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487 Sec. 413(c). Multiple employer plan status does not apply if the plan is a multiemployer plan, defined under section 414(f) as a plan maintained pursuant to one or more collective bargaining agreements with two or more unrelated employers and to which the employers are required to contribute under the collective bargaining agreement(s). Multiemployer plans are also known as Taft-Hartley plans. Section 101 of Pub. L. No. 116–94, Multiple employer plans; pooled employer plans, describes the modifications to section 413 with respect to multiple employer plans.

488 Treas. Reg. sec. 1.410(b)–7(f).

489 Sec. 403(b). These plans are available to employers that are tax exempt under section 501(c)(3), as well as to employers that are educational institutions of State or local governments.

490 Treas. Reg. sec. 1.410(b)–7(f).
basis may not be available. Notwithstanding the regulations, recent IRS guidance provides relief for a limited period, allowing certain closed defined benefit plans to be aggregated with a defined contribution plan and tested on an aggregate equivalent benefits basis without meeting any of the threshold conditions.\textsuperscript{491} When the group of employees continuing to accrue benefits under a closed defined benefit plan consists more heavily of highly compensated employees, the benefits, rights, and features provided under the plan may also fail the tests under the existing nondiscrimination rules.

In some cases, if a defined benefit plan is amended to cease future accruals for all participants, referred to as a “frozen” defined benefit plan, additional contributions to a defined contribution plan may be provided for participants, in particular for older participants, in order to make up in part for the loss of the benefits they expected to earn under the defined benefit plan (“make-whole” contributions). As a practical matter, testing on a benefit accrual basis may be required in that case, but may not be available because the defined contribution plan does not meet any of the threshold conditions.

\textbf{Explanation of Provision}

\textbf{Closed or frozen defined benefit plans}

\textit{In general}

The provision provides nondiscrimination relief with respect to benefits, rights, and features for a closed class of participants (“closed class”),\textsuperscript{492} and with respect to benefit accruals for a closed class, under a defined benefit plan that meets the requirements described below (referred to herein as an “applicable” 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 eligible for relief under the provision is spun off to another employer, and if the spun-off plan continues to satisfy any ongoing requirements applicable for the relevant relief as described below, the relevant relief for the spun-off plan will continue with respect to the other employer.

\textit{Benefits, rights, or features for a closed class}

Under the provision, an applicable defined benefit plan that provides benefits, rights, or features to a closed class does not fail the nondiscrimination requirements by reason of the composition of the closed class, or the benefits, rights, or features provided to the


\textsuperscript{492} References under the provision to a closed class of participants and similar references to a closed class include arrangements under which one or more classes of participants are closed, except that one or more classes of participants closed on different dates are not aggregated for purposes of determining the date any such class was closed.
closed class, if (1) for the plan year as of which the class closes and the two succeeding plan years, the benefits, rights, and features satisfy the nondiscrimination requirements without regard to the relief under the provision, but taking into account the special testing rules described below; and (2) after the date as of which the class was closed, any plan amendment modifying the closed class or the benefits, rights, and features provided to the closed class does not discriminate significantly in favor of highly compensated employees.

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; and
- 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 a merger, 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 on a benefit accrual basis with one or more defined contribution plans (without having to satisfy the threshold conditions under present law) if (1) for the plan year as of which the class closes and the two succeeding plan years, the plan satisfies the plan coverage and nondiscrimination requirements without regard to the relief under the provision, but taking into account the special testing rules described above, and (2) after the date as of which the class was closed, any plan amendment modifying the closed class or the benefits provided to the closed class does not discriminate significantly in favor of highly compensated employees.

Under the provision, defined contribution plans that may be aggregated with an applicable defined benefit plan and treated as a single plan include the portion of one or more defined contribution plans consisting of matching contributions, an ESOP, or matching or nonelective contributions under a section 403(b) plan. If an applicable defined benefit plan is aggregated with the portion of a defined contribution plan consisting of elective deferrals, any portion of the defined contribution plan consisting of elective deferrals must also be aggregated. In addition, the matching contributions are treated in the same manner as nonelective contributions, including for purposes of permitted disparity.

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493 Other testing options available under present law are also available for this purpose.
494 This rule applies also for purposes of applying the plan coverage and other nondiscrimination requirements to an applicable defined benefit plan and one or more defined contributions that, under the provision, may be treated as a single plan as described below.
495 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)) is generally the sum of the present value of the benefits expected to be earned under the plan during the plan year plus the amount of plan-related expenses to be paid from plan assets during the plan year. Under the provision, in applying this average benefit rule to certain defined benefit plans maintained by cooperative organizations and charities, referred to as CSEC plans (defined in section 414(y)), which are subject to the funding requirements applicable to defined benefit plans.

**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 that meets the following alternative 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) under the plan, during the five-year period preceding that date, (a) for purposes of the relief provided with respect to benefits, rights, and features for a closed class, there 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 benefit accruals for a closed class or the minimum participation requirements, there has not been a substantial increase in the coverage or benefits under the plan.

For purposes of (2)(a) above, 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 more than 50 percent greater than the number on the first day of the plan year in which 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 class is closed, the value of the benefits, rights, and features to the closed class as a whole is substantially greater than the value as of the first day of the five-year period, solely as a result of the amendments.

For purposes of (2)(b) above, a plan is treated as having had a substantial increase in coverage or benefits only if, during the applicable five-year period, either the number of participants benefiting under the plan on the date the period ends is more than 50 percent greater than the number of participants 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 plan year in which the period began. In applying this requirement, the average benefit provided to participants under the plan is treated as having remained the same between the two relevant dates if the benefit formula applicable to the participants has not changed between the dates and, if the benefit formula has changed, the average benefit under the plan is considered to have increased by more than 50 percent only if the target normal cost for all participants benefiting under the plan for the plan year in which the five-year period ends exceeds the target normal cost for all such participants for that plan year if determined using the benefit formula in effect for the participants for the first plan year in the five-year period by more than 50 percent.\(^\text{496}\) In applying

\(^{496}\) Under the funding requirements applicable to defined benefit plans, target normal cost for a plan year (defined in section 430(b)(1)(A)) is generally the sum of the present value of the benefits expected to be earned under the plan during the plan year plus the amount of plan-related expenses to be paid from plan assets during the plan year. Under the provision, in applying this average benefit rule to certain defined benefit plans maintained by cooperative organizations and charities, referred to as CSEC plans (defined in section 414(y)), which are subject to the funding requirements applicable to defined benefit plans.
these rules, a multiple employer plan is treated as a single plan, rather than as separate plans separately covering the employees of each participating employer.

In applying these standards, any increase in coverage or value, or in coverage or benefits, whichever is applicable, is generally disregarded if it is attributable to coverage and value, or coverage and benefits, provided to employees who (1) became participants as a result of a merger, acquisition, or similar event that occurred during the 7-year period preceding the date the class was closed; or (2) became participants by reason of a merger of the plan with another plan that had been in effect for at least five years as of the date of the merger and, in the case of benefits, rights, or features for a closed class, under the merger, the benefits, rights, or features under one plan were conformed to the benefits, rights, or features under the other plan prospectively.

**Make-whole contributions under a defined contribution plan**

Under the provision, a defined contribution plan is permitted to be tested on an equivalent benefit accrual basis (without having to satisfy the threshold conditions under present law) if the following requirements are met:

- The plan provides make-whole contributions to a closed class of participants whose accruals under a defined benefit plan have been reduced or ended (“make-whole class”);
- For the plan year of the defined contribution plan as of which the make-whole class closes and the two succeeding plan years, the make-whole class satisfies the nondiscriminatory classification requirement under the plan coverage rules, taking into account the special testing rules described above;
- After the date as of which the class was closed, any amendment to the defined contribution plan modifying the make-whole class or the allocations, benefits, rights, and features provided to the make-whole class does not discriminate significantly in favor of highly compensated employees; and
- Either the class was closed before April 5, 2017, or the defined benefit plan is an applicable defined benefit plan under the alternative conditions applicable for purposes of the relief provided with respect to benefit accruals for a closed class.

With respect to one or more defined contribution plans meeting the requirements above, in applying the plan coverage and nondiscrimination requirements, the portion of the plan providing make-whole or other nonelective contributions may also be aggregated and tested on an equivalent benefit accrual basis with the portion of one or more 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 the portion of a defined contribution plan consisting of matching contributions, any portion of the defined contribution plan consisting of elective deferrals must also be aggregated. In addition, the matching contributions are treated in the same manner as non-
elective 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 the defined benefit plan and other plan or arrangement. However, under a special rule, in the case of a defined contribution plan that provides benefits, rights, or features to a closed class of participants whose accruals under a defined benefit plan have been reduced or eliminated, the plan will not fail to satisfy the nondiscrimination requirements solely by reason of the composition of the closed class, or the benefits, rights, or features provided to the closed class, if the defined contribution plan and defined benefit plan otherwise meet the requirements described above but for the fact

If a portion of a defined contribution plan eligible for relief under the provision is spun off to another employer, 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, without regard to whether any plan modifications referred to in the provision are adopted or effective before, on, or after the date of enactment.

However, at the election of a plan sponsor, the provision will apply to plan years beginning after December 31, 2013. For purposes of the provision, a closed class of participants under a defined benefit plan is treated as being closed before April 5, 2017 if the plan sponsor’s intention to create the closed class is reflected in formal written documents and communicated to participants before that date. In addition, a plan does not fail to be eligible for the relief under the provision solely because (1) in the case of benefits, rights, or features for a closed class under a defined benefit plan, the plan was amended before the date of enactment to eliminate one or more benefits, rights, or features and is further amended after the date of enactment to provide the previously eliminated benefits, rights, or features to a closed class of participants; or (2) in the case of benefit accruals for a closed class under a defined benefit plan or application of the minimum benefit requirements to a closed or frozen defined benefit plan, the plan was amended before the date of the enactment to cease all benefit accruals and is further amended after the date of enactment to provide benefit accruals to a closed class of participants. In either case, the relevant relief applies only if the plan otherwise meets the requirements for the relief, and, in applying the relevant relief, the date the class

For this purpose, consistency is not required with respect to employees who were subject to different benefit formulas under the defined benefit plan that the make-whole contributions under the defined contribution plan are made in whole or in part through matching contributions.
of participants is closed is the effective date of the later amend-
ment.

6. Modification of PBGC premiums for CSEC plans (sec. 206 of the Act and sec. 4006 of ERISA)

Present Law

Qualified retirement plans, including defined benefit plans, are
categorized as single employer plans or multiple employer plans.498
A single employer plan is a plan maintained by one employer.499
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).500

Defined benefit plans maintained by private employers are gen-
erally subject to minimum funding requirements.501 Historically,
single employer and multiple employer defined benefit plans have
been subject to the same minimum funding requirements. How-
ever, when the funding requirements for single employer plans
were substantially revised by the Pension Protection Act of 2006,502
effective 2008, a delayed effective date was provided for certain
multiple employer plans in order to allow time for further congres-
sional consideration of appropriate rules for these plans. Such con-
sideration resulted in the enactment in 2014 of the Cooperative
and Small Employer Charity Pension Flexibility Act ("CSEC
Act"),503 which provides specific funding rules for certain multiple
employer plans, referred to as CSEC plans.504

Private defined benefit plans are also covered by the Pension
Benefit Guaranty Corporation ("PBGC") insurance program, under
which the PBGC guarantees the payment of certain plan benefits,
and plans are required to pay annual premiums to the PBGC.505
Plan sponsors of single employer plans and multiemployer plans
must participate in the PBGC insurance program. Single employer
plans and multiple employer plans, including CSEC plans, are sub-

498 A third type of plan is a multiemployer plan, defined under section 414(f) as a plan main-
tained pursuant to one or more collective bargaining agreements with two or more unrelated
employers and to which the employers are required to contribute under the collective bargaining
agreement(s). Multiemployer plans are also known as Taft-Hartley plans. Multiemployer plans
are subject to different minimum funding requirements than those applicable to single employer
plans and multiple employer plans, as well as to different PBGC premium and benefit guarantee
structures.
499 For this purpose, businesses and organizations that are members of a controlled group of
corporations, a group under common control, or an affiliated service group are treated as one
employer (referred to as "aggregation"). Secs. 414(b), (c), (m) and (o).
500 Sec. 413(c). Multiple employer plan status does not apply if the plan is a multiemployer
plan.
501 Secs. 412 and 430–433 and ERISA secs. 301–306. Unless a funding waiver is obtained, an
employer may be subject to a two-tier excise tax under section 4971 if the funding requirements
are not met.
504 As defined in section 414(v) and ERISA section 210(f), CSEC plans include defined benefit
plans maintained by certain cooperative organizations, such as rural electric or telephone co-
operatives, or by certain tax-exempt organizations. The definition of a CSEC plan was further
113-235, December 16, 2014, to include a plan that, as of June 25, 2010, was maintained by an
employer (1) that is a tax-exempt charitable organization and a Federally chartered patriotic
organization, (2) that has employees in at least 40 States, and (3) the primary exempt purpose
of which is to provide services with respect to children. For purposes of determining the em-
ployer maintaining the plan, the aggregation rules for controlled groups and groups under com-
mon control employers apply.
505 Title IV of ERISA.
ject to the same PBGC premium requirements, consisting of flat-rate, per participant premiums and variable rate premiums, based on the unfunded vested benefits under the plan. For 2019, flat-rate premiums are $80 per participant, and variable rate premiums are $43 for each $1,000 of unfunded vested benefits, subject to a limit of $541 multiplied by the number of plan participants. For this purpose, unfunded vested benefits under a plan for a plan year is the excess (if any) of (1) the plan’s funding target for the plan year, determined by taking into account only vested benefits and using specified interest rates, over (2) the fair market value of plan assets.

Under the funding rules applicable to single employer plans, a plan’s funding target is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, determined using certain specified actuarial assumptions, including specified interest rates and mortality. A single employer plan’s funding target is a factor taken into account in determining required contributions for the plan. Although a CSEC plan’s funding target is used under present law to determine variable rate premiums, it does not apply in determining required contributions for a CSEC plan. Instead, a CSEC plan’s funding liability applies, which is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, determined using reasonable actuarial assumptions chosen by the plan’s actuary.

**Explanation of Provision**

Under the provision, for CSEC plans, flat-rate premiums are $19 per participant, and variable rate premiums are $9 for each $1,000 of unfunded vested benefits. In addition, for purposes of determining a CSEC plan’s variable rate premiums, unfunded vested benefits for a plan year is the excess (if any) of (1) the plan’s funding liability, determined by taking into account only vested benefits, over (2) the fair market value of plan assets.

The provision applies to such plans with plan years beginning after December 31, 2018.

**Effective Date**

The provision is effective on date of enactment.

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506 The same PBGC benefit guarantee structure also applies to single employer plans and multiple employer plans.

507 These premium rates have been increased several times by legislation since 2005 and are subject to automatic increases to reflect inflation (referred to as “indexing”).

508 Corporate bond rates are used for PBGC liability measurement purposes. For funding purposes, single employer plans are required to use the 24-month average segment rates (before adjustment) determined under Section 430(h)(2), as amended by the “Moving Ahead for Progress in the 21st Century Act” (MAP–21), Pub. L. No. 112–141, the “Highway and Transportation Funding Act of 2014” (HATFA), Pub. L. No.113–159, and the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114–74. However, a plan sponsor is permitted to elect to use the monthly yield curve under section 430(h)(2)(D)(ii) in place of the segment rates. CSEC plans may use the third segment rate to determine current liability. Sec. 433(h)(3). CSEC plans were also able to elect (not later than the close of the first plan year of the plan beginning after December 31, 2013), not to be treated as a CSEC plan so that the same interest rates that apply to single employer plans would apply to CSEC plans.

509 These are the premium rates that applied to single employer plans and multiple employer plans in 2005 and are not subject to indexing.
TITLE III—OTHER BENEFITS

1. Benefits provided to volunteer firefighters and emergency medical responders (sec. 301 of the Act and sec. 139B of the Code)

Present Law

Benefits for volunteer firefighters and emergency medical responders

In general, a reduction in property tax by persons who volunteer their services as emergency responders under a State law program is includible in gross income. However, for taxable years beginning after December 31, 2007, and before January 1, 2011, an exclusion applied for any qualified State and local tax benefit and any qualified payment provided to members of qualified volunteer emergency response organizations.

A qualified volunteer emergency response organization is a volunteer organization that is organized and operated to provide firefighting or emergency medical services for persons in a State or a political subdivision and is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in the State or political subdivision.

A qualified State and local tax benefit is any reduction or rebate of certain taxes provided by a State or political division thereof on account of services performed by individuals as members of a qualified volunteer emergency response organization. These taxes are limited to State or local income taxes, State or local real property taxes, and State or local personal property taxes. A qualified payment is a payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization. The amount of excludable qualified payments is limited to $30 for each month during which a volunteer performs services.

Itemized deductions

Subject to certain limitations, individuals are allowed itemized deductions for (1) State and local income taxes, real property taxes, and personal property taxes, and (2) contributions to charitable organizations, including unreimbursed expenses incurred in performing volunteer services for such an organization.

The amount of State or local taxes taken into account in determining the deduction for taxes is reduced by the amount of any excludible qualified State and local tax benefit. Similarly, expenses paid or incurred by an individual in connection with the performance of services as a member of a qualified volunteer emergency response organization are taken into account for purposes of the

510 CCA 200302045 (December, 2002).
511 Sec. 139B. The exclusion applied also for purposes of taxes under the Federal Insurance Contributions Act (“FICA”) under section 3121(a)(2), for Federal Unemployment Tax Act (“FUTA”) purposes under section 3306(b)(20), and for Federal income tax purposes under section 3401(a)(23).
512 Secs. 164(a) and 170.
charitable deduction only to the extent the expenses exceed the amount of any excludible qualified payment.

**Explanation of Provision**

The provision reinstates for one year the exclusions for qualified State and local tax benefits and qualified payments provided to members of qualified volunteer emergency response organizations. The provision also increases the exclusion for qualified payments to $50 for each month during which a volunteer performs services. Under the provision, the exclusions for qualified State and local tax benefits and qualified payments do not apply for taxable years beginning after December 31, 2020.

**Effective Date**

The provision is effective for taxable years beginning after December 31, 2019. As described above, the exclusions do not apply for taxable years beginning after December 31, 2020. Thus, the exclusions apply only for taxable years beginning during 2020.

2. Expansion of section 529 plans (sec. 302 of the Act and sec. 529 of the Code)

**Present Law**

**In general**

A qualified tuition program (often referred to as a “529 plan”) is a program established and maintained by a State or agency or instrumentality thereof, or by one or more eligible 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 the waiver or payment of qualified higher education expenses of the beneficiary (“prepaid tuition contract”). In the case of a program established and maintained by a State or agency or instrumentality thereof, a qualified tuition program also includes a program under which a person may make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account, provided it satisfies certain specified requirements (“tuition savings account”). Section 529 provides specified income tax and transfer tax rules for the treatment of accounts and contracts established under qualified tuition programs.\(^{513}\) Under both types of qualified tuition programs, a contributor establishes an account for the benefit of a particular designated beneficiary to provide for that beneficiary’s higher education expenses.

In general, prepaid tuition contracts and tuition savings accounts established under a qualified tuition program involve prepayments or contributions made by one or more individuals for the benefit of a designated beneficiary. Decisions with respect to the contract or account may be made by an individual who is not the designated beneficiary. Qualified tuition accounts or contracts generally re-

\(^{513}\) For purposes of this description, the term “account” is used interchangeably to refer to a prepaid tuition benefit contract or a tuition savings account established pursuant to a qualified tuition program.
Section 529 refers to contributors and designated beneficiaries but does not define or otherwise refer to the term "account owner," which is a commonly used term among qualified tuition programs.

Require the designation of a person (generally referred to as an "account owner") whom the program administrator (often a third-party administrator retained by the State or by the educational institution that established the program) may look to for decisions, recordkeeping, and reporting with respect to the account established for a designated beneficiary. The person or persons who make the contributions to the account also need not be the same person who is regarded as the account owner for purposes of administering the account or the designated beneficiary. Under many qualified tuition programs, the account owner generally has control over the account or contract, including the ability to change designated beneficiaries and to withdraw funds at any time and for any purpose. Thus, in practice, qualified tuition accounts or contracts generally involve a contributor, a designated beneficiary, an account owner (all three of whom may be the same person or different people), and an administrator of the account or contract.

**Qualified higher education expenses**

Distributions for the purpose of meeting the designated beneficiary's higher education expenses are generally not subject to tax. For purposes of receiving a distribution from a qualified tuition program that qualifies for this favorable tax treatment, the term qualified higher education expenses means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, and expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with such enrollment or attendance. Qualified higher education expenses generally also include room and board for students who are enrolled at least half-time. Qualified higher education expenses include the purchase of any computer technology or equipment, or Internet access or related services, if such technology or services are to be used primarily by the beneficiary during any of the years a beneficiary is enrolled at an eligible institution.

For distributions made after December 31, 2017, a designated beneficiary may, on an annual basis, receive up to $10,000 in aggregate 529 distributions to be used in connection with expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school. To the extent these distributions do not exceed $10,000, they are treated in the same manner as distributions for qualified higher education expenses.

**Contributions to qualified tuition programs**

Contributions to a qualified tuition program must be made in cash. Section 529 does not impose a specific dollar limit on the amount of contributions, account balances, or prepaid tuition benefits relating to a qualified tuition account or contract; however, the program is required to have adequate safeguards to prevent contributions in excess of amounts necessary to provide for the beneficiary's qualified higher education expenses. Contributions gen-

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514 Section 529 refers to contributors and designated beneficiaries but does not define or otherwise refer to the term "account owner," which is a commonly used term among qualified tuition programs.
erally are treated as a completed gift that is subject to the gift tax but is eligible for the gift tax annual exclusion. Contributions are not tax deductible for Federal income tax purposes, although they may be deductible for State income tax purposes. Amounts in the account accumulate on a tax-free basis (i.e., income on accounts in the plan is not subject to current Federal income tax).

A qualified tuition program may not permit any contributor to, or designated beneficiary under, the program to direct (directly or indirectly) the investment of any contributions (or earnings thereon) more than two times in any calendar year, and must provide separate accounting for each designated beneficiary. A qualified tuition program may not allow any interest in an account or contract (or any portion thereof) to be used as security for a loan.

**Deduction for interest on education loans**

Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for the interest expense, subject to a maximum annual deduction limit of $2,500. For 2020, the deduction is phased out ratably for taxpayers with modified AGI between $70,000 and $85,000 ($140,000 and $170,000 for married taxpayers filing a joint return). The income phaseout ranges are indexed for inflation.

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) an eligible educational institution, or (2) an institution conducting internship 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 of certain other scholarships and similar payments.

**Explanation of Provision**

The provision makes two modifications to section 529 plans. First, the provision allows the tax-free treatment of distributions for higher education expenses to apply to expenses for fees, books, supplies, and equipment required for the participation of a designated beneficiary in an apprenticeship program. The apprenticeship program must be registered and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act. Second, the provision allows tax-free treatment to apply to distributions of certain amounts used to make payments on principal or interest of a qualified education loan. No individual may receive

515 A contributor may elect to have a contribution in excess of the gift tax annual exclusion be treated as if it was made ratably over five years beginning in the year the contribution is made. Sec. 529(c)(2)(B).

516 Sec. 221.

more than $10,000 of such distributions, in aggregate, over the course of the individual’s lifetime. To the extent that an individual receives in excess of $10,000 of such distributions, the portion of the excess representing earnings is included in income and is subject to a 10-percent penalty (following the general 529 rules for non-qualified distributions). The provision contains a special rule allowing such amounts to be distributed to a sibling of a designated beneficiary (i.e., a brother, sister, stepbrother, or stepsister). This rule allows a 529 account holder to make a student loan distribution to a sibling of the designated beneficiary without changing the designated beneficiary of the account. For purposes of the $10,000 lifetime limit on student loan distributions, a distribution to a sibling of a designated beneficiary is applied towards the sibling’s lifetime limit, and not the designated beneficiary’s lifetime limit. The deduction available for interest paid by the taxpayer during the taxable year on any qualified education loan is disallowed to the extent such interest was paid from a tax-free distribution from a 529 plan.

**Effective Date**

The provision applies to distributions made after December 31, 2018.

**TITLE IV—REVENUE PROVISIONS**

1. Modification of required minimum distribution rules for designated beneficiaries (sec. 401 of the Act and sec. 401(a)(9) of the Code)

**Present Law**

**In general**

Minimum distribution rules apply to tax-favored employer-sponsored retirement plans and IRAs. Employer-sponsored retirement plans are of two general types: defined benefit plans, under which benefits are determined under a plan formula and paid from general plan assets, rather than individual accounts; and defined contribution plans, under which benefits are based on a separate account for each participant, to which are allocated contributions, earnings and losses.

In general, under the minimum distribution rules, distribution of minimum benefits must begin to an employee (or IRA owner) no later than a required beginning date and a minimum amount must be distributed each year (sometimes referred to as “lifetime” minimum distribution requirements). These lifetime requirements do not apply to a Roth IRA. Minimum distribution rules also apply to benefits payable with respect to an employee (or IRA owner) who

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518 This limitation applies to such distributions from all 529 accounts. Thus, an individual may not avoid the limitation by receiving separate $10,000 distributions from multiple 529 accounts.

519 Secs. 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), and 457(d)(2). Tax-favored employer-sponsored retirement plans include qualified retirement plans and annuities under sections 401(a) and 403(a), tax-deferred annuity plans under section 403(b), and governmental eligible deferred compensation plans under section 457(b). Minimum distribution requirements also apply to eligible deferred compensation plans under section 457(b) of tax-exempt employers.

520 Sec. 408A(c)(4).
has died (sometimes referred to as “after-death” minimum distribution requirements). The regulations provide a methodology for calculating the required minimum distribution from an individual account under a defined contribution plan or from an IRA.521 In the case of annuity payments under a defined benefit plan or an annuity contract, the regulations provide requirements that the stream of annuity payments must satisfy.

Failure to comply with the minimum distribution requirements results in an excise tax imposed on the individual who was required to take the distributions equal to 50 percent of the amount by which the required minimum distribution exceeds the actual amount distributed during the taxable year.522 The excise tax may be waived in certain cases for reasonable cause. For employer-sponsored retirement plans, satisfying the minimum distribution requirement under the plan terms and in operation is also a requirement for tax-favored treatment.

**Required beginning date**

For traditional IRAs, the required beginning date is April 1 following the calendar year in which the employee (or IRA owner) attains age 70 1/2. For employer-sponsored retirement plans, for an employee other than an employee who is a five-percent owner in the year the employee attains age 70 1/2, the required beginning date is April 1 after the later of the calendar year in which the employee attains age 70 1/2 or retires. For an employee who is a five-percent owner under an employer-sponsored tax-favored retirement plan in the year the employee attains age 70 1/2, the required beginning date is the same as for IRAs even if the employee continues to work past age 70 1/2.

**Lifetime rules**

While an employee (or IRA owner) is alive, distributions of the individual’s interest are required to be made (in accordance with regulations) over the life of the employee (or IRA owner) or over the joint lives of the employee (or IRA owner) and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee (or IRA owner) or the life expectancy of such employee (or IRA owner) and a designated beneficiary).523 For defined contribution plans and IRAs, the required minimum distribution for each year is determined by dividing the account balance as of the end of the prior year by a distribution period which, while the employee (or IRA owner) is alive, is the factor for the employee’s (or IRA owner’s) age from the Uniform Lifetime Table included in the Treasury regulations.524 The distribution period for annuity

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521 Reflecting the directive in section 823 of the Pension Protection Act of 2006 (Pub. L. No. 109–280), pursuant to Treas. Reg. sec. 1.401(a)(9)–1, A–2(d), a governmental plan within the meaning of section 414(d) or a governmental eligible deferred compensation plan is treated as having complied with the statutory minimum distribution rules if the plan complies with a reasonable and good faith interpretation of those rules.

522 Sec. 4974.

523 Sec. 401(a)(9)(A).

524 Treas. Reg. sec. 1.401(a)(9)–5. This table is based on the joint life and last survivor expectancy of the individual and a hypothetical beneficiary 10 years younger. For an individual with a spouse as designated beneficiary who is more than 10 years younger (and thus the number of years in the couple’s joint life and last survivor expectancy is greater than the Uniform Lifetime Table), the joint life expectancy and last survivor expectancy of the couple (calculated using
payments under a defined benefit plan or annuity contract (to the extent not limited to the life of the employee (or IRA owner) or the joint lives of the employee (or IRA owner) and a designated beneficiary) is generally subject to the same limitations as apply to individual accounts.\textsuperscript{525}

\textbf{After-death rules}

\textit{Payments over a distribution period}

The after-death minimum distributions rules vary depending on (i) whether an employee (or IRA owner) dies on or after the required beginning date or before the required beginning date, and (ii) whether there is a designated beneficiary for the benefit.\textsuperscript{526} Under the regulations, a designated beneficiary is an individual designated as a beneficiary under the plan or IRA.\textsuperscript{527} Similar to the lifetime rules, for defined contribution plans and IRAs ("individual accounts"), the required minimum distribution for each year after the death of the employee (or IRA owner) is generally determined by dividing the account balance as of the end of the prior year by a distribution period.

If an employee (or IRA owner) dies on or after the required beginning date, the basic statutory rule is that the remaining interest must be distributed at least as rapidly as under the method of distribution being used before death.\textsuperscript{528} If there is no designated beneficiary, the distribution period is measured by the employee's (or IRA owner's) life expectancy using age as of the year of death.\textsuperscript{529} If there is a designated beneficiary, the distribution period is (if longer) the beneficiary's life expectancy calculated using the life expectancy table in the regulations, determined in the year after the year of death.\textsuperscript{530}

If an employee (or IRA owner) dies before the required beginning date and any portion of the benefit is payable to a designated beneficiary, the statutory rule is that distributions are generally required to begin within one year of the employee's (or IRA owner's) death (or such later date as may be prescribed in regulations) and are permitted to be paid (in accordance with regulations) over the life of the designated beneficiary or over a period not extending beyond the life expectancy of such beneficiary. If the beneficiary of

\textsuperscript{525} Treas. Reg. sec. 1.401(a)(9)–6.
\textsuperscript{526} In the case of amounts for which the employee or IRA owner's surviving spouse is the beneficiary, the surviving spouse generally is permitted to do a tax-free rollover of such amounts to an IRA (or account of a tax-favored employer-sponsored plan of the spouse's employer) established in the surviving spouse's name as IRA owner or employee. The rules applicable to the rollover account, including the minimum distribution rules, are the same rules that apply to an IRA owner or employee. In the case of an IRA for which the spouse is sole beneficiary, this can be accomplished by simply renaming the IRA as an IRA held by the spouse as IRA owner rather than as a beneficiary.
\textsuperscript{527} Sec. 401(a)(9)(B)(i).
\textsuperscript{528} Treas. Reg. sec. 1.401(a)(9)–5, Q&A–1. The individual need not be named as long as the individual is identifiable under the terms of the plan (or IRA). However, the fact that an interest under a plan or IRA passes to a certain individual under a will or otherwise under State law does not make that individual a designated beneficiary unless the individual is designated as a beneficiary under the plan or IRA.
\textsuperscript{529} Treas. Reg. sec. 1.401(a)(9)–4, Q&A–1.
\textsuperscript{530} Treas. Reg. sec. 1.401(a)(9)–5, Q&A–5(a)(1).
the employee (or IRA owner) is the individual’s surviving spouse, distributions are not required to commence until the year in which the employee (or IRA owner) would have attained age 70½. If the surviving spouse dies before the employee (or IRA owner) would have attained age 70½, the after-death rules apply after the death of the spouse as though the spouse were the employee (or IRA owner). Under the regulations, for individual accounts, the required minimum distribution for each year is determined using a distribution period and the period is measured by the designated beneficiary’s life expectancy, calculated in the same manner as if the individual died on or after the required beginning date.\(^{531}\)

In cases where distribution after death is based on life expectancy (either the remaining life expectancy of the employee (or IRA owner) or a designated beneficiary), the distribution period generally is fixed at the employee’s (or IRA owner’s) death and then reduced by one for each year that elapses after the year in which it is calculated. If the designated beneficiary dies during the distribution period, distributions continue to subsequent beneficiaries over the remaining years in the distribution period.\(^{532}\)

The distribution period for annuity payments under a defined benefit plan or annuity contract (to the extent not limited to the life of a designated beneficiary) is generally subject to the same limitations as apply to individual accounts.

**Five-year rule**

If an employee (or IRA owner) dies before the required beginning date and there is no designated beneficiary, then the entire remaining interest of the employee (or IRA owner) must generally be distributed by the end of the fifth calendar year following the individual’s death.\(^{533}\)

**Multiple beneficiaries and trusts**

Treasury regulations include special rules for determining an employee’s (or IRA owner’s) designated beneficiary for purposes of calculating the distribution period in the case of multiple designated beneficiaries or in the case of a beneficiary that is a trust. Generally, if an employee (or IRA owner) has more than one designated beneficiary, the designated beneficiary with the shortest life expectancy is the designated beneficiary for purposes of determining the distribution period.\(^{534}\)

If a trust is named as an employee’s (or IRA owner’s) beneficiary, the beneficiaries of the trust (and not the trust itself) are treated as designated beneficiaries of the employee or IRA owner if the following requirements are met: (1) the trust is a valid trust under

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\(^{531}\) Treas. Reg. sec. 1.401(a)(9)–5, A–5(b).

\(^{532}\) If the distribution period is based on the surviving spouse’s life expectancy (whether the employee or IRA owner’s death is before or after the required beginning date), the spouse’s life expectancy generally is recalculated each year while the spouse is alive and then fixed the year after the spouse’s death. Treas. Reg. sec. 1.401(a)(9)–5, A–7(b).

\(^{533}\) Section 401(a)(9)(B)(ii) provides that the entire interest must be distributed within five years of the employee’s death. Treas. Reg. sec. 1.401(a)(9)–3, A–2, provides that this requirement is satisfied if the entire interest is distributed by the end of the fifth calendar year following the employee’s death. There are provisions in the regulations allowing a designated beneficiary to take advantage of the five-year rule. See Treas. Reg. secs. 1.401(a)(9)–3, A–4, and 1.4974–2, A–7(b).

state law, or would be but for the fact that there is no corpus, (2) the trust is irrevocable or will, by its terms, become irrevocable upon the employee’s (or IRA owner’s) death, (3) the trust beneficiaries who are beneficiaries with respect to the trust’s interest in the employee’s (or IRA owner’s) benefit are identifiable from the trust instrument, and (4) certain documentation requirements are met.

**Defined benefit plans and annuity distributions**

The regulations provide rules for the amount of annuity distributions from a defined benefit plan, or from an annuity purchased by the plan from an insurance company, that are paid over life (or a period not extending beyond life expectancy). Annuity distributions are generally required to be nonincreasing over time with certain exceptions, which include, for example, (i) increases to the extent of certain specified cost-of-living indices, (ii) a constant percentage increase (for a qualified defined benefit plan, the constant percentage cannot exceed five percent per year), (iii) certain accelerations of payments, and (iv) increases to reflect when an annuity is converted to a single life annuity after the death of the beneficiary under a joint and survivor annuity or after termination of the survivor annuity under a qualified domestic relations order. If distributions are in the form of a joint and survivor annuity and the survivor annuitant both is an individual other than the surviving spouse and is younger than the employee (or IRA owner), the survivor annuity benefit must be limited to a percentage of the life annuity benefit for the employee (or IRA owner). The survivor benefit as a percentage of the benefit of the primary annuitant is required to be smaller (but not required to be less than 52 percent) as the difference in the ages of the primary annuitant and the survivor annuitant becomes greater.

**Explanation of Provision**

**Change in after-death rules for defined contribution plans**

The provision changes the after-death required minimum distribution rules applicable to defined contribution plans, as defined, with respect to required minimum distributions to designated beneficiaries. A defined contribution plan for this purpose means an eligible retirement plan (qualified retirement plans, section 403(b) plans, governmental section 457(b) plans, and IRAs) other than a defined benefit plan.

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535 The beneficiary must be identifiable within the meaning of Treas. Reg. sec. 1.401(a)(9)–4, A–1.
536 The documentation described in Treas. Reg. sec. 1.401(a)(9)–4, A–6 must be provided to the plan administrator.
539 Under the provision, a defined contribution plan is an eligible retirement plan, as defined in sec. 402(c)(8)(B), other than a defined benefit plan described in clause (iv) or (v) thereof or a qualified trust that is part of a defined benefit plan.
Ten-year after-death rule for defined contributions plans

In general

Under the provision, the five-year rule is expanded to become a 10-year period instead of five years (“10-year rule”), such that the 10-year rule is the general rule for distributions to designated beneficiaries after death (regardless of whether the employee (or IRA owner) dies before, on, or after the required beginning date) unless the designated beneficiary is an eligible designated beneficiary as defined in the provision. Thus, in the case of an ineligible designated beneficiary, distribution of the employee (or IRA owner’s) entire benefit is required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner’s death.

Eligible designated beneficiaries

For eligible designated beneficiaries, an exception to the 10-year rule (for death before the required beginning date) applies whether or not the employee (or IRA owner) dies before, on, or after the required beginning date. The exception (similar to present law) generally allows distributions over life or a period not extending beyond the life expectancy of an eligible designated beneficiary beginning in the year following the year of death. Eligible designated beneficiaries include any designated beneficiary who, as of the date of death, is the surviving spouse of the employee (or IRA owner), is a chronically ill individual, is an individual who is not more than 10 years younger than the employee (or IRA owner), or is a child of the employee (or IRA owner) who has not reached the age of majority. In the case of a child who has not reached the age of majority, calculation of the minimum required distribution under this exception is only allowed through the year that the child reaches the age of majority.

Further, under the provision, the 10-year rule also applies after the death of an eligible designated beneficiary or after a child reaches the age of majority. Thus, for example, if a disabled child of an employee (or IRA owner) is an eligible designated beneficiary of a parent who dies when the child is age 20 and the child dies at age 30, even though 52.1 years remain in the measurement period, the disabled child’s remaining beneficiary interest must be distributed by the end of the tenth year following the death of the disabled child. If a child is an eligible designated beneficiary based on having not reached the age of majority before the employee’s (or IRA owner’s) death, the 10-year rule applies beginning with the earlier of the date of the child’s death or the date that the child reaches the age of majority.

As in the case of the present law special rule in section 401(a)(9)(B)(iv) for surviving spouses, spouse is not defined in the provision. Under Treas. Reg. sec. 1.401(a)(9)–8, Q&A–5, a spouse is the employee's spouse under applicable State law. In the case of a joint and survivor annuity under section 401(a)(11) and 417, the spouse is generally determined as of the annuity starting date.
reaches the age of majority. The child's entire interest must be distributed by the end of the tenth year following that date.

As under present law, if the surviving spouse is the designated beneficiary, a special rule allows the commencement of distribution to be delayed until the end of the year that the employee (or IRA owner) would have attained age 70½. If the spouse dies before distributions were required to begin to the spouse, the surviving spouse is treated as the employee (or IRA owner) in determining the required distributions to beneficiaries of the surviving spouse.

Definitions of disabled and chronically ill individual

Under the provision, disabled means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to end in death or to be for a long-continued and indefinite duration. Further, under the definition, an individual is not considered to be disabled unless proof of the disability is furnished in such form and manner as the Secretary may require. Substantial gainful activity for this purpose is the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability (or prior to retirement if the individual was retired at the time the disability arose).

Under the provision, the definition of a chronically ill individual for purposes of qualified long-term care insurance is incorporated by reference with a modification. Under this definition, a chronically ill individual is any individual who (1) is unable to perform (without substantial assistance from another individual) at least two activities of daily living for an indefinite period (expected to be lengthy in nature) due to a loss of functional capacity, (2) has a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described above requiring assistance with daily living based on loss of functional capacity, or (3) requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment. The activities of daily living for which assistance is needed for purposes of determining loss of functional capacity are eating, toileting, transferring, bathing, dressing, and continence.

Special rules for trusts

Special rules apply in the case of an applicable multi-beneficiary trust. An applicable multi-beneficiary trust is a trust (1) that has more than one beneficiary, (2) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the required minimum distribution period, and (3) at least one of the beneficiaries is a chronically ill individual.

\footnotesize{542 The definition of disabled in section 72(m)(7) is incorporated by reference.}

\footnotesize{543 Treas. Reg. sec. 1.72–17(f). Under the regulations, in determining whether an individual is disabled, primary consideration is given to the nature and severity of the individual's impairment. However, consideration is also given to other factors such as the individual's education, training, and work experience. Whether an impairment in a particular case constitutes a disability is determined with reference to all the facts in the case.}

\footnotesize{544 Sec. 7702B(c)(12).}

\footnotesize{545 Section 7702B(c) only requires this period to be at least 90 days.}
beneficiaries of which is an eligible designated beneficiary who is disabled or chronically ill.

In the case of an applicable multi-beneficiary trust that under its terms is to be divided immediately upon the death of the employee (or IRA owner) into separate trusts for each beneficiary, the exception to the 10-year rule for eligible designated beneficiaries applies separately to any portion of the employee’s (or IRA owner’s) interest that is payable to a disabled or chronically ill eligible designated beneficiary. Thus, for example, if an applicable multi-beneficiary trust is to be divided immediately upon the death of the IRA owner into separate trusts for three beneficiaries, one of whom is a chronically ill eligible designated beneficiary, the exception to the 10-year rule will apply to the portion of the IRA owner’s interest that is payable to the chronically ill eligible designated beneficiary’s trust. The portion of the IRA owner’s interest that is payable to the trusts for the other two beneficiaries must then be distributed in accordance with the 10-year rule.

In the case of an applicable multi-beneficiary trust under the terms of which no individual other than a disabled or chronically ill eligible designated beneficiary has any right to the employee’s (or IRA owner’s) interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust, the exception to the 10-year rule applies to the distribution of the employee’s (or IRA owner’s) interest and any beneficiary who is not a disabled or chronically ill eligible designated beneficiary is treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary. Thus, the 10-year rule applies to any portion of the employee’s (or IRA owner’s) interest remaining after the death of the disabled or chronically ill eligible designated beneficiary (or beneficiaries).

Annuity payments under commercial annuities

The provision applies to after-death required minimum distributions under defined contribution plans and IRAs, including annuity contracts purchased from insurance companies under defined contribution plans or IRAs.

Effective Date

General effective date

In determining required minimum distributions after the death of an employee (or IRA owner), the provision is generally effective for required minimum distributions with respect to employees (or IRA owners) with a date of death after December 31, 2019.

Delayed effective date for governmental and collectively bargained plans

In the case of a governmental plan (as defined in section 414(d)), in determining required minimum distributions after the death of an employee, the provision applies to distributions with respect to employees who die after December 31, 2021.
In the case of a collectively bargained plan, in determining required minimum distributions after the death of an employee, the provision applies to distributions with respect to employees who die in calendar years beginning after the earlier of two dates. The first date is the later of (1) the date on which the last collective bargaining agreement ratified before date of enactment of the provision terminates, or (2) December 31, 2019. The second date is December 31, 2021.

10-year rule after the death of a beneficiary

In the case of an employee (or IRA owner) who dies before the effective date (as described below) for the plan (or IRA), if the designated beneficiary of the employee (or IRA owner) dies on or after the effective date, the provision applies to any beneficiary of the designated beneficiary as though the designated beneficiary were an eligible designated beneficiary. Thus, the entire interest must be distributed by the end of the tenth calendar year after the death of the designated beneficiary. For this purpose, the effective date is the first day of the first calendar year to which this provision applies to a plan with respect to employees dying on or after such date (for example, January 1, 2020 under the general effective date).

Certain annuities grandfathered

The modification to the after-death minimum distribution rules does not apply to a qualified annuity that is a binding annuity contract in effect on the date of enactment of the provision and at all times thereafter. A qualified annuity with respect to an individual is a commercial annuity under which the annuity payments are made over the lives of the individual and a designated beneficiary (or over a period not extending beyond the life expectancy of the individual or the life expectancy of the individual and a designated beneficiary) in accordance with the required minimum distribution regulations for annuity payments as in effect before enactment of this provision. In addition to these requirements, annuity payments to the individual must begin before the date of enactment, and the individual must have made an irrevocable election before that date as to the method and amount of the annuity payments to the individual or any designated beneficiaries. Alternatively, if an annuity is not a qualified annuity solely based on annuity payments not having begun irrevocably before the date of enactment, an annuity can be a qualified annuity if the individual has made an irrevocable election before the date of enactment as to the method and amount of the annuity payments to the individual or any designated beneficiaries.

546 A collectively bargained plan is a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers.

547 The date that the last agreement terminates is determined without regard to any extension thereof agreed to on or after the date of enactment of the provision. Further, any plan amendment made pursuant to a collective bargaining agreement relating to the plan that amends the plan solely to conform to any requirement added by the provision shall not be treated as a termination of the collective bargaining agreement.

548 For this purpose, commercial annuity is defined in section 3405(e)(6).
2. Increase in penalty for failure to file (sec. 402 of the Act and sec. 6651 of the Code)

Present Law

The Federal tax system is one of “self-assessment,” i.e., taxpayers are required to declare their income, expenses, and ultimate tax due, while the IRS may propose subsequent changes. This voluntary system requires that taxpayers comply with deadlines and adhere to the filing requirements. While taxpayers may obtain extensions of time in which to file their returns, the Federal tax system consists of specific due dates of returns. In order to foster compliance in meeting these deadlines, Congress enacted a penalty for the failure to timely file tax returns.549

A taxpayer who fails to file a tax return on or before its due date is subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 25 percent of the net amount.550 If the failure to file a return is fraudulent, the taxpayer is subject to a penalty equal to 15 percent of the net amount of tax due for each month the return is not filed, up to a maximum of 75 percent of the net amount.551 The net amount of tax due is the amount of tax required to be shown on the return reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credits against tax which may be claimed on the return.552 The penalty will not apply if it is shown that the failure to file was due to reasonable cause and not willful neglect.553

If a return is filed more than 60 days after its due date, and unless it is shown that such failure is due to reasonable cause, then the failure to file penalty may not be less than the lesser of $205 554 or 100 percent of the amount required to be shown as tax on the return.555 If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax shown on a return.556 If a return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of $205 or 100 percent of the amount required to be shown on the return.557

The failure to file penalty applies to all returns required to be filed under subchapter A of Chapter 61 (relating to income tax returns of an individual, fiduciary of an estate or trust, or corporation; self-employment tax returns, and estate and gift tax returns),

550 Sec. 6651(a)(1).
551 Sec. 6651(f).
552 Sec. 6651(b)(1).
553 Sec. 6651(a)(1).
554 The $205 amount is adjusted for inflation.
555 Sec. 6651(b)(1) (flush language). For this minimum penalty to apply, the Tax Court has held, and the IRS has acquiesced, that there must be an underpayment of tax. See Patronik-Holder v. Commissioner, 100 T.C. 374 (1993) (citing the Conference Report to the Tax Equity and Fiscal Responsibility Act of 1982), AOD 1994–03, 1993–2 C.B. 1.
556 Sec. 6651(e)(1).
557 Ibid.
subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), and subchapter A of chapter 53 (relating to machine guns and certain other firearms).\(^{558}\) The failure to file penalty is adjusted annually to account for inflation. The failure to file penalty does not apply to any failure to pay estimated tax required to be paid by sections 6654 or 6655.\(^{559}\) The failure to file penalty generally applies to employment and excise tax returns, but they are not subject to the minimum penalty described above for filing late.

**Explanation of Provision**

Under the provision, if a return is filed more than 60 days after its due date (including extensions), absent a showing that the failure is due to reasonable cause and not willful neglect, then the failure to file penalty may not be less than the lesser of $435 (adjusted for inflation) or 100 percent of the amount required to be shown as tax on the return.

**Effective Date**

The provision applies to returns with filing due dates (including extensions) after December 31, 2019.

3. Increased penalties for failure to file retirement plan returns (sec. 403 of the Act and sec. 6652 of the Code)

**Present Law**

**Annual reporting for certain plans**

An employer that maintains a pension, annuity, stock bonus, profit-sharing or other funded deferred compensation plan (or the plan administrator of the plan) is required to file an annual return containing information with respect to the qualification, financial condition, and operation of the plan.\(^{560}\) The plan administrator of a defined benefit plan subject to minimum funding requirements\(^{561}\) is required to file an annual actuarial report.\(^{562}\) These filing requirements are met by filing an Annual Return/Report of Employee Benefit Plan, Form 5500 series, and providing the information as required on the form and related instructions.\(^{563}\) A failure to file Form 5500 generally results in a civil penalty of $25 for each day during which the failure continues, subject to a maximum penalty of $15,000.\(^{564}\) This penalty may be waived if it is shown that the failure is due to reasonable cause.

\(^{558}\) Sec. 6651(a)(1).

\(^{559}\) Sec. 6651(e).

\(^{560}\) Sec. 6058.

\(^{561}\) Sec. 412. Most governmental plans (defined in section 414(d)) and church plans (defined in section 414(e)) are exempt from the minimum funding requirements.

\(^{562}\) Sec. 6059.

\(^{563}\) Treas. Reg. secs. 301.6058–1(a) and 301.6059–1.

\(^{564}\) Sec. 6652(e). The failure to file penalties in section 6652 generally apply to certain information returns, including retirement plan returns. The failure to file penalties in section 6651(a)(1), discussed above in section 502 of the bill, generally apply to income, estate, gift, employment and self-employment, and certain excise tax returns.
Annual registration statement and notification of changes

For a plan subject to the vesting requirements under the Employee Retirement Income Security Act of 1974 ("ERISA"), the plan administrator is required to file a registration statement with the IRS with respect to any plan participant who (1) separated from service during the year and (2) had a vested benefit under the plan, but who was not paid the benefit during the year (a "deferred vested" benefit). The registration statement generally must include the name of the plan, the name and address of the plan administrator, the name and taxpayer identification number of the separated participant, and the nature, amount, and form of the participant’s deferred vested benefit. A failure to file a registration statement as required generally results in a civil penalty of $1 for each participant with respect to whom the failure applies, multiplied by the number of days during which the failure continues, subject to a maximum penalty of $5,000 for a failure with respect to any plan year. This penalty may be waived if it is shown that the failure is due to reasonable cause.

A plan administrator is also required to notify the IRS if certain information in a registration changes; specifically, such notification is required for any change in the name of the plan or in the name or address of the plan administrator, the termination of the plan, or the merger or consolidation of the plan with any other plan or its division into two or more plans. A failure to file a required notification of change generally results in a penalty of $1 for each day during which the failure continues, subject to a maximum penalty of $1,000 for any failure. This penalty may be waived if it is shown that the failure is due to reasonable cause.

Withholding notices

Withholding requirements apply to distributions from tax-favored employer-sponsored retirement plans and IRAs, but, except in the case of certain distributions, payees may generally elect not to have withholding apply. A plan administrator or IRA custodian is required to provide payees with notices of the right to elect no withholding. A failure to provide a required notice generally results in a civil penalty of $10 for each failure, subject to a maximum penalty of $5,000 for all failures during any calendar year. This penalty may be waived if it is shown that the failure is due to reasonable cause and not to willful neglect.

Explanation of Provision

Increase to penalty for failure to file Form 5500

Under the provision, a failure to file Form 5500 generally results in a penalty of $250 for each day during which the failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $150,000.

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565 Code sec. 6057(a). Under Code section 6057(e) and ERISA section 105(c), similar information must be provided to the separated participant.
566 Sec. 6652(d)(1).
567 Sec. 6652(d)(2).
568 Sec. 3405.
569 Sec. 6652(h).
Increase in penalties for annual registration statement and notification of changes

Under the provision, a failure to file a registration statement as required generally results in a penalty of $10 for each participant with respect to whom the failure applies, multiplied by the number of days during which the failure continues, subject to a maximum penalty of $50,000 for a failure with respect to any plan year. A failure to file a required notification of change generally results in a penalty of $10 for each day during which the failure continues, subject to a maximum penalty of $10,000 for any failure.

Increase in penalties for withholding notices

Under the provision, a failure to provide a required withholding notice generally results in a penalty of $100 for each failure, subject to a maximum penalty of $50,000 for all failures during any calendar year.

Effective Date

The provision is effective for returns, statements, and notifications required to be filed, and withholding notices required to be provided, after December 31, 2019.

4. Increase information sharing to administer excise taxes (sec. 404 of the Act and sec. 6103(o) of the Code)

Present Law

Generally, tax returns and return information ("tax information") are confidential and may not be disclosed unless authorized in the Code. Return information includes data received, collected, or prepared by the Secretary with respect to the determination of the existence or possible existence of liability of any person under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense. Criminal penalties apply for the unauthorized inspection or disclosure of tax information. Willful unauthorized disclosure is a felony under section 7213 and the willful unauthorized inspection of tax information is a misdemeanor under section 7213A. Taxpayers may also pursue a civil cause of action for disclosures and inspections not authorized by section 6103.

Section 6103 provides exceptions to the general rule of confidentiality, detailing permissible disclosures. Under section 6103(h)(1), tax information is open to inspection by or disclosure to Treasury officers and employees whose official duties require the inspection or disclosure for tax administration purposes.

The heavy vehicle use tax, an annual highway use tax, is imposed on the use of any highway motor vehicle that has a gross weight of 55,000 pounds or more. Proof of payment of the heavy vehicle use tax must be presented to customs officials upon entry into the United States of any highway motor vehicle subject to the tax and that has a base in a contiguous foreign country.
operator of the vehicle is unable to present proof of payment of the tax with respect to the vehicle, entry into the United States may be denied.574

Prior to 2003, customs officials who had responsibility for enforcing and/or collecting excise taxes were employees of the U.S. Department of the Treasury (“Treasury”). Thus, prior to 2003, section 6103(h)(1) allowed disclosure of tax information by the IRS to these customs officials in the performance of their duties. In 2003, U.S. Customs and Border Protection became an official agency of the U.S. Department of Homeland Security.575 At that time, customs officials were transferred from Treasury to the Department of Homeland Security.

Explanation of Provision

The provision allows the IRS to share returns and return information with employees of U.S. Customs and Border Protection whose official duties require such inspection or disclosure for purposes of administering and collecting the heavy vehicle use tax.

Effective Date

The provision is effective on the date of enactment (December 20, 2019).

TITLE V—TAX RELIEF FOR CERTAIN CHILDREN

1. Modification of rules relating to the taxation of unearned income of certain children (sec. 501 of the Act and sec. 1 of the Code)

Present Law

Income tax rates

To determine regular income tax liability, an individual taxpayer generally must apply the tax rate schedules (or the tax tables) to his or her taxable income. The rate schedules are broken into several ranges of income, known as income brackets, and the marginal tax rate increases as a taxpayer’s income increases.

Separate rate schedules apply based on an individual’s filing status.576 Estates and trusts are generally taxed in a manner similar to individuals, to the extent that the income is not distributed or required to be distributed under governing law or under the terms of the governing instrument. They are subject to a separate income tax rate schedule.577 For 2019, the regular individual and estate and trust income tax rate schedules are as follows:

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574 Treas. Reg. 41.6001–3(b).
577 Ibid.
### TABLE 1: FEDERAL INDIVIDUAL INCOME TAX RATES FOR 2019

<table>
<thead>
<tr>
<th>If taxable income is:</th>
<th>Then income tax equals:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Single Individuals</strong></td>
<td></td>
</tr>
<tr>
<td>Not over $9,700</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $9,700 but not over $39,475</td>
<td>$970 plus 12% of the excess over $9,700</td>
</tr>
<tr>
<td>Over $39,475 but not over $84,200</td>
<td>$4,545 plus 22% of the excess over $39,475</td>
</tr>
<tr>
<td>Over $84,200 but not over $160,725</td>
<td>$14,382.50 plus 24% of the excess over $84,200</td>
</tr>
<tr>
<td>Over $160,725 but not over $204,100</td>
<td>$32,748.50 plus 32% of the excess over $160,725</td>
</tr>
<tr>
<td>Over $204,100 but not over $510,300</td>
<td>$46,628.50 plus 35% of the excess over $204,100</td>
</tr>
<tr>
<td>Over $510,300</td>
<td>$153,798.50 plus 37% of the excess over $510,300</td>
</tr>
<tr>
<td><strong>Heads of Households</strong></td>
<td></td>
</tr>
<tr>
<td>Not over $13,850</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $13,850 but not over $52,850</td>
<td>$1,385 plus 12% of the excess over $13,850</td>
</tr>
<tr>
<td>Over $52,850 but not over $84,200</td>
<td>$6,065 plus 22% of the excess over $52,850</td>
</tr>
<tr>
<td>Over $84,200 but not over $160,700</td>
<td>$12,962 plus 24% of the excess over $84,200</td>
</tr>
<tr>
<td>Over $160,700 but not over $204,100</td>
<td>$31,322 plus 32% of the excess over $160,700</td>
</tr>
<tr>
<td>Over $204,100 but not over $510,300</td>
<td>$45,210 plus 35% of the excess over $204,100</td>
</tr>
<tr>
<td>Over $510,300</td>
<td>$152,380 plus 37% of the excess over $510,300</td>
</tr>
<tr>
<td><strong>Married Individuals Filing Joint Returns and Surviving Spouses</strong></td>
<td></td>
</tr>
<tr>
<td>Not over $19,400</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $19,400 but not over $78,950</td>
<td>$1,940 plus 12% of the excess over $19,400</td>
</tr>
<tr>
<td>Over $78,950 but not over $168,400</td>
<td>$9,086 plus 22% of the excess over $78,950</td>
</tr>
<tr>
<td>Over $168,400 but not over $321,450</td>
<td>$28,765 plus 24% of the excess over $168,400</td>
</tr>
<tr>
<td>Over $321,450 but not over $408,200</td>
<td>$65,497 plus 32% of the excess over $321,450</td>
</tr>
<tr>
<td>Over $408,200 but not over $612,350</td>
<td>$93,257 plus 35% of the excess over $408,200</td>
</tr>
<tr>
<td>Over $612,350</td>
<td>$164,709.50 plus 37% of the excess over $612,350</td>
</tr>
<tr>
<td><strong>Married Individuals Filing Separate Returns</strong></td>
<td></td>
</tr>
<tr>
<td>Not over $9,700</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $9,700 but not over $39,475</td>
<td>$970 plus 12% of the excess over $9,700</td>
</tr>
<tr>
<td>Over $39,475 but not over $84,200</td>
<td>$4,545 plus 22% of the excess over $39,475</td>
</tr>
<tr>
<td>Over $84,200 but not over $160,725</td>
<td>$14,382.50 plus 24% of the excess over $84,200</td>
</tr>
<tr>
<td>Over $160,725 but not over $204,100</td>
<td>$32,748.50 plus 32% of the excess over $160,725</td>
</tr>
<tr>
<td>Over $204,100 but not over $306,175</td>
<td>$46,628.50 plus 35% of the excess over $204,100</td>
</tr>
<tr>
<td>Over $306,175</td>
<td>$82,354.75 plus 37% of the excess over $306,175</td>
</tr>
<tr>
<td><strong>Estates and Trusts</strong></td>
<td></td>
</tr>
<tr>
<td>Not over $2,600</td>
<td>10% of the taxable income</td>
</tr>
<tr>
<td>Over $2,600 but not over $9,300</td>
<td>$260 plus 24% of the excess over $2,600</td>
</tr>
<tr>
<td>Over $9,300 but not over $12,750</td>
<td>$1,868 plus 35% of the excess over $9,300</td>
</tr>
<tr>
<td>Over $12,750</td>
<td>$3,075.50 plus 37% of the excess over $12,750</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.\(^{578}\) Generally, the kiddie tax applies to a child 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 is alive at that time; (2) the child’s unearned income exceeds $2,200 (for 2019); and (3) the child does not file a joint return. The kiddie tax applies regardless of whether the child may be claimed as a dependent by either or both parents. If a child is above age 17, the kiddie tax applies to the net unearned income of that child only if the child’s earned income does not exceed one-half of the amount of his or her support. For these purposes, unearned income is income other than wages, salaries, professional fees, other amounts received as compensation for personal services actually rendered,

\(^{578}\)Sec. 1(g).
and distributions from qualified disability trusts. In general, a child is eligible to use the preferential tax rates for qualified dividends and capital gains.

Public Law 115–97 temporarily modifies the kiddie tax by separating the child’s tax from the tax situation of the child’s parent or of any sibling. It is intended that the net unearned income (both ordinary income and net capital gain) of a child to whom the kiddie tax applies is taxed according to the tax table applicable to a trust, while earned taxable income of a child is taxed according to the tax table applicable to the child (normally the table applicable to unmarried individuals).

The modification of the kiddie tax does not apply to taxable years beginning after December 31, 2025.

**Alternative minimum tax**

An alternative minimum tax ("AMT") is imposed on an individual, estate, or trust in an amount by which the tentative minimum tax exceeds the regular income tax for the taxable year. For 2019, the tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $194,800 ($97,400 in the case of married filing separately) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income ("AMTI") as exceeds the exemption amount. AMTI is the taxpayer’s taxable income increased by the taxpayer’s tax preferences and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items.

For taxable years beginning in 2019, the exemption amount is $111,700 for married individuals filing jointly and surviving spouses, $71,700 for other unmarried individuals, $55,850 for married individuals filing separately, and $25,000 for estates or trusts. In the case of a child to whom the kiddie tax applies, the exemption amount may not exceed the child’s earned income plus $7,750. The exemption amount is phased out by an amount equal to 25 percent of the amount by which the individual’s AMTI exceeds $1,020,600 for married individuals filing jointly and surviving spouses, $510,300 for other individuals, and $83,500 for estates or trusts.

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579 Secs. 1(g)(4) and 911(d)(2).
580 Sec. 1(h).
581 For this purpose, earned taxable income means taxable income reduced (but not below zero) by net unearned income. Section 1(j)(4)(D).
582 A technical correction may be necessary for the kiddie tax to fully reflect this intent. As enacted, a child to whom the kiddie tax applies uses modified unmarried and estates and trusts brackets to calculate tax on income. The brackets are modified so that the total amount taxed at a given rate does not exceed the amount that would be taxed at that rate in the case of an individual to whom the kiddie tax does not apply. For a detailed explanation see Joint Committee on Taxation, *General Explanation of Public Law 115–97* (JCS–1–18), December 20, 2018, pp. 7–8.
583 Sec. 55.
584 Sec. 3.12 of Rev. Proc. 2018–57, supra. The breakpoint between the 26-percent and 28-percent brackets is indexed for inflation.
585 The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax.
586 As defined in Sec. 55.
tates or trusts. These dollar amounts are indexed annually for inflation.\footnote{\textsuperscript{587}Secs. 3.12 and 3.13 of Rev. Proc. 2018–57, supra.}

Among the tax preferences and adjustments included in AMTI are accelerated depreciation on certain property used in a trade or business, circulation expenditures, research and experimental expenditures, certain expenses and allowances related to oil and gas, certain expenses and allowances related to mining exploration and development, certain tax-exempt interest income, and a portion of the gain excluded with respect to the sale or disposition of certain small business stock. The standard deduction, and certain itemized deductions, such as the deduction for State and local taxes, are not allowed to reduce AMTI.

**Explanation of Provision**

**Unearned income of children**

The provision reverses the temporary change enacted by Public Law 115–97 to the calculation of the kiddie tax for taxable years beginning after December 31, 2019. In addition, the provision provides that taxpayers may elect to reverse the temporary change to the calculation of the kiddie tax for taxable years of the taxpayer which begin in 2018, 2019, or both.

Under the provision, the net unearned income of a child (for 2019, unearned income over $2,200)\footnote{\textsuperscript{588}Sec. 1(g)(4)(A) provides for a reduction in the amount of net unearned income by twice the basic standard deduction, which for 2019 is $1,100, if the child does not itemize deductions.} is taxed at the parents' tax rates if the parents' tax rates are higher than the tax rates of the child.\footnote{\textsuperscript{589}Sec. 1(g)(4).} The remainder of a child's taxable income (i.e., earned income, plus unearned income up to $2,200 (for 2019), less the child's standard deduction) is taxed at the child's rates, regardless of whether the kiddie tax applies to the child.

The kiddie tax is calculated by computing the "allocable parental tax." This involves adding the net unearned income of the child to the parent's income and then applying the parent's tax rate. A child's "net unearned income" is the child's unearned income less the sum of (1) the minimum standard deduction allowed to dependents ($1,100 for 2019),\footnote{\textsuperscript{590}Sec. 1(g)(4)(A).} and (2) the greater of (a) such minimum standard deduction amount or (b) the amount of allowable itemized deductions that are directly connected with the production of the unearned income.\footnote{\textsuperscript{591}Sec. 1(g)(3).}

The allocable parental tax equals the hypothetical increase in tax to the parent that results from adding the child's net unearned income to the parent's taxable income.\footnote{\textsuperscript{592}Sec. 3.02 of Rev. Proc. 2018–57, supra.} If the child has net capital gains or qualified dividends, these items are allocated to the parent's hypothetical taxable income according to the ratio of net unearned income to the child's total unearned income. If a parent has more than one child subject to the kiddie tax, the net unearned income of all children is combined, and a single kiddie tax is calculated. Each child is then allocated a proportionate share of the
hypothetical increase, based upon the child’s net unearned income relative to the aggregate net unearned income of all of the parent’s children subject to the tax.

Generally, a child with a filing obligation must file a separate return to report his or her income.\textsuperscript{593} The parents’ tax is not affected by the child’s income, and the total tax due from the child is the greater of:

1. The sum of (a) the tax payable by the child on the child’s earned income and unearned income up to $2,200 (for 2019), plus (b) the allocable parental tax on the child’s unearned income, or
2. The tax on the child’s income without regard to the kiddie tax provisions.\textsuperscript{594}

If a child’s gross income is only from interest and dividends and the amount of the gross income (in 2019) is greater than $1,100, and less than $11,000,\textsuperscript{595} the parents may elect to report the child’s gross income on the parents’ return and the child is treated as having no gross income. A tax at the rate of 10 percent is imposed on up to $1,100 of the child’s gross income included on the parents’ return.

**Alternative minimum tax**

The provision also temporarily suspends the limitation on the AMT exemption amount for taxpayers subject to the kiddie tax for taxable years beginning after December 31, 2017. This modification to the alternative minimum tax does not apply to taxable years beginning after December 31, 2025.

**Effective Date**

The provision to modify the calculation of the kiddie tax applies to taxable years beginning after December 31, 2019, or at the taxpayer’s election, may apply to taxable years beginning in 2018, 2019, or both.

The provision to modify the alternative minimum tax applies to taxable years beginning after December 31, 2017.

**TITLE VI—ADMINISTRATIVE PROVISIONS**

1. **Provisions relating to plan amendments (sec. 601 of the Act and sec. 401 of the Code)**

**Present Law**

Present law provides a remedial amendment period during which, under certain circumstances, a retirement plan may be amended retroactively in order to comply with the tax qualification requirements.\textsuperscript{596} In general, plan amendments to reflect changes in the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer’s taxable year in which the change in law occurs (including extensions).

\textsuperscript{593} Sec. 1(g)(6). See Form 8615, Tax for Certain Children Who Have Unearned Income.

\textsuperscript{594} Sec. 1(g)(1).

\textsuperscript{595} Sec. 3.02 of Rev. Proc. 2018–57, \textit{supra}.

\textsuperscript{596} Sec. 401(b).
The Secretary of the Treasury may extend the time by which plan amendments need to be made.

The Code and ERISA provide that, in general, accrued benefits cannot be reduced by a plan amendment. This prohibition on the reduction of accrued benefits is commonly referred to as the “anti-cut-back rule.”

**Explanation of Provision**

The provision permits certain plan amendments made pursuant to the changes in the Act, or regulations issued thereunder, to be retroactively effective. If a plan amendment meets the requirements of the provision, then the plan will be treated as being operated in accordance with its terms and the amendment will not violate the anti-cut-back rule. In order for this treatment to apply, the plan must be operated as if the plan amendment were in effect, and the amendment is required to be made on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date as the Secretary of the Treasury may prescribe. However, if the plan is a governmental plan or, in the case of section 401 (and the amendments made thereby), an applicable collectively bargained plan, the amendment is required to be made on or before the last day of the first plan year beginning on or after January 1, 2024 (or such later date as the Secretary of the Treasury may prescribe). For this purpose, an applicable collectively bargained plan is a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of enactment of this Act.

If the amendment is required to be made to retain a plan’s qualified status as a result of the changes in the law (or regulations), the amendment is required to be made retroactively effective as of the date on which the change became effective with respect to the plan and the plan is required to be operated in compliance until the amendment is made. Amendments that are not required to retain a plan’s qualified status but that are made pursuant to the changes made by the Act (or applicable regulations) may be made retroactively effective as of the first day the amendment is effective.

A plan amendment will not be considered to be pursuant to the Act (or applicable regulations) if it has an effective date before the effective date of the provision under the Act (or regulations) to which it relates. Similarly, the provision does not provide relief from the anti-cut-back rule for periods prior to the effective date of the relevant provision (or regulations) or the plan amendment. The Secretary of the Treasury (or the Secretary’s delegate) is authorized to provide exceptions to the relief from the prohibition on reductions in accrued benefits. It is intended that the Secretary will not permit inappropriate reductions in contributions or benefits that are not directly related to the provisions under the Act.

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597 Code sec. 411(d)(6); ERISA sec. 204(g).
Effective Date

The provision is effective on date of enactment (December 20, 2019).

DIVISION Q—TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF 2019

TITLE I—EXTENSION OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Tax Relief and Support for Families and Individuals

1. Exclusion from gross income of discharge of qualified principal residence indebtedness (sec. 101 of the Act and sec. 108(a)(1)(E) of the Code)

Present Law

In general

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

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

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

Qualified principal residence indebtedness

An exclusion from gross income is provided for any discharge of indebtedness income by reason of a discharge (in whole or in part) of qualified principal residence indebtedness. Qualified principal residence indebtedness means acquisition indebtedness (within the meaning of section 163(h)(3)(B), except that the dollar limitation is

598 A debt cancellation that constitutes a gift or bequest is not treated as income to the donee debtor. Sec. 102.
599 Secs. 61(a)(11) and 108.
600 Sec. 1017.
$2 million) with respect to the taxpayer’s principal residence.\textsuperscript{601} Acquisition indebtedness with respect to a principal residence generally means indebtedness which is incurred in the acquisition, construction, or substantial improvement of the principal residence of the individual and is secured by the residence. It also includes refinancing of such indebtedness to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness. For these purposes, the term “principal residence” has the same meaning as under section 121.

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

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

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

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

The exclusion for qualified principal residence indebtedness is effective for discharges of indebtedness before January 1, 2018. The exclusion for qualified principal residence indebtedness is also effective for discharges of indebtedness on or after January 1, 2018 if the discharge is subject to a written arrangement entered into prior to January 1, 2018.

\textit{Explanation of Provision}

The provision extends for three additional years the exclusion from gross income for discharges of qualified principal residence indebtedness. Thus, the exclusion for qualified principal residence indebtedness is effective for discharges of indebtedness before January 1, 2021 and for discharges of indebtedness on or after January 1, 2021 if the discharge is subject to a written arrangement entered into prior to January 1, 2021.

\textit{Effective Date}

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

\textsuperscript{601} The limitation is $1 million in the case of a married individual filing a separate return. Sec. 108(h)(2).
2. Treatment of mortgage insurance premiums as qualified residence interest (sec. 102 of the Act and sec. 163(h) of the Code)

**Present Law**

**In general**

Qualified residence interest is deductible notwithstanding the general rule that personal interest is nondeductible.\(^{602}\)

**Acquisition indebtedness**

Qualified residence interest is interest on acquisition indebtedness with respect to a principal and a second residence of the taxpayer. Acquisition indebtedness means debt that is incurred in acquiring, constructing, or substantially improving a qualified residence of the taxpayer, and that is secured by the residence. Acquisition indebtedness also includes refinancing of such indebtedness to the extent the amount of the indebtedness resulting from refinancing does not exceed the amount of the refinanced indebtedness. The maximum amount of debt that may be treated as acquisition indebtedness is $750,000 ($375,000 in the case of married taxpayers filing separately).

**Qualified mortgage insurance**

Certain premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a qualified residence of the taxpayer are treated as interest that is qualified residence interest and thus deductible. The amount allowable as a deduction is phased out ratably by 10 percent for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction is not allowed if the taxpayer's adjusted gross income exceeds $109,000 ($54,000 in the case of married individual filing a separate return).

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

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

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

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\(^{602}\) Sec. 163(h).
Information reporting rules apply to mortgage insurance premiums for premiums paid or accrued during periods to which the deductibility provision applies.603

**Explanation of Provision**

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

**Effective Date**

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

3. **Reduction in medical expense deduction floor (sec. 103 of the Act and sec. 213 of the Code)**

**Present Law**

For taxable years ending before January 1, 2019, individuals may claim an itemized deduction for unreimbursed medical expenses paid during the taxable year, but only to the extent that the expenses exceed 7.5 percent of adjusted gross income (“AGI”) for purposes of regular tax and the alternative minimum tax (“AMT”).604 For taxable years ending after December 31, 2018, the 7.5-percent threshold is increased to 10 percent.

**Explanation of Provision**

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

**Effective Date**

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

4. **Deduction of qualified tuition and related expenses (sec. 104 of the Act and sec. 222 of the Code)**

**Present Law**

An individual is allowed a deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year.605 The deduction is allowed in computing ad-

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603 Sec. 6050H(h) and Treas. Reg. sec. 1.6050H–3.
604 Sec. 213. The threshold was amended by the Patient Protection and Affordable Care Act (Pub. L. No. 111–148). For taxable years beginning after December 31, 2012, the threshold was 10 percent for regular tax purposes and AMT purposes. A temporary special rule applied in the case of a taxpayer who attained age 65 (or, in the case of a married taxpayer, if either the taxpayer or the taxpayer’s spouse attained age 65) before the close of the taxable year, in which case the threshold was 7.5 percent for regular tax purposes. The 2017 Tax Act (Pub. L. No. 115–97) reduced the floor to 7.5 percent for all taxpayers for taxable years beginning after December 31, 2017, and ending before January 1, 2019.
605 Sec. 222.
justed gross income. The term qualified tuition and related expenses is defined in the same manner as for the American Opportunity and Lifetime Learning credits, and includes tuition and fees required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction for a personal exemption,606 at an eligible institution of higher education for courses of instruction of such individual at such institution.607 The expenses must be in connection with enrollment at an institution of higher education during the taxable year, or with an academic period beginning during the taxable year or during the first three months of the next taxable year. The deduction is not available for tuition and related expenses paid for elementary or secondary education.

The maximum deduction is $4,000 for an individual whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for an individual whose adjusted gross income does not exceed $80,000 ($160,000 in the case of a joint return). No deduction is allowed for an individual whose adjusted gross income exceeds the relevant adjusted gross income limitations, for a married individual who does not file a joint return, or for an individual with respect to whom a personal exemption deduction is allowable to another taxpayer for the taxable year. Generally, no deduction is allowed unless the taxpayer receives a payee statement furnished by the eligible institution of higher education or other entity subject to reporting that reports qualified tuition and related expenses.608

The amount of qualified tuition and related expenses must be reduced by certain scholarships, educational assistance allowances, and other amounts paid for the benefit of such individual,609 and by the amount of such expenses taken into account for purposes of determining any exclusion from gross income of: (1) income from certain U.S. savings bonds used to pay higher education tuition and fees; and (2) income from a Coverdell education savings account.610 Additionally, such expenses must be reduced by the earnings portion (but not the return of principal) of distributions from a qualified tuition program if an exclusion under section 529 is claimed with respect to expenses eligible for the qualified tuition deduction. No deduction is allowed for any expense for which a deduction is otherwise allowed or with respect to an individual for whom an American Opportunity or Lifetime Learning credit is elected for such taxable year.

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

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

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

608 Secs. 222(d)(6) and 6050S.

609 Secs. 222(d)(1) and 25A(g)(2).

610 Sec. 222(c). These reductions are the same as those that apply to the American Opportunity and Lifetime Learning credits.
Explanation of Provision

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

Effective Date

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

5. Black Lung Disability Trust Fund excise tax (sec. 105 of the Act and sec. 4121 of the Code)

Present Law

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

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

Explanation of Provision

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

Effective Date

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

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

1. Indian employment credit (sec. 111 of the Act and sec. 45A of the Code)

Present Law

In general, a credit against income tax liability is allowed to employers for the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees. The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current taxable year over the amount of such wages and costs incurred by the employer during calendar year.

611 Sec. 4121.
612 The date of enactment of the Act was December 20, 2019; thus, the provision reinstates the higher rates as of January 1, 2020, through December 31, 2020.
613 Sec. 45A.
year 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.614

Qualified wages means wages paid or incurred by an employer for services performed by a qualified employee. A qualified employee means any employee who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. An “Indian reservation” is a reservation as defined in section 3(d) of the Indian Financing Act of 1974615 or section 4(10) of the Indian Child Welfare Act of 1978.616 The definition in section 3(d) of the Indian Financing Act includes, in addition to current Indian reservations and certain other lands, “former Indian reservations in Oklahoma.” For purposes of the credit, section 3(d) is applied by treating “former Indian reservations in Oklahoma” as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).

An employee is not treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during the taxable year exceeds an amount determined at an annual rate of $30,000 (which after adjustment for inflation is $45,000 for 2017).617 In addition, an employee will not be treated as a qualified employee under certain specific circumstances, such as where the employee is related to the employer (in the case of an individual employer) or to one of the employer’s specified shareholders, owners, partners, grantors, beneficiaries, or fiduciaries, or is a dependent thereof.618 Similarly, an employee will not be considered a qualified employee where the employee has more than a five percent ownership interest in the employer. Finally, an employee will not be considered a qualified employee to the extent the employee’s services relate to gaming activities or are performed in a building housing such activities.

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

**Explanation of Provision**

The provision extends the Indian employment credit for three years (through taxable years beginning on or before December 31, 2020).

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614 Sec. 280C(a).
615 Pub. L. No. 93–262.
617 See Instructions for Form 8845, Indian Employment Credit (2017).
618 Sec. 51(i)(1).
Effective Date

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

2. Railroad track maintenance credit (sec. 112 of the Act and sec. 45G of the Code)

Present Law

In general

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

Limitation

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

Assignments

Each mile of railroad track may be taken into account only once, either by the owner of such mile or by the owner’s assignee, in computing the per-mile limitation. Any assignment of a mile of railroad track may be made only once per taxable year of the Class II or Class III railroad, and in computing the tax credit, the total number of miles of railroad track assigned to an eligible taxpayer by a Class II or Class III railroad shall not exceed the number of such miles owned or leased by the eligible taxpayer as of the close of its taxable year.

Effective Date

The provision applies to taxable years beginning after December 31, 2017.
II or Class III railroad, and is treated as made of the close of such taxable year. Such assignment is taken into account for the taxable year of the assignee that includes the date that such assignment is treated as effective. However, assignments, including related expenditures paid or incurred, for taxable years ending after January 1, 2017, and before January 1, 2018, are treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than May 10, 2018.

**Eligible taxpayer**

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

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

**Qualified railroad track maintenance expenditures**

Qualified railroad track maintenance expenditures are defined as gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, trackway, and ties) and are treated as made of the close of such taxable year.627 Such assignment is taken into account for the taxable year of the assignee that includes the date that such assignment is treated as effective. However, assignments, including related expenditures paid or incurred, for taxable years ending after January 1, 2017, and before January 1, 2018, are treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than May 10, 2018.

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627 An assignor must file Form 8900 with its timely filed (including extensions) Federal income tax return for the taxable year for which it assigns any mile of eligible railroad track, even if it is not itself claiming the railroad track maintenance credit for that taxable year. Treas. Reg. sec. 1.45G–1(d)(4). Both the assignor and the assignee must attach a statement to Form 8900 detailing the information required by Treas. Reg. sec. 1.45G–1(d)(4).


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

631 Railroad-related property is property that is unique to railroads and provided directly to a Class II or Class III railroad. See Treas. Reg. sec. 1.45G–1(b)(8) for a detailed description.

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

633 Sec. 45G(c).

634 Sec. 45G(e)(1) and Treas. Reg. sec. 1.45G–1(b)(1). The Surface Transportation Board currently classifies a Class II railroad as a carrier with annual operating revenue of $40,384,263 or more, but less than $504,803,294 ($39,194,876 or more, but less than $489,935,956, for 2018), and a Class III railroad as a carrier with annual operating revenue of less than $40,384,263 (less than $39,194,876 for 2018). See the Surface Transportation Board Railroad Revenue Deflator Factors, available at https://prod.stb.gov/reports-data/economic-data/railroad-revenue-deflator-factors/.

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

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Basis adjustment

Basis of the railroad track must be reduced (but not below zero) by an amount equal to 100 percent of the taxpayer’s qualified railroad track maintenance tax credit determined for the taxable year. However, consideration received directly or indirectly from persons other than the Class II or Class III railroad does reduce the amount of qualified railroad track maintenance expenditures. Any amount that an assignee pays an assignor in exchange for an assignment of one or more miles of eligible railroad is treated as qualified railroad track maintenance expenditures paid or incurred by the assignee at the time and to the extent the assignor pays or incurs qualified railroad track maintenance expenditures.

Explanation of Provision

The provision extends the present law credit for five years, for qualified railroad track maintenance expenditures paid or incurred during taxable years beginning before January 1, 2023.

Effective Date

The provision generally applies to expenditures paid or incurred during taxable years beginning after December 31, 2017. The provision also provides a safe harbor that treats any assignment, including related expenditures paid or incurred, for a taxable year beginning on or after January 1, 2018, and ending before January 1, 2020, as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than March 19, 2020.
3. Mine rescue team training credit (sec. 113 of the Act and sec. 45N of the Code)

Present Law

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

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

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

No deduction is allowed for the portion of the expenses otherwise allowable as a deduction for the taxable year that is equal to the amount of the mine rescue team training credit determined for the taxable year. The credit does not apply to taxable years beginning after December 31, 2017. Additionally, the credit is not allowable for purposes of computing the alternative minimum tax.

Explanation of Provision

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

Effective Date

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

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642 Sec. 45N(a).
643 Sec. 45N(b).
644 Sec. 45N(c).
645 Section 3306(b) defines wages for purposes of Federal Unemployment Tax.
646 Sec. 45N(d).
647 Sec. 280C(e).
648 Sec. 45N(e).
649 Sec. 38(c). Note that the corporate alternative minimum tax was repealed for taxable years beginning after December 31, 2017. See Pub. L. No. 115–97, sec. 12001, December 22, 2017.
4. Classification of certain race horses as three-year property (sec. 114 of the Act and sec. 168(e)(3)(A) of the Code)

Present Law

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.650 The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.651 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 placed in service convention.652 For some assets, the recovery period for the asset is provided in section 168.653 In other cases, the recovery period of an asset is generally set forth in Revenue Procedure 87–56.654

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,655 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.

Race horses

The statute assigns a three-year recovery period to any race horse that is (1) placed in service before January 1, 2018, and (2) placed in service after December 31, 2017, and more than two years old at such time it is placed in service by the purchaser.656

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

651 Sec. 168.

652 See sec. 168(e) and (g).

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

654 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785). Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87–56, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88–22, 1988–1 C.B. 785. In November 1988, Congress revoked the Secretary's authority to modify the class lives of depreciable property. Rev. Proc. 87–56, as modified, remains in effect except to the extent that the Congress has, since 1988, statutorily modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.

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

<table>
<thead>
<tr>
<th>Recovery method</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>200-percent declining balance</td>
<td>285.71</td>
<td>204.08</td>
<td>145.77</td>
<td>104.12</td>
<td>86.77</td>
<td>86.77</td>
<td>86.77</td>
<td>1,000.00</td>
</tr>
<tr>
<td>150-percent declining balance</td>
<td>214.29</td>
<td>168.37</td>
<td>132.29</td>
<td>121.26</td>
<td>121.26</td>
<td>121.26</td>
<td>121.26</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Straight-line</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>1,000.00</td>
</tr>
</tbody>
</table>

656 Sec. 168(e)(3)(A)(i). A horse is more than two years old after the day that is 24 months after its actual birthdate. See Prop. Treas. Reg. sec. 1.168–3(c)(1)(iii) (interpreting ACRS); and...
A seven-year recovery period applies to any race horse that is placed in service after December 31, 2017, and that is two years old or younger at the time it is placed in service.\textsuperscript{657}

**Explanation of Provision**

The provision extends the three-year recovery period for race horses for three years to apply to any race horse (regardless of age when placed in service) which is placed in service before January 1, 2021. Subsequently, the three-year recovery period for race horses will only apply to those which are more than two years old when placed in service by the purchaser after December 31, 2020.

**Effective Date**

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

5. **Seven-year recovery period for motorsports entertainment complexes (sec. 115 of the Act and sec. 168(i)(15) of the Code)**

**Present Law**

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.\textsuperscript{658} The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.\textsuperscript{659} 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 placed in service convention.\textsuperscript{660} For some assets, the recovery period for the asset is provided in section 168.\textsuperscript{661} In other cases, the recovery period of an asset is generally set forth in Revenue Procedure 87–56.\textsuperscript{662}

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\textsuperscript{657} See sec. 168(e)(3)(C)(v) and asset class 01.225 of Rev. Proc. 87–56, as clarified and modified by Rev. Proc. 88–22.

\textsuperscript{658} See secs. 263(a) and 167. In general, only the tax owner of property (i.e., the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not used exclusively in a taxpayer's business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, e.g., sec. 280A.

\textsuperscript{659} See Treas. Reg. secs. 1.167(a)–19(b), –3, –14, and 1.197–2(f). See also Treas. Reg. sec. 1.167(a)–11(e)(1)(i).

\textsuperscript{660} See Treas. Reg. sec. 1.167(a)–11(e)(1)(i).

\textsuperscript{661} See sec. 168(e) and (g).

\textsuperscript{662} 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785). Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87–56, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88–22, 1988–1 C.B. 785. In November 1988, Con-
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 respect to the adjusted basis as of the beginning of that year yields a larger depreciation allowance.

**Real property**

The recovery periods for most real property are 39 years for nonresidential real property and 27.5 years for residential rental property. The straight line depreciation method is required for the aforementioned real property. In addition, nonresidential real and residential rental property are both subject to the mid-month convention, which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month. All other property generally is subject to the half-year convention, which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

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

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**Table: Depreciation for Different Methods**

<table>
<thead>
<tr>
<th>Recovery Method</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
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<td>142.86</td>
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<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>1,000.00</td>
</tr>
</tbody>
</table>

* Details may not add to totals due to rounding.

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

664 Sec. 168(c).

665 Sec. 168(b)(3).

666 Sec. 168(d)(2) and (d)(4)(B).

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

668 Sec. 168(b)(2)(A) and asset class 80.0 of Rev. Proc. 87–56. Under the 150-percent declining balance method, the depreciation rate is determined by dividing 150 percent by the appropriate recovery period, switching to the straight-line method for the first taxable year where using the straight-line method with respect to the adjusted basis of the beginning of that year will yield a larger depreciation allowance. Sec. 168(b)(2) and (b)(1)(B).

669 This asset class includes assets used in the provision of rides, attractions, and amusements in activities defined as theme and amusement parks, and includes appurtenances associated with a ride, attraction, amusement or theme setting within the park such as ticket booths, facades, shop interiors, and props, special purpose structures, and buildings other than warehouses, administration buildings, hotels, and motels. It also includes all land improvements for or in support of park activities (e.g., parking lots, sidewalks, waterways, bridges, fences, land-
from the definition of theme and amusement park facilities classified under asset class 80.0.670

Although racetrack facilities are excluded from asset class 80.0, the statute assigns a recovery period of seven years to motorsports entertainment complexes placed in service before January 1, 2018.671 For this purpose, a motorsports entertainment complex means a racing track facility which (i) is permanently situated on land, and (ii) during the 36-month period following its placed-in-service date hosts one or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.672

A motorsports entertainment complex also includes ancillary facilities, land improvements (e.g., parking lots, sidewalks, waterways, bridges, fences, and landscaping), support facilities (e.g., food and beverage retailing, souvenir vending, and other nonlodging accommodations), and appurtenances associated with such facilities and related attractions and amusements (e.g., ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).673 Such ancillary and support facilities must be (i) owned by the taxpayer who owns the motorsports entertainment complex, and (ii) provided for the benefit of patrons of the motorsports entertainment complex.

A motorsports entertainment complex does not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.674

**Explanation of Provision**

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

**Effective Date**

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

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671 Sec. 168(e)(3)(C)(ii) and (i)(15)(D).
672 Sec. 168(i)(15)(A).
673 Sec. 168(i)(15)(B).
674 Sec. 168(i)(15)(C).
6. Accelerated depreciation for business property on Indian reservations (sec. 116 of the Act and sec. 168(j) of the Code)

Present Law

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

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

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

Certain “qualified infrastructure property” may be eligible for the accelerated depreciation, even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities).

An “Indian reservation” means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)) or section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)). The definition in section 3(d) of the Indian Financing Act of 1974 includes, in addition to current Indian reservations and certain other lands, “former Indian reservations in Oklahoma.” For purposes of section 168(j), section 3(d) is applied by treating “former Indian reservations in Oklahoma” as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).

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675 Section 168(j)(2) does not provide shorter recovery periods for water utility property, residential rental property, or railroad grading and tunnel bores.
676 For these purposes, the term “related persons” is defined in section 465(b)(3)(C).
677 Sec. 168(j)(4)(A).
678 Sec. 168(j)(4)(C).
679 Pub. L. No. 93–262.
The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax.\footnote{Sec. 168(j)(3). Note that the corporate alternative minimum tax was repealed for taxable years beginning after December 31, 2017. See Pub. L. No. 115–97, sec. 12001, December 22, 2017.}

The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2018.\footnote{Sec. 168(j)(9).} A taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis.\footnote{Sec. 168(j)(8).}

**Explanation of Provision**

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

**Effective Date**

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


**Present Law**

Under section 181, a taxpayer may elect\footnote{See Treas. Reg. sec. 1.181–2 for rules on making (and revoking) an election under section 181.\footnote{For purposes of determining whether a production is eligible for section 181 expensing, a qualified film or television production is treated as commencing on the first date of principal photography. The date on which a qualified live theatrical production commences is the date of the first public performance of such production for a paying audience. Treas. Reg. sec. 1.181(a)(2)(A). See Treas. Reg. sec. 1.181–1 for rules on determining eligible production costs. Eligible production costs under section 181 include participations and residuals paid or incurred. Treas. Reg. sec. 1.181–1(a)(3)(i). The special rule in section 167(g)(7) that allows taxpayers using the income forecast method of depreciation to include participations and residuals that have not met the economic performance requirements in the adjusted basis of the property for the taxable year the property is placed in service does not apply for purposes of section 181. Treas. Reg. sec. 1.181–1(a)(8). Thus, under section 181, a taxpayer may only include participations and residuals actually paid or incurred in eligible production costs. Further, production costs do not include the cost of obtaining a production after its initial release or broadcast. See Treas. Reg. sec. 1.181–1(a)(3). For this purpose, “initial release or broadcast” means the first commercial exhibition or broadcast of a production to an audience. Treas. Reg. sec. 1.181–1(a)(7).\footnote{The provision applies to property placed in service after December 31, 2017.\footnote{The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2018.\footnote{A taxpayer may only make an irrevocable election out of section 168(j) on a class-by-class basis.}}}} to deduct up to $15 million of the aggregate production costs of any qualified film, television or live theatrical production, commencing prior to January 1, 2018,\footnote{Sec. 181(a)(2)(A). See Treas. Reg. sec. 1.181–1 for rules on determining eligible production costs. Eligible production costs under section 181 include participations and residuals paid or incurred. Treas. Reg. sec. 1.181–1(a)(3)(i). The special rule in section 167(g)(7) that allows taxpayers using the income forecast method of depreciation to include participations and residuals that have not met the economic performance requirements in the adjusted basis of the property for the taxable year the property is placed in service does not apply for purposes of section 181. Treas. Reg. sec. 1.181–1(a)(8). Thus, under section 181, a taxpayer may only include participations and residuals actually paid or incurred in eligible production costs. Further, production costs do not include the cost of obtaining a production after its initial release or broadcast. See Treas. Reg. sec. 1.181–1(a)(3). For this purpose, “initial release or broadcast” means the first commercial exhibition or broadcast of a production to an audience. Treas. Reg. sec. 1.181–1(a)(7).\footnote{The provision applies to property placed in service after December 31, 2017.\footnote{The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2018.\footnote{A taxpayer may only make an irrevocable election out of section 168(j) on a class-by-class basis.}}} in the year the costs are paid or incurred by the taxpayer, in lieu of capitalizing the costs and recovering them through depreciation allowances once the production is placed in service.\footnote{For purposes of determining whether a production is eligible for section 181 expensing, a qualified film or television production is treated as commencing on the first date of principal photography. The date on which a qualified live theatrical production commences is the date of the first public performance of such production for a paying audience. Treas. Reg. sec. 1.181(a)(2)(A). See Treas. Reg. sec. 1.181–1 for rules on determining eligible production costs. Eligible production costs under section 181 include participations and residuals paid or incurred. Treas. Reg. sec. 1.181–1(a)(3)(i). The special rule in section 167(g)(7) that allows taxpayers using the income forecast method of depreciation to include participations and residuals that have not met the economic performance requirements in the adjusted basis of the property for the taxable year the property is placed in service does not apply for purposes of section 181. Treas. Reg. sec. 1.181–1(a)(8). Thus, under section 181, a taxpayer may only include participations and residuals actually paid or incurred in eligible production costs. Further, production costs do not include the cost of obtaining a production after its initial release or broadcast. See Treas. Reg. sec. 1.181–1(a)(3). For this purpose, “initial release or broadcast” means the first commercial exhibition or broadcast of a production to an audience. Treas. Reg. sec. 1.181–1(a)(7).\footnote{The provision applies to property placed in service after December 31, 2017.\footnote{The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2018.\footnote{A taxpayer may only make an irrevocable election out of section 168(j) on a class-by-class basis.}}}} The dollar limitation is increased to $20 million if a significant amount of the production costs are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress.\footnote{Sec. 181(a)(2)(B).}

A section 181 election may only be made by an owner of the production.\footnote{Treas. Reg. sec. 1.181–1(a). An owner of a production is any person that is required to make an election under section 181. See T.D. 9551, 76 Fed. Reg. 64816, October 19, 2011.\footnote{Sec. 181(a)(2)(A). See Treas. Reg. sec. 1.181–1 for rules on determining eligible production costs. Eligible production costs under section 181 include participations and residuals paid or incurred. Treas. Reg. sec. 1.181–1(a)(3)(i). The special rule in section 167(g)(7) that allows taxpayers using the income forecast method of depreciation to include participations and residuals that have not met the economic performance requirements in the adjusted basis of the property for the taxable year the property is placed in service does not apply for purposes of section 181. Treas. Reg. sec. 1.181–1(a)(8). Thus, under section 181, a taxpayer may only include participations and residuals actually paid or incurred in eligible production costs. Further, production costs do not include the cost of obtaining a production after its initial release or broadcast. See Treas. Reg. sec. 1.181–1(a)(3). For this purpose, “initial release or broadcast” means the first commercial exhibition or broadcast of a production to an audience. Treas. Reg. sec. 1.181–1(a)(7).\footnote{The provision applies to property placed in service after December 31, 2017.\footnote{The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2018.\footnote{A taxpayer may only make an irrevocable election out of section 168(j) on a class-by-class basis.}}}}
under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person.\textsuperscript{690} In addition, the aggregate production costs of a qualified production that is co-produced include all production costs, regardless of funding source, in determining if the applicable dollar limit is exceeded. Thus, the term “aggregate production costs” means all production costs paid or incurred by any person, whether paid or incurred directly by an owner or indirectly on behalf of an owner.\textsuperscript{691} The costs of the production in excess of the applicable dollar limitation are capitalized and recovered under the taxpayer’s method of accounting for the recovery of such property once placed in service.\textsuperscript{692}

\begin{itemize}
  \item A qualified film, television, or live theatrical production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format), television program, or live staged play if at least 75 percent of the total compensation expended on the production is for services performed in the United States by actors, directors, producers, and other relevant production personnel.\textsuperscript{693} Solely for purposes of this rule, the term “compensation” does not include participations and residuals (as defined in section 167(g)(7)(B)).\textsuperscript{694}

  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.\textsuperscript{695} Qualified productions do not include sexually explicit productions as referenced by section 2257 of title 18 of the U.S. Code.\textsuperscript{696}

  A qualified live theatrical production is defined as a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a commercial entity in any venue which has an audience capacity of not more than 3,000, or a series of venues the majority of which have an audience capacity of not more than 3,000.\textsuperscript{697} 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.\textsuperscript{698} In general, in the case of multiple live-staged productions, each such live-staged production is treated as
\end{itemize}

\textsuperscript{690}Treas. Reg. sec. 1.181–1(a)(2)(i).
\textsuperscript{691}Treas. Reg. sec. 1.181–1(a)(4). See Treas. Reg. sec. 1.181–2(c)(3) for the information required to be provided to the Internal Revenue Service when more than one person will claim deductions under section 181 for a production (to ensure that the applicable deduction limitation is not exceeded).
\textsuperscript{692}See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 110th Congress (JCS–1–09), March 2009, p. 448; and Treas. Reg. sec. 1.181–1(c)(2). A production is generally considered to be placed in service at the time of initial release, broadcast, or live staged performance (i.e., at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience). See, e.g., Rev. Rul. 79–285, 1979–2 C.B. 91; and Priv. Ltr. Rul. 9010011, March 9, 1990. See also, Treas. Reg. sec. 1.181–1(a)(7). However, a production generally may not be considered to be placed in service if it is only exhibited, broadcast or performed for a limited test audience in advance of the commercial exhibition, broadcast, or performance to general audiences. See Priv. Ltr. Rul. 9010011 and Treas. Reg. sec. 1.181–1(a)(7).
\textsuperscript{693}Sec. 181(d)(3)(A).
\textsuperscript{694}Sec. 181(d)(3)(B). Participations and residuals are defined as, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property. See also Treas. Reg. sec. 1.181–3(c).
\textsuperscript{695}Sec. 181(d)(3)(C).
\textsuperscript{696}Sec. 181(d)(3)(A).
\textsuperscript{697}Sec. 181(e)(2)(A).
\textsuperscript{698}Sec. 181(e)(2)(D).
a separate production. Similar to the exclusion for sexually explicit productions from the definition of qualified film or television productions, qualified live theatrical productions do not include productions that include or consist of any performance of conduct described in section 2257(h)(1) of title 18 of the U.S. Code.\textsuperscript{699}

For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.\textsuperscript{700} Thus, the deduction under section 181 may be subject to recapture as ordinary income in the taxable year in which (i) the taxpayer revokes a section 181 election, (ii) the production fails to meet the requirements of section 181, or (iii) the taxpayer sells or otherwise disposes of the production.\textsuperscript{701}

\textbf{Explanation of Provision}

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

\textbf{Effective Date}

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

8. Empowerment zone tax incentives (sec. 118 of the Act and secs. 1391, 1394, 1396, 1397A, and 1397B of the Code)

\textbf{Present Law}

The Omnibus Budget Reconciliation Act of 1993 ("OBRA 93")\textsuperscript{702} authorized the designation of nine empowerment zones ("Round I empowerment zones")\textsuperscript{703} to provide tax incentives for businesses to locate within certain targeted areas\textsuperscript{703} designated by the Secretaries of the Department of Housing and Urban Development ("HUD") and the U.S. Department of Agriculture ("USDA"). The first empowerment zones were established in large, rural areas and large cities. OBRA 93 also authorized the designation of 95 enterprise communities,\textsuperscript{704} which were located in smaller rural areas and cities.\textsuperscript{705}

The Taxpayer Relief Act of 1997\textsuperscript{706} authorized the designation of two additional urban Round I empowerment zones, and 20 additional empowerment zones ("Round II empowerment zones"). The Community Renewal Tax Relief Act of 2000 ("2000 Community Re-

\textsuperscript{699} Sec. 181(e)(2)(E).
\textsuperscript{700} Sec. 1245(a)(2)(C). For a discussion of the recapture rules applicable to depreciation and amortization deductions, see Joint Committee on Taxation, Tax Incentives for Domestic Manufacturing (JCX–15–21), March 12, 2021, pp. 14–17. This document can be found on the Joint Committee on Taxation website at www.jct.gov.
\textsuperscript{702} Pub. L. No. 103–66.
\textsuperscript{703} The targeted areas are those that have pervasive poverty, high unemployment, and general economic distress, and that satisfy certain eligibility criteria, including specified poverty rates and population and geographic size limitations.
\textsuperscript{704} Sec. 1391(b)(1).
\textsuperscript{705} Enterprise communities were eligible for only one tax benefit: tax-exempt bond financing. For tax purposes, the areas designated as enterprise communities continued as such for the ten-year period starting 1995 and ending at the end of 2004. However, after 2004 the enterprise communities may still be eligible for other Federal benefits (e.g., grants and preferences).
\textsuperscript{706} Pub. L. No. 105–34.
newal Act")\textsuperscript{707} authorized a total of 10 new empowerment zones ("Round III empowerment zones"), bringing the total number of authorized, and not relinquished, empowerment zones to 41.\textsuperscript{708} In addition, the 2000 Community Renewal Act confirmed the tax incentives that are available to businesses in the Round I, Round II, and Round III empowerment zones and extended the empowerment zone incentives through December 31, 2009. Subsequent legislation, most recently the Bipartisan Budget Act of 2018, extended the empowerment zone incentives through December 31, 2017.\textsuperscript{709}

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

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

\textbf{Wage credit}

A 20-percent wage credit is available to employers for the first $15,000 of qualified wages paid to each employee (i.e., a maximum credit of $3,000 with respect to each qualified employee) who (1) is a resident of the empowerment zone, and (2) performs substantially all employment services within the empowerment zone in a trade or business of the employer.\textsuperscript{710}

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

\textsuperscript{707} Pub. L. No. 106–554. The 2000 Community Renewal Act also authorized the designation of 40 "new renewal communities" within which special tax incentives were available. The tax incentives were generally available through December 31, 2009 when the renewal community designation expired. One of the tax incentives involving the exclusion of capital gain from the sale or exchange of a qualified community asset continued through 2014.

\textsuperscript{708} The urban part of the program is administered by HUD, and the rural part of the program is administered by the USDA. The eight urban Round I empowerment zones are Atlanta, GA; Baltimore, MD; Chicago, IL; Cleveland, OH; Detroit, MI; Los Angeles, CA; New York, NY; and Philadelphia, PA/Camden, NJ. Atlanta relinquished its empowerment zone designation in Round III. The three rural Round I empowerment zones are Kentucky Highlands, KY; Mid-Delta, MI; and Rio Grande Valley, TX. The 15 urban Round II empowerment zones are Boston, MA; Cincinnati, OH; Columbia, SC; Columbus, OH; Cumberland County, NJ; El Paso, TX; Gary/Hammond/East Chicago, IN; Ironton, OH/Huntington, WV; Knoxville, TN; Miami/Dade County, FL; Minneapolis, MN; New Haven, CT; Norfolk/Portsmouth, VA; Santa Ana, CA; and St. Louis, MO/East St. Louis, IL. The five rural Round II empowerment zones are Desert Communities, CA; Griggs-Steile, ND; Oglala Sioux Tribe, SD; Southernmost Illinois Delta, IL; and Southwest Georgia United, GA. The eight urban Round III empowerment zones are Fresno, CA; Jacksonville, FL; Oklahoma City, OK; Pulaski County, AR; San Antonio, TX; Syracuse, NY; Tucson, AZ; and Yonkers, NY. The two rural Round III empowerment zones are Aroostook County, ME and Futuro, TX.

\textsuperscript{709} Pub. L. No. 111–312, sec. 753 (2010); Pub. L. No. 112–240, sec. 327(a) (2013); Pub. L. No. 113–295, sec. 139 (2014); Pub. L. No. 114–113, Div. Q, sec. 171(a) (2015); and Pub. L. No. 115–123, sec. 40311 (2018). The empowerment zone tax incentives may expire earlier than December 31, 2017 if a State or local government provided for an expiration date in the nomination of an empowerment zone, or the appropriate Secretary revokes an empowerment zone’s designation. The State or local government may, however, amend the nomination to provide for a new termination date.

\textsuperscript{710} Sec. 1396. The $15,000 limit is annual, not cumulative, such that the limit is the first $15,000 of wages paid in a calendar year which ends with or within the taxable year.
ness carrying out activities in the empowerment zone may claim the wage credit. However, the wage credit is not available for wages paid in connection with certain business activities described in section 144(c)(6)(B), including a golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, liquor store, or certain farming activities. In addition, wages are not eligible for the wage credit if paid to: (1) a person who owns more than five percent of the stock (or capital or profits interests) of the employer, (2) certain relatives of the employer, or (3) if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business.

Sec. 280C(a).

Sec. 1396(c)(3)(A).

Sec. 1396(c)(3)(B).

Sec. 38(c)(2). The corporate alternative minimum tax is repealed for taxable years beginning after December 31, 2017. However, the full amount of the minimum tax credit will be allowed in taxable years beginning before 2022. See sec. 53(e), prior to amendment by Pub. L. No. 116–136.

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

Sec. 1397A. Note that section 168(k) provides 100-percent bonus depreciation for qualified property acquired and placed in service after September 27, 2017, and before January 1, 2023. The 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes qualified zone property other than buildings.

Sec. 1397A(a)(2). For example, assume that during 2017 a calendar year taxpayer in an enterprise zone business purchased and placed in service $4,500,000 of section 179 property that

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

An enterprise zone business means any qualified business entity and any qualified proprietorship. A qualified business entity means any corporation or partnership if for such year: (1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone; (2) at least 50 percent of the total gross income of such entity is derived from the active conduct of such business; (3) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone; (4) a substantial portion of the intangible property of such entity is used in the active conduct of any such business; (5) a substantial portion of the services performed for such entity by its employees are performed in an empowerment zone; (6) at least 35 percent of its employees are residents of an empowerment zone; (7) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

A qualified proprietorship is any qualified business carried on by an individual as a proprietorship if for such year: (1) at least 50 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone; (2) a substantial portion of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone; (3) a substantial portion of the intangible property of such business is used in the active conduct of such business; (4) a substantial portion of the services performed for such individual in such business by employees of such business are performed in an empowerment zone; (5) at least 35 percent of such employees are residents of an empowerment zone; (6) less than five percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles other than collectibles other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (8) the taxpayer’s expensing limitation is $325,000 ($545,000−$220,000). If the taxpayer had not been an enterprise zone business, its expensing limitation would be zero because the taxpayer had been fully phased out.

Note, however, that to be eligible for the increased section 179 expensing, the qualified zone property has to also meet the definition of section 179 property (e.g., building property would only qualify if it constitutes qualified real property under section 179(e)).

is qualified zone property. The $510,000 section 179(b)(1) dollar amount for 2017 is increased to $545,000 (by the lesser of $35,000 or $4,500,000). That amount is reduced by the excess section 179 property cost amount of $220,000 ($545,000−$2,030,000). If the taxpayer had not been an enterprise zone business, its expensing limitation would be zero because the taxpayer would have been fully phased out.

Sec. 1397D(a)(2). Note, however, that to be eligible for the increased section 179 expensing, the qualified zone property has to also meet the definition of section 179 property (e.g., building property would only qualify if it constitutes qualified real property under section 179(e)).

Sec. 1397D(a)(1).
bles that are held primarily for sale to customers in the ordinary course of such business; and (7) less than five percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to non-qualified financial property.724

A qualified business is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license or any business prohibited in connection with the empowerment zone employment credit.725 In addition, the leasing of real property that is located within the empowerment zone is treated as a qualified business only if (1) the leased property is not residential rental property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property is not a qualified business unless at least 50 percent of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

**Expanded tax-exempt financing for certain zone facilities**

States or local governments can issue enterprise zone facility bonds to raise funds to provide an enterprise zone business with qualified zone property.726 These bonds can be used in areas designated enterprise communities as well as areas designated empowerment zones. To qualify, 95 percent (or more) of the net proceeds from the bond issue must be used to finance: (1) qualified zone property whose principal user is an enterprise zone business; and (2) certain land functionally related and subordinate to such property.

The term enterprise zone business is the same as that used for purposes of the increased section 179 deduction limitation (discussed above) with certain modifications for start-up businesses. First, an employee is considered a resident of an empowerment zone for purposes of the 35-percent in-zone employment requirement if they are a resident of an empowerment zone, an enterprise community, or a qualified low-income community within an applicable nominating jurisdiction.727 The applicable nominating jurisdiction means, with respect to any empowerment zone or enterprise community, any local government that nominated such community for designation under section 1391. The definition of a qualified low-income community is similar to the definition of a low-income community provided in section 45D(e) (concerning eligibility for the new markets tax credit). A “qualified low-income community” is a population census tract with either (1) a poverty rate of at least 20 percent, or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a nonmetropolitan census tract, does not exceed 80 percent of statewide median family in-

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724 Sec. 1397C(c). For these purposes, the term “employee” includes the proprietor.

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


come). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

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

Second, a business will be treated as an enterprise zone business during a start-up period if (1) at the beginning of the period, it is reasonable to expect the business to be an enterprise zone business by the end of the start-up period; and (2) the business makes bona fide efforts to be an enterprise zone business. The start-up period is the period that ends with the start of the first tax year beginning more than two years after the later of (1) the issue date of the bond issue financing the qualified zone property, and (2) the date this property is first placed in service (or, if earlier, the date that is three years after the issue date).728

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

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

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

Taxpayers can elect to defer recognition of gain on the sale of a qualified empowerment zone asset held for more than one year and replaced within 60 days by another qualified empowerment zone asset in the same zone.729 A qualified empowerment zone asset

728 Sec. 1394(b)(3).
729 Sec. 1397B.
generally means stock or a partnership interest acquired at original issue for cash in an enterprise zone business, or tangible property originally used in an enterprise zone business by the taxpayer. The deferral is accomplished by reducing the basis of the replacement asset by the amount of the gain recognized on the sale of the asset.

**Explanation of Provision**

The provision extends for three years, through December 31, 2020, the period for which the designation of an empowerment zone is in effect, thus extending for three years the empowerment zone tax incentives, including the wage credit, increased section 179 expensing for qualifying property, tax-exempt bond financing, and deferral of capital gains tax on the sale of qualified assets replaced with other qualified assets. In the case of a designation of an empowerment zone the nomination for which included a termination date which is December 31, 2017, termination shall not apply with respect to such designation if the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary may provide.\(^{730}\)

**Effective Date**

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

**9. American Samoa economic development credit (sec. 119 of the Act)**

**Present Law**

Beginning in 2006, certain domestic corporations have been entitled to an economic development credit with respect to operations in American Samoa.\(^{731}\) The credit is not part of the Code but is computed based on the rules of former sections 30A, 199, and 936.

For taxable years beginning before January 1, 2011, as originally enacted, the credit was limited to domestic corporations that were existing credit claimants with respect to American Samoa who had elected the application of section 936 for its last taxable year beginning before January 1, 2006. The credit is based on the corporation’s economic activity-based limitation with respect to American Samoa. An existing claimant is a domestic corporation that (1) was engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, and (2) elected the benefits of the possession tax credit\(^{732}\) in an election in effect for its taxable year


\(^{731}\)This credit was again extended during the 116th Congress by section 139 of the Taxpayer Certainty and Disaster Relief Act of 2020 (Division E of Pub. L. No. 116–260), described in Part Seven of this document.

\(^{732}\)For taxable years beginning before January 1, 2006, certain domestic corporations with business operations in the U.S. possessions were eligible for the possession tax credit. Secs. 27(b) and 936. This credit offset the U.S. tax imposed on certain income related to operations in the U.S. possessions. Subject to certain limitations, the amount of the possession tax credit allowed to any domestic corporation equaled the portion of that corporation’s U.S. tax that was attributable to the corporate taxable income from (1) the active conduct of a trade or business within a U.S. possession; (2) the sale or exchange of substantially all of the assets that were used in such a trade or business, or (3) certain possessions investment. No deduction or foreign
that included October 13, 1995, or that acquired all of the assets of a trade or business that met the foregoing conditions. A corporation that added a substantial new line of business (other than in a qualifying acquisition of all the assets of a trade or business of an existing credit claimant) ceased to be an existing credit claimant as of the close of the taxable year ending before the date on which that new line of business was added.

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

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

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

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

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tax credit was allowed for any possessions or foreign tax paid or accrued with respect to taxable income that was taken into account in computing the credit under section 936. Under the economic activity-based limit, the amount of the credit could not exceed an amount equal to the sum of (1) 60 percent of the taxpayer’s qualified possession wages and allocable employee fringe benefit expenses, (2) 15 percent of depreciation allowances with respect to short-life qualified tangible property, plus 40 percent of depreciation allowances with respect to medium-life qualified tangible property, and (3) in certain cases, a portion of the taxpayer’s possession income taxes. A taxpayer could elect, instead of the economic activity-based limit, a limit equal to the applicable percentage of the credit that otherwise would have been allowable with respect to possession business income, beginning in 1998, the applicable percentage was 40 percent.

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

733 See sec. 936(c).
taxable years of that corporation which begin after December 31, 2011, and before January 1, 2018.

**Explanation of Provision**

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

For purposes of this credit, the Code is applied without regard to the repeal of sections 30A and 936 in 2018,734 or the repeal of section 199 in 2017.735

**Effective Date**

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

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

1. **Biodiesel and renewable diesel (sec. 121 of the Act and secs. 40A, 6426(c), and 6427(e) of the Code)**

**Present Law**

**Biodiesel**

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

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

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735 Pub. L. 115–97, section 13305(a).
Biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

**Biodiesel mixture credit**

The biodiesel mixture credit is $1.00 for each gallon of biodiesel (including agri-biodiesel) used by the taxpayer in the production of a qualified biodiesel mixture. A “qualified biodiesel mixture” is a mixture of biodiesel and diesel fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) used as a fuel by the taxpayer producing such mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

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

**Biodiesel credit (B–100)**

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

**Small agri-biodiesel producer credit**

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

**Biodiesel mixture excise tax credit**

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

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

Payments with respect to biodiesel fuel mixtures

If any person produces a biodiesel fuel mixture in such person's trade or business, the Secretary is to pay such person an amount equal to the biodiesel mixture credit. The biodiesel fuel mixture credit must first be taken against tax liability for taxable fuels. To the extent the biodiesel fuel mixture credit exceeds such tax liability, the excess may be received as a payment. Thus, if the person has no section 4081 liability, the credit is refundable. The Secretary is not required to make payments with respect to biodiesel fuel mixtures sold or used after December 31, 2017.

Renewable diesel

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

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

Explanation of Provision

The provision extends the present-law income tax credit, excise tax credit, and payment provisions for biodiesel and renewable diesel through December 31, 2022. The provision creates a special rule to address claims regarding excise tax credits and claims for payment for fuel sold or used during the period beginning on January 1, 2018, through the close of the last calendar quarter beginning before the date of enactment (December 20, 2019). In particular, the provision directs the Secretary to issue guidance within 30 days of the date of enactment. Such guidance is to provide for a one-time
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submission of claims covering those periods. The guidance is to provide for a 180-day period for the submission of such claims (in such manner as prescribed by the Secretary) to begin no later than 30 days after such guidance is issued. Such claims shall be paid by the Secretary of the Treasury not later than 60 days after receipt. If the claim is not paid within 60 days of the date of the filing, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

Effective Date

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

2. Second generation biofuel producer credit (sec. 122 of the Act and sec. 40 of the Code)

Present Law

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

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

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

\footnote{IRS Notice 2020–8 provides rules claimants must follow to make a one-time claim for payment of the credits and payments allowable under sections 6426(c), 6426(d), and 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar years 2018 and 2019.}

\footnote{In addition, for fuels derived from algae, cyanobacteria, or lemla, a special rule provides that qualified second generation biofuel includes fuel that is sold by the taxpayer to another person for refining by such other person into a fuel that meets the registration requirements for fuels and fuel additives under section 211 of the Clean Air Act.}
or excluded fuels’). It also does not include any alcohol with a proof of less than 150.

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

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

**Explanation of Provision**

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

**Effective Date**

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

3. **Nonbusiness energy property (sec. 123 of the Act and sec. 25C of the Code)**

**Present Law**

A 10-percent credit is available for the purchase of qualified energy efficiency improvements to existing homes.\(^{738}\) A qualified energy efficiency improvement is any energy efficient building envelope component (1) that is installed in or on a dwelling located in the United States and owned and used by the taxpayer as the taxpayer’s principal residence; (2) the original use of which commences with the taxpayer; and (3) that reasonably can be expected to remain in use for at least five years. The credit is nonrefundable.

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

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

\(^{738}\) Sec. 25C.
granules that are specifically and primarily designed to reduce the heat gain of such dwelling unit.

Additionally, credits are available for the amount of the residential energy property expenditures paid or incurred by the taxpayer during the taxable year. Residential energy property expenditures are expenditures made by the taxpayer for qualified energy property (1) that is installed on or in connection with a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer’s principal residence; and (2) the original use of which commences with the taxpayer. Unlike qualified energy efficiency improvements, residential energy efficiency improvements include both qualified energy property and expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the qualified energy property. The allowable credit for the purchase of certain qualified energy property is (1) $50 for each advanced main air circulating fan, (2) $150 for each qualified natural gas, propane, or oil furnace or hot water boiler, and (3) $300 for each item of energy efficient building property.

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than two percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

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

Energy efficient building property is: (1) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure, (2) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,739 (3) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,740 (4) a natural gas, propane, or oil water heater which has an energy factor of at least 0.82 or thermal efficiency of at least 90 percent, and (5) a stove which burns biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such dwelling unity, and which has a thermal efficiency rating of at least 75 percent. Biomass fuel is any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

Generally, the credit is available for property placed in service prior to January 1, 2018. The maximum credit for a taxpayer for

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

740 These standards are a SEER greater than or equal to 16 and EER greater than or equal to 13 for split systems, and SEER greater than or equal to 14 and EER greater than or equal to 12 for packaged systems.
all taxable years is $500, and no more than $200 of such credit may be attributable to expenditures on windows.

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

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

**Explanation of Provision**

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

**Effective Date**

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

4. **Qualified fuel cell motor vehicles (sec. 124 of the Act and sec. 30B of the Code)**

**Present Law**

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

**Explanation of Provision**

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

**Effective Date**

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

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741 Sec. 30B.
5. Alternative fuel refueling property credit (sec. 125 of the Act and sec. 30C of the Code)

Present Law

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

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

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

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

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

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

Explanation of Provision

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

Effective Date

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

742Sec. 30C.
6. Two-wheeled plug-in electric vehicle credit (sec. 126 of the Act and sec. 30D of the Code)

Present Law

In general, for vehicles acquired before 2018, a 10-percent credit is available for qualified two-wheeled plug-in electric vehicles ("qualified electric motorcycles").\(^{743}\) Qualified electric motorcycles must have a battery capacity of at least 2.5 kilowatt-hours, be manufactured primarily for use on public streets, roads, and highways, and be capable of achieving speeds of at least 45 miles per hour. The maximum credit for any qualified electric motorcycle is $2,500.

Explanation of Provision

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

Effective Date

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

7. Credit for electricity produced from certain renewable resources (sec. 127 of the Act and sec. 45 of the Code)

Present Law

Renewable electricity production credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit").\(^{744}\) Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

SUMMARY OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

<table>
<thead>
<tr>
<th>Eligible electricity production activity (sec. 45)</th>
<th>Credit amount for 2019 (^1) (cents per kilowatt-hour)</th>
<th>Expiration (^2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind</td>
<td>2.5</td>
<td>December 31, 2019</td>
</tr>
<tr>
<td>Closed-loop biomass</td>
<td>2.5</td>
<td>December 31, 2017</td>
</tr>
<tr>
<td>Open-loop biomass (including agricultural livestock waste nutrient facilities).</td>
<td>1.2</td>
<td>December 31, 2017</td>
</tr>
<tr>
<td>Geothermal</td>
<td>2.5</td>
<td>December 31, 2017</td>
</tr>
<tr>
<td>Municipal solid waste (including landfill gas facilities and trash combustion facilities).</td>
<td>1.2</td>
<td>December 31, 2017</td>
</tr>
<tr>
<td>Qualified hydropower</td>
<td>1.2</td>
<td>December 31, 2017</td>
</tr>
</tbody>
</table>

\(^{743}\) Sec. 30D(g). The credit lapsed and was not available for vehicles placed in service in calendar year 2014. Before 2014, the credit was also available for qualified vehicles having three wheels.

\(^{744}\) Sec. 45. In addition to the renewable electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.
SUMMARY OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES—Continued

<table>
<thead>
<tr>
<th>Eligible electricity production activity (sec. 45)</th>
<th>Credit amount for 2019</th>
<th>Expiration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marine and hydrokinetic</td>
<td>1.2</td>
<td>December 31, 2017</td>
</tr>
</tbody>
</table>

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

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

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

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

Explanation of Provision

For renewable power facilities, the provision extends for three years (one year in the case of wind facilities), through December 31, 2020, the beginning of construction deadline for the renewable electricity production credit and the election to claim the energy credit in lieu of the electricity production credit. For wind facilities the construction of which begins in calendar year 2020, the credit is reduced by 40 percent.

Effective Date

The provision takes effect on January 1, 2018.

8. Production credit for Indian coal facilities (sec. 128 of the Act and sec. 45 of the Code)

Present Law

In general, a credit is available for each ton of Indian coal produced from a qualified Indian coal facility during the 12-year period beginning January 1, 2006, and ending December 31, 2017.\textsuperscript{745} Qualified Indian coal must be sold to an unrelated third party (either directly by the taxpayer or after sale or transfer to one or

\textsuperscript{745}Sec. 45(e)(10).
more related persons). The amount of the credit is $2.00 per ton (adjusted for inflation, $2.525 per ton for 2019). A qualified Indian coal facility is a facility that produces coal from reserves that on June 14, 2005, were owned by a Federally recognized tribe of Indians or were held in trust by the United States for a tribe or its members.

**Explanation of Provision**

The provision extends the credit for the production of Indian coal for three years, through December 31, 2020.

**Effective Date**

The extension of the credit applies to Indian coal produced after December 31, 2017.


**Present Law**

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

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

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

In lieu of meeting the standards of chapter 4 of the 2006 International Energy Conservation Code, manufactured homes certified by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program are eligible for the $1,000 credit provided all other applicable criteria are met.
The credit applies to homes that are purchased prior to January 1, 2018.

**Explanation of Provision**

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

**Effective Date**

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

10. **Special allowance for second generation biofuel plant property (sec. 130 of the Act and sec. 168(l) of the Code)**

**Present Law**

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization. The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer. 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.

**Special depreciation allowance for second generation biofuel plant property**

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

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes, but is not allowed in computing earnings and profits. The additional...
first-year depreciation deduction is subject to the general rules regarding whether a cost is subject to capitalization under section 263A. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction.⁷⁵⁴

**Qualified property**

Qualified second generation biofuel plant property means depreciable property used in the U.S. solely to produce any liquid fuel that (1) is derived by, or from, qualified feedstocks, and (2) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (“EPA”) under section 211 of the Clean Air Act.⁷⁵⁵ Qualified feedstock means any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis,⁷⁵⁶ and any cultivated algae, cyanobacteria, or lemmat.⁷⁵⁷ Second generation biofuel does not include any alcohol with a proof of less than 150 or certain unprocessed fuel.⁷⁵⁸ Unprocessed fuels are fuels that (1) are more than four percent (determined by weight) water and sediment in any combination, (2) have an ash content of more than one percent (determined by weight), or (3) have an acid number greater than 25.⁷⁵⁹

In order for such property to qualify for the additional first-year depreciation deduction, it must also meet the following requirements: (1) the original use of the property must commence with the taxpayer; and (2) the property must be (i) acquired by purchase (as defined under section 179(d)) by the taxpayer, and (ii) placed in service before January 1, 2018.⁷⁶⁰ Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies if the taxpayer begins the manufacture, construction, or production of the property before January 1, 2018 (and all other requirements are met).⁷⁶¹ Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

**Exceptions**

Property not eligible for the additional first-year depreciation deduction under section 168(l) includes (i) any property to which the additional first-year depreciation allowance under section 168(k) applies,⁷⁶² (ii) any property required to be depreciated under the

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⁷⁵⁴ Sec. 168(l)(1)(B).
⁷⁵⁵ Secs. 168(l)(2)(A) and 40(b)(6)(E).
⁷⁵⁶ For example, lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis includes bagasse (from sugar cane), corn stalks, and switchgrass. See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 109th Congress* (JCS–1–07), January 2007, p. 722.
⁷⁵⁷ Sec. 40(b)(6)(F).
⁷⁵⁸ See 40(b)(6)(E)(ii) and (iii).
⁷⁵⁹ Sec. 40(b)(6)(E)(iii).
⁷⁶⁰ Sec. 168(l)(2). Requirements relating to actions taken before 2007 are not described herein since they have little (if any) remaining effect.
⁷⁶¹ Sec. 168(l)(4) and (k)(2)(E).
⁷⁶² Sec. 168(l)(3)(A).
alternative depreciation system of section 168(g),\(^\text{763}\) (iii) any property any portion of which is financed with the proceeds of a tax-exempt obligation under section 103,\(^\text{764}\) and (iv) any property with respect to which the taxpayer has elected 50-percent expensing under section 179C (relating to election to expense certain refineries).\(^\text{765}\)

A taxpayer may elect out of the additional first-year depreciation for any class of property for any taxable year.\(^\text{766}\)

In addition, recapture rules apply if the property ceases to be qualified second generation biofuel plant property.\(^\text{767}\)

**Explanation of Provision**

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

**Effective Date**

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

11. Energy efficient commercial buildings deduction (sec. 131 of the Act and sec. 179D of the Code)

**Present Law**

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

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Sec-

\(^{763}\) Sec. 168(1)(x)(B).
\(^{764}\) Sec. 168(1)(x)(C).
\(^{765}\) Sec. 168(1)(x)(D).
\(^{766}\) Sec. 168(1)(x)(E).
\(^{767}\) Sec. 168(1)(x)(F).
The Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs using qualified computer software based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

The Secretary is granted authority to prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a Federal, state, or local government or a political subdivision thereof, such as a public school, the deduction may be allocated to the person primarily responsible for designing the energy efficient commercial building property in lieu of the government or political subdivision thereof.

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

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

Partial allowance of deduction

System-specific deductions

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

Interim rules for lighting systems

In general, in the case of system-specific partial deductions, no deduction is allowed until the Secretary establishes system-specific

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769 The IRS has specified that only a "qualified individual" (as defined in section 5.05 of IRS Notice 2008–52) can certify that energy efficient building property has met the requirements of the section 179D deduction. A qualified individual is an individual who (1) is not related (within the meaning of section 45(e)(4)) to the taxpayer claiming the deduction under section 179D; (2) is an engineer or contractor that is properly licensed as a professional engineer or contractor in the jurisdiction in which the building is located; and (3) has represented in writing to the taxpayer that the qualified individual has the requisite qualifications to provide the certification required or to perform the inspection and testing required by IRS Notice 2008–40.

770 Ibid.
However, in the case of lighting system retrofits, until such time as the Secretary issues final regulations, the system-specific energy savings target for the lighting system is deemed to be met by a reduction in lighting power density of 40 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 of ASHRAE/IESNA Standard 90.1–2007. Also, in the case of a lighting system that reduces lighting power density by 25 percent, a partial deduction of 30 cents per square foot is allowed. A pro-rated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions under the interim rule.

Explanation of Provision

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

Effective Date

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

12. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities (sec. 132 of the Act and sec. 451(k) of the Code)

Present Law

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

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

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

See sec. 1001.

See secs. 61 and 451.

See, e.g., secs. 453, 1031, and 1033.

The applicable period for a taxpayer to reinvest the proceeds is four years after the close of the taxable year in which the qualifying electric transmission transaction occurs.

Sec. 451(k).
A qualifying electric transmission transaction is the sale or other disposition of property used by a qualified electric utility to an independent transmission company prior to January 1, 2018. A qualified electric utility is defined as an electric utility, which as of the date of the qualifying electric transmission transaction, is vertically integrated in that it is both (1) a transmitting utility (as defined in the Federal Power Act) with respect to the transmission facilities to which the election applies, and (2) an electric utility (as defined in the Federal Power Act).

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

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

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

**Explanation of Provision**

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

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777 Sec. 451(k)(3).
778 Sec. 3(23), 16 U.S.C. sec. 796, defines “transmitting utility” as any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency that owns or operates electric power transmission facilities that are used for the sale of electric energy at wholesale.
779 Sec. 3(22), 16 U.S.C. sec. 796, defines “electric utility” as any person or State agency (including any municipality) that sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.
780 Sec. 451(k)(6).
781 For example, a regional transmission organization, an independent system operator, or an independent transmission company.
783 Sec. 451(k)(4).
784 Sec. 451(k)(5).
785 Sec. 451(k)(5)(C).
786 Sec. 451(k)(7).
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**Effective Date**

The provision applies to dispositions after December 31, 2017.

13. Extension and clarification of excise tax credits relating to alternative fuels (sec. 133 of the Act and secs. 6426 and 6427 of the Code)

**Present Law**

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

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

The alternative fuel credit is allowed against section 4041 liability, and the alternative fuel mixture credit is allowed against section 4081 liability. Neither credit is allowed unless the taxpayer is registered with the Secretary. The alternative fuel credit is 50 cents per gallon of alternative fuel or gasoline gallon equivalents\(^787\) of nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a motor vehicle or motorboat, sold for use in aviation or so used by the taxpayer.

The alternative fuel mixture credit is 50 cents per gallon of alternative fuel used in producing an alternative fuel mixture for sale or use in a trade or business of the taxpayer. An “alternative fuel mixture” is a mixture of alternative fuel and taxable fuel (gasoline, diesel fuel or kerosene) that contains at least 1/10 of one percent taxable fuel.\(^788\) The mixture must be sold by the taxpayer producing such mixture to any person for use as a fuel, or used by the taxpayer producing the mixture as a fuel. The credits expired after December 31, 2017.

A person may file a claim for payment equal to the amount of the alternative fuel credit (but not the alternative fuel mixture credit). The alternative fuel credit must first be applied to the ap-
plicable excise tax liability under section 4041 or 4081, and any excess credit may be taken as a payment. The payment provision for alternative fuel expired after December 31, 2017.

**Explanation of Provision**

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

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

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

**Effective Date**

The provision generally applies to fuel sold or used after December 31, 2017. The clarification applies to fuel sold or used on or after the date of enactment, and to fuel sold or used before such date of enactment, but only to the extent that credits and claims of credit under section 6426(e) (relating to the alternative fuel mixture credit) with respect to such sale or use have not been paid or allowed as of such date and were made on or after January 8, 2018. Nothing contained in, or amendments made by, the provision is to be construed to create any inference as to a change in law or guidance in effect prior to enactment of the provision.


**Present Law**

The Oil Spill Liability Trust Fund financing rate (“oil spill tax”) was nine cents per barrel. It generally applies to crude oil received

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789 See Senators Grassley (Iowa) and Wyden (Oregon), “Alternative Fuel Mixture Credit,” Cong. Rec. 165:206, December 19, 2019, p. S7185. “Mr. GRASSLEY: I do agree. The IRS got the law correct when it issued Revenue Ruling 2018–2, and our clarification makes clear that it is our intent for the IRS interpretation of the law to be controlling for all claims. This is the basis of the ‘no inference’ language in the bill that states: ‘Nothing contained in this subsection or the amendments made by this subsection shall be construed to create any inference as to a change in law or guidance in effect prior to enactment of this subsection.’”
at a U.S. refinery and to petroleum products entered into the
United States for consumption, use, or warehousing. If any domestic crude oil is used in or exported from
the United States and, before such use or exportation, no oil spill tax was imposed on such crude oil then the oil spill tax is imposed on such crude oil. The tax does not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

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

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

Explanation of Provision

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

Effective Date

The provision applies beginning on the first day of the first calendar month beginning after the date of enactment (December 20, 2019).

Subtitle D—Certain Provisions Expiring at the End of 2019

1. New markets tax credit (sec. 141 of the Act and sec. 45D of the Code)

Present Law

In general

The New Markets Tax Credit ("NMTC") is a geography-based tax credit program. Under section 45D(a), an investor may claim tax credits for a qualified equity investment in a qualified community development entity ("CDE"). The qualified CDE designates equity investments as qualified equity investments, rendering the investor eligible to receive tax credits. The qualified CDE can only designate up to an amount allocated to it by the Department of the Treasury’s Community Development Financial Institutions Fund ("CDFI Fund"). The CDFI Fund allocates amounts to qualified CDEs through a competitive application process.

The amount of the NMTC is determined on a credit allowance date as an amount equal to the applicable percentage of the investment in the qualified CDE on that date. The applicable percentage

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790 The term “crude oil” includes crude oil condensates and natural gasoline. The term “petroleum product” includes crude oil.
791 The term “domestic crude oil” means any crude oil produced from a well located in the United States.
792 The tax is reinstated for the period beginning on January 1, 2020, and ending on December 31, 2020.
is five percent for the first three years of the investment and six percent for the remaining four years, for a total credit of 39 percent over seven years. The credit allowance date is the date of the investment and the next six anniversary dates of the investment.

To continue to be eligible for tax credits, the taxpayer must continue to hold the qualified equity investment on the credit allowance date of each year. In other words, if the qualified equity investment ceases, or ceases to be qualified, the remaining tax credits are no longer allowed. The credits already claimed may also be subject to recapture if the CDE ceases to be qualified, if the proceeds of the investment cease to be used in a qualified manner, or if the taxpayer redeems its qualified equity investment.

Regulated financial institutions provide most of the equity for NMTC transactions. In addition to receiving the NMTC, financial institutions often receive credit under the Community Reinvestment Act for investing in low-income census tracts.

Substantially all the qualified equity investment must be used by the qualified CDE to provide investments in low-income communities through qualified active low-income community businesses.

**Qualifying geography**

The NMTC provisions require CDEs to serve or provide investment capital for low-income communities or low-income persons. A low-income community is either (1) a population census tract that meets certain criteria or (2) a specific area designated by the Secretary. Specifically, 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 nonmetropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration, rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the NMTC 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.

CDEs may also qualify for the NMTC if they serve targeted populations, as designated by the Secretary, regardless of the composition of the population census tract or tracts in which the targeted populations live. For this purpose, a “targeted population” is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the “Act”) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that “low-income” means (1) for a targeted population within a metropolitan area, less than 80 percent of the area me-
dian family income; and (2) for a targeted population within a non-
metropolitan area, less than the greater of 80 percent of the area
median family income or 80 percent of the statewide nonmetropoli-

tan area median family income.

Project structures

In a typical NMTC structure, an intermediary entity (the “invest-
ment fund LLC”) receives equity investments from investors (usu-
ally financial institutions) and debt from other sources. The invest-
ment fund LLC’s proceeds are then invested as equity investment
into a qualified CDE. The qualified CDE in turn makes a qualified
low-income community investment in a qualified active low-income
community business.

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

Although equity investments in qualified active low-income com-
munity businesses qualify under the NMTC rules, generally, such
investments are in the form of loans. Equity investors that own a
majority interest in a low-income community business can have
their NMTC credits recaptured if the business violates the rules for
qualification. However, Treasury regulations provide a “reasonable
expectation” safe harbor for CDEs that lend to such a business; if
the CDE “reasonably expects” that the rules are being satisfied,
NMTC credits are not subject to recapture.793

A qualified active low-income community business is defined as
a business that satisfies, with respect to a taxable year, the fol-
lowing requirements: (1) at least 50 percent of the total gross in-
come of the business is derived from the active conduct of trade or
business activities in any low-income community; (2) a substantial
portion of the tangible property of such business is used in a low-
income community; (3) a substantial portion of the services per-
fomed for such business by its employees is performed in a low-
income community; and (4) less than five percent of the average of

the aggregate unadjusted bases of the property of such business is attributable to certain financial property or to certain collectibles.

**Allocation process**

The CDFI Fund annually allocates NMTCs to CDEs under a competitive application process. CDEs, in turn, allocate NMTCs to equity investors. The maximum annual amount of NMTCs that the CDFI Fund can allocate is $3.5 billion for calendar years 2010 through 2019. No amount of unused allocation limitation may be carried to any calendar year after 2024.

For the 2018 allocation application round, the CDFI Fund awarded 73 CDEs $3.5 billion in NMTCs from a total of 214 applications requesting $14.8 billion.794 The successful CDE applicants focused on different types of investments and geographic areas, including financing projects ranging from large manufacturing plants to grocery and retail stores.795

Applications for NMTCs are reviewed in two phases.796 In Phase 1, applications are reviewed, scored, and ranked based on two criteria: business strategy and community outcomes. Applicants that meet the minimum scoring thresholds in Phase 1 advance to Phase 2 review and will be provided with “preliminary” awards, in descending order of final rank score, until the available allocation authority is fulfilled. Final rank scores are determined by evaluating management capacity, capitalization strategy, and information regarding previous awards.

In Phase 1, in evaluating and scoring the business strategy criteria, the CDFI Fund is looking for a CDE to articulate, with specificity, its strategy to use an allocation and to describe a long track record serving low-income communities, and of providing products and services like those that it intends to provide through its investments. The CDE can earn “priority points” if it has a track record of five or more years of experience providing capital and/or technical assistance to disadvantaged businesses and communities. For the community outcomes criteria, the CDFI Fund considers the extent to which the CDE is working in particularly economically distressed or otherwise underserved communities, shows that its projected financing activities will generate demonstrable community outcomes, and demonstrates meaningful engagement with community stakeholders when vetting potential investments. In general, the highest ranked applications provide specifics concerning job creation, community development benefits, and a track record of providing capital and/or technical assistance to disadvantaged businesses and communities.

In Phase 2, management capacity is evaluated based on management experience in low-income communities, asset and risk management, and fulfilling government compliance requirements. Capitalization is evaluated based on an applicant’s track record of raising capital, investor commitments (or a strategy to secure such

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795 For the 2019 allocation application round, the CDFI Fund awarded 76 CDEs more than $3.5 billion in NMTCs from a total of 206 applications requesting $14.7 billion. Information is available at [https://www.cdfifund.gov/news/385](https://www.cdfifund.gov/news/385) (last visited June 29, 2021).
commitments), plan to pass along the benefits of the credit to the underlying businesses, and willingness to invest in amounts that exceed the minimum statutory requirements. Applicants with prior year allocations are evaluated on their effective use of prior-year allocations and whether they have substantiated a need for additional allocation authority.

**Explanation of Provision**

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

**Effective Date**

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

2. Employer credit for paid family and medical leave (sec. 142 of the Act and sec. 45S of the Code)

**Present Law**

**In general**

The Family and Medical Leave Act of 1993, as amended (the “FMLA”), generally requires employers to provide employees with up to 26 weeks of leave under certain circumstances. In general, FMLA does not require that the employer continue to pay employees during such leave, although employers may choose to pay for all or a portion of such leave. State and local governments may provide, or State and local laws may require employers to provide, employees with up to a certain amount of paid leave for types of leave that may or may not fall under the FMLA.

**Employer credit for paid family and medical leave**

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

An “eligible employer” is one which has in place a written policy that allows all qualifying full-time employees not less than two

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798 Wages for this purpose are Federal Unemployment Tax Act wages defined in section 3306(b), without regard to the dollar limitation, but do not include amounts taken into account for purposes of determining any other credit under subpart D of the Code.
weeks of annual paid family and medical leave, and which allows all less-than-full-time qualifying employees a commensurate amount of leave (on a pro rata basis) compared to the leave provided to full-time employees. The policy must also provide that the rate of payment under the program is not less than 50 percent of the wages normally paid to any such employee for services performed for the employer.

In addition, in order to be an eligible employer, the employer is prohibited from certain practices or acts which are also prohibited under the FMLA, regardless of whether the employer is subject to the FMLA. Specifically, the employer must provide paid family and medical leave in compliance with a written policy that ensures that the employer will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy and will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

A “qualifying employee” means any individual who is an employee under tax rules and principles and is defined in section 3(e) of the Fair Labor Standards Act of 1938, as amended, who has been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60 percent of the compensation threshold in such year for highly compensated employees. For 2020, this 60 percent amount is $78,000.

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

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

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800 Sec. 414(q)(1)(B) ($130,000 for 2020).
801 FMLA section 102(a)(1) provides leave for FMLA purposes due to (A) the birth of a son or daughter of the employee and in order to care for such son or daughter; (B) the placement of a son or daughter with the employee for adoption or foster care; (C) caring for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; (D) a serious health condition that makes the employee unable to perform the functions of the employee’s position; (E) any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. In addition, FMLA section 102(a)(3) provides leave for FMLA purposes due to the need of an employee who is a spouse, son, daughter, parent, or next-of-kin of an eligible service member to care for such service member.
802 These terms mean these types of leave within the meaning of FMLA section 102(d)(2).
**Explanation of Provision**

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

**Effective Date**

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

3. **Work opportunity credit (sec. 143 of the Act and sec. 51 of the Code)**

**Present Law**

**In general**

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

**Targeted groups eligible for the credit**

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

(1) **Families receiving TANF**

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

(2) **Qualified veteran**

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

A veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability. However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not a qualified veteran if any of this active duty occurred during the 60-day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(3) Qualified ex-felon

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

(4) Designated community resident

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

(5) Vocational rehabilitation referral

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

(6) Qualified summer youth employee

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

(7) Qualified supplemental nutrition assistance program benefits recipient

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

(8) Qualified SSI recipient

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

(9) Long-term family assistance recipient

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

(10) Long-term unemployment recipient

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

Qualified wages

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

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

Calculation of the credit

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

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

In the case of long-term family assistance recipients, the credit equals 40 percent (25 percent for employment of 400 hours or less) of $10,000 for qualified first-year wages and 50 percent of the first $10,000 of qualified second-year wages. Generally, qualified second-year wages are qualified wages (not in excess of $10,000) attributable to service rendered by a member of the long-term family assistance category during the one-year period beginning on the day after the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $9,000 (40 percent of the first $10,000 of qualified first-

Sec. 280C(a).
year wages plus 50 percent of the first $10,000 of qualified second-year wages). Except for long-term family assistance recipients, no credit is allowed for second-year wages.

**Certification rules**

Generally, an individual is not treated as a member of a targeted group unless: (1) on or before the day on which an individual begins work for an employer, the employer has received a certification from a designated local agency that the individual is a member of a targeted group; or (2) on or before the day an individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to that individual, and not later than the 28th day after the individual begins work for the employer, the employer submits the notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for certification. For these purposes, a pre-screening notice is a document (in such form as the Secretary may prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

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

**Minimum employment period**

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

**Qualified tax-exempt organizations employing qualified veterans**

The credit is not available to qualified tax-exempt organizations other than those employing qualified veterans. If a qualified tax-exempt organization employs a qualified veteran (as described above) a tax credit against the FICA taxes of the organization is allowed for the wages of the qualified veteran which are paid for the veteran’s services in furtherance of the activities related to the function or purpose constituting the basis of the organization’s exemption under section 501.\(^{804}\)

The credit available to a tax-exempt employer for qualified wages paid to a qualified veteran equals 26 percent (16.25 percent for employment of 400 hours or less) of qualified first-year wages. The amount of qualified first-year wages eligible for the credit is the same as those for non-tax-exempt employers (i.e., $6,000, $12,000, $14,000 or $24,000, depending on the category of qualified veteran). A qualified tax-exempt organization means an employer that is described in section 501(c) and exempt from tax under section 501(a).

\(^{804}\)Sec. 3111(e).
The Social Security Trust Funds are held harmless from the effects of this provision by a transfer from the Treasury General Fund.

**Treatment of possessions**

The “VOW to Hire Heroes Act of 2011” (the “VOW Act”) provides a reimbursement mechanism for the U.S. possessions (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands). The Secretary pays to each mirror Code possession (Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands) an amount equal to the loss to that possession as a result of the VOW Act changes to the qualified veterans rules. Similarly, the Secretary pays to each non-mirror Code possession (American Samoa and the Commonwealth of Puerto Rico) the amount that the Secretary estimates as being equal to the loss to that possession that would have occurred as a result of the VOW Act changes if a mirror Code tax system had been in effect in that possession. The Secretary makes this payment to a non-mirror Code possession only if that possession establishes to the satisfaction of the Secretary that the possession has implemented (or, at the discretion of the Secretary, will implement) an income tax benefit that is substantially equivalent to the qualified veterans credit allowed under the VOW Act modifications.

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

**Other significant rules**

The work opportunity tax credit is not allowed for wages paid to a relative or dependent of the taxpayer. No credit is allowed for wages paid to an individual who is a more than 50-percent owner of the entity. Similarly, wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for wages paid to individuals who were previously employed by the employer.

**Expiration**

The work opportunity tax credit is not available for individuals who begin work for an employer after December 31, 2019.

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806 Prior to enactment of the VOW Act, there were two categories of qualified veterans to whom wages paid by an employer were eligible for the credit. Employers that hired veterans who were eligible to receive assistance under a supplemental nutritional assistance program were entitled to a maximum credit of 40 percent of $6,000 of qualified first-year wages paid to such individual. Employers that hired veterans who were entitled to compensation for a service-connected disability were entitled to a maximum wage credit of 40 percent of $12,000 of qualified first-year wages paid to such individual. The VOW Act expanded the work opportunity tax credit with respect to qualified veterans resulting in the present-law treatment of qualified veterans described above.
**Explanation of Provision**

The provision extends for one year the work opportunity tax credit making it available with respect to individuals who begin work for an employer before January 1, 2021.

**Effective Date**

The provision generally applies to individuals who begin work for an employer after December 31, 2019.

4. Certain provisions related to beer, wine, and distilled spirits (sec. 144 of the Act and secs. 263A, 5001, 5041, 5051, 5212, 5415, and 5555 of the Code)

Exemption for aging process of beer, wine, and distilled spirits

**Present Law**

The uniform capitalization ("UNICAP") rules require certain direct and indirect costs allocable to real property or tangible personal property produced by the taxpayer to be included in either inventory or capitalized into the basis of such property, as applicable. 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.\(^{807}\)

In the case of interest expense, the UNICAP rules apply only to interest paid or incurred during the property's production period\(^{808}\) and that is allocable to property produced by the taxpayer or acquired for resale which (1) is either real property or property with a class life of at least 20 years, (2) has an estimated production period exceeding two years, or (3) has an estimated production period exceeding one year and a cost exceeding $1,000,000.\(^{809}\) The production period with respect to any property is the period beginning on the date on which production of the property begins,\(^{810}\) and, except as described below, ending on the date on which the property is ready to be placed in service or held for sale.\(^{811}\)

For interest costs paid or accrued after December 31, 2017, and before January 1, 2020, the aging period for beer,\(^{812}\) wine,\(^{813}\) or

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\(^{807}\) Sec. 263A. Note that a taxpayer that meets the gross receipts test of section 448(c) is generally exempt from the application of section 263A. See sec. 263A(i). The gross receipts test looks to whether the average annual gross receipts for the three-taxable-year period ending with the prior taxable year is under a threshold amount ($26 million for 2020). See sec. 448(c) and Rev. Proc. 2019–44, 2019–47 I.R.B. 1093.

\(^{808}\) See Treas. Reg. sec. 1.263A–12.

\(^{809}\) See Sec. 263A(f).

\(^{810}\) In the case of tangible personal property, the production period begins on the first date the taxpayer's accumulated production expenditures, including planning and design expenditures, are at least five percent of the taxpayer's total estimated accumulated production expenditures for the property unit. Treas. Reg. sec. 1.263A–12(c)(3). Thus, the production period may begin before physical production activity has commenced. See Treas. Reg. sec. 1.263A–12(c)(3).

\(^{811}\) For example, in the case of the beer, wine, and distilled spirits industries, the production period may include time spent planning and designing ingredients, production space, or production personnel.

\(^{812}\) Sec. 263A(f)(5)(B). The production period for a unit of property produced for sale ends on the date that the unit is ready to be held for sale and all production activities reasonably expected to be undertaken by, or for, the taxpayer or a related person are complete. Treas. Reg. sec. 1.263A–12(d)(4).

\(^{813}\) As defined in section 5052(a).
distilled spirits is excluded from the production period as determined for purposes of the UNICAP interest capitalization rules. Thus, producers of beer, wine, or distilled spirits (other than spirits unfit for beverage purposes) are able to deduct interest expenses (subject to any other applicable limitation) attributable to a shorter production period that does not include the aging period of beer, wine, or distilled spirits. In the case of interest costs paid or accrued after December 31, 2019, the production period as determined for purposes of the UNICAP interest capitalization rules will include the aging period for beer, wine, or distilled spirits.

Explanation of Provision

The provision extends for one year (i.e., through December 31, 2020) the exclusion of the aging period for beer, wine, or distilled spirits from the production period as determined for purposes of the UNICAP interest capitalization rules.

Effective Date

The provision applies to interest costs paid or accrued after December 31, 2019.

Reduced rate of excise tax on beer and transfer of beer between bonded facilities

Present Law

In general

Federal excise taxes are imposed at different rates on distilled beer, wine, and distilled spirits and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the Alcohol and Tobacco Tax and Trade Bureau (“TTB”), except the taxes on imported bottled beer, wine, and distilled spirits are collected by the Customs and Border Protection Bureau (the “CBP”) of the Department of Homeland Security (under delegation by the Secretary). Liability for the excise tax on beer arises when the alcohol is produced or imported but is not payable until the beer is removed from the brewery or customs custody for consumption or sale. Generally, beer may be transferred between commonly owned breweries without payment of tax; however, tax liability follows these products. Imported bulk beer may be released from customs custody without payment of tax and transferred in bond to a brewery, which becomes liable for the tax on such beer. Beer may be exported without payment of tax and may be withdrawn from a brewery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.816

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814 As defined in section 5002(a)(8), except such spirits that are unfit for use for beverage purposes.
815 Bulk (non-bottled) beer, wine, and distilled spirits may be imported and transferred in bond free of tax. See secs. 5232, 5364, and 5418. TTB collects tax on such items when they are removed from bond.
816 Sec. 5053.
Notwithstanding the current, temporary rates described below, the rate of tax on beer is $18 per barrel. Small brewers are eligible for a reduced tax rate of $7 per barrel on the first 60,000 barrels of beer domestically produced and removed each year. Small brewers are defined as brewers producing not more than two million barrels of beer during a calendar year. The lower rates for small producers reduce the effective per-gallon tax rate from approximately 58 cents per gallon to approximately 22.6 cents per gallon for this beer.

In the case of a controlled group, the two million barrel limitation for small brewers is applied to the controlled group, and the 60,000 barrels eligible for the reduced rate of tax, are apportioned among the brewers that are component members of such group. The term “controlled group” has the meaning assigned to it by section 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in section 1563(a).

Individuals may produce limited quantities of beer for personal or family use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

For calendar years 2018 and 2019, the rate of tax on beer is temporarily lowered to $16 per barrel on the first six million barrels brewed by the brewer or imported by the importer. In general, in the case of a controlled group of brewers, the six million barrel limitation is applied and apportioned at the level of the controlled group. Beer brewed or imported in excess of the six million barrel limit continues to be taxed at $18 per barrel. In the case of small brewers, such brewers are taxed at a rate of $3.50 per barrel on the first 60,000 barrels domestically produced, and $16 per barrel on any further barrels produced.

**Transfer rules and removals without tax**

Certain removals or transfers of beer are exempt from tax. Beer may be transferred without payment of the tax between bonded premises under certain conditions specified in the regulations. The tax liability accompanies the beer that is transferred in bond. However, beer may only be transferred without payment of tax between breweries if both breweries are owned by the same brewer.

The shared ownership requirement of section 5414 is temporarily relaxed for calendar years 2018 and 2019. Thus, a brewer may transfer beer from one brewery to another without payment of tax, provided that: (i) the breweries are owned by the same person; (ii) one brewery owns a controlling interest in the other; (iii) the same person or persons have a controlling interest in both breweries; or (iv) the proprietors of the transferring and receiving premises are independent of each other, and the transferor has divested itself of all interest in the beer so transferred, and the transferee has accepted responsibility for payment of the tax.

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517 Sec. 5051. One barrel of beer is equal to 31 gallons.
518 Sec. 5631(a)(2).
519 Sec. 5414.
For purposes of transferring the tax liability pursuant to (iv) above, such relief from liability shall be effective from the time of removal from the transferor’s bonded premises, or from the time of divestment, whichever is later.

**Explanation of Provision**

The provision extends for one year the temporary rate schedule on beer.

The provision extends for one year the temporary rules regarding shared ownership.

**Effective Date**

The provision to extend the temporary rate schedule applies to beer removed after December 31, 2019.

The provision to extend the temporary rules regarding shared ownership applies to calendar quarters beginning after December 31, 2019.

**Reduced rate of excise tax on certain wine, adjustment of alcohol content level for application of excise taxes, and definition of mead and low alcohol by volume wine**

**Present Law**

**In general**

Excise taxes are imposed on wine, based on the wine’s alcohol content and carbonation levels. Notwithstanding temporary changes to alcohol content allowances described below, the following table outlines the rates of tax on wine.

<table>
<thead>
<tr>
<th>Tax (and code section)</th>
<th>Tax rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wines (sec. 5041)</td>
<td></td>
</tr>
<tr>
<td>“Still wines” not more than 14 percent alcohol</td>
<td>$1.07 per wine gallon</td>
</tr>
<tr>
<td>“Still wines” more than 14 percent, but not more than 21 percent, alcohol</td>
<td>$1.57 per wine gallon</td>
</tr>
<tr>
<td>“Still wines” more than 21 percent, but not more than 24 percent, alcohol</td>
<td>$3.15 per wine gallon</td>
</tr>
<tr>
<td>“Still wines” more than 24 percent alcohol</td>
<td>$13.50 per proof gallon (taxed as distilled spirits)</td>
</tr>
<tr>
<td>Champagne and other sparkling wines</td>
<td>$3.40 per wine gallon</td>
</tr>
<tr>
<td>Artificially carbonated wines</td>
<td>$3.30 per wine gallon</td>
</tr>
</tbody>
</table>

Liability for the excise taxes on wine arises when the wine is produced or imported but is not payable until the wine is removed from the bonded wine cellar or winery, or from customs control, for consumption or sale. Generally, bulk and bottled wine may be transferred between bonded premises; however, the tax liability on such wine becomes the responsibility of the transferee. Bulk natural wine may be released from customs custody without payment of tax and transferred in bond to a winery. Wine may be exported without payment of tax and may be withdrawn from a wine cellar.

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820 A “still wine” is a non-effervescent or minimally effervescent wine containing no more than 0.392 grams of carbon dioxide per hundred milliliters of wine. Champagne wine typically contains more than twice that amount.

821 A wine gallon is a U.S. liquid gallon.
Sec. 5042.

Sec. 5041(c).

The credit rate for hard cider is tiered at the same level of production or importation, but is equal to 6.2 cents, 5.6 cents, and 3.3 cents, respectively.

The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.

Credits and exemptions for certain wine producers

Notwithstanding the current, temporary credits described below, domestic wine producers having aggregate annual production not exceeding 250,000 wine 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 wine gallons of wine domestically produced and removed during a calendar year. The credit is reduced (but not below zero) by one percent for each 1,000 gallons produced in excess of 150,000 wine gallons; the credit may not be applied to the tax liability on sparkling wines. In the case of a controlled group, the 250,000 wine gallon limitation for wineries is applied to the controlled group, and the 100,000 wine gallons eligible for the credit, are apportioned among the wineries that are component members of such group. The term "controlled group" has the meaning assigned to it by section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" in each place it appears in sec. 1563(a).

The credit against the wine excise tax for small domestic producers is temporarily modified for calendar years 2018 and 2019 in several ways. First, the 250,000 wine gallon domestic production limitation is removed (thus making the credit available for all wine producers and importers). Second, under the modifications, the credit may be applied to the tax liability on sparkling wine. Third, with respect to wine produced in, or imported into, the United States during a calendar year, the credit amount is modified to (1) $1.00 per wine gallon for the first 30,000 wine gallons of wine, plus; (2) 90 cents per wine gallon on the next 100,000 wine gallons of wine, plus; (3) 53.5 cents per wine gallon on the next 620,000 wine gallons of wine.

Finally, there is no phaseout of the credit with additional production.

Other temporary changes

Alcohol-by-volume levels of the first two tiers of the excise tax on wine are temporarily modified for calendar years 2018 and 2019, by changing 14 percent to 16 percent. Thus, a wine producer or importer may temporarily produce or import "still wine" that has an alcohol-by-volume level of up to 16 percent and remain subject to the lowest rate of $1.07 per wine gallon.

Mead and certain sparkling, low alcohol-by-volume wines are temporarily designated to be taxed at the lowest rate applicable to "still wine," $1.07 per wine gallon of wine for calendar years 2018 and 2019. Mead is defined as a wine that contains not more than 0.64 grams of carbon dioxide per hundred milliliters of wine, which is derived solely from honey and water, contains no fruit product or fruit flavoring, and contains less than 8.5 percent alco-

\[^{822}\text{Sec. 5042.}\]
\[^{823}\text{Sec. 5041(c).}\]
\[^{824}\text{The credit rate for hard cider is tiered at the same level of production or importation, but is equal to 6.2 cents, 5.6 cents, and 3.3 cents, respectively.}\]
\[^{825}\text{The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.}\]
The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.

Secs. 5001, 5006, 5043, and 5054.

hol-by-volume. The sparkling wines eligible to be taxed at the lowest rate are those wines that 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.

**Explanation of Provision**

The provision extends for one year the temporary modifications to the alcohol-by-volume levels for purposes of the excise tax.

The provision extends for one year the temporary rates on mead and certain sparkling, low alcohol-by-volume wines.

**Effective Date**

The provisions apply to wine removed after December 31, 2019.

**Reduced rate of excise tax on certain distilled spirits and transfer of bonded spirits**

**Present Law**

Notwithstanding the current, temporary rates described below, distilled spirits are taxed at a rate of $13.50 per proof gallon. Liability for the excise tax on distilled spirits arises when the alcohol is produced or imported but is not determined and payable until bottled distilled spirits are removed from the bonded premises of the distilled spirits plant where they are produced, or customs custody. Generally, bulk distilled spirits may be transferred in bond between bonded premises; however, tax liability follows these products. Imported bulk distilled spirits may be released from customs custody without payment of tax and transferred in bond to a distillery. Distilled spirits be exported without payment of tax and may be withdrawn from a distillery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.

For calendar years 2018 and 2019, there is a temporary tax rate schedule for distilled spirits based on annual quantity produced or imported. The rate of tax is lowered to $2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits produced, $13.34 on the next 22,130,000 proof gallons, and $13.50 for amounts thereafter. Rules prevent members of the same controlled group from receiving the lower rate on more than 100,000 proof gallons of distilled spirits. Additionally, importers of distilled spirits are eligible for the temporary lower rates subject to documentation of the annual total production of the producer.

Additionally, for calendar years 2018 and 2019, distillers may transfer spirits in bond in containers other than bulk containers without payment of tax.

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826 The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.

827 Secs. 5001, 5006, 5043, and 5054.
Explanation of Provision

The provision extends for one year the temporary rate schedule on distilled spirits and the eligibility of that rate schedule for importers.

The provision extends for one year the allowance for distillers to transfer spirits in bond in containers other than bulk containers without payment of tax.

Effective Date

The provision to extend the temporary rate schedule applies to distilled spirits removed after December 31, 2019.

The provision to extend the allowance for distillers to transfer spirits in bond in containers other than bulk containers without payment of tax applies to distilled spirits transferred in bond after December 31, 2019.

Simplification of rules regarding records, statements, and returns

Present Law

The Code requires those liable for taxation on alcoholic beverages to keep such records, render such statements, make such returns, and comply with such rules and regulations as prescribed by the Secretary. For calendar quarters beginning after February 9, 2018, and before January 1, 2020, the Secretary shall permit a unified system for any records, statements, and returns required to be kept, rendered, or made for any beer produced in a brewery for which tax is imposed, including any beer which has been removed for consumption on the premises of the brewery.

Explanation of Provision

The provision extends for one year the requirement that the Secretary permits a unified system for any records, statements, and returns required to be kept, rendered, or made for any beer produced in a brewery for which tax is imposed, including any beer which has been removed for consumption on the premises of the brewery.

Effective Date

The provision applies to calendar quarters beginning after December 31, 2019.
5. Extension of look-through treatment of payments between related controlled foreign corporations under foreign personal holding company rules (sec. 145 of the Act and sec. 954(c)(6) of the Code)

Present Law

In general

The rules of subpart F require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("CFC") to include certain income of the CFC (referred to as "subpart F income") on a current basis for U.S. tax purposes.

Subpart F income includes foreign base company income, which includes passive income such as dividends, interest, rents, and royalties, among other types of income. There are several exceptions to these rules. For example, foreign personal holding company income does not include dividends and interest received by a CFC from a related corporation organized and operating in the same foreign country in which the CFC is organized, or rents and royalties received by a CFC from a related corporation for the use of property within the country in which the CFC is organized. Interest, rent, and royalty payments do not qualify for this exclusion to the extent that such payments reduce the subpart F income of the payor.

In addition, subpart F income of a CFC does not include any item of income from sources within the United States that is effectively connected with the conduct by such CFC of a trade or business within the United States ("ECI") unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a tax treaty.

"CFC look-through"

Section 954(c)(6), colloquially referred to as "CFC look-through," provides that dividends, interest (including factoring income that is treated as equivalent to interest under section 954(c)(1)(E)), rents, and royalties received or accrued by one CFC from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to income of the payor that is neither subpart F income nor treated as ECI. For this purpose, a related CFC is a CFC that controls or is controlled by the other CFC, or a CFC that is controlled by the same person or persons that control the other CFC. Ownership of more than 50 percent of the CFC's stock (by vote or value) constitutes control for these purposes.

The Secretary is authorized to prescribe regulations that are necessary or appropriate to carry out CFC look-through, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of such rule.

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829 Secs. 951–964.
830 Sec. 951(a).
831 Secs. 952(a)(2) and 954.
832 Sec. 954(c)(1).
833 Sec. 954(c)(3).
834 Sec. 952(b).
CFC look-through applies to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Explanation of Provision

The provision extends for one year the application of CFC look-through, to taxable years of foreign corporations beginning before January 1, 2021, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Effective Date

The provision applies to taxable years of foreign corporations beginning after December 31, 2019, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

6. Credit for health insurance costs of eligible individuals
(sec. 146 of the Act and sec. 35 of the Code)

Present Law

Eligible coverage months

An eligible individual is allowed a refundable tax credit for 72.5 percent of the individual's premiums for qualified health insurance of the individual and qualifying family members for each eligible coverage month beginning in the taxable year. The credit is commonly referred to as the health coverage tax credit ("HCTC"). The credit is available only with respect to amounts paid by the individual for qualified health insurance. Advance monthly payments paid by the Secretary directly to the health plan administrator are available.

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if (1) the month begins before January 1, 2020, and (2) as of the first day of the month, (i) the individual is an eligible individual; (ii) is covered by qualified health insurance the premium for which is paid by the individual; (iii) does not have other specified coverage; and (iv) is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements.

Eligible individuals

An eligible individual is an individual who is (1) an eligible Trade Adjustment Assistance ("TAA") recipient, (2) an eligible alternative TAA recipient or an eligible reemployment TAA recipient, or (3) an eligible Pension Benefit Guaranty Corporation ("PBGC") pension recipient. In general, an individual is an eligible TAA recipient for a month if the individual (1) receives for any day of the month a trade readjustment allowance under the Trade Act of 1974

835 Qualifying family members are the individual's spouse and any dependent for whom the individual is entitled to claim a dependency exemption. Any individual who has certain specified coverage is not a qualifying family member.

836 Sec. 7527.
or would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance, and (2) with respect to such allowance, is covered under a required certification. An individual is an eligible alternative TAA recipient or an eligible reemployment TAA recipient for a month if the individual participates in certain programs under the Trade Act of 1974 providing wage supplements and receives a related benefit for the month. Generally, an individual is an eligible PBGC pension recipient for any month if the individual (1) is age 55 or over as of the first day of the month, and (2) receives a benefit for the month, any portion of which is paid by the PBGC. A person who may be claimed as a dependent on another person’s tax return is not an eligible individual. In addition, an otherwise eligible individual is not eligible for the credit for a month if, as of the first day of the month, the individual has certain specified coverage, such as certain employer-provided coverage or coverage under certain governmental health programs.

Qualified health insurance

Qualified health insurance in respect of which the credit is allowed is: (1) coverage under a COBRA continuation provision; 837 (2) State-based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by a State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual’s spouse; (9) coverage under individual health insurance838 (other than coverage purchased through an American Health Benefit Exchange); 839 and (10) coverage under an employee benefit plan funded by a voluntary employee beneficiary association (“VEBA”)840 established pursuant to an order of a bankruptcy court (or by agreement with an authorized representative).841

Qualified health insurance does not include any State-based coverage (i.e., coverage described in (2)–(7) in the preceding paragraph) unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain consumer-protection requirements.842 Such State coverage must pro-

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837 As defined in section 9832(d)(1).
838 For this purpose, “individual health insurance” means any insurance that constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.
839 The premium assistance credit is provided for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange. See sec. 36B.
840 As defined in section 501(c)(9).
842 For guidance on how a State elects a health program to be qualified health insurance for purposes of the credit, see Rev. Proc. 2004–12, 2004–1 C.B. 528.
vide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals.

A qualifying individual for this purpose is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage\(^{843}\) of three months or longer, does not have other specified coverage, and is not imprisoned.

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is for excepted benefits.

**Explanation of Provision**

The provision extends the availability of the health coverage tax credit for 12 months by amending the definition of eligible coverage month to include months beginning before January 1, 2021.

**Effective Date**

The provision is effective for months beginning after December 31, 2019.

**TITLE II—DISASTER TAX RELIEF**

1. Definitions (sec. 201 of the Act and secs. 24, 32, 38, 72, 165, and 170 of the Code))

The provisions below provide temporary tax relief to those areas affected by certain major disasters declared in 2018 and the majority of 2019.

The provisions use the terms “qualified disaster area,” “qualified disaster zone,” “qualified disaster,” and “incident period.” As used in the bill, “qualified disaster area” refers to an area with respect to which a major disaster has been declared by the President during the period beginning on January 1, 2018, and ending on the date which is 60 days after the date of enactment of the Act (December 20, 2019), under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the “Stafford Act”), if the incident period of the disaster with respect to which such declaration is made begins on or before the date of the enactment of the Act. However, the “California wildfire disaster area,” as defined in the Bipartisan Budget Act of 2018,\(^{844}\) is not a qualified disaster area.

A “qualified disaster zone” refers to that portion of the applicable “qualified disaster area,” as described above, which has been deter-
minded by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act by reason of the applicable qualified disaster.

A “qualified disaster” means, with respect to the applicable qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area.

“Incident period” means, with respect to the applicable qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred, except that such period shall not be treated as beginning before January 1, 2018, or ending after the date which is 30 days after the date of enactment of the Act.

2. Special disaster-related rules for use of retirement funds (sec. 202 of the Act and sec. 72 of the Code)

Present Law

Distributions from tax-favored retirement plans

A distribution from a qualified retirement plan, a tax-sheltered annuity plan (a “section 403(b) plan”), an eligible deferred compensation plan of a State or local government employer (a “governmental section 457(b) plan”), or an individual retirement arrangement (an “IRA”) generally is included in income for the year distributed.845 These plans are referred to collectively as “eligible retirement plans.” In addition, unless an exception applies, a distribution from a qualified retirement plan, a section 403(b) plan, or an IRA received before age 59 1/2 is subject to a 10-percent additional tax (referred to as the “early withdrawal tax”) on the amount includible in income.846

In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual.847

The terms of a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan generally determine when distributions are permitted. However, in some cases, restrictions may apply to distributions before an employee’s termination of employment, referred to as “in-service” distributions. Despite such restrictions, an in-service distribution may be permitted in the case of financial hardship or an unforeseeable emergency.

845 Secs. 401(a), 403(a), 403(b), 457(b) and 408. Under section 3405, distributions from these plans are generally subject to income tax withholding unless the recipient elects otherwise. In addition, certain distributions from a qualified retirement plan, a section 403(b) plan, or a governmental section 457(b) plan are subject to mandatory income tax withholding at a 20-percent rate unless the distribution is rolled over.

846 Sec. 72(t). Under present law, the 10-percent early withdrawal tax does not apply to distributions from a governmental section 457(b) plan.

847 Secs. 402(c)(3)(B) and 408(d)(3)(I). Rev. Proc. 2020–46, 2020–51 I.R.B. 995, further provides for a self-certification procedure (subject to verification on audit) that may be used by a taxpayer claiming eligibility for a waiver of the 60-day requirement with respect to a rollover into a plan or IRA in certain specified circumstances.
**Loans from tax-favored retirement plans**

Employer-sponsored retirement plans may provide loans to participants. Unless the loan satisfies certain requirements in both form and operation, the amount of a retirement plan loan is a deemed distribution from the retirement plan. Among the requirements that the loan must satisfy are that the loan amount must not exceed the lesser of 50 percent of the participant’s account balance or $50,000 (generally taking into account outstanding balances of previous loans), and the loan’s terms must provide for a repayment period of not more than five years (except for a loan specifically to purchase a home) and for level amortization of loan payments to be made not less frequently than quarterly.848 Thus, if an employee stops making payments on a loan before the loan is repaid, a deemed distribution of the outstanding loan balance generally occurs. A deemed distribution of an unpaid loan balance is generally taxed as though an actual distribution occurred, including being subject to a 10-percent early distribution tax, if applicable. A deemed distribution is not eligible for rollover to another eligible retirement plan. Subject to the limit on the amount of loans, which precludes any additional loan that would cause the limit to be exceeded, the rules relating to loans do not limit the number of loans an employee may obtain from a plan.

**Tax-favored retirement plan compliance**

Tax-favored retirement plans are generally required to be operated in accordance with the terms of the plan document, and amendments to reflect changes to the plan generally must be adopted within a limited period.

**Explanation of Provision**

**Distributions and recontributions**

Under the provision, an exception to the 10-percent early withdrawal tax applies in the case of “qualified disaster distributions” from a qualified retirement plan, a section 403(b) plan, or an IRA. In addition, as discussed further, income attributable to a qualified disaster distribution may be included in income ratably over three years, and the amount of a qualified disaster distribution may be recontributed to an eligible retirement plan within three years.

A “qualified disaster distribution” is any distribution from a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan, made on or after the first day of the incident period of a qualified disaster and before the date which is 180 days after the date of enactment, to an individual whose principal place of abode at any time during the incident period is located in the qualified disaster area and who has sustained an economic loss by reason of such disaster, regardless of whether a distribution otherwise would be permissible.849

A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified disaster distribution, provided that the aggregate amount of such distributions from

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848 Sec. 72(p).
849 A qualified disaster distribution is subject to income tax withholding unless the recipient elects otherwise. Mandatory 20-percent withholding does not apply.
plans maintained by the employer and members of the employer’s controlled group or affiliated service group does not exceed $100,000 for each qualified disaster. The total amount of distributions to an individual from all eligible retirement plans that may be treated as qualified disaster distributions with respect to each qualified disaster is $100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $100,000, taking into account distributions from plans of other employers or IRAs, or because an individual may have been affected by more than one qualified disaster.

Any amount required to be included in income as a result of a qualified disaster distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply.

Any portion of a qualified disaster distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income. For example, if an individual receives a qualified disaster distribution in 2019, that amount is included in income, generally ratably over the year of the distribution and the following two years, but is not subject to the 10-percent early withdrawal tax. If, in 2021, the amount of the qualified disaster distribution is recontributed to an eligible retirement plan, the individual may file an amended return to claim a refund of the tax attributable to the amount previously included in income. In addition, if, under the ratable inclusion provision, a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includible in income.

Recontributions of withdrawals for purchase of a home

Any individual who received a qualified disaster distribution, during the period beginning on the date which is 180 days before the first day of the incident period of the qualified disaster and ending on the date which is 30 days after the last day of such incident period, which was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not so purchased or constructed on account of the qualified disaster, may, during the “applicable period,” make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made. The “applicable period” is, in the case of a principal residence in a qualified disaster area with respect to any qualified disaster, the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the date of enactment. A plan is not treated as violating any Code requirement merely because it repays such distributions as provided above, provided that the aggregate

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850 As described in sections 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F).

851 Under sections 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.
amount of such repayments from plans maintained by the employer and members of the employer’s controlled group or affiliated service group does not exceed $100,000.

**Loans**

In the case of a “qualified individual” who obtained a loan from a qualified employer plan made during the 180-day period beginning on the date of enactment, in lieu of the permitted maximum loan amount as the lesser of 50 percent of the participant’s account balance or $50,000, the permitted maximum loan amount is the lesser of “the present value of the nonforfeitable accrued benefit of the employee under the plan” (rather than “one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan”) or $100,000, and the loan is not treated as a distribution. For this purpose, a “qualified individual” is an individual whose principal place of abode, during any portion of the incident period of any qualified disaster, was located in the qualified disaster area and who sustained an economic loss by reason of the qualified disaster.

In the case of such a qualified individual (with respect to a qualified disaster) with an outstanding loan (on or after the first day of the incident period of such qualified disaster), from a qualified employer plan, if the due date for any repayment with respect to such a loan occurs during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period, the due date is delayed for one year (or, if later, until the date which is 180 days after the date of enactment) and any subsequent repayments will be appropriately adjusted to reflect the delay in any repayment date noted above and any interest accruing during such delay, but the repayment delay is disregarded in determining the 5-year period and the term of the loan.

**Plan amendments**

A plan amendment made pursuant to the provision (or a regulation issued thereunder) may be retroactively effective if, in addition to the requirements described below, the amendment is made on or before the last day of the first plan year beginning after January 1, 2020 (or in the case of a governmental plan, January 1, 2022), or a later date prescribed by the Secretary. In addition, the plan is treated as operated in accordance with plan terms during the period beginning with the date the provision or regulation takes effect (or the date specified by the plan if the amendment is not required by the provision or regulation) and ending on the last permissible date for the amendment (or, if earlier, the date the amendment is adopted). For an amendment to be retroactively effective, it must apply retroactively for that period, and the plan must be operated in accordance with the amendment during that period.

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852 As defined under section 72(p)(4).
853 See sec. 72(p)(2)(A).
854 See sec. 72(p)(2).
855 Under section 72(p)(2)(B) or (C).
Effective Date

The provision is effective on the date of enactment.

3. Employee retention credit for employers affected by qualified disasters (sec. 203 of the Act and sec. 38 of the Code)

Present Law

Congress has at times enacted employee retention credits against employer income tax in response to specific natural disasters.\textsuperscript{856} There is not a generally applicable employer income tax credit for wages paid in connection with natural disasters.

Explanation of Provision

The provision provides an income tax credit of 40 percent of the qualified wages (up to a maximum of $6,000 in qualified wages per employee) paid by an eligible employer to an eligible employee.

An eligible employer is any employer that (1) conducted an active trade or business in a qualified disaster zone at any time during the incident period of the applicable qualified disaster and (2) with respect to which the trade or business described in (1), as a result of damage sustained by reason of the applicable qualified disaster, is inoperable on any day during the period beginning on the first day of the applicable incident period of the applicable qualified disaster and ending on the date of enactment of this bill.

An eligible employee is, with respect to an eligible employer, an employee whose principal place of employment, determined immediately before the applicable qualified disaster, with such eligible employer was in the applicable qualified disaster zone. An employee may not be treated as an eligible employee for any period with respect to an employer if such employer is allowed a credit under section 51, the work opportunity credit, with respect to the employee for the period.

Qualified wages are wages\textsuperscript{857} paid or incurred by an eligible employer with respect to an eligible employee during the period (1) beginning on the date on which the trade or business first became inoperable at the principal place of employment of the employee immediately before the applicable qualified disaster and (2) ending on the earlier of (i) the date on which the trade or business resumes significant operations at such principal place of employment or (ii) the date which is 150 days after the last day of the applicable incident period. Qualified wages include wages paid without regard to whether the employee performs services, performs services at a different place of employment than the principal place of employment, or performs services at the principal place of employment before significant operations resume.

The credit is treated as a current year business credit under section 38(b) and therefore is subject to the income tax liability limita-

\textsuperscript{856} See, e.g., sec. 20103 of Pub. L. No. 115–123 (providing a credit in response to 2017 California wildfires); sec. 503 of Pub. L. No. 115–63, as amended by sec. 20201(b) of Pub. L. No. 115–123 (providing a credit in response to Hurricanes Harvey, Irma, and Maria); and former sec. 1400R (providing a credit in response to Hurricanes Katrina, Rita, and Wilma).

\textsuperscript{857} For this purpose, "wages" is defined in section 51(c)(1), without regard to section 3306(b)(2)(B).
Section 51(i)(2) provides a rule that employers may not claim the work opportunity credit for wages paid to rehired employees. Section 52 provides, for purposes of the work opportunity credit, rules to treat a controlled group of corporations, or trades or businesses under common control, as a single employer, as well as special rules for tax-exempts, estates and trusts, and certain other entities. Section 280C denies a deduction for the portion of wages paid or incurred for the taxable year for which certain wage-based credits are earned.

**Effective Date**

The provision is effective on the date of enactment (December 20, 2019).

4. **Temporary suspension of limitation on charitable contributions (sec. 204(a) of the Act and sec. 170 of the Code)**

**Present Law**

**In general**

In general, an income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.\(^{\text{859}}\)

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

**Percentage limitations**

**Contributions by individuals**

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base. The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. The contribution base is defined as the taxpayer's adjusted gross income computed without regard to any net operating loss carryback.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (e.g., public charities, private foundations other than private non-operating foundations, and certain governmental units) may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base.

\(^{\text{858}}\) Section 51(i)(2) provides a rule that employers may not claim the work opportunity credit for wages paid to rehired employees. Section 52 provides, for purposes of the work opportunity credit, rules to treat a controlled group of corporations, or trades or businesses under common control, as a single employer, as well as special rules for tax-exempts, estates and trusts, and certain other entities. Section 280C denies a deduction for the portion of wages paid or incurred for the taxable year for which certain wage-based credits are earned.

\(^{\text{859}}\) Sec. 170.
For contributions taken into account for taxable years beginning after December 31, 2017 and before January 1, 2026, section 170(b)(1)(G) increases the percentage limit for contributions by an individual taxpayer of cash to an organization described in section 170(b)(1)(A) to 60 percent. The 60-percent limit does not apply to noncash contributions. The 60-percent limit is intended to be applied after, and reduced by, the amount of noncash contributions to organizations described in section 170(b)(1)(A).

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer’s contribution base. An individual may elect, however, to bring all these contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private nonoperating foundations) are deductible up to 20 percent of the taxpayer’s contribution base.

Contributions by corporations

For corporations, in any taxable year, charitable contributions are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation’s taxable income computed without regard to net operating loss or capital loss carrybacks.

For purposes of determining whether a corporation’s aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

Carryforward of excess contributions

Charitable contributions that exceed the applicable percentage limitation may be carried forward for up to five years. The amount that may be carried forward from a taxable year (“contribution year”) to a succeeding taxable year may not exceed the applicable percentage of the contribution base for the succeeding taxable year less the sum of contributions made in the succeeding taxable year plus contributions made in taxable years prior to the contribution year and treated as paid in the succeeding taxable year under this provision.

Explanation of Provision

Under the provision, in the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer’s contribution base exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years as contributions described in section 170(b)(1)(G)(ii) (generally relating to cash contributions to public charities).

In the case of a corporation, the deduction for qualified contributions is allowed up to the amount by which the corporation’s taxable income (as computed under section 170(b)(2)) exceeds the de-
duction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations under section 170(d)(2).

In applying subsections (b) and (d) of section 170 to determine the deduction for other contributions, qualified contributions are not taken into account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Qualified contributions are cash contributions paid during the period beginning on January 1, 2018, and ending on the date which is 60 days after the date of enactment, to a charitable organization described in section 170(b)(1)(A), other than contributions to (i) a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be made to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. Qualified contributions must be made for relief efforts in one or more qualified disaster areas. Taxpayers must obtain from the recipient organization a contemporaneous written acknowledgment substantiating that the contribution was used (or is to be used) for this purpose. A taxpayer must elect to have the contributions treated as qualified contributions.

**Effective Date**

The provision is effective on the date of enactment (December 20, 2019).

5. Special rules for qualified disaster-related personal casualty losses (sec. 204(b) of the Act and sec. 165 of the Code)

**Present Law**

An individual taxpayer may claim an itemized deduction for a personal casualty loss only if the loss was attributable to a disaster declared by the President under section 401 of the Stafford Act. All other personal casualty losses are deductible only to the extent that those losses do not exceed the individual’s personal casualty gains. Personal casualty losses are deductible only if they exceed $100 per casualty. In addition, aggregate net losses (i.e., the excess of personal casualty losses over personal casualty gains) are deductible only to the extent they exceed 10 percent of the individual taxpayer’s adjusted gross income.

Congress has at times enacted more generous casualty loss provisions in response to specific natural disasters.
Explanation of Provision

Under the provision, if an individual has a personal casualty loss which arose in a qualified disaster area on or after the first day of the incident period of the applicable qualified disaster and which was attributable to that qualified disaster, the individual is allowed a deduction for the loss without regard to whether the individual’s aggregate net losses exceed 10 percent of adjusted gross income. A casualty loss is deductible, however, only if it exceeds $500.\footnote{The $100 per casualty rule still applies with respect to other deductible personal casualty losses.}

For a personal casualty loss to which the provision applies, an individual is allowed a deduction in addition to the standard deduction. The deduction is also allowed in determining alternative minimum tax.

Effective Date

The provision is effective on the date of enactment (December 20, 2019).

6. Special rule for determining earned income (sec. 204(c) of the Act and secs. 24 and 32 of the Code)

Present Law

The Code provides eligible taxpayers with an earned income tax credit ("EITC") and a child tax credit. In general, the EITC is a refundable income tax credit for low-income workers.\footnote{The amount of the credit depends on the earned income of the taxpayer and whether the taxpayer has one, more than one, or no qualifying children. Earned income generally includes wages, salaries, tips, and other employee compensation, plus net earnings from self-employment.}

Taxpayers with incomes below certain threshold amounts are eligible for a $2,000 child tax credit for each qualifying child.\footnote{In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable income tax credit (the "additional child tax credit"). Generally, the amount of the additional child tax credit equals 15 percent of the taxpayer’s earned income in excess of $2,500. The maximum amount of the refundable credit for each qualifying child is $1,400 for taxable years beginning in 2019.\footnote{Congress has at times enacted provisions that allow individuals to use their earned income from the prior, rather than current, taxable year in determining the amount of the EITC or additional child tax credit.}}

Congress has at times enacted provisions that allow individuals to use their earned income from the prior, rather than current, taxable year in determining the amount of the EITC or additional child tax credit.\footnote{Congress has at times enacted provisions that allow individuals to use their earned income from the prior, rather than current, taxable year in determining the amount of the EITC or additional child tax credit.}

Explanation of Provision

The provision permits a qualified individual to elect to calculate the EITC and additional child tax credit for an applicable taxable year using the individual’s earned income from the prior taxable year.
year. A qualified individual is permitted to make the election with respect to an applicable taxable year only if the individual’s earned income for that taxable year is less than his or her earned income for the preceding taxable year.

A qualified individual is an individual (1) whose principal place of abode at any time during the incident period of a qualified disaster was in the applicable qualified disaster zone or (2) who during any portion of the incident period was not in the applicable qualified disaster zone but whose principal place of abode was in the applicable qualified disaster area and was displaced from that abode by reason of the qualified disaster. An applicable taxable year is any taxable year which includes any portion of the incident period of a qualified disaster.

For purposes of the provision, in the case of a joint return for a taxable year which includes an applicable taxable year, the provision applies if either spouse is a qualified individual. In such cases, earned income for the preceding taxable year is the sum of the earned income of each spouse for such preceding taxable year.

An election to use the prior year’s earned income under the provision applies with respect to both the earned income credit and additional child tax credit. Additionally, the incorrect use on a return of earned income pursuant to an election under this provision is treated as a mathematical or clerical error. An election under the provision is disregarded for purposes of calculating gross income in the election year.

Effective Date

The provision is effective on the date of enactment (December 20, 2019).

7. Automatic extension of filing deadlines in case of certain taxpayers affected by Federally declared disasters (sec. 205 of the Act and sec. 7508A of the Code)

Present Law

In general, the Secretary may specify a period of up to one year that may be disregarded for performing various acts under the Internal Revenue Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, for any taxpayer determined by the Secretary to be affected by a Federally declared disaster or a terroristic or military action with respect to any tax liability of the taxpayer. In addition, the period specified by the Secretary may be disregarded in determining the amount of any interest, penalty, additional amount, or addition to tax, and the amount of any credit or refund.

There are special rules provided for pensions and other employee benefit plans. The Secretary may prescribe a period of up to one year which may be disregarded in determining the date by which any action by a pension or other employee benefit plan, or by any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Federally declared disaster or a terroristic or military action would be required or permitted

868 Sec. 7508A.
to be completed. A plan is not treated as operating in a manner inconsistent with its terms or in violation of its terms merely due to disregarding any such periods.

The suspension of time may apply to the following acts:

1. Filing any return of income, estate, gift, employment, or excise tax;
2. Payment of any income, estate, gift, employment, or excise tax or any installment thereof or of any other liability to the United States in respect thereof;
3. Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;
4. Allowance of a credit or refund of any tax;
5. Filing a claim for credit or refund of any tax;
6. Bringing suit upon any such claim for credit or refund;
7. Assessment of any tax;
8. Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
9. Collection of the amount of any liability in respect of any tax;
10. Bringing suit by the United States in respect of any liability in respect of any tax; and
11. Any other act required or permitted under the internal revenue laws specified by the Secretary of the Treasury. 869

For a tax-related deadline to be postponed under this authority, the IRS generally will publish, as soon as practicable after the declaration of the disaster or occurrence of a terroristic or military action, a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance authorizing the postponement and describing the acts postponed, the postponement period, and the covered disaster area. 870

**Explanation of Provision**

The provision provides to qualified taxpayers in the case of a Federally declared disaster a mandatory 60-day period that is disregarded in the same manner as the period specified under the Secretary's discretionary authority to provide disaster relief under section 7508A(a). 871 The 60-day period begins on the earliest incident date specified in the declaration to which the relevant disaster area relates and ends on the date which is 60 days after the latest incident date so specified. A disaster area is the geographic area of a Federally declared disaster, which is any disaster subsequently de-
termined by the President to warrant assistance by the Federal
government under the Stafford Act. 872

Qualified taxpayers are (1) any individual whose principal resi-
dence is located in a disaster area, (2) any taxpayer if the tax-
payer’s principal place of business (other than the business of per-
forming services as an employee) is located in a disaster area, (3)
any individual who is a relief worker affiliated with a recognized
government or philanthropic organization and who is assisting in
a disaster area, (4) any taxpayer whose records necessary to meet
a deadline for the acts listed above are maintained in a disaster
area, (5) any individual visiting a disaster area who was killed or
injured as a result of the disaster, and (6) solely with respect to a
joint return, any spouse of an individual who is a qualified tax-
payer.

In the case of a pension or other employee benefit plan, or any
sponsor, administrator, participant, beneficiary or other person
with respect to such a plan, 873 the provision provides that a rule
similar to the mandatory 60-day period rule described above ap-
plies with respect to any of the following actions:

1. Making contributions to a section 401(a) qualified retirement
plan, a section 403(a) annuity, a section 403(b) tax-sheltered annu-
ity, or a section 408 individual retirement account or annuity
(IRA);

2. Making distributions of contributions to an IRA prior to the
due date for filing the individual’s tax return for the year in which
the contribution was made;

3. Recharacterizing IRA contributions by making a trustee-to-
trustee transfer from a traditional IRA to a Roth IRA, or vice
versa, before the due date (including extensions) for the individ-
ual’s income tax return for that year; 874 or

4. Making a rollover. 875

The mandatory 60-day period provided under the provision is in
addition to, or concurrent with as the case may be, any period of
suspension provided by the Secretary.

**Effective Date**

The provision applies to Federally declared disasters declared
after the date of enactment of the Act (December 20, 2019).

8. **Modification of the tax rate for the excise tax on invest-
ment income of private foundations (sec. 206 of the Act
and sec. 4940 of the Code)**

**Present Law**

Under section 4940(a), private foundations that are recognized as
exempt from Federal income tax under section 501(a) (other than

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872 Sec. 165(i)(5).
873 For this purpose, a definition similar to the definition of “qualified taxpayer” is intended
to generally apply.
874 In the case of a recharacterization, the contribution will be treated as having been made
to the transferee IRA (and not the original, transferor IRA) as of the date of the original con-
tribution. Pursuant to section 13611 of Pub. L. No. 115–97, this rule does not apply to a con-
version contribution to a Roth IRA effective for taxable years beginning after December 31, 2017.
875 Such actions are those provided under Treas. Reg. sec. 301.7508A–1(e)(1)(iii), described
above.
exempt operating foundations\textsuperscript{876}) are subject to a two-percent excise tax on their net investment income. Net investment income generally includes interest, dividends, rents, royalties (and income from similar sources), and capital gain net income, and is reduced by expenses incurred to earn this income. The two-percent rate of tax is reduced to one-percent in any year in which a foundation exceeds the average historical level of its charitable distributions. Specifically, the excise tax rate is reduced if the foundation’s qualifying distributions (generally, amounts paid to accomplish exempt purposes)\textsuperscript{877} equal or exceed the sum of (1) the amount of the foundation’s assets for the taxable year multiplied by the average percentage of the foundation’s qualifying distributions over the five taxable years immediately preceding the taxable year in question, and (2) one percent of the net investment income of the foundation for the taxable year.\textsuperscript{878} In addition, the foundation cannot have been subject to tax in any of the five preceding years for failure to meet minimum qualifying distribution requirements in section 4942.

Private foundations that are not exempt from tax under section 501(a), such as certain charitable trusts, are subject to an excise tax under section 4940(b). The tax is equal to the excess of the sum of the excise tax that would have been imposed under section 4940(a) if the foundation were tax exempt and the amount of the tax on unrelated business income that would have been imposed if the foundation were tax exempt, over the income tax imposed on the foundation under subtitle A of the Code.

Private foundations are required to make a minimum amount of qualifying distributions each year to avoid tax under section 4942. The minimum amount of qualifying distributions a foundation has to make to avoid tax under section 4942 is reduced by the amount of section 4940 excise taxes paid.\textsuperscript{879}

**Explanation of Provision**

The provision replaces the two rates of excise tax on tax-exempt private foundations with a single rate of tax of 1.39 percent. Thus, under the provision, a tax-exempt private foundation generally is subject to an excise tax of 1.39 percent on its net investment income. A taxable private foundation is subject to an excise tax equal to the excess (if any) of the sum of the 1.39-percent net investment income excise tax and the amount of the tax on unrelated business income (both calculated as if the foundation were tax-exempt), over the income tax imposed on the foundation. The provision repeals the special reduced excise tax rate for private foundations that exceed their historical level of qualifying distributions.

\textsuperscript{876} Sec. 4940(d)(1). Exempt operating foundations generally include organizations such as museums or libraries that devote their assets to operating charitable programs but have difficulty meeting the “public support” tests necessary not to be classified as a private foundation. To be an exempt operating foundation, an organization must: (1) be an operating foundation (as defined in section 4942(j)(3)); (2) be publicly supported for at least 10 taxable years; (3) have a governing body no more than 25 percent of whom are disqualified persons and that is broadly representative of the general public; and (4) have no officers who are disqualified persons. Sec. 4940(d)(2).

\textsuperscript{877} Sec. 4942(g).

\textsuperscript{878} Sec. 4940(e).

\textsuperscript{879} Sec. 4942(d)(2).
Effective Date

The provision is effective for taxable years beginning after the date of enactment (December 20, 2019).

9. Additional low-income housing tax credit allocations for qualified 2017 and 2018 California disaster areas (sec. 207 of the Act and sec. 42 of the Code)

Present Law

A taxpayer may claim the low-income housing tax credit annually over a 10-year period for the costs of building or rehabilitating rental housing occupied by low-income tenants. The amount of credit that may be claimed each year is equal to the applicable percentage of the qualified basis of each qualified low-income building.

Credit calculations

The applicable percentage for a low-income building is set for the earlier of: (1) the month the building is placed in service; or (2) at the election of the taxpayer, (a) the month the taxpayer and the State housing credit agency enter into a binding agreement with respect to such building for a credit allocation, or (b) in the case of a tax-exempt bond-financed project for which no credit allocation is required, the month in which the tax-exempt bonds are issued.

These credit percentages are adjusted monthly by the IRS on a discounted after-tax basis (assuming a 28-percent tax rate) based on the average of the Applicable Federal Rates for mid-term and long-term obligations for the month the building is placed in service. The discounting formula assumes that each credit is received on the last day of each year and that the present value is computed on the last day of the first year. In a project consisting of two or more buildings placed in service in different months, a separate credit percentage may apply to each building.

The applicable percentage for non-Federally subsidized newly constructed housing and non-Federally subsidized substantial rehabilitation is calculated such that the present value of the credit amounts is at least 70 percent of a building's qualified basis, depending on the prevailing interest rate. For buildings placed in service after July 30, 2008, the applicable percentage cannot be less than 9 percent. These credits are sometimes referred to as “nine-percent credits.”

The applicable percentage for Federally subsidized newly constructed housing, Federally subsidized substantial rehabilitation, and certain housing acquisition costs is calculated such that the present value of the credit amounts equals 30 percent of a build-

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880 See sec. 42(b) and (e). This credit is referred to as the 70-percent credit. See Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (JCS–10–87), May 4, 1987. This document can be found on the Joint Committee on Taxation website at www.jct.gov. However, under the Housing and Economic Recovery Act of 2008, the minimum applicable percentage for such credits was temporarily set at nine percent (the “nine-percent floor”). The Consolidated Appropriations Act, 2016 made the nine-percent floor permanent. The enactment of the nine-percent floor on the credit implies that, under the statutory formula, the present value is always 70 percent or greater.

881 See sec. 42(b)(1)(B) and (e).
ing’s qualified basis. These credits are sometimes referred to as “four-percent credits.”

Credit allocations and placed-in-service requirements

Generally, the low-income housing tax credit is allowable only if either 50 percent or more of the aggregate basis of the building and land is financed by tax-exempt bonds subject to the volume cap or the owner of a low-income building receives a credit allocation from the State. Unless an exception applies, the building must be placed in service by the end of the calendar year in which the allocation is made.

However, the taxpayer may receive an extension to have the building placed in service by the end of the second calendar year following the calendar year in which the allocation is made (a “carryover allocation”). To be eligible for a carryover allocation, more than 10 percent of the taxpayer’s reasonably expected basis in the building (as of the close of the second calendar year following the calendar year in which the allocation is made) must be incurred by the date that is one year after the allocation date.

State housing credit ceiling

In general

The total amount of housing credits available for allocation by a State is limited by the State housing credit ceiling for the calendar year. However, the amount of housing credit allocated by a State to a low-income building reduces the State housing credit ceiling only once, in the year the housing credit is allocated.

The State housing credit ceiling is an amount equal to the sum of four components: (1) the unused State housing credit ceiling (if any) for the preceding calendar year (the “unused carryforward component”), (2) the population component, (3) the amount of State housing credit ceiling returned in the calendar year (the “returned credit component”), plus (4) the amount (if any) that the Secretary allocates to the State from the national pool of unused housing credits (the “national pool component”).

The unused carryforward component is the excess, if any, of (1) the sum of the population, returned credit, and national pool components for the preceding calendar year, over (2) the aggregate amount of housing tax credits actually allocated by the State for such year, reduced by the amount of credits allocated from such year’s unused State housing credit ceiling. Any credits in the unused carryforward component that are not allocated in the current calendar year are forfeited to the national pool.

For 2020, the population component is equal to the greater of (1) $2.8125 multiplied by the State population or (2) $3,217,500.

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882 This credit is referred to as the 30-percent credit. See Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (JCS–10–87), May 4, 1987. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

883 Sec. 42(h)(4).

884 Sec. 42(h)(3)(C); Treas. Reg. sec. 1.42–14(a)(1).

885 Sec. 42(h)(3)(C); Treas. Reg. sec. 1.42–14(b).

886 Rev. Proc. 2019–44. These amounts include a temporary increase enacted in the Consolidated Appropriations Act of 2018, Pub. L. No. 115–141. These limits do not apply in the case...
Stacking order rule

A stacking order rule governs the order in which credits are treated as allocated from the four components of the State housing credit ceiling. Credits are first treated as allocated from the unused carryforward component. After all of the credits in the unused carryforward component have been allocated, any credits then allocated are treated as allocated from the sum of the population, returmed credit, and national pool components.

Explanation of Provision

Under the provision, the State housing credit ceiling of California for calendar year 2020 is increased by the aggregate housing credit dollar amount allocated by the State housing credit agency of California for 2020 to buildings located in qualified 2017 and 2018 California disaster areas, up to the average amount of the State housing credit ceilings of California for 2017 and 2018.

The provision also provides that credit allocations are treated as made first from these additional amounts for purposes of determining the unused State housing credit ceiling to be carried forward in a calendar year.

Effective Date

The provision is effective on the date of enactment (December 20, 2019).

10. Treatment of certain possessions (sec. 208 of the Act)

Present Law

Citizens of the United States are generally subject to Federal income tax on their U.S. and foreign income regardless of whether they live in a U.S. State, the District of Columbia, a foreign country, or a U.S. territory. Residents of the U.S. territories are generally subject to the Federal income tax system based on their status as U.S. citizens or residents in the territories, with certain special rules for determining residence and source of income specific to the territory.

The application of the Federal tax rules to the territories varies from one territory to another. Three territories, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code territories because the Code serves as the internal tax law of those territories (substituting the particular territory for the United States wherever the Code refers to the United States). A resident of one of those territories generally files a single tax return only with the territory of which the...
individual is a resident, and not with the United States. Income tax paid by a bona fide resident of a mirror Code territory generally is allocated between the U.S. government and the territory government under special rules administered by the U.S. Treasury Department and the revenue authority of the territory government.

American Samoa and Puerto Rico, by contrast, are non-mirror Code territories. These two territories have their own internal tax laws, and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the territory of residence and the United States. In general, U.S.-source income and other income from outside the territory of residence is included on a U.S. income tax return, and income from sources within the territory of residence is reported on the territory income tax return.

**Explanation of Provision**

The provision requires the Secretary to make a payment to each mirror Code territory in an amount equal to the loss in revenue by reason of the temporary disaster-related tax relief allowable by reason of Title II of the Act to residents of such territory against its income tax. The Secretary must determine the amount of each payment based on information provided by the government of the respective territory.

The provision requires the Secretary to make a payment to each non-mirror Code territory in an amount estimated by the Secretary as the aggregate benefits (if any) of the temporary disaster-related tax relief that would have been provided to residents of that territory if a mirror code tax system had been in effect in the territory. Accordingly, the amount of each payment to a non-mirror Code territory is an estimate of the aggregate benefits that would be allowed to the territory's residents if the temporary tax relief provided by Title II of the Act to U.S. residents were provided by the territory to its residents. The Secretary is not permitted to make a payment to a territory unless the territory has a plan that has been approved by the Secretary under which the territory will promptly distribute the payment to its residents.

**Effective Date**

The provision is effective on the date of enactment (December 20, 2019).

**TITLE III—OTHER PROVISIONS**

1. Modification of income for purposes of determining tax-exempt status of certain mutual or cooperative telephone or electric companies (sec. 301 of the Act and sec. 501(c)(12) of the Code)

**Present Law**

Under Code section 501(c)(12), certain mutual or cooperative organizations, including telephone and electric companies, are ex-
empt from Federal income tax under Code section 501(a), provided that certain requirements are satisfied. To qualify for exemption under Code section 501(c)(12), at least 85 percent of the organization’s income must consist of amounts collected from members for the sole purpose of meeting losses and expenses. Present law includes special rules regarding the treatment of specific types of income under the 85-percent test for mutual or cooperative electric and telephone companies.

Under Code section 118, the gross income of a corporation does not include any contribution to its capital. Public Law 115–97 amended Code section 118 to provide that contributions to capital do not include contributions by any governmental entity or civic group (other than a contribution made by a shareholder as such). Thus, under present law, mutual or cooperative telephone or electric companies described in Code section 501(c)(12) generally must include such contributions in non-member income for purposes of the 85-percent test.

**Explanation of Provision**

Under the provision, in the case of a mutual or cooperative telephone or electric company described in Code section 501(c)(12), the 85-percent test shall be applied without taking into account: (i) any grant, contribution, or assistance provided pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act or any similar grant, contribution, or assistance by any local, State, or regional governmental entity for the purposes of relief, recovery, or restoration from, or preparation for, a disaster or emergency; or (ii) any grant or contribution by any governmental entity (other than a contribution in aid of construction or any other contribution as a customer or potential customer) the purpose of which is substantially related to providing, constructing, restoring, or relocating electric, communication, broadband, internet, or other utility facilities or services.

**Effective Date**

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

2. **Repeal of increase in unrelated business taxable income for certain fringe benefit expenses (sec. 302 of the Act and sec. 512(a)(7) of the Code)**

**Present Law**

**Tax exemption for certain organizations**

Section 501(a) exempts certain organizations from Federal income tax. Such organizations include: (1) tax-exempt organizations described in section 501(c) (including among others section 501(c)(12)(A)). The IRS has interpreted the term “income,” for purposes of the 85-percent test, as meaning gross income. Rev. Rul. 74–362, 1974–2 C.B. 170; IRS Audit Technique Guide—Local Benevolent Life Insurance Association, Mutual Irrigation Companies and Like Organizations—IRC Section 501(c)(12).

Sec. 501(c)(12)(B)–(H).

Sec. 118(b)(2).
501(c)(3) charitable organizations and section 501(c)(4) social welfare organizations; (2) religious and apostolic organizations described in section 501(d); and (3) trusts forming part of a pension, profit-sharing, or stock bonus plan of an employer described in section 401(a).

**Unrelated business income tax**

The unrelated business income tax ("UBIT") generally applies to income derived from a trade or business regularly carried on by the organization that is not substantially related to the performance of the organization's tax-exempt functions. An organization that is subject to UBIT and that has $1,000 or more of gross unrelated business taxable income must report that income on Form 990-T (Exempt Organization Business Income Tax Return).

Most exempt organizations may operate an unrelated trade or business so long as the organization remains primarily engaged in activities that further its exempt purposes. Therefore, an organization may generally engage in a substantial amount of unrelated business activity 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 activities.

An organization determines its unrelated business taxable income by subtracting from its gross unrelated business income the deductions directly connected with the unrelated trade or business.

**Organizations subject to tax on unrelated business income**

Most exempt organizations are subject to UBIT. Specifically, organizations subject to UBIT generally include: (1) organizations exempt from tax under section 501(a), including organizations described in section 501(c) (except for U.S. instrumentalities and certain charitable trusts); (2) qualified pension, profit-sharing, and stock bonus plans described in section 401(a); and (3) certain State colleges and universities.

**Exclusions from unrelated business taxable income**

Certain types of income are specifically excluded from unrelated business taxable income, such as dividends, interest, royalties, and certain rents, unless derived from debt-financed property or from certain 50-percent controlled subsidiaries. Certain types of activities are not considered unrelated trade or business activities, such as activities in which substantially all the work is performed by volunteers, which involve the sale of donated goods, or which are carried on for the convenience of members, students, patients,
officers, or employees of a charitable organization. Additional activities exempt from UBIT include certain activities of trade shows and State fairs, conducting bingo games, and the distribution of low-cost items incidental to the solicitation of charitable contributions.

Specific deduction against unrelated business taxable income

In computing unrelated business taxable income, an exempt organization may take a specific deduction of $1,000. This specific deduction may not be used to create a net operating loss that will be carried back or forward to another year.

In the case of a diocese, province of a religious order, or a convention or association of churches, there is also allowed a specific deduction with respect to each parish, individual church, district, or other local unit. The specific deduction is equal to the lower of $1,000 or the gross income derived from any unrelated trade or business regularly carried on by the local unit.

Increase in unrelated business taxable income for certain fringe benefit expenses

Under section 512(a)(7), unrelated business taxable income of a tax-exempt organization is increased to the extent that a deduction is not allowable by reason of section 274 for any item with respect to qualified transportation fringe benefits or any parking facility used in connection with qualified parking. The determination of unrelated business taxable income associated with providing qualified transportation fringes, including parking facilities used in connection with qualified parking, is consistent with the determination of the deduction disallowance under section 274.

Section 512(a)(7) does not apply to any item directly connected with an unrelated trade or business that is regularly carried on by the organization. The Secretary is granted specific authority to issue regulations or other guidance necessary or appropriate to carry out the provision, including regulations or guidance providing for the appropriate allocation of depreciation and other costs with respect to facilities used for parking. The $1,000 specific deduction available to organizations under section 512(b)(12) remains in effect and may be used to offset unrelated business taxable income resulting from the application of section 512(a)(7).

Explanation of Provision

The provision repeals section 512(a)(7) (the increase in unrelated business taxable income for certain fringe benefit expenses).

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903 See sec. 513(a).
904 See sec. 513(d).
905 See sec. 513(f).
906 See sec. 513(h).
907 Ibid.
908 Ibid.
909 See sec. 132(f).
910 See sec. 132(f)(5)(C).
911 See sec. 274(a)(4).
Effective Date

The provision is effective as if included in the amendments made by section 13703 of Public Law 115–97 (i.e., for amounts paid or incurred after December 31, 2017).
PART FOUR: VIRGINIA BEACH STRONG ACT (PUBLIC LAW 116–98) 913

1. Special rules for contributions for relief of the families of the mass shooting in Virginia Beach (sec. 2 of the Act)

Present Law

Tax exemption for charitable organizations

Organizations described in section 501(c)(3) (generally, charitable organizations) are exempt from Federal income taxation under section 501(a). A section 501(c)(3) organization must be organized and operated exclusively for exempt purposes, and no part of the net earnings of such an organization may inure to the benefit of any private shareholder or individual. An organization is not organized or operated exclusively for one or more exempt purposes unless the organization serves a public rather than a private interest. Thus, an organization described in section 501(c)(3) generally must serve a charitable class of persons that is indefinite or of sufficient size.

Deduction for charitable contributions

In general, under present law, taxpayers may claim an income tax deduction for charitable contributions. A charitable contribution generally is a contribution or gift to or for the use of an organization described in section 170(c) (describing certain charitable, governmental, and other organizations). Contributions to individuals generally are not deductible as charitable contributions.

A donor who claims a charitable deduction for a contribution of money, regardless of amount, must maintain as a record of the contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. In addition to the foregoing recordkeeping requirements, substantiation requirements apply in the case of charitable contributions with a value of $250 or more. No charitable deduction is allowed for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization.

Explanation of Provision

The provision clarifies that a cash contribution made on or after May 31, 2019, for the exclusive benefit of the families of the dead

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913 H.R. 4566. The bill was introduced in the House of Representatives on September 27, 2019, and was passed by the House by voice vote on December 9, 2019. The Senate passed the bill without amendment by voice vote the next day. The President signed the bill on December 20, 2019.

914 Sec. 170(f)(17).

915 Sec. 170(f)(8).
or wounded victims of the mass shooting in Virginia Beach, Virginia, that occurred on May 31, 2019, will not fail to qualify for a charitable deduction merely because the contribution is for the exclusive benefit of such families.

Under the provision, certain payments by an organization are treated as: (1) related to the purpose or function constituting the basis for the organization's exempt status; and (2) are not treated as inuring to the benefit of any private individual, if the payments are made in good faith using a reasonable and objective formula that is consistently applied. Such payments are payments made: (1) on or after May 31, 2019, and on or before June 1, 2021 (2) to the spouse or any dependent (as defined in section 152 of the Code) of the dead or wounded victims of the mass shooting in Virginia Beach, Virginia, that occurred on May 31, 2019 (3) by an organization that is exempt from tax under section 501(a) (determined without regard to such payments).

**Effective Date**

The provision is effective on the date of enactment (December 20, 2019).
PART FIVE: FAMILIES FIRST CORONAVIRUS RESPONSE ACT (PUBLIC LAW 116–127) 916

DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE

Present Law

Federal employment taxes

Federal employment taxes are imposed on wages paid to employees with respect to employment and include taxes imposed under the Federal Insurance Contributions Act ("FICA"), the Federal Unemployment Tax Act ("FUTA"), and Federal income tax.917 In addition, Tier 1 of the Railroad Retirement Tax Act ("RRTA") imposes a tax on compensation paid to railroad employees and representatives.918

FICA taxes are comprised of two components: the Old-Age, Survivors, and Disability Insurance ("OASDI") and Hospital Insurance ("Medicare").919 With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer.920 The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020).921 Generally, the OASDI wage base rises based on increases in the national average wage index.922

The employee portion of OASDI taxes must be withheld and remitted to the Federal government by the employer during the quarter, as required by the applicable deposit rules.923 The employer is liable for the employee portion of OASDI taxes, in addition to its own share, whether or not the employer withholds the amount from the employee’s wages.924 OASDI and Medicare taxes are generally allocated by statute among separate trust funds: the OASDI Trust Funds, Medicare’s Hospital Insurance Trust Fund, and Supplementary Medical Insurance Trust Fund.925

916 H.R. 6201. The bill was introduced in the House of Representatives on March 11, 2020, and was passed by the House on March 14, 2020. The Senate passed the bill without amendment on March 18, 2020. The President signed the bill the same day.

917 Secs. 3101, 3111, 3301, and 3401.

918 Sec. 3221.

919 The Hospital Insurance tax includes two components: Medicare tax and Additional Medicare tax. Additional Medicare taxes are imposed on wages in excess of certain thresholds and are only imposed on the employee. Sec. 3101(b). There is no employer match for Additional Medicare tax. For purposes of this explanation, when referencing Medicare taxes, the term does not include Additional Medicare tax.

920 Sec. 3101.

921 Indexed for inflation, the OASDI wage base is $142,800 in 2021.


923 Sec. 3102(a) and Treas. Reg. sec. 31.3121(a)–2. Sec. 6302.

924 Sec. 3102(b).

925 Secs. 201 and 1817 of the Social Security Act, Pub. L. No. 74–271 as amended (42 U.S.C. secs. 401 and 1395ii). Section 201, 42 U.S.C. sec. 402. This section appropriates to the OASI and DI trust funds 100 percent "the taxes imposed . . . by chapter 21 [other than sections 3101(b) and 3111(b) [i.e., current sections 3101(a) and 3111(a)]] of the Internal Revenue Code of 1954"
Generally, the term “wages” for OASDI tax purposes means all remuneration for “employment,” including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions. The name given to the remuneration for employment is immaterial. OASDI wages includes salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term “employment” is generally defined for FICA tax purposes as any service, of whatever nature, performed by an employee for the person employing him or her, with certain specific exceptions.

**OASDI Trust Funds**

The taxes related to the OASDI program collected from FICA and under the Self-Employment Contributions Act (“SECA”) are deposited into two separate OASDI Trust Funds: (1) the Old-Age and Survivors Insurance (“OASI”) Trust Fund which pays retirement and survivor benefits, and (2) the Disability Insurance (“DI”) Trust Fund which pays disability benefits. The major source of income to the OASDI Trust Funds is employment taxes, specifically FICA and SECA. The OASDI Trust Funds are financial accounts in the U.S. Treasury. The only purposes for which these trust funds can be used are to pay benefits and program administrative costs. A fixed proportion (dependent on the allocation of tax rates by trust fund) of the taxes received under FICA and SECA is deposited in the OASI Trust Fund to the extent that such taxes are not needed immediately to pay expenses. Taxes are deposited in the fund on every business day and the Railroad Retirement Board (“RRB”). The SSA collects taxes to fund the program, while the RRB is tasked with distributing benefits to eligible railroad industry employees and their family members to provide income assurance during retirement. These two governing bodies cooperate in determining an individual’s benefits.

**Railroad retirement program**

Railroad workers do not participate in the OASDI system. Compensation subject to RRTA tax is exempt from FICA taxes. Instead, the railroad retirement system, while separate from and parallel to the Social Security Administration ("SSA"), is overseen by the SSA.

**RRTA tax rates**

The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of serv-

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926 Sec. 3121(a).
927 42 U.S.C. sec. 401.
928 Sec. 3121(b)(9).
Employees whose compensation is subject to RRTA are ultimately eligible for railroad retirement benefits that fall under a two-tier structure. Rail employees and employers pay tier 1 taxes at the same rate as other employment taxes. In addition, rail employees and employers both pay tier 2 taxes which are used to finance railroad retirement benefits over and above social security benefit levels. Tier 2 benefits are similar to a private defined benefit pension. Those taxes are funneled to the railroad retirement system and used to fund basic retirement benefits for railroad workers and an investment trust that generates returns for the pension fund.

Coordination between OASDI Trust Funds and RRB’s Social Security Equivalent Benefit Fund

The railroad retirement system and the OASDI programs have been coordinated financially since 1951. The purpose of the financial interchange is to place the OASDI Trust Funds in the same position they would have been in if railroad employment had been covered under OASDI since its inception. Generally, under the interchange, for a given fiscal year there is computed the revenue that would have been collected by the OASDI Trust Funds if railroad employment had been covered directly by the SSA. This amount is netted against the amount of benefits SSA would have paid to railroad beneficiaries based on railroad and nonrailroad earnings during that period. Where OASDI benefits that would have been paid exceed revenue to the trust funds that would have been due, the excess, plus an allowance for interest and administrative expenses, is transferred from the OASDI Trust Funds to the RRB’s Social Security Equivalent Benefit Account. If revenue exceeds benefits, the RRB would transfer an amount equal to the difference from the RRB’s Social Security Equivalent Benefit Account to the OASDI Trust Funds.

OASDI and Medicare benefits

The OASDI program under the Social Security Act provides for the payment of benefits to individuals based on wages earned as an employee and credited to the employee’s earnings record. Eligibility for Medicare coverage under the Social Security Act generally is based on eligibility for OASDI benefits and, thus, on wages credited to an employee’s earnings record. The definitions of “wages” and “employment” for purposes of OASDI and Medicare eligibility are similar to those definitions for FICA tax purposes described above.

929Secs. 3201 through 3233. Instead of FICA taxes, railroad employers and employees are subject, under the RRTA, to taxes equivalent to the Social Security and Medicare taxes under FICA. Under the RRTA, employers and employees are also subject to an additional tax, referred to as the “tier 2” tax, on compensation up to a certain amount.

9307.65 percent, consisting of 6.2 percent for retirement on earnings up to $137,700 in 2020, and 1.45 percent for Medicare hospital insurance on all earnings. An additional 0.9 percent in Medicare taxes are withheld from employees on earnings above $200,000.

931In 2020, the tier 2 tax rate on earnings up to $102,300 is 4.9 percent for employees and 13.1 percent for employers.

932OASDI benefits are provided by Title II of the Social Security Act (42 U.S.C. secs. 401 et seq.).

933Sec. 226 of the Social Security Act (42 U.S.C. sec. 426).

Self-employment taxes

SECA imposes tax on the self-employment income of an individual. SECA taxes consist of OASDI tax and Medicare tax. Under the OASDI component, the rate of tax is 12.4 percent on self-employment income up to the OASDI wage base ($137,700 for 2020). Under the basic Medicare tax component, the second rate of tax is 2.9 percent of all self-employment income (without regard to the OASDI wage base). As is the case with employees, an additional Medicare tax applies to the Medicare portion of SECA tax on self-employment income in excess of a threshold amount.

Self-employment income subject to SECA tax is determined as the net earnings from self-employment derived by an individual during any taxable year, subject to certain exceptions. Net earnings from self-employment is the gross income derived by an individual from any trade or business less allowed deductions which are attributable to the trade or business and permitted under the SECA rules. Certain passive income and related deductions are not taken into account in determining net earnings from self-employment, including rentals from real estate unless received in the course of a trade or business as a real estate dealer, dividends and interest unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities, and sales or exchanges of capital assets and certain other property unless the property is stock in trade which would properly be included in inventory or held primarily for sale to customers in the ordinary course of the trade or business.

For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer’s net self-employment income (determined without regard to this deduction) and one-half of the sum of the rates for OASDI and Medicare, i.e., 7.65 percent of net earnings. This deduction is determined without regard to the 0.9 percent Additional Medicare tax that may apply to an individual. This deduction reflects the fact that the FICA rates apply to an employee’s wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual’s net earnings are economically equivalent to an employee’s wages plus the employer share of FICA taxes. This is generally referred to as the “regular method” of determining net earnings from self-employment, and in Internal Revenue Service forms and publications is expressed as multiplying total net earnings from self-employment by 92.35 percent.

Footnotes:
935 Secs. 1401(a), 1401(b).
936 Sec. 1401(a). In calculating the SECA tax for OASDI, the OASDI wage base taken into account is reduced by FICA wages paid to the individual during the taxable year.
937 Sec. 1401(b)(1).
938 Sec. 1401(b)(2).
939 Sec. 1402(a)(1).
940 Sec. 1402(a)(2).
941 Sec. 1402(a)(3).
942 Sec. 1402(a)(12).
943 The deduction is intended to provide parity between FICA and SECA taxes because the employer may deduct, as a business expense, its share of the FICA taxes paid. As presently written, the deduction for SECA taxes is not the exact economic equivalent to the deduction for FICA taxes. See Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures, (JCS–2–05), January 27, 2005, for a detailed description of this issue.
Employment tax and income tax in the U.S. territories

**FICA tax**

Employers and employees in the U.S. territories are generally subject to FICA payroll tax obligations.\(^\text{944}\) In contrast, employers and employees in the territories are generally not subject to withholding at the source for Federal income tax, although they are subject to withholding of local taxes.\(^\text{945}\) These payroll obligations of the employers are generally applicable to Federal agencies with personnel in the territory. Employers in the territories file quarterly tax returns with the Federal government to report and pay FICA taxes for employees in the respective territories.

**Income tax**

Citizens of the United States are generally subject to Federal income tax on their worldwide income, including those citizens in the U.S. territories. Residents of the U.S. territories are generally subject to the Federal income tax system based on their status as U.S. citizens or residents in the territories, with certain special rules for determining residence and source of income specific to the territory.

The application of the Federal income tax rules to the territories varies from one territory to another. Three territories, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code territories because the Code serves as the internal tax law of those territories (substituting the particular territory for the United States wherever the Code refers to the United States). A resident of one of those territories generally files a single tax return only with the territory of which the individual is a resident, and not with the United States. Income tax paid by a bona fide resident of a mirror Code territory generally is allocated between the U.S. government and the territory government under special rules administered by the U.S. Treasury Department and the revenue authority of the territory government.

American Samoa and Puerto Rico, by contrast, are referred to as non-mirror Code territories that have their own internal tax laws. A resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the territory of residence and the United States. In general, U.S.-source income and other income from outside the territory of residence is included on a U.S. income tax return, and income from sources within the territory of residence is reported on the territory income tax return.

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\(^{944}\) The U.S. territories referred to in this document are American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

\(^{945}\) Under section 3401(a)(8), most wages paid to U.S. persons for services performed in one of the territories are excluded if the payments are subject to withholding by the territory, or, in the case of Puerto Rico, the payee is a bona fide resident of the territory for the full year.

\(^{946}\) Sec. 932 and former sec. 935.
1. Payroll credit for required paid sick leave (sec. 7001 of the Act)

**Explanation of Provision**

**In general**

Under the provision, an employer is allowed a credit against the Old-Age, Survivors, and Disability Insurance Act (“OASDI”) tax or Railroad Retirement Tax Act (“RRTA”) tax imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages paid by the employer with respect to that calendar quarter, subject to the limits described below. The provision defines qualified sick leave wages as wages (as defined in section 3121(a)) and compensation (as defined in section 3231(e)) paid by an employer which are required to be paid by reason of Division E of the bill, the Emergency Paid Sick Leave Act (“EPSLA”). As described below, the credit may be increased by certain health plan expenses of the employer.

The EPSLA requires certain employers to provide an employee with paid sick time to the extent that the employee is unable to work or telework due to a need for leave because: (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19 and seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to an order described in clause (1) or has been advised as described in clause (2); (5) the employee is caring for the employee’s son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID–19 precautions; or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.947

**Credit against OASDI and RRTA tax**

The provision limits the amount of qualified sick leave wages taken into account with respect to an individual for purposes of the credit. The provision provides different limitations for different circumstances under which qualified sick leave wages are paid. In the case of paid sick time qualifying under clauses (1), (2), or (3) above, the amount of qualified sick leave wages taken into account for purposes of the credit may not exceed $511 for any day (or any portion thereof) for which the individual is paid such sick time. In the case of paid sick time qualifying under clauses (4), (5), or (6) above, the amount of qualified sick leave wages taken into account may not exceed $200 for any day (or portion thereof) for which the individual is paid such sick time. In addition, the provision provides that the aggregate number of days taken into account for the calendar quarter with respect to an individual under all clauses may

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947 Division E of the bill, sec. 5102(a).
not exceed the excess (if any) of 10 over the aggregate number of days so taken into account for all preceding calendar quarters.

The credit allowed is increased under the provision by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified sick leave wages for which the credit is allowed. Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees’ income as coverage under an accident or health plan. Qualified health plan expenses are allocated to qualified sick leave wages in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary, such allocations are treated as properly made under the provision if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

The provision provides that the credit allowed may not exceed the OASDI tax or RRTA tax imposed on the employer, reduced by any credits allowed for the employment of qualified veterans and research expenditures of qualified small businesses for that calendar quarter on the wages paid with respect to all the employer’s employees. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

If an employer claims a credit under this provision, the amount so claimed is included in gross income. Thus, the credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction, deduction for qualified sick leave wages, or deduction for health plan expenses (or any amount capitalizable to basis). For example, assume an employer claims a credit of $5,510 for $5,110 of qualified sick leave wages and $400 of health plan expenses paid during the quarter. Under the provision, the employer has an offsetting income inclusion amount of $5,510, and the employer may deduct $5,110 of qualified sick leave wages and $400 of health plan expenses (assuming such costs are not subject to capitalization). In addition, the employer’s income tax deduction for any tax imposed by section 3111(a) or 3221(a), the employer’s share of OASDI or RRTA tax, for such quarter will not be reduced.

Any qualified sick leave wages taken into account under the provision are not taken into account for purposes of determining a section 45S credit. Thus, the employer may not claim a credit under

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948 Group health plan for this purpose is defined in section 5000(b)(1).
949 For the exclusion, see section 106(a).
950 This credit is described in section 3111(e).
951 This credit is described in section 3111(f).
952 The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b).
953 Note that the qualified sick leave wages paid are not subject to the tax imposed by section 3111(a) or 3221(a). Employers also receive an increase in the otherwise available credit in the amount of the tax imposed by section 3111(b) on qualified sick leave wages.
954 Section 45S provides an employer credit for certain paid family and medical leave.
section 45S with respect to the qualified sick leave wages paid, but may be able to take a credit under section 45S with respect to any additional wages paid, provided the requirements of section 45S are met with respect to the additional wages.

Under the provision, an employer may elect, at such time and in such manner as provided by the Secretary of the Treasury (or the Secretary's delegate), to have the provision not apply to such employer for a calendar quarter. Further, the credit allowed under this provision does not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of those entities. Under the provision, employers in the U.S. territories may claim the credit by filing their quarterly Federal employment tax returns.

The provision provides that the Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this provision, including regulations or other guidance: (1) to prevent the avoidance of the purposes of the limitations under this provision; (2) to minimize compliance and record-keeping burdens under this provision; (3) providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit under this provision; (4) for recapturing the benefit of credits determined under this provision in cases where there is a subsequent adjustment to the credit; and (5) to ensure that the wages taken into account under this provision conform with the paid sick time required to be provided under the EPSLA. With respect to clause (5), it is intended that the Secretary of the Treasury (or the Secretary's delegate) be provided broad authority to ensure qualified sick leave wages under this provision includes paid sick time required to be paid under the EPSLA.

Under the provision, amounts are appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974 equal to the reduction in revenues to the Treasury by reason of the provision. Such amounts are transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the OASDI Trust Funds or Social Security Equivalent Benefit Account had this provision not been enacted.

The IRS has subsequently implemented this provision.

**Effective Date**

The provision is effective on the date of enactment (March 18, 2020). The provision applies for the period that begins on a date within 15 days of the date of enactment, prescribed by the Secretary of the Treasury (or the Secretary's delegate), and that ends on December 31, 2020.
2. Credit for sick leave for certain self-employed individuals 
(see. 7002 of the Act)

Explanation of Provision

In general

Under the provision, an eligible self-employed individual is allowed an income tax credit for any taxable year for a qualified sick leave equivalent amount, as described below. An eligible self-employed individual is defined as an individual who regularly carries on any trade or business and would be entitled to receive paid leave during the taxable year under Division E of the bill, the Emergency Paid Sick Leave Act (“EPSLA”), if the individual were an employee of an employer (other than himself or herself) that is subject to the requirements of the Act.

The EPSLA requires certain employers to provide an employee with paid sick time to the extent that the employee is unable to work or telework due to a need for leave because: (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19; (3) the employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to an order described in clause (1) or has been advised as described in clause (2); (5) the employee is caring for the employee’s son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID–19 precautions; or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Qualified sick leave equivalent amount

The qualified sick leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days during the taxable year that the self-employed individual cannot perform services for which that individual would have been entitled to sick leave pursuant to the EPSLA (if the individual were employed by an employer), multiplied by the lesser of two amounts: (a) $511 in the case of paid sick time described in clauses (1), (2), or (3) above ($200 in the case of paid sick time described in clauses (4), (5), or (6) above); or (b) 100 percent of the average daily self-employment income of the individual for the taxable year in the case of any day of paid sick time described in clauses (1), (2), or (3) above (67 percent in the case of paid sick time described in clauses (4), (5), or (6) above).

The number of days taken into account in determining the qualified sick leave equivalent amount may not exceed, with respect to any taxable year, 10 days, taking into account any days taken in all preceding taxable years. The individual’s average daily self-em-

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959 Within the meaning of sec. 1402.
960 Division E of the bill, sec. 5102(a).
961 Division E of the bill.
ployment income under the provision is an amount equal to the net earnings from self-employment for the taxable year divided by 260.

**Additional rules**

The provision provides that the credit allowed is refundable. No credit is allowed to an individual unless the individual maintains such documentation as the Secretary of Treasury (or the Secretary's delegate) may prescribe to establish that the individual is an eligible self-employed individual.

If an eligible self-employed individual receives qualified sick leave wages, the individual's qualified sick leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified sick leave equivalent amount and the qualified sick leave wages received exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in clause (1), (2), or (3) above, with respect to section 5102(a) of the EPSLA). For example, assume that an eligible self-employed individual's qualified sick leave equivalent amount is $1,500, but the individual also works for a covered employer under the EPSLA and received qualified sick leave wages under clause (5) above (with respect to section 5102(a) of such Act) of $1,000 to care for the individual's son or daughter while school was closed due to COVID–19. The individual's qualified sick leave equivalent amount would be reduced by $500, resulting in a credit under the provision of $1,000.

**Application of credit in certain territories**

Under the provision, the Secretary of the Treasury (or the Secretary's delegate) is directed to make payments to each territory with a mirror Code tax system that relate to the cost (if any) of each territory's credits for sick leave for certain self-employed individuals. The Secretary is further directed to make similar payments to each non-mirror Code territory.

With respect to mirror Code territories, the Secretary makes payments equal to the loss in revenue by reason of the application of the credit for sick leave for certain self-employed individuals to the territory's mirror Code. This amount is determined by the Secretary based on information provided by the governments of the respective territories.

With respect to Puerto Rico and American Samoa (non-mirror Code territories), the Secretary is directed to make payments in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of each territory from the credit for sick leave for certain self-employed individuals if a mirror Code tax system had been in effect in such territory. These payments will not be made unless the territory has a plan approved by the Secretary to promptly distribute the payments to its residents.

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962 Any refund due to an individual is treated in the same manner as a refund due from a credit provision. 31 U.S.C. sec. 1324. Thus, amounts are appropriated to the Secretary of the Treasury for refunding such amounts.

963 As defined by sec. 7001(c) of the Act, described above.

964 $(1,500 + $1,000)–$2,000 = $500.

965 $1,500–$500 = $1,000.
**Regulatory authority**

The Secretary of the Treasury (or the Secretary's delegate) is directed to prescribe such regulations or other guidance as may be necessary to carry out the purposes of the bill, including (1) to effectuate the purposes of this provision, and (2) to minimize compliance and record-keeping burdens under the provision. The IRS has subsequently implemented this provision.966

**Effective Date**

The provision is effective on the date of enactment (March 18, 2020). The only days that may be taken into account in determining the qualified sick leave equivalent amount are days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of enactment and ending on December 31, 2020.

3. **Payroll credit for required paid family leave (sec. 7003 of the Act)**

**Explanation of Provision**

**In general**

Under the provision, an employer is allowed a credit against the Old-Age, Survivors, and Disability Insurance ("OASDI") tax or Railroad Retirement Tax Act ("RRTA") tax imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified family leave wages paid by the employer with respect to that calendar quarter, subject to the limits described below. The provision defines qualified family leave wages as wages (within the meaning of section 3121(a)) and compensation (within the meaning of section 3231(e)) paid by an employer by reason of Division C of the bill, the Emergency Family and Medical Leave Expansion Act ("EFMLEA"). As described below, the credit may be increased by certain health plan expenses of the employer.

The EFMLEA requires certain employers to provide public health emergency leave to employees under the Family and Medical Leave Act of 1993 ("FMLA").967 This requirement generally applies when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency. The bill defines a public health emergency as an emergency with respect to COVID–19 declared by a Federal, State, or local authority. An employer that is required to provide this additional family and medical leave is allowed a tax credit in respect of the leave.

The first 10 days of public health emergency leave required under the EFMLEA may consist of unpaid leave, after which paid leave is required. The paid leave is for the duration of the period provided in the EFMLEA, which is a maximum of 10 weeks. The amount of required paid leave under the provision is based on an

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967 Division C of the bill, section 3102.
amount not less than two-thirds of an employee’s regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work. Additional guidance is provided for employees with varying schedules. The paid leave mandated by the EFMLEA may not exceed $200 per day and $10,000 in the aggregate.

Credit against OASDI and RRTA tax

Under the provision, employers are allowed a credit against OASDI or RRTA taxes in an amount equal to 100 percent of qualified family leave wages paid by the employer during the quarter. Qualified family leave wages for purposes of the credit means wages paid by an employer which were required to be paid pursuant to the EFMLEA. The maximum amount of qualified family leave wages eligible for the credit is $200 for any day (or portion thereof) for which the employee is paid qualified family leave wages, and in the aggregate with respect to all calendar quarters, $10,000. The credit is not allowed in respect of unpaid leave.

The credit allowed is increased under the provision by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified family leave wages for which the credit is allowed. The provision defines qualified health plan expenses as amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees’ income as coverage under an accident or health plan. Qualified health plan expenses are allocated to qualified family leave wages in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary, such allocations are treated as properly made under the provision if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

The provision provides that the credit allowed may not exceed the OASDI tax or RRTA tax imposed on the employer, reduced by any credits allowed for the employment of qualified veterans and research expenditures of qualified small businesses for that calendar quarter on the wages paid with respect to all of the employer’s employees. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described under the prior sentence, such excess is treated as a refundable overpayment.

If an employer claims a credit under this provision, the amount so claimed is included in gross income. Thus, the credit is not taken into account for purposes of determining any amount allow-

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968 Sec. 3121(a) (defining wages for FICA tax purposes).
969 Sec. 3221(a) (defining compensation for RRTA tax purposes).
970 Group health plan for this purpose is defined in section 5000(b)(1).
971 For the exclusion, see section 106(a).
972 This credit is described in section 3111(e).
973 This credit is described in section 3111(d).
974 The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b).

In addition, any amount that is due to an employer is treated in the same manner as a refund due from a credit provision, 31 U.S.C. sec. 1324. Thus, amounts are appropriated to the Secretary of the Treasury for refunding such excess amounts.
able as a payroll tax deduction, deduction for qualified family leave wages, or deduction for health plan expenses (or any amount capitalizable to basis). For example, assume an employer claims a credit of $2,700 for $2,500 of qualified family leave wages and $200 of health plan expenses paid during the quarter. Under the provision, the employer will have an offsetting income inclusion amount of $2,700, and the employer may deduct $2,500 of qualified family leave wages and $200 of health plan expenses (assuming such costs are not subject to capitalization). In addition, the employer's income tax deduction for any tax imposed by section 3111(a) or 3221(a), the employer's share of OASDI or RRTA tax, for such quarter will not be reduced.975

Any wages taken into account in determining the credit under this provision are not taken into account for purposes of determining the section 45S credit. Thus, the employer may not claim a credit under section 45S with respect to the qualified family leave wages paid, but may be able to take a credit under section 45S with respect to any additional wages paid, provided the requirements of section 45S are met with respect to the additional wages.

Under the provision an employer may elect, at such time and in such manner as provided by the Secretary of the Treasury (or the Secretary's delegate), to have the provision not apply to the employer for a calendar quarter. The credit allowed under this provision does not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of these entities. Under the provision, employers in the territories may claim the credit by filing their quarterly Federal employment tax returns.

The provision provides that the Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of the provision, including regulations or other guidance: (1) to prevent the avoidance of the purposes of the limitations under the provision; (2) to minimize compliance and record-keeping burdens under the provision; (3) providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit under the provision; (4) for recapturing the benefit of credits determined under the provision in cases where there is a subsequent adjustment to the credit; and (5) to ensure that the wages taken into account under the provision conform with the paid family leave required to be provided under the EFMLEA.976 With respect to clause (5), it is intended that the Secretary of the Treasury (or the Secretary's delegate) be provided broad authority to ensure qualified family leave wages under this provision includes paid sick time required to be paid under the EFMLEA.977

Under the provision, amounts are appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account
established under the Railroad Retirement Act of 1974\textsuperscript{978} equal to the reduction in revenues to the Treasury by reason of the provision. Such amounts are transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the Trust Funds or Account had the provision not been enacted.

The IRS has subsequently implemented this provision\textsuperscript{979}

**Effective Date**

The provision is effective on the date of enactment (March 18, 2020). The provision applies for the period that begins on a date, within 15 days of the date of enactment, prescribed by the Secretary of the Treasury (or the Secretary’s delegate) and that ends on December 31, 2020.

4. **Credit for family leave for certain self-employed individuals (sec. 7004 of the Act)**

**Explanation of Provision**

**In general**

Under the provision, an eligible self-employed individual is allowed an income tax credit for any taxable year for a qualified family leave equivalent amount, as described below. An eligible self-employed individual is defined as an individual who regularly carries on any trade or business\textsuperscript{980} and would be entitled to receive paid leave during the taxable year under Division C of the bill, the Emergency Family and Medical Leave Expansion Act (“EFMLEA”), if the individual were an employee of an employer (other than himself or herself) that is subject to the requirements of the Act.

The EFMLEA requires certain employers to provide public health emergency leave to employees under the Family and Medical Leave Act of 1993 (“FMLA”).\textsuperscript{981} This requirement generally applies when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency. The bill defines a public health emergency as an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

An employer that is required to provide this additional family and medical leave is allowed a tax credit in respect of the leave. In general, under the provision, a self-employed individual is allowed a similar tax credit in situations in which a credit would be allowed if the individual were an employee of an employer subject to the leave requirements.

The first 10 days of public health emergency leave required under the EFMLEA may consist of unpaid leave, after which paid leave is required. The paid leave is for the duration of the period provided in the EFMLEA, which is a maximum of 10 weeks. The amount of required paid leave under the provision is based on an

\textsuperscript{978}Sec. 15A(a) (45 U.S.C. sec. 231n–1(a)).
\textsuperscript{980}Within the meaning of sec. 1402.
\textsuperscript{981}Division C of the bill.
amount not less than two-thirds of an employee’s regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work. Additional guidance is provided for employees with varying schedules. The paid leave mandated by the EFMLEA may not exceed $200 per day and $10,000 in the aggregate.

**Qualified family leave equivalent amount**

The qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 50) during the taxable year that the self-employed individual cannot perform services for which that individual would be entitled to paid leave pursuant to the EFMLEA if the individual were employed by an employer, multiplied by the lesser of two amounts: (1) 67 percent of the average daily self-employment income of the individual for the taxable year, or (2) $200. The individual’s average daily self-employment income under the provision is an amount equal to the individual’s net earnings from self-employment for the year divided by 260.

**Additional rules**

The provision provides that the credit allowed is refundable. No credit is allowed to an individual unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe to establish that the individual is an eligible self-employed individual.

If an eligible self-employed individual receives qualified family leave wages, the individual’s qualified family leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified family leave equivalent amount and the qualified family leave wages received exceeds $10,000. For example, assume that an eligible self-employed individual’s qualified family leave equivalent amount is $5,000, but the individual also works for an employer that is a covered employer under the EFMLEA and received qualified family leave wages of $9,000 to care for the individual’s son or daughter while school was closed due to COVID–19. The individual’s qualified family leave equivalent amount would be reduced by $4,000, resulting in a credit under the provision of $1,000.

**Application of credit in certain territories**

Under the provision, the Secretary of the Treasury (or the Secretary’s delegate) makes payments to each territory with a mirror Code tax system that relate to the cost of each territory’s credits for family leave for certain self-employed individuals. The Secretary of the Treasury (or the Secretary’s delegate) makes similar payments to each non-mirror Code territory.

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982 Division C of the bill.

983 Any refund due to an individual is treated in the same manner as a refund due from a credit provision, 31 U.S.C. sec. 1324. Thus, amounts are appropriated to the Secretary of the Treasury for refunding such amounts.

984 As defined by sec. 7903(c) of the bill, described above.

985 ($5,000 + $9,000) − $10,000 = $4,000.

986 $5,000 − $4,000 = $1,000.
With respect to mirror Code territories, the Secretary of the Treasury (or the Secretary’s delegate) makes payments equal to the loss in revenue by reason of the application of the credit for family leave for certain self-employed individuals to the territory's mirror Code. This amount is determined by the Secretary of the Treasury (or the Secretary’s delegate) based on information provided by the governments of the respective territories.

With respect to Puerto Rico and American Samoa (non-mirror Code territories), the Secretary makes payments in an amount estimated by the Secretary of the Treasury (or the Secretary’s delegate) as being equal to the aggregate benefits that would have been provided to the residents of each territory from the credit for family leave for certain self-employed individuals if a mirror Code tax system had been in effect in such territory. These payments will not be made unless the territory has a plan approved by the Secretary of the Treasury (or the Secretary’s delegate) to promptly distribute the payments to its residents.

**Regulatory authority**

The Secretary of the Treasury (or the Secretary's delegate) is directed to prescribe such regulations as are necessary to carry out the purposes of the provision, including (1) to prevent the avoidance of the purposes of the bill, and (2) to minimize compliance and record-keeping burdens under the provision.

The IRS has subsequently implemented this provision.\(^{987}\)

**Effective Date**

The provision is effective on the date of enactment (March 18, 2020). The only days that may be taken into account in determining the qualified family leave equivalent amount are days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary’s delegate) which is during the 15-day period beginning on the date of enactment and ending on December 31, 2020.

5. Special rule related to tax on employers (sec. 7005 of the Act)

**Explanation of Provision**

Under the provision, any wages or compensation required to be paid to employees by reason of the Emergency Family and Medical Leave Expansion Act (“EFMLEA”) or the Emergency Paid Sick Leave Act (“EPSLA”) are not considered wages for purposes of Old-Age, Survivors, and Disability Insurance (“OASDI”) tax or compensation for purposes of Railroad Retirement Tax Act (“RRTA”) tax. As a result, no OASDI or RRTA taxes will be collected on such amounts from employers to be contributed to the OASDI or railroad retirement programs.

The amount of the credit allowed by sections 7001 and 7003 of the bill is increased by the amount of tax imposed by section 5.

Section 3111(b) imposes on the employer a Medicare hospital insurance excise tax of 1.45 percent on all wages paid by the employer.

Secs. 201 and 1817 of the Social Security Act, Pub. L. No. 74–271 as amended (42 U.S.C. secs. 401 and 1395i). Section 201, 42 U.S.C. sec. 402. This section appropriates to the OASI and DI trust funds 100 percent "the taxes imposed . . . by chapter 21 (other than sections 3101(b) and 3111(b) [i.e., current sections 3101(a) and 3111(a)]) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code)" "determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages." Accordingly, the amount appropriated is based on the tax rate in effect on wages as defined in the statute. Similarly, section 1817 of the Social Security Act, 42 U.S.C. sec. 1395i, appropriates to the HI trust fund 100 percent of "the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages."

The provision provides that amounts will be transferred to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Social Security Equivalent Benefit Account from Treasury’s general fund in an amount equal to the reduction in revenues to the Treasury resulting from not treating such paid emergency sick leave and emergency family and medical leave as wages or compensation for employment tax purposes. Such amounts are to be transferred from the general fund at such times and in such manner as to replicate, to the extent possible, the transfers which would have occurred to such Trust Fund or Account had the provision not been enacted.

Effective Date

The provision is effective on the date of enactment (March 18, 2020).
PART SIX: CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (“CARES”) ACT (PUBLIC LAW 116–136) 990

TITLE II—ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

Subtitle B—Rebates and Other Individual Provisions

1. 2020 recovery rebates for individuals (sec. 2201 of the Act and sec. 6428 of the Code)

Present Law

In general

A United States citizen or resident alien generally is subject to the U.S. individual income tax on his or her worldwide taxable income. Taxable income equals the taxpayer's total gross income less certain exclusions, exemptions, and deductions. In determining taxable income, an individual may claim either a standard deduction or itemized deductions.

An individual's income tax liability is determined by computing his or her regular income tax liability (and any additional tax liabilities such as self-employment taxes or household employment taxes) and, if applicable, alternative minimum tax liability. After computing income tax liability, all withholding and estimated tax payments as well as other available credits are applied to determine whether there is a balance due (i.e., tax owed for that year) or an overpayment that may be refunded for that taxable year.

There is no permanent provision under present law that authorizes rebates to individuals during a taxable year. As part of the Economic Stimulus Act of 2008, Congress enacted a temporary stimulus provision under former section 6428. An overview of the computation of individual income tax liability, credits, and former section 6428 is described below.

Income tax liability

Regular income tax liability is determined by applying the regular income tax rate schedules (or tax tables) to the individual’s taxable income. The regular income tax rate schedules are divided into several ranges of income, known as income brackets, and the statutory tax rate on an additional dollar of income (referred to as the “marginal tax rate”) increases as the individual’s income increases from one bracket to the next. The income bracket amounts are adjusted annually for inflation. Separate rate schedules apply based on filing status: single individuals (other than heads of household).
households and surviving spouses), heads of households, married individuals filing joint returns (including surviving spouses), married individuals filing separate returns, and estates and trusts.

Lower rates may apply to capital gains and certain dividends ("qualified dividends") than the rates generally applicable to wages and other so-called "ordinary income." Additional taxes not based on the income brackets may also be owed by the individual for the taxable year, such as self-employment tax or household employment taxes.

Refunds and refundable tax credits

In general

An individual may reduce his or her income tax liability by available income tax credits. In some instances, a credit is wholly or partially refundable. That is, if the amount of a taxpayer's refundable income tax credits exceeds the taxpayer's income tax liability (net of other nonrefundable credits), such credits create an overpayment, which may generate a refund or be credited against any other internal revenue tax liability. A refund or credit is authorized for a taxable year only if an overpayment exists, that is, if the amounts paid or deemed paid exceed the tax liability for that year. The refundable tax credits that may generate a refund include (i) actual remittances or withheld taxes and (ii) credits that deem payments to have been made. Two major refundable credits are the child tax credit and the earned income tax credit.

All other credits are nonrefundable in that they may reduce or eliminate income tax liability but may not cause this liability to decrease below zero. Even if an overpayment exists for a year, a refund may be withheld to offset against tax liabilities from other taxable periods or against certain nontax debts.

Child tax credit

An individual may claim a tax credit of $2,000 for each qualifying child under the age of 17. Generally, under section 152, a qualifying child must have the same principal place of abode as the taxpayer for more than half of the taxable year, must not provide over half of his or her own support for the taxable year, must not file a joint return for the taxable year, and must satisfy a relationship test. To satisfy the relationship test, the child must be the taxpayer's son, daughter, stepson, stepdaughter, brother, sister, stepsister, stepsister, adopted child, foster child, or a descendant of any such individual. The credit is phased out and reduced to zero at higher-income levels. A child who is not a citizen, national, or resident of the United States may not be a qualifying child.

No credit is allowed unless the individual includes the name and Social Security Number ("SSN") of each qualifying child on the individual's income tax return. For this purpose, the SSN must be
issued by the Social Security Administration before the due date of the return (including extensions) and must be issued to a citizen of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the United States.\textsuperscript{999}

To the extent the child tax credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child tax credit) equal to 15 percent of earned income in excess of $2,500,\textsuperscript{1000} not to exceed $1,400 per child in 2020. The maximum amount of the refundable portion of the credit is indexed for inflation.

**Tax treatment of the U.S. territories**

Citizens of the United States are generally subject to Federal income tax on their U.S. and foreign income regardless of whether they live in a U.S. State, the District of Columbia, a foreign country, or a U.S. territory. Residents of the U.S. territories are generally subject to the Federal income tax system based on their status as U.S. citizens or residents in the territories, with certain special rules for determining residence and source of income specific to the territory.

The application of the Federal tax rules to the territories varies from one territory to another. Three territories, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code territories because the Code serves as the internal tax law of those territories (substituting the particular territory for the United States wherever the Code refers to the United States). A resident of one of those territories generally files a single tax return only with the territory of which the individual is a resident, and not with the United States.\textsuperscript{1001} Income tax paid by a bona fide resident of a mirror Code territory generally is allocated between the U.S. government and the territory government under special rules administered by the U.S. Treasury Department and the revenue authority of the territory government.

American Samoa and Puerto Rico, by contrast, are non-mirror Code territories. These two territories have their own internal tax laws,\textsuperscript{1002} and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the territory of residence and the United States. In general, U.S.-source income and other income from outside the territory of residence is included on a U.S. income tax return, and income from sources within the territory of residence is reported on the territory income tax return.

Residents of the territories may be eligible for refundable income tax credits. Under which law (the Code, a mirror Code, or the internal tax law of a non-mirror Code territory) and by which method (filing with the Internal Revenue Service or with the territory revenue authority) a territory resident claims a refundable credit var-

\textsuperscript{999}Sec. 24(h)(7).

\textsuperscript{1000}Families with three or more children may determine the additional child tax credit by taking the greater of (1) the earned income formula, or (2) the alternative formula (i.e., the amount by which the taxpayer's Social Security taxes exceed the taxpayer's earned income tax credit).

\textsuperscript{1001}Sec. 932 and former sec. 935.

\textsuperscript{1002}The tax laws of American Samoa follow, with certain modifications, the Internal Revenue Code as in effect December 31, 2000. See Am. Sam. Code Ann. Sec. 11.0404.
ies from one credit to another. The U.S. Treasury reimburses territory governments for the costs of some refundable credits.

**2008 recovery rebates for individuals**

As part of the Economic Stimulus Act of 2008, Congress enacted a one-time recovery rebate income tax credit for 2008. The credit was refundable, and most taxpayers received advance refunds before filing their 2008 Federal income tax returns.

*Eligibility for and computation of rebate credit*

The credit was the sum of two components, a basic component and a qualifying child component. Eligible individuals were allowed a basic component equal to the greater of:

- Net income tax liability, not to exceed $600 ($1,200 in the case of a joint return), or
- $300 ($600 in the case of a joint return) if the eligible individual had (1) qualifying income of at least $3,000 or (2) a net income tax liability of at least $1 and gross income greater than the sum of the applicable basic standard deduction amount and one personal exemption (two personal exemptions for a joint return).

An eligible individual was any individual other than: (1) a nonresident alien; (2) an estate or trust; or (3) a dependent.

If an individual was eligible for any amount of the basic component, the individual also may have been eligible for the qualifying child component of $300 for each qualifying child of such individual. For these purposes, the child tax credit definition of a qualifying child applied.

The amount of the credit was phased out at a rate of five percent of adjusted gross income (“AGI”) above certain income levels. The beginning point of this phaseout range was $75,000 of AGI ($150,000 in the case of joint returns).

To be eligible for the credit, taxpayers—including both married spouses filing a joint return—had to provide an SSN. There was a limited exception to the SSN requirement where one spouse was a member of the Armed Forces of the United States at any time during the taxable year. In addition, any qualifying child had to have an SSN to qualify for purposes of the qualifying child credit component. Any credit amount allowed for a qualifying child in the case of a taxpayer claiming an individual as a qualifying child but providing an SSN for the individual associated with an individual too

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1004 An eligible individual was any individual other than: (1) a nonresident alien; (2) an estate or trust; or (3) a dependent.

1005 Net income tax liability was defined as the excess of the sum of the individual’s regular tax liability and alternative minimum tax over the sum of all nonrefundable credits (other than the child tax credit).

1006 Qualifying income was defined as the sum of the eligible individual’s: (a) earned income; (b) Social Security benefits; and (c) veteran’s payments. The definition of earned income had the same meaning as the definition for purposes of the earned income tax credit at that time, except that it did not include net earnings from self-employment that are not taken into account in computing taxable income.
In the event of a mathematical or clerical error, the IRS may assess additional tax without issuance of a notice of deficiency as otherwise required. Sec. 6213(b).


IRS Notice 2008–28 created a mechanism for certain individuals not otherwise required to file an income tax return to receive an advance refund amount. 2008–10 I.R.B. 546. Such taxpayers were instructed to file a Form 1040A with specific information entered to allow the IRS to compute the advance refund amount. Revenue Procedure 2008–21 provided additional guidance regarding how to electronically file the form. 2008–12 I.R.B. 657.

Advance payments of recovery rebate

Most taxpayers were allowed the recovery rebate credit in the form of an advance refund amount during 2008, issued either as a direct deposit or as a check from Treasury. The amount of the advance refund was computed in the same manner as the credit, except that it was done on the basis of tax returns filed for 2007 (instead of 2008). Accordingly, the advance refund amount was based on a taxpayer’s filing status, number of qualifying children, AGI, net income tax liability, and qualifying income as reported for 2007. Taxpayers that did not file a 2007 income tax return did not receive the advance refund amount but could claim the recovery rebate amount on their 2008 income tax returns.

On their 2008 income tax returns, taxpayers could reconcile the recovery rebate amount (using 2008 information) with any advance refund amount received during 2008 (using 2007 information). If the recovery rebate amount less the advance refund amount was a positive number (because, for example, the taxpayer paid no tax in 2007 but paid tax in 2008), the taxpayer was allowed that amount as a refundable credit against 2008 tax liability. If, however, the result was negative (because, for example, the taxpayer paid tax in 2007 but owed no tax for 2008), that negative amount did not increase the taxpayer’s tax liability in 2008. Failure to reduce the recovery rebate amount by any advance refund amount was treated as a mathematical or clerical error.

Additional provisions

The Economic Stimulus Act of 2008 required Treasury to make payments to the U.S. territories to compensate them for the cost of the recovery rebate credit. To each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), Treasury was to make a payment in an amount equal to the aggregate amount of the credits allowable by reason of the provision to that territory’s residents against its income tax, based on information provided by the government of the respective territory. To each non-mirror Code territory (American Samoa and Puerto Rico), Treasury was to make a payment in an amount estimated by Treasury as being equal to the aggregate credits that would have been allowed to residents of that territory if a mirror Code tax system had been in effect in that territory. The payment was not made to any territory without a mirror Code unless that territory had a plan that had been approved by the Secretary.

\[1007\] In the event of a mathematical or clerical error, the IRS may assess additional tax without issuance of a notice of deficiency as otherwise required, Sec. 6213(b).


\[1009\] IRS Notice 2008–28 created a mechanism for certain individuals not otherwise required to file an income tax return to receive an advance refund amount. 2008–10 I.R.B. 546. Such taxpayers were instructed to file a Form 1040A with specific information entered to allow the IRS to compute the advance refund amount. Revenue Procedure 2008–21 provided additional guidance regarding how to electronically file the form. 2008–12 I.R.B. 657.
under which the territory would promptly distribute the payment to its residents. A taxpayer who was allowed a credit, or received a payment under a credit-related plan, from the taxpayer’s territory government was not allowed the recovery rebate credit under the Code.

The Economic Stimulus Act of 2008 did not alter any of the offset authority under the law in effect at the time. As such, any overpayment resulting from the recovery rebate credit was subject to the refund offset provisions for tax debts and for certain non-tax debts.

**Explanation of Provision**

In response to the economic and health crises in 2020, Congress enacted a refundable income tax credit for individuals that is advanceable to eligible individuals, as described below.

**In general**

The provision provides a one-year refundable income tax credit for 2020, referred to as the 2020 recovery rebate. The credit is referred to as a rebate because it includes rules, described below, under which the Secretary of the Treasury (herein “Secretary”) makes an advance payment to a taxpayer for the amount of the credit (determined based on prior year filing characteristics or other information) before the taxpayer files a 2020 Federal income tax return. The IRS refers to such advance payments as economic impact payments.

An eligible individual is allowed a refundable income tax credit for the first taxable year beginning in 2020 equal to the sum of:

- $1,200 ($2,400 in the case of a joint return), and
- $500 for each qualifying child of such individual.

An eligible individual is any individual other than (1) a non-resident alien, (2) an estate or trust, or (3) a dependent. For these purposes, the child tax credit definition of a qualifying child applies (generally, a qualifying child as defined in section 152 who is under the age of 17).

Unlike the 2008 recovery rebate credit, there are no eligibility requirements related to minimum levels of qualifying income, gross income, or net tax liability.

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1010 The Economic Stimulus Act of 2008 included a provision that any recovery rebate credit or refund allowed or made to an individual (including to any resident of a U.S. territory) was not taken into account as income and was not taken into account as resources for the month of receipt and the following two months for purposes of determining eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds. A similar provision applicable to all tax refunds, including advance payments of refundable credits, was subsequently codified as section 6409. See infra footnote 35.


1012 Sec. 6428(a).

1013 Sec. 6428(d).
The amount of the credit is phased out at a rate of five percent of AGI above certain threshold amounts.\textsuperscript{1014} The threshold amount at which the credit begins to phase out is $150,000 of AGI for joint filers, $112,500 of AGI for head of household filers, and $75,000 of AGI for all other filers.\textsuperscript{1015} Thus, the credit is fully phased out (i.e., reduced to zero) for joint filers with no children at $198,000 of AGI and for a single filer at $99,000 of AGI.

\textbf{Identification number requirement}

No credit is allowed to an individual who does not include a valid identification number on the individual’s income tax return.\textsuperscript{1016} In the case of a joint return that does not include valid identification numbers for both spouses, no credit is allowed. In addition, a qualifying child shall not be taken into account in determining the amount of the credit if a valid identification number for the child is not included on the return.

For purposes of this requirement, a valid identification number is an SSN as defined for purposes of the child tax credit,\textsuperscript{1017} which means it must be issued by the Social Security Administration before the due date of the return (including extensions) to a citizen of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the United States.\textsuperscript{1018} Two exceptions to this requirement are provided. First, an adoption identification number is considered a valid identification number in the case of a qualifying child who is adopted or placed for adoption. Second, when a married couple files a joint return and at least one spouse was a member of the Armed Forces of the United States during the taxable year for which the return is filed, only one spouse is required to provide a valid identification number.

The failure to provide a correct valid identification number is treated as a mathematical or clerical error. If a taxpayer claims an individual as a qualifying child, but based on the SSN provided the individual is too old to be a qualifying child, the provision of the SSN is treated as a mathematical or clerical error.

\textbf{Advance payments of the recovery rebate credit}

A taxpayer may receive the recovery rebate credit as an advance refund in the form of a direct deposit to their bank account or as a check or prepaid debit card issued by the Secretary during calendar year 2020.\textsuperscript{1019} The amount of the advance refund is com-
computed in the same manner as the recovery rebate credit, except that the calculation is made on the basis of the income tax return filed for 2019 (instead of 2020), if available, or otherwise on the basis of the income tax return filed for 2018. Accordingly, the advance refund amount generally is based on a taxpayer’s filing status, number of qualifying children, and AGI as reported for 2019 or 2018. The Secretary is directed to issue advance refunds as rapidly as possible.

If a taxpayer has not filed an income tax return for 2019 or 2018, in administering the advance refund the Secretary is authorized to use information with respect to that taxpayer that is provided on a 2019 Form SSA–1099, Social Security Benefit Statement, or a 2019 Form RRB–1099, Social Security Equivalent Benefit Statement. Recipients of these forms include Social Security retirement, disability, and survivor benefit recipients and railroad retirees who are not otherwise required to file a Federal income tax return. An individual in one of these categories is allowed a $1,200 payment per person without the necessity of a return filing or other action.

Supplemental Security Income recipients and recipients of compensation and benefit payments from the Department of Veterans Affairs similarly are allowed $1,200 per-person payments automatically without the requirement of filing a return or taking other action. Other taxpayers who did not have a return-filing obligation could register to receive the advance refund by filing a simplified tax return using the “non-filer portal,” a web tool developed by the IRS, or could use a simplified Federal income tax return filing procedure for taxable year 2019.
The amount of the recovery rebate credit allowed on a taxpayer's 2020 income tax return (based on 2020 information) must be reduced (but not below zero) by any advance refund received during 2020 (based on 2019 or 2018 information). If the recovery rebate amount less the advance refund is a positive number (because, for example, a qualifying child was born to the taxpayer during 2020), the taxpayer is allowed that difference as a refundable credit against 2020 income tax liability. If, however, the result is negative (because, for example, the taxpayer's AGI was higher in 2020 and was in the phaseout range), the taxpayer's 2020 tax liability is not increased by that negative amount. In addition, an eligible taxpayer who did not receive an advance refund may claim the recovery rebate amount on his or her 2020 income tax return. A taxpayer's failure to reduce the recovery rebate amount by an advance refund is treated as a mathematical or clerical error. The advance refund is not includible in gross income.

The Secretary may not issue an advance refund after December 31, 2020. Within 15 days of distribution of the advance refund, the Secretary is required to send a notice by mail to the taxpayer's last known address that indicates the method by which the payment was made, the amount of such payment, and a phone number at the IRS to report any failure to receive such payment.

Treatment of the U.S. territories

The provision directs the Secretary to make payments to each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) that relate to the cost (if any) of each territory's recovery rebate credit. The Secretary is further directed to make similar payments to each non-mirror Code territory (American Samoa and Puerto Rico).

The provision requires the Secretary to pay to each mirror Code territory amounts equal to the aggregate amount of the credits allowable by reason of the provision to that territory's residents against its income tax. Such amounts are determined by the Secretary based on information provided by the government of the respective territory.

To each non-mirror Code territory, the provision requires the Secretary to pay amounts estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that territory if a mirror Code tax system had been in effect in that territory. Accordingly, the amount of each payment to a non-mirror Code territory is an estimate of the aggregate

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of other relevant Federal agencies, to provide information regarding the availability of the recovery rebate credit, including information with respect to individuals who may not have filed a tax return for 2019 or 2018. Among other actions, the IRS mailed letters to approximately nine million individuals who typically are not required to file Federal income tax returns but may qualify for an advance refund. IRS. IRS to mail special letter to estimated 9 million non-filers, urging them to claim Economic Impact Payments by Oct. 15 at IRS.gov, IR–2020–203, September 8, 2020, available at https://www.irs.gov/newsroom/irs-to-mail-special-letter-to-estimated-9-million-non-filers-urging-them-to-claim-economic-impact-payment-by-oct-15-at-irs.gov.

Under section 6426(e), the recovery rebate credit is disregarded in the administration of Federal programs and Federally assisted programs. Any refund due to the credit, including any advance payment of the credit, is not taken into account as income and is not taken into account as resources for a period of 12 months from receipt for purposes of determining eligibility for benefits or assistance under any Federal program or under any State or local program financed with Federal funds.
amount of the credits that would be allowed to the territory’s residents if the credit provided by the provision to U.S. residents were provided by the territory to its residents. This payment will not be made to any U.S. territory unless it has a plan that has been approved by the Secretary under which the territory will promptly distribute the payment to its residents.

No credit against U.S. income taxes is permitted under the provision for any person to whom a credit is allowed against territory income taxes as a result of the provision (i.e., under that territory’s mirror income tax). Similarly, no credit against U.S. income taxes is permitted for any person who is eligible for a payment under a non-mirror Code territory’s plan for distributing to its residents the payment described above from the U.S. Treasury.

**Exception from reduction or offset**

Any overpayment resulting from the recovery rebate credit or from similar payments to residents of the U.S. territories is not subject to reduction or offset by other assessed Federal taxes that would otherwise be subject to levy or collection. In addition, the overpayments resulting from these credits are not subject to offset for other taxes or non-tax debts owed to the Federal government or State governments.

As an exception to the above rule, an overpayment resulting from the recovery rebate credit is subject to the offset against overpayments of the amount of any past-due support.\(^\text{1027}\) The term past-due support means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living.\(^\text{1028}\) The State must have notified the Secretary of the taxpayer’s delinquency in order for the offset to apply. If the offset applies, the Secretary remits the offset amount to the State collecting such support and notifies the taxpayer of the remittance. The offset of past-due child support applies before any other reductions allowed by law and before the crediting of the overpayment to the taxpayer’s future tax liability.

An overpayment resulting from the recovery rebate credit may be subject to claims by the taxpayer’s creditors under applicable State law or Federal bankruptcy law.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).

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\(^{1028}\) Sec. 464(c) of the Social Security Act, 42 U.S.C. sec. 664(c).
2. Special rules for use of retirement funds (sec. 2202 of the Act and sec. 72 of the Code)

Present Law

Distributions from tax-favored retirement plans

A distribution from a tax-qualified plan described in section 401(a) (a “qualified retirement plan”), a tax-sheltered annuity plan (a “section 403(b) plan”), an eligible deferred compensation plan of a State or local government employer (a “governmental section 457(b) plan”), or an individual retirement arrangement (an “IRA”) generally is included in income for the year distributed. These plans are referred to collectively as “eligible retirement plans.”

In addition, unless an exception applies, a distribution from a qualified retirement plan, a section 403(b) plan, or an IRA received before age 591/2 is subject to a 10-percent additional tax (referred to as the “early withdrawal tax”) on the amount includible in income.

In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual.

The terms of a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan generally determine when distributions are permitted. However, in some cases, restrictions may apply to distributions before an employee’s termination of employment, referred to as “in-service” distributions. Despite such restrictions, an in-service distribution may be permitted under certain types of plans in the case of financial hardship or an unforeseeable emergency.

Loans from tax-favored retirement plans

Employer-sponsored retirement plans are permitted, but not required, to provide loans to participants. Unless the loan satisfies certain requirements in both form and operation, the amount of a retirement plan loan is a deemed distribution from the retirement plan. Among the requirements that the loan must satisfy are that (1) the loan amount must not exceed the lesser of 50 percent of the participant’s account balance or $50,000 (generally taking into account outstanding balances of previous loans), and (2) the loan’s terms must provide for a repayment period of not more than five...
years (except for a loan specifically to purchase a home) and for level amortization of loan payments to be made not less frequently than quarterly.\footnote{Sec. 72(p).} 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 withdrawal tax, if applicable. A deemed distribution is not eligible for rollover to another eligible retirement plan. The rules generally do not limit the number of loans an employee may obtain from a plan except to the extent that any additional loan would cause the aggregate loan balance to exceed limitations.

\textbf{Tax-favored retirement plan compliance}

Tax-favored retirement plans are generally required to be operated in accordance with the terms of the plan document, and amendments to reflect changes to the plan generally must be adopted within a limited period.

\textbf{Disaster relief}

Congress has at times liberalized the plan distribution and loan provisions for individuals affected by certain natural disasters.\footnote{See, e.g., sec. 20102 of Pub. L. No. 115–123 (providing relief in response to 2017 California wildfires); sec. 502 of Pub. L. No. 115–63 (providing relief in response to Hurricanes Harvey, Irma, and Maria); and former sec. 1400Q (providing relief in response to Hurricanes Katrina, Rita, and Wilma). For a more detailed description of the most recently enacted provision, see Joint Committee on Taxation, \textit{General Explanation of Certain Tax Legislation Enacted in the 115th Congress} (JCS–2–19), October 2019, pp. 22–26.}

\textit{Explanation of Provision}

\textbf{Distributions and recontributions}

The provision allows an exception to the 10-percent early withdrawal tax for a “coronavirus-related distribution” from a qualified retirement plan, a section 403(b) plan, or an IRA.\footnote{Dependent is defined in section 152.} The provision also allows a taxpayer to include income attributable to a coronavirus-related distribution ratable over three years and to recontribute the amount of the distribution to an eligible retirement plan within three years.

A “coronavirus-related distribution” is any distribution from a qualified retirement plan, section 403(b) plan, governmental section 457(b) plan, or an IRA, made on or after January 1, 2020, and before December 31, 2020, to an individual (1) who was diagnosed with the virus SARS–CoV–2 or with coronavirus disease 2019 (“COVID–19”) by a test approved by the Centers for Disease Control and Prevention; (2) whose spouse or dependent\footnote{This exception also applies to an annuity plan described in section 403(a). The 10-percent early withdrawal tax generally does not apply to section 457 plans. Sec. 72(t)(1).} is diagnosed with such virus or disease by such a test; or (3) who experiences adverse financial consequences as a result of being quarantined; being furloughed or laid off, or having work hours reduced due to such virus or disease; being unable to work due to lack of child care due to such virus or disease; closing or reducing hours of a business owned or operated by the individual due to such virus.
A coronavirus-related distribution is subject to income tax withholding unless the recipient elects otherwise. Mandatory 20-percent withholding does not apply.

For this purpose, qualified employer plan is defined in section 72(p)(4).

See sec. 72(p)(2)(A).

The administrator of the plan may rely on the individual’s certification that he or she satisfies the conditions described in clauses (1), (2), or (3) in determining whether any distribution is a coronavirus-related distribution.

A plan is not treated as violating any Code requirement merely because it treats a distribution as a coronavirus-related distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer's controlled group or affiliated service group does not exceed $100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $100,000, taking into account distributions from plans of other employers or IRAs. A plan is not required to treat a distribution as a coronavirus-related distribution.

Any amount required to be included in income as a result of a coronavirus-related distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply.

Any portion of a coronavirus-related distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed in one or more contributions to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income.

For example, if an individual receives a coronavirus-related distribution in 2020, that amount is included in income, generally ratably over the year of the distribution and the following two years and is not subject to the 10-percent early withdrawal tax. If, in 2022, the amount of the coronavirus-related distribution is recontributed to an eligible retirement plan, the individual may file amended returns to claim a refund of the tax attributable to the amounts previously included in income. In addition, if a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includible in income.

**Loans**

The provision modifies the rules applicable to loans, providing that for a qualified individual, in order for the loan not to be treated as a distribution, the permitted maximum loan amount from a qualified employer plan during the 180-day period beginning on the date of enactment is the lesser of the present value of the non-forfeitable accrued benefit of the employee under the plan or $100,000.

For this purpose, qualified individual has the same meaning as persons eligible to receive coronavirus-related distributions.

In the case of a qualified individual with an outstanding loan from a qualified employer plan on or after the date of enactment, the provision delays by one year the due date for any repayment

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1037 A coronavirus-related distribution is subject to income tax withholding unless the recipient elects otherwise. Mandatory 20-percent withholding does not apply.

1038 For this purpose, qualified employer plan is defined in section 72(p)(4).

1039 See sec. 72(p)(2)(A).
with respect to such loan, if the due date for the repayment otherwise would fall during the period beginning on the date of enactment and ending on December 31, 2020. Under the provision, any subsequent repayments are appropriately adjusted to reflect the delay in the earlier repayment due date and any interest accruing during that delay. The repayment delay is disregarded for purposes of the requirement that a loan be repaid within five years.

**Plan amendments**

A plan amendment made under the provision (or a regulation interpreting the provision) may be retroactively effective if, in addition to the requirements described below, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2022 (or in the case of a governmental plan, January 1, 2024), or a later date prescribed by the Secretary. The provision treats the plan as being operated in accordance with plan terms during the period beginning with the date the provision or regulation takes effect (or the date specified by the plan if the amendment is not required by the provision or regulation) and ending on the last permissible date for the amendment to be made (or, if earlier, the date the amendment is adopted). For an amendment to be treated as retroactively effective, it must apply retroactively for that period, and the plan must be operated in accordance with the amendment during that period.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).

3. **Temporary waiver of required minimum distribution rules for certain retirement plans and accounts (sec. 2203 of the Act and secs. 401 and 402 of the Code)**

**Present Law**

**Required minimum distributions**

Employer-provided qualified retirement plans and IRAs are subject to required minimum distribution rules. A qualified retirement plan for this purpose means a tax-qualified plan described in section 401(a) (such as a defined benefit pension plan or a section 401(k) plan), an employee retirement annuity described in section 403(a), a tax-sheltered annuity described in section 403(b), and a plan described in section 457(b) that is maintained by a governmental employer.\textsuperscript{1040} An employer-provided qualified retirement plan that is a defined contribution plan is a plan that provides (1) an individual account for each participant and (2) for benefits based on the amount contributed to the participant’s account and any income, expenses, gains, losses, and forfeitures of accounts of other participants which may be allocated to such participant’s account.\textsuperscript{1041}

\textsuperscript{1040}The required minimum distribution rules also apply to section 457(b) plans maintained by tax-exempt employers other than governmental employers.

\textsuperscript{1041}Sec. 414(i).
Required minimum distributions generally must begin by April 1 of the calendar year following the calendar year in which the individual (employee or IRA owner) reaches age 72. Prior to January 1, 2020, the age after which required minimum distributions were required to begin was 70 1/2. Thus, for individuals who attained age 70 1/2 before January 1, 2020, required minimum distributions generally must begin by April 1 of the calendar year following the calendar year in which the individual attained age 70 1/2. In the case of an employer-provided qualified retirement plan, the required minimum distribution date for an individual who is not a five-percent owner of the employer maintaining the plan may be delayed to April 1 of the year following the year in which the individual retires if the plan provides for this later distribution date. For all subsequent years, including the year in which the individual was paid the first required minimum distribution by April 1, the individual must take the required minimum distribution by December 31.

For IRAs and defined contribution plans, the required minimum distribution for each year generally is determined by dividing the account balance as of the end of the prior year by the number of years in the distribution period. The distribution period is generally derived from the Uniform Lifetime Table. This table is based on the joint life expectancies of the individual and a hypothetical beneficiary 10 years younger than the individual. For an individual with a spouse as designated beneficiary who is more than 10 years younger, the joint life expectancy of the couple is used (because the couple’s remaining joint life expectancy is longer than the length provided in the Uniform Lifetime Table). There are special rules in the case of annuity payments from an insurance contract.

If an individual dies before the individual’s entire interest is distributed, and the individual has a designated beneficiary, unless the designated beneficiary is an eligible designated beneficiary, the individual’s entire account must be distributed within 10 years after the individual’s death. This rule applies regardless of whether the individual dies before or after the individual’s required beginning date.

In the case of an eligible designated beneficiary, the remaining required minimum distributions are distributed over the life of the beneficiary (or over a period not extending beyond the life expectancy of such beneficiary). Such distributions must begin no later than December 31 of the calendar year immediately following the calendar year in which the individual dies. An eligible designated beneficiary is a designated beneficiary who is (1) the surviving

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1042 The Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”), enacted as part of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116–94, Div. O, sec. 114, increased the age after which required minimum distributions must begin from 70 1/2 to 72, effective for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70 1/2 after that date.

1043 Treas. Reg. sec. 1.401(a)(9)–5.

1044 The SECURE Act provided special rules for required minimum distributions for defined contribution plans (including, for this purpose, IRAs), generally effective with respect to individuals who die after December 31, 2019 (later effective dates apply to governmental plans and collectively bargained plans). For additional information, including rules applicable to defined contribution plans before the effective date of the SECURE Act, see the section describing section 401 of the SECURE Act in Part Three of this document.
spouse of the individual; (2) a child of the individual who has not reached majority; (3) disabled; (4) chronically ill; or (5) not more than 10 years younger than the individual. If the eligible designated beneficiary is the individual’s spouse, commencement of distributions is permitted to be delayed until December 31 of the calendar year in which the deceased individual would have attained age 72. The required minimum distribution for each year is determined by dividing the account balance as of the end of the prior year by a distribution period, which is determined by reference to the beneficiary’s life expectancy. Special rules apply in the case of trusts for disabled or chronically ill beneficiaries.

In the case of an individual who does not have a designated beneficiary, if an individual dies on or after the individual’s required beginning date, the distribution period for the remaining required minimum distributions is equal to the remaining years of the deceased individual’s single life expectancy, using the age of the deceased individual in the year of death. If an individual dies before the required beginning date, the individual’s entire account must be distributed no later than December 31 of the calendar year that includes the fifth anniversary of the individual’s death.

A special after-death rule applies for an IRA if the beneficiary of the IRA is the surviving spouse. The surviving spouse is permitted to choose to calculate required minimum distributions both while the surviving spouse is alive and after death as though the surviving spouse is the IRA owner, rather than a beneficiary.

Roth IRAs are not subject to the minimum distribution rules during the IRA owner’s lifetime. However, Roth IRAs are subject to the post-death minimum distribution rules that apply to traditional IRAs. For Roth IRAs, the IRA owner is treated as having died before the individual’s required beginning date.

Failure to make a required minimum distribution triggers a 50-percent excise tax, payable by the individual or the individual’s beneficiary. The tax is imposed during the taxable year that begins with or within the calendar year during which the distribution was required. The tax may be waived if the failure to distribute is reasonable error and reasonable steps are taken to remedy the violation.

Eligible rollover distributions

With certain exceptions, distributions from an employer-provided qualified retirement plan are eligible to be rolled over tax free into another employer-provided qualified retirement plan or an IRA. This can be achieved by contributing the amount of the distribution to the other plan or IRA within 60 days of the distribution, or by a direct payment by the plan to the other plan or IRA (referred to as a “direct rollover”). Distributions that are not eligible for rollover include (i) any distribution that is one of a series of periodic pay-
For any distribution that is eligible for rollover, an employer-provided qualified retirement plan must offer the distributee the right to have the distribution made in a direct rollover. Before making the distribution, the plan administrator must provide the distributee with a written explanation of the direct rollover right and related tax consequences. Unless a distributee elects to have the distribution made in a direct rollover, the distribution is generally subject to mandatory 20-percent income tax withholding.

**Explanation of Provision**

Under the provision, no minimum distribution is required for calendar year 2020 from an IRA or from an employer-provided qualified retirement plan that is a defined contribution plan that is a tax-qualified plan described in section 401(a), an employee retirement annuity described in section 403(a), a tax-sheltered annuity described in section 403(b), or a plan described in section 457(b) that is maintained by a governmental employer. The next required minimum distributions for these plans will be for calendar year 2021. The provision waives the 2020 minimum distribution requirement for lifetime distributions to employees and IRA owners and for after-death distributions to beneficiaries.

In the case of an individual whose required beginning date is April 1, 2020 (because, for example, the individual attained age 70½ in 2019), the provision waives the minimum distribution requirement with respect to a distribution that would have been required to be made in 2020 on account of the distribution not having been made in 2019.

In the case of an individual whose required beginning date is April 1, 2021 (because, for example, the individual attains age 72 in 2020), the first year for which a minimum distribution would have been required is 2020. Under the provision, no distribution is required for 2020, and thus, no distribution will be required to be made by April 1, 2021. However, the provision does not change the individual’s required beginning date for purposes of determining the required minimum distribution for calendar years after 2020. Thus, for an individual whose required beginning date is April 1, 2021, the required minimum distribution for 2021 will be required to be made no later than December 31, 2021. If the individual dies on or after April 1, 2021, the required minimum distribution for the individual’s beneficiary will be determined using the rule for death on or after the individual’s required beginning date.

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1054 Sec. 402(c)(4). Distributions that are not eligible rollover distributions also include distributions made upon hardship of the employee.
1055 Sec. 401(a)(31).
1056 Sec. 402(f).
1057 Sec. 3405(c). This mandatory withholding does not apply to a distributee that is a beneficiary other than a surviving spouse of an employee.
1058 Defined contribution plan is defined in section 414(i).
In the case of an individual who dies and whose interest is required to be distributed within five years, under the provision, the five-year period is determined without regard to calendar year 2020. For example, for an account with respect to an individual who died in 2018, the five-year period ends in 2024 instead of 2023.

If, as a result of the provision, all or a portion of a 2020 distribution that would have been a required minimum distribution is instead an eligible rollover distribution, the distribution (or portion thereof) is not treated as an eligible rollover distribution for purposes of the direct rollover requirement, the requirement for notice and written explanation of the direct rollover requirement, or the mandatory 20-percent income tax withholding for eligible rollover distributions. Thus, for example, a plan may offer an individual a direct rollover of an eligible rollover distribution that would have been a required minimum distribution for 2020 (if not for this provision), but the plan is not required to offer a direct rollover. Similarly, the plan is not required to provide the employee notice and a written explanation of the direct rollover requirement and is not required to withhold 20 percent from the distribution. The employee may roll over the distribution by contributing it to an eligible retirement plan within 60 days of the distribution.

Effective Date

The provision is effective for calendar years beginning after December 31, 2019.

4. Allowance of partial above-the-line deduction for charitable contributions (sec. 2204 of the Act and sec. 62 of the Code)

Present Law

Adjusted gross income and taxable income of an individual

Adjusted gross income

Under the Code, gross income means “income from whatever source derived” except for certain items specifically exempt or excluded by statute. An individual’s AGI is determined by subtracting certain “above-the-line” deductions from gross income. These deductions include trade or business expenses, losses from the sale or exchange of property, contributions to a qualified retirement plan by a self-employed individual, contributions to certain IRAs, certain moving expenses for members of the Armed Forces, and certain education-related expenses.

Taxable income

To determine taxable income, an individual reduces AGI by the applicable standard deduction or his or her itemized deductions and by the deduction for qualified business income.
A taxpayer may reduce AGI by the amount of the applicable standard deduction to arrive at taxable income. The basic standard deduction varies depending on a taxpayer's filing status. For 2020, the amount of the standard deduction is $12,400 for a single individual and for a married individual filing separately, $18,650 for a head of household, and $24,800 for married taxpayers filing jointly and for a surviving spouse. An additional standard deduction is allowed with respect to any individual who is elderly (i.e., above age 64) and/or blind. The amounts of the basic standard deduction and the additional standard deductions are indexed annually for inflation.

In lieu of taking the applicable standard deduction, an individual may elect to itemize deductions. The deductions that may be itemized include personal State and local income, property, and sales taxes (up to $10,000 annually ($5,000 for married taxpayers filing separately)), home mortgage interest (on mortgages up to certain specified dollar amounts), charitable contributions, certain investment interest, medical expenses (in excess of 7.5 percent of AGI), and casualty and theft losses attributable to Federally declared disasters (in excess of 10 percent of AGI and in excess of $100 per loss).

**Itemized deduction for charitable contributions**

An income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the recipient organization. For individuals, the deduction for charitable contributions is available only to a taxpayer who elects to itemize deductions.

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base. The applicable percentage of the contribution base varies depending on the type of recipient organization and property contributed. The contribution base is defined as the taxpayer's adjusted gross income computed without regard to any net operating loss carryback.

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1064 For 2020, the additional amount is $1,300 for married taxpayers (for each spouse meeting the applicable criterion) and surviving spouses. The additional amount for single individuals and heads of households is $1,650. If an individual is both elderly and blind, the individual is entitled to two additional standard deductions, for a total additional amount (for 2020) of $2,600 or $3,300, as applicable.

1065 Sec. 170.

1066 Sec. 170(b)(1)(H).
Charitable contributions that exceed the applicable percentage limit generally may be carried forward for up to five years. In general, contributions carried over from a prior year are taken into account after contributions for the current year that are subject to the same percentage limit.

**Explanation of Provision**

The provision permits an eligible individual to claim an above-the-line deduction in an amount not to exceed $300 for qualified charitable contributions made during a taxable year that begins in 2020. The above-the-line deduction is not available for contributions made during a taxable year that begins after 2020. An eligible individual is an individual who does not elect to itemize deductions. Thus, a taxpayer taking the standard deduction, who absent the provision would not be able to deduct any charitable contributions, may claim an above-the-line deduction for qualified charitable contributions.

A qualified charitable contribution is a cash contribution for which a deduction is allowable under section 170 (determined without regard to the percentage limitations under section 170(b)) that is paid to a charitable organization described in section 170(b)(1)(A), other than contributions to (i) a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. A qualified charitable contribution does not include an amount that is treated as a contribution in the taxable year by reason of being carried forward from a prior contribution year under section 170(b)(1)(G) or (d)(1).

**Effective Date**

The provision is effective for taxable years beginning after December 31, 2019.
5. Modification of limitations on charitable contributions during 2020 (sec. 2205 of the Act and sec. 170 of the Code)

Present Law

In general

An income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the recipient organization.\textsuperscript{1071}

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer’s trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor’s basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

Percentage limitations

Contributions by individuals

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer’s contribution base. The contribution base is defined as the taxpayer’s AGI computed without regard to any net operating loss carryback. The applicable percentage of the contribution base varies depending on the type of recipient organization and property contributed.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (e.g., public charities, private foundations other than private non-operating foundations, and certain governmental units) may not exceed 50 percent of the taxpayer’s contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer’s contribution base.

For contributions taken into account for taxable years beginning after December 31, 2017, and before January 1, 2026, section 170(b)(1)(G) increases the percentage limit for contributions by an individual taxpayer of cash to an organization described in section 170(b)(1)(A) to 60 percent. The 60-percent limit is intended to be applied after, and reduced by, the amount of noncash contributions to organizations described in section 170(b)(1)(A).

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer’s contribution base. An individual may elect, however, to bring contributions of appreciated

\textsuperscript{1071}Sec. 170.
capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private nonoperating foundations) are deductible up to 20 percent of the taxpayer’s contribution base.

Contributions by corporations

For corporations, in any taxable year, charitable contributions are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation’s taxable income computed with certain modifications.

For purposes of determining whether a corporation’s aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

Carryforwards of excess contributions

Charitable contributions that exceed the applicable percentage limitation may be carried forward for up to five years. The amount that may be carried forward from a taxable year (“contribution year”) to a succeeding taxable year may not exceed the applicable percentage of the contribution base for the succeeding taxable year less the sum of contributions made in the succeeding taxable year plus contributions made in taxable years prior to the contribution year and treated as paid in the succeeding taxable year under this rule.

Contributions of food inventory

A taxpayer’s deduction for charitable contributions of inventory generally is limited to the taxpayer’s basis (typically, cost) in the inventory, or, if less, the fair market value of the inventory. For certain contributions of inventory, however, a C corporation may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item’s appreciation (i.e., basis plus one-half of fair market value in excess of basis) or (2) two times basis.

Any taxpayer engaged in a trade or business, whether or not a C corporation, is eligible to claim the enhanced deduction for donations of food inventory. The enhanced deduction for food inventory is available only for food that qualifies as “apparently wholesome food.” Apparently wholesome food is defined as food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 15 percent of the taxpayer’s net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non-C corporation trades or businesses) from which contribu-

\footnotesize{1072}Sec. 170(d).
\footnotesize{1073}Sec. 170(e)(3).
\footnotesize{1074}Sec. 170(e)(3)(C).}
tions of apparently wholesome food are made. For C corporations, these contributions are made subject to a limitation of 15 percent of taxable income (as modified). The general 10-percent limitation for a C corporation does not apply to these contributions, but the 10-percent limitation applicable to other contributions is reduced by the amount of these contributions. Qualifying food inventory contributions in excess of these 15-percent limitations may be carried forward and treated as qualifying food inventory contributions in each of the five succeeding taxable years in order of time.

Disaster relief

Congress has at times liberalized the charitable contribution limitations for contributions made in response to certain natural disasters.1075

Explanation of Provision

Under the provision, in the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer’s contribution base (AGI computed without regard to any net operating loss carryback) exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years as contributions described in section 170(b)(1)(G), subject to the limitations of section 170(b)(1)(G)(ii).

In the case of a corporation, the deduction for qualified contributions is allowed up to 25 percent of the corporation’s taxable income. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations of section 170(d)(2).

In applying subsections (b) and (d) of section 170 to determine the deduction for other contributions, qualified contributions are not taken into account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Qualified contributions are cash contributions paid during calendar year 2020 to a charitable organization described in section 170(b)(1)(A), other than contributions (i) to a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. A taxpayer must elect to have contributions treated as qualified contributions.

1075 See, e.g., sec. 20104(a) of Pub. L. No. 115–123 (increasing limits in response to 2017 California wildfires); sec. 504(a) of Pub. L. No. 115–63 (increasing limits in response to Hurricanes Harvey, Irma, and Maria); and former sec. 1400S (increasing limits in response to Hurricanes Katrina, Rita, and Wilma). For a more detailed description of the most recently enacted provision (related to the 2017 California wildfires), see Joint Committee on Taxation, General Explanation of Certain Tax Legislation Enacted in the 115th Congress (JCS–2–19), October 2019, pp. 27–29.
For charitable contributions of food inventory that are made during 2020 and which qualify for the enhanced deduction, the 15-percent limitations described above are increased to 25 percent.

**Effective Date**

The provision is effective for taxable years ending after December 31, 2019.

6. Exclusion for certain employer payments of student loans
(secs. 2206 of the Act and secs. 127, 3121, 3306, and 3401 of the Code)

**Present Law**

**Employer-provided educational assistance programs**

Under section 127, an employee may exclude from gross income for income tax purposes and the employer may exclude from wages for employment tax purposes up to $5,250 annually of educational assistance provided by the employer to the employee. For the exclusion to apply, certain requirements must be satisfied: (1) the educational assistance must be provided pursuant to a separate written plan of the employer; (2) employers must provide reasonable notification of the terms and availability of the program to eligible employees; (3) the employer’s educational assistance program must not discriminate in favor of highly compensated employees; and (4) no more than five percent of the amounts paid or incurred by the employer during the year for educational assistance under a qualified educational assistance program may be provided for the class of individuals consisting of (i) more than five-percent owners of the employer and (ii) the spouses or dependents of such owners.

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 similar payments, books, supplies, and equipment. Educational assistance also includes the provision by the employer of courses of instruction for the employee, including books, supplies, and equipment. Educational assistance does not include payment for or the provision of (1) tools or supplies that may be retained by the employee after completion of a course, (2) meals, lodging, or transportation, or (3) any education involving sports, games, or hobbies. The education need not be job-related or part of a degree program. Educational assistance qualifies for the exclusion only if the employer does not give the employee a choice between educational assistance and other remuneration includible in the employee’s income.

The exclusion for employer-provided educational assistance applies only with respect to education provided to the employee. The exclusion does not apply, for example, to assistance provided directly or indirectly for the education of the spouse or a child of the employee.

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1076 See also sec. 3401(a)(18).
1077 Secs. 3121(a)(18) and 3306(b)(13).
The employer’s costs for providing such educational assistance are generally deductible as a trade or business expense.\footnote{1079}{See sec. 162.}

In the absence of the specific exclusion for employer-provided educational assistance under section 127, employer-provided educational assistance is excludable from gross income for income tax purposes\footnote{1080}{See also sec. 3401(a)(19).} and wages for employment tax purposes\footnote{1081}{Secs. 3121(a)(20) and 3306(b)(16).} only if the education expenses qualify as a working condition fringe benefit under section 132(d) or as a qualified tuition reduction under section 117(d). In general, education qualifies as a working condition fringe benefit if the employee could have deducted the education expenses under section 162 if the employee paid for the education.\footnote{1082}{Sec. 132(d).} In general, education expenses are deductible by an individual under section 162 if the education (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer’s employer, applicable law, or regulations imposed as a condition of continued employment.\footnote{1083}{Treas. Reg. sec. 1.162–5.} However, education expenses are generally not deductible if they relate to certain minimum educational requirements or to education or training that enables a taxpayer to begin working in a new trade or business.\footnote{1084}{For taxable years beginning before January 1, 2026, trade or business expenses relating to the trade or business of the performance of services by the taxpayer as an employee are disallowed miscellaneous itemized deductions. Secs. 62(a)(1), 67(g), and 162(a).}

Section 117(d) provides an exclusion from gross income and wages for qualified tuition reductions for certain education provided to employees of certain educational organizations, and to the spouses and dependents of such employees.

**Employer payment of employee student loans**

In general, gross income includes all income from whatever source derived, such as compensation for services, fringe benefits, and similar items, absent an exclusion.\footnote{1085}{Sec. 61.} The exclusion from income for educational assistance does not apply to payments of principal or interest made by an employer to or on behalf of its employee on an education loan incurred by an employee of the employer. Because the educational assistance exclusion does not apply to these payments of education loans, the amount of these payments is includible in the employee’s taxable wages. These amounts are generally deductible by the employer as a trade or business expense.\footnote{1086}{See sec. 162.}

**Deduction for student loan interest**

Under section 221, certain individual taxpayers may claim an above-the-line deduction for interest paid on student loans.\footnote{1087}{See also sec. 3401(a)(19).} Only interest paid on a “qualified education loan” is eligible for the deduction.

A qualified education loan generally is defined as any indebtedness incurred to pay for the costs of the attendance at an eligible
educational institution on at least a half-time basis. The payments may be for attendance of the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred. Eligible educational institutions are (1) post-secondary educational institutions and certain vocational schools defined by reference to section 481 of the Higher Education Act of 1965, and (2) institutions conducting internship 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. Additionally, to qualify as an eligible educational institution, an institution must be eligible to participate in Department of Education student aid programs.

The maximum allowable deduction per year is $2,500. The deduction is phased out and reduced to zero at higher-income levels. Dependents are ineligible to claim the deduction.

**Explanation of Provision**

The provision expands the definition of the term “educational assistance” excludible from income and from wages to include payments of principal or interest made by an employer on a qualified education loan incurred by an employee of the employer. Thus, the employee may exclude these payments from gross income for income tax purposes and the employer may exclude these payments from wages for employment tax purposes. The term “qualified education loan” is defined in section 221(d)(1). The loan must be incurred for the education of the employee. The exclusion applies to payments made to the employee or a lender. The provision does not apply to payments made on or after January 1, 2021.

Payments made under this provision are subject to the general requirements of section 127, including the $5,250 cap, the requirement that assistance be provided pursuant to a separate written plan of the employer, and the nondiscrimination requirement.

The provision also provides that the employee may not claim a deduction under section 221 for interest paid on student loans on an amount for which an exclusion is allowable under the provision.

**Effective Date**

The provision is effective for payments made after the date of enactment (March 27, 2020).

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1088 Secs. 221(d)(1)–(3); see also sec. 25A(b)(3).
1089 Secs. 25A(f)(2) and 221(d)(2).
1090 For 2020, the phaseout range is for modified adjusted gross income between $140,000 to $170,000 for married taxpayers filing a joint return and between $70,000 and $85,000 for other taxpayers. Sec. 221(b)(12)(B); Rev. Proc. 2019–44, 2019–47 I.R.B. 1080.
1091 Sec. 221(e)(1), as amended by the Act.
1092 Sec. 221(e)(1), as amended by the Act.
Subtitle C—Business Provisions

1. Employee retention credit for employers subject to closure due to COVID–19 (sec. 2301 of the Act)

Present Law

In general

Federal employment taxes and OASDI Trust Funds

Federal employment taxes are imposed on wages paid to employees with respect to employment and include taxes levied under the Federal Insurance Contributions Act ("FICA"), the Federal Unemployment Tax Act ("FUTA"), and Federal income tax.1093 In addition, tier 1 of the Railroad Retirement Tax Act ("RRTA") imposes a tax on compensation paid to railroad employees and representatives.1094

FICA taxes comprise two components: Old-Age, Survivors, and Disability Insurance ("OASDI") taxes and Hospital Insurance ("Medicare") taxes.1095 With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer.1096 The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020). Generally, the OASDI wage base rises based on increases in the national average wage index.1097

The employee portion of OASDI taxes must be withheld and remitted to the Federal government by the employer during the calendar quarter, as required by the applicable deposit rules.1098 The employer is liable for the employee portion of OASDI taxes, in addition to its own share, whether or not the employer withholds the amount from the employee’s wages.1099 OASDI and Medicare taxes are generally allocated by statute among separate trust funds: the OASDI Trust Funds, Medicare’s Hospital Insurance Trust Fund, and Supplementary Medical Insurance Trust Fund.1100

Generally, the term “wages” for OASDI tax purposes means all remuneration for “employment,” including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions.1101 The name given to the remuneration for employment is immaterial. OASDI wages includes salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term “employment” is generally defined for FICA tax purposes as any service, of whatever nature, performed...
by an employee for the person employing him or her, with certain specific exceptions.

The taxes related to the OASDI program collected from FICA are deposited into two separate OASDI Trust Funds: (1) the Old-Age and Survivors Insurance ("OASI") Trust Fund, which pays retirement and survivor benefits, and (2) the Disability Insurance ("DI") Trust Fund, which pays disability benefits.\footnote{1102} The major sources of income to the OASDI Trust Funds are FICA taxes and taxes under the Self-Employment Contributions Act ("SECA"). The OASDI Trust Funds are financial accounts in the U.S. Treasury. The only purposes for which these trust funds can be used are to pay benefits and program administrative costs. A fixed proportion (dependent on the allocation of tax rates by trust fund) of the taxes received under FICA and SECA is deposited in the OASI Trust Fund to the extent that such taxes are not needed immediately to pay expenses.

**Railroad retirement program**

Railroad workers do not participate in the OASDI system. Compensation subject to RRTA tax is exempt from FICA taxes.\footnote{1103} The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of services.\footnote{1104} The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, with certain exceptions.\footnote{1105} Employees whose compensation is subject to RRTA tax are generally eligible for railroad retirement benefits under a two-tier structure. Rail employees and employers pay tier 1 taxes at the same rate as other employment taxes.\footnote{1106} In addition, rail employees and employers both pay tier 2 taxes, which are used to finance railroad retirement benefits above Social Security benefit levels.\footnote{1107} Tier 2 benefits are similar to a private defined benefit pension.

**Employment tax in the U.S. territories**

Employers and employees in the U.S. territories are generally subject to FICA payroll tax obligations.\footnote{1108} In contrast, employers and employees in the territories are generally not subject to withholding at the source for Federal income tax, although they are subject to withholding of local taxes.\footnote{1109} These payroll obligations

\footnote{1106}{2 U.S.C. sec. 401.}
\footnote{1103}Sec. 3121(b)(9).
\footnote{1104}Secs. 3201 through 3233. Instead of FICA taxes, railroad employers and employees are subject, under the RRTA, to taxes equivalent to the Social Security and Medicare taxes under FICA. Under the RRTA, employers and employees are also subject to an additional tax, referred to as the "tier 2" tax, on compensation up to a certain amount.
\footnote{1105}Sec. 3231(e).
\footnote{1106}7.65 percent, consisting of 6.2 percent for retirement on earnings up to $137,700 in 2020, and 1.45 percent for Medicare hospital insurance on all earnings. An additional 0.9 percent in Medicare taxes are withheld from employees on earnings above $200,000.
\footnote{1107}In 2020, the tier 2 tax rate on earnings up to $102,300 is 4.9 percent for employees and 13.1 percent for employers.
\footnote{1108}See sec. 3121(b) and (e) and Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Sec. 601(c). The U.S. territories referred to in this document are American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.
\footnote{1109}Under section 3401(a)(8), most wages paid to U.S. persons for services performed in one of the territories are exempt from Federal income tax withholding if the payments are subject to withholding by the territory, or, in the case of Puerto Rico, the payee is a bona fide resident of the territory for the full year.
of the employers are generally applicable to Federal agencies with personnel in the territory. Employers in the territories file quarterly tax returns with the Federal government to report and pay FICA taxes for employees in the respective territories.

**Employee retention credits against income taxes**

Congress has at times enacted employee retention credits against employer income tax in response to natural disasters. These enactments generally provide a credit of 40 percent of the wages (up to a maximum of $6,000 in wages per employee) paid by certain employers harmed by the applicable disaster to employees employed in the applicable disaster zone during the period when the employer’s business was inoperable due to the applicable disaster. The credits are treated as a current year business credit under section 38(b) and therefore subject to the Federal income tax liability limitations of section 38(c). Rules similar to those in sections 51(i)(1), 52, and 280C(a) apply to the credits.

**Refundable payroll tax credits for paid sick and paid family and medical leave**

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act ("FFCRA"). Divisions C and E of which require certain employers to provide certain types of paid leave to certain employees affected by the outbreak of COVID–19. Sections 7001 and 7003 of Division G of that Act provide refundable credits against a portion of payroll tax liability for certain sick and family leave wages required to be paid under Divisions C and E. Those credits are described above in Part Five of this document.

**Explanation of Provision**

In general The provision allows an eligible employer to claim a credit against applicable employment taxes for each calendar quarter in an amount equal to 50 percent of the qualified wages with respect to each employee of such employer for such calendar quarter. Applicable employment taxes are OASDI tax imposed on the employer and so much of the RRTA tax imposed on the employer as is attributable to the rate in effect under section 3111(a). The amount of qualified wages with respect to any employee which may be taken into account in calculating the credit for all calendar quarters may not exceed $10,000. Therefore, under the provision,

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1110 See, e.g., sec. 203 of Pub. L. No. 116–94, Div. Q (providing a credit in response to certain major disasters declared in 2018 and 2019); sec. 20103 of Pub. L. No. 115–63, as amended by sec. 20201(b) of Pub. L. No. 115–123 (providing a credit in response to 2017 California wildfires); Sec. 503 of Pub. L. No. 115–63, as amended by sec. 20201(b) of Pub. L. No. 115–123 (providing a credit in response to Hurricanes Harvey, Irma, and Maria); and former sec. 1400R (providing a credit in response to Hurricanes Katrina, Rita, and Wilma).

1111 For a more detailed description of a recently enacted employee retention credit (related to certain major disasters declared in 2018 and 2019), see Joint Committee on Taxation, Description of H.R. 3301, The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (JCX–30–19), June 2019 pp. 80–81. See also the description of section03 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of Pub. L. No. 116–260).


1113 For a full description of Division G, see Part Five of this document; see also Joint Committee on Taxation, Technical Explanation of Division G, "Tax Credits for Paid Sick and Paid Family and Medical Leave," of H.R. 6201, the “Families First Coronavirus Response Act” (JCX–10–20), March 2020.
the maximum amount of credit per employee for all calendar quarters is $5,000. The provision applies only to wages paid after March 12, 2020, and before January 1, 2021.

The credit allowed may not exceed the applicable employment taxes imposed on the eligible employer for that calendar quarter on the wages paid with respect to all of the employer’s employees, reduced by any credits allowed for the employment of qualified veterans, for research expenditures of a qualified small business, or for paid sick or family leave under sections 7001 and 7003 of the Families First Coronavirus Response Act. However, if for any calendar quarter the amount of the credit exceeds the applicable employment taxes imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

For example, assume that, for a calendar quarter, an eligible employer had applicable employment taxes prior to any credits of $10,000 and (1) a credit for research expenditures of a qualified small business of $4,000, (2) a $3,000 credit for paid sick leave under section 7001 of FFCRA, and (3) a $5,000 employee retention credit. The eligible employer’s applicable employment taxes are reduced to $0 and it has a $2,000 refundable overpayment. If, instead, the eligible employer had applicable employment taxes prior to any credits of $2,000, its applicable employment taxes are reduced to $0 and it has an $8,000 refundable overpayment.

Amounts are appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account established under the RRTA equal to the reduction in revenues to the Treasury by reason of the credit. Such amounts are transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the Trust Funds or Account had the credit not been enacted.

**Definition of eligible employer**

An eligible employer is any employer which was carrying on a trade or business during calendar year 2020 and which meets either of two tests.

Under the first test (the “governmental order test”), such employer is an eligible employer if it experiences a calendar quarter in which the operation of the trade or business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or

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1114 Sec. 3111(e).
1115 Sec. 3111(f).
1116 The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b).
1117 The tax is reduced by the $4,000 research expenditures credit, the $3,000 paid sick leave credit, and $3,000 of the $5,000 employee retention credit. The $2,000 excess employee retention credit is treated as refundable.
1118 The tax is reduced by the $2,000 research expenditures credit, the other $2,000 of which is not refundable. See sec. 3111(f). The $3,000 paid sick leave credit is treated as refundable, section 7001(b)(4) of the Families First Coronavirus Response Act, as is the $5,000 employee retention credit.
1119 See sec. 15A(a) of the RRTA (45 U.S.C. sec. 231n–1(a)).
group meetings (for commercial, social, religious, or other purposes) due to COVID–19.

For example, a restaurant in a State under a Statewide order that restaurants offer only take-out service meets the governmental order test, as does a concert venue in a State under a Statewide order limiting gatherings to no more than 10 people. Similarly, an accounting firm that is in a county where accounting firms are among businesses subject to a directive from public health authorities to cease all activities other than minimum basic operations and that closes its offices and does not require employees who cannot work from home (e.g., custodial employees, mail room employees) to work meets this test. However, a grocery store in a State that generally imposes limitations on food service, gathering size, and travel outside the home, but exempts grocery stores (and travel to and from grocery stores) from any COVID–19 related restrictions (e.g., because grocery stores are deemed an “essential business” that is excepted from restrictions) would not meet this test.

Under the second test (the “reduced gross receipts test”), such employer is an eligible employer if it experiences a significant decline in gross receipts. The employer is treated as experiencing a significant decline in gross receipts in the period (i) beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts (within the meaning of section 448(c)) for the calendar quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year, and (ii) ending with the quarter following the first calendar quarter beginning after a calendar quarter described in (i) in which gross receipts exceed 80 percent of gross receipts for the same calendar quarter for the prior year.

For example, if an employer had gross receipts of $100 in each calendar quarter of 2019 and then had gross receipts in the first, second, third, and fourth quarters of 2020 of $100, $40, $90, and $100, respectively, the period in which such employer is treated as meeting the significant decline in gross receipts test is the second and third quarter of 2020.

An organization described in section 501(c) may qualify as an eligible employer under either test. The requirement that an eligible employer be carrying on a trade or business during calendar year 2020 and the governmental order test are to be applied as if they referred to all operations of such organization, and not merely those which are treated as a trade or business.

**Definition of qualified wages**

The definition of qualified wages depends on the average number of full-time and full-time-equivalent employees of the eligible employer during 2019. All persons treated as a single employer

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1120 The provision states that the metric is the “average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986).” This language includes full-time equivalents as referred to in section 4980H(c)(2)(E), which reads as follows:

(E) Full-time equivalents treated as full-time employees. Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.
under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 are treated as one employer for purposes of the provision.

For an eligible employer that had more than 100 such employees in 2019, qualified wages are wages paid by the eligible employer with respect to which an employee is not providing services due to circumstances that cause the eligible employer to meet either the governmental order test or the reduced gross receipts test.

For example, if a restaurant that had an average of 150 full-time employees during 2019 meets the governmental order test, and the restaurant continues to pay kitchen employees’ wages as if they were working 40 hours per week but only requires them to work 15 hours per week, the wages paid to the kitchen employees for the 25 hours per week with respect to which the kitchen employees are not providing services are qualified wages. However, if the same restaurant reduces kitchen employees’ working hours from 40 hours per week to 15 hours per week and only pays wages for 15 hours per week, no wages paid to the kitchen employees are qualified wages.

As another example, if an accounting firm that had an average of 500 full-time employees during 2019 meets the governmental order test, and during the period in which the governmental order is in place the accounting firm closes its office and does not require custodial and mail room employees to work but continues to pay them their full salaries, wages paid to those custodial and mail room employees for the time they do not work are qualified wages. Similarly, if the accounting firm continues to pay administrative assistants their full salaries but only requires them to work two days per week on a rotating schedule reflecting reduced demand for assistance resulting from the office closure, the portion of an administrative assistant’s salary attributable to days not worked are qualified wages.

Qualified wages paid to an employee by an eligible employer that had more than 100 full-time employees in 2019 cannot exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period in which the eligible employer met either the governmental order test or the reduced gross receipts test.

For example, if an eligible employer subject to this rule paid an employee $15 per hour for all hours worked prior to meeting the governmental order test, but during the period when the eligible employer meets the governmental order test pays the same employee $10 per hour for hours when the employee is providing services and $20 per hour for hours when the employee is not providing services, only $15 per hour of wages paid when the employee is not providing services are qualified wages. As another example, if an eligible employer subject to this rule paid an employee $15 per hour for all hours worked prior to meeting the governmental order test, but during the period when the eligible employer meets the governmental order test pays the same employee $20 per hour (both for hours when the employee is providing services and for hours when the employee is not providing services), only $15 per hour of wages paid when the employee is not providing services are qualified wages.
For an eligible employer that had an average of 100 or fewer full-time employees in 2019, qualified wages are wages paid to any employee either during the time period in which such eligible employer meets the governmental order test or during a quarter in which the eligible employer meets the reduced gross receipts test.

For example, if a restaurant that had an average of 45 full-time employees during 2019 meets the governmental order test, and the restaurant continues to pay kitchen employees’ wages as if they were working 40 hours per week but only requires them to work 15 hours per week, all of such employees’ wages paid during the period to which the governmental order applies are qualified wages. If the same restaurant responds to the governmental order by reducing the hours of kitchen employees who had previously worked 40 hours per week to 15 hours per week and only pays wages for 15 hours per week, such wages paid during the period to which the governmental order applies are qualified wages.

As another example, if a grocery store that had an average of 75 full-time employees during 2019 meets the reduced gross receipts test for the second and third calendar quarters of 2020, all wages paid by the grocery store during those quarters are qualified wages.

Qualified wages do not include any wages taken into account under sections 7001 or 7003 of FFCRA. Qualified wages also include so much of the employer’s qualified health plan expenses as are properly allocable to qualified wages under the provision. Qualified health plan expenses are defined as amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees’ income as coverage under an accident or health plan. Qualified health plan expenses are allocated to qualified wages in such manner as the Secretary (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary (or the Secretary’s delegate), such allocations are treated as properly made if made pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate). This broad grant of authority permits the Secretary (or the Secretary’s delegate) to treat qualified health plan expenses as qualified wages in a situation where no other qualified wages are paid by the eligible employer or to the particular employee to which such expenses are allocable.

**Other rules, definitions, and guidance**

No credit is available under the provision to any employer that receives a small business interruption loan (i.e., a covered loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) as added by section 1102 of the Act).

If a taxpayer claims a credit under this provision, rules similar to the rules of sections 51(i)(1) and 280C(a) apply. Thus, for example, an employee retention credit may not be generated by an individual employer hiring his or her children. In addition, the credit

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1121 Sec. 3121(a).
1122 Sec. 3231(e).
1123 Group health plan for this purpose is defined in section 5000(b)(1).
1124 For the exclusion, see section 106(a).
is taken into account for purposes of determining any amount allowable as an income tax deduction for qualified wages (or any amount capitalizable to basis) or for payroll taxes associated with such qualified wages. For example, assume a calendar year employer pays $2,500 of qualified wages for the second quarter of 2020. If the employer claimed no ERTC, the employer would be able to deduct $2,500 of wage expense (assuming such wages are not subject to capitalization) and $155 of OASDI tax liability, for a total income tax deduction of $2,655 for the quarter with respect to those wages. If the employer claims an ERTC of $1,250 for those wages, the ERTC would offset $155 of OASDI liability and $1,095 of wage expense, leaving $1,405 of qualified wages as deductible for income tax purposes.

Continuing the example above, assume that the employer delays the deposit of its $155 of OASDI tax liability until December 31, 2021, pursuant to section 2302 of the CARES Act, and thus does not have a current income tax deduction for such OASDI tax. If the employer claims an ERTC of $1,250, the ERTC would offset $1,250 of wage expense, leaving $1,250 of qualified wages as deductible for income tax purposes.

An employer may elect, at such time and in such manner as provided by the Secretary (or the Secretary’s delegate), to have the credit not apply for a calendar quarter. Further, the credit is not available to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of those entities. Employers in the U.S. territories may claim the credit by filing their quarterly Federal employment tax returns.

The provision does not apply to wages paid to any employee for any period with respect to any employer if such employer is allowed a credit under section 51 (i.e., the work opportunity tax credit) with respect to such employee for such period. Furthermore, any wages taken into account in determining the credit allowed under the provision shall not be taken into account for purposes of determining the credit allowed under section 45S (i.e., the employer credit for paid family and medical leave).

Any credit allowed under the provision is treated as a credit described in section 3511(d)(2) (relating to third party payors).

The provision directs the Secretary (or the Secretary’s delegate) to waive any penalty under section 6656 for failure to make a deposit of applicable employment taxes if the Secretary (or the Secretary’s delegate) determines that such failure was due to the reasonable anticipation of the credit allowed under the provision.

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1125 See subsequent description of section 2302 of the CARES Act, “Delay of Payment of Employer Payroll Taxes.”

1126 In general, an employer’s payroll tax liability is deductible when paid by the employer to the governmental authority. See section 461 and Treas. Reg. secs. 1.461–1 and 1.461–4(g). However, an accrual method employer who has adopted the recurring item exception method of accounting for its payroll taxes may generally deduct such taxes for which it has a fixed and determinable liability by the end of its taxable year if it pays the taxes by the earlier of the date the it files a timely income tax return (including extensions) for such taxable year or the 15th day of the ninth calendar month following the close of such taxable year (e.g., by September 15, 2021, for the 2020 calendar taxable year). See section 461(h), Treas. Reg. sec. 1.461–5, and Rev. Proc. 2008–25, 2008–1 C.B. 686. Thus, if the 2020 payroll taxes are not paid until December 31, 2021, they will not be deductible in 2020 by a calendar year employer, regardless of whether the employer uses the cash or accrual method of accounting.
The Secretary (or the Secretary's delegate) is required to provide such regulations or other guidance as may be necessary to carry out the purposes of the credit, including regulations or other guidance: (1) to allow the advance payment of the credit based on such information as the Secretary (or the Secretary's delegate) may require;\footnote{1127} (2) to provide for the reconciliation of such advance payment with the amount advanced at the time of filing the return of tax for the applicable calendar quarter or taxable year; (3) to provide for recapture of the credit if it is allowed to a taxpayer which receives a small business interruption loan; (4) with respect to the application of the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors; and (5) for application of the reduced gross receipts test to any employer which was not carrying on a trade or business for all or part of the same calendar quarter in the prior year.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).

2. **Delay of payment of employer payroll taxes (sec. 2302 of the Act and secs. 6302 and 6654 of the Code)**

**Present Law**

Federal employment taxes are imposed on wages paid to employees with respect to employment and include Federal income tax as well as taxes levied under the Federal Insurance Contributions Act (“FICA”), Federal Unemployment Tax Act (“FUTA”).\footnote{1128} In addition, tier 1 of the Railroad Retirement Tax Act (“RRTA”) imposes a tax on compensation paid to railroad employees and representatives.\footnote{1129}

FICA taxes are comprised of two components: Old-Age, Survivors, and Disability Insurance (“OASDI”) and Medicare taxes.\footnote{1130}

\footnote{1127}For 2020, the IRS provided Form 7200, Advance Payment of Employer Credits Due to COVID-19, to allow taxpayers to request advance payment of the credit. The instructions to Form 7200 explain, Eligible employers who pay . . . qualified wages eligible for the employee retention credit, rather than depositing these amounts with the IRS. The employment taxes that are available for the credit[] include withheld federal income tax, the employee share of social security and Medicare taxes, and the employer share of social security and Medicare taxes with respect to all employees. If there aren’t sufficient employment taxes to cover the cost of . . . the employee retention credit, employers can file Form 7200 to request an advance payment from the IRS. Don’t reduce your deposits and request advance credit payments for the same expected credit. You will need to reconcile your advance credit payments and reduced deposits on your employment tax return. See instructions to IRS Form 7200, revised March 2020, available at https://www.irs.gov/instructions/i7200.}

\footnote{1128}Secs. 3401, 3101, 3111, and 3301.}

\footnote{1129}Sec. 3221.}

\footnote{1130}The Hospital Insurance (“HI”) tax has two components: Medicare tax and Additional Medicare tax. Medicare tax is imposed on wages, as defined in Section 3121(a), with respect to employment, as defined in Section 3121(b), at a rate of 1.45 percent for the employer. Sec. 3101(b)(1). An equivalent 1.45 percent is withheld from employee wages. Sec. 3111(b)(1). For

Continued
With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer. The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020). Generally, the OASDI wage base rises based on increases in the national average wage index.

Generally, the term “wages” for OASDI tax purposes means all remuneration for “employment,” including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions. The name given to the remuneration for employment is immaterial. OASDI wages includes salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term “employment” is generally defined for FICA tax purposes as any service, of whatever nature, performed by an employee for the person employing him or her, with certain specific exceptions.

**Railroad retirement program**

Railroad workers do not participate in the OASDI system. Accordingly, compensation subject to RRTA tax is exempt from FICA taxes. The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of services. Employees whose compensation is subject to RRTA are ultimately eligible for railroad retirement benefits that fall under a two-tier structure. Rail employees and employers pay tier 1 taxes at the same rate as FICA taxes. In addition, rail employees and employers both pay tier 2 taxes that are used to finance railroad retirement benefits over and above Social Security benefit levels. Tier 2 benefits are similar to benefits under a defined benefit plan. Those taxes are funneled to the railroad retirement system and used to fund basic retirement benefits for railroad workers and an investment trust that generates returns for the pension fund.

**Self-employment taxes**

The Self-Employed Contributions Act (“SECA”) imposes tax on the self-employment income of an individual. SECA taxes consist of OASDI tax and Medicare tax. Under the OASDI component, the first rate of tax is 12.4 percent on self-employment income up to the OASDI wage base ($137,700 for 2020). Under the basic
Medicare tax component, the second rate of tax is 2.9 percent of all self-employment income (without regard to the OASDI wage base). As is the case with employees, an Additional Medicare tax applies to the Medicare portion of SECA tax on self-employment income in excess of a threshold amount.

Self-employment income subject to SECA tax is determined as the net earnings from self-employment derived by an individual during any taxable year, subject to certain exceptions. Net earnings from self-employment are equal to the gross income derived by an individual from any trade or business less allowed deductions that are attributable to the trade or business and permitted under the SECA rules. Certain passive income and related deductions are not taken into account in determining net earnings from self-employment, including rentals from real estate (unless received in the course of a trade or business as a real estate dealer), dividends and interest (unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities), and sales or exchanges of capital assets and certain other property (unless the property is stock in trade that would properly be included in inventory or held primarily for sale to customers in the ordinary course of the trade or business).

For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer’s net self-employment income (determined without regard to this deduction) and one-half of the sum of the rates for OASDI tax and Medicare tax (i.e., 7.65 percent of net earnings). This deduction is determined without regard to the additional 0.9 percent Additional Medicare tax that may apply to an individual. This deduction reflects the fact that the FICA rates apply to an employee’s wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual’s net earnings are economically equivalent to an employee’s wages plus the employer’s share of FICA taxes. This is generally referred to as the “regular method” of determining net earnings from self-employment, and in Internal Revenue Service forms and publications it is expressed as multiplying total net earnings from self-employment by 92.35 percent.

Deposit requirements

The employee portion of OASDI taxes must be withheld and remitted to the Federal government by the employer during the quarter, as required by the applicable deposit rules. The employer is liable for the employee portion of OASDI taxes, in addition to its own share, whether or not the employer withheld the amount from

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1140 Sec. 1401(b)(1).
1141 Sec. 1401(b)(2).
1142 Sec. 1402(a)(1).
1143 Sec. 1402(a)(2).
1144 Sec. 1402(a)(12).
1145 Sec. 1402(a)(3).
1146 Sec. 3102(a) and Treas. Reg. sec. 31.3121(a)–2. Sec. 6302.
the employee’s wages. Employers that make payments of wages and withhold Federal income and FICA taxes are required to make deposits of those taxes in a timely manner.

The regulations under section 6302 provide that an employer generally must deposit employment taxes under a monthly or semi-weekly schedule, with certain exceptions. The applicable deposit schedule is determined based on the total tax liability reported on an employer’s quarterly employment tax return during a lookback period. In general, an employer is a monthly depositor if the total Federal income and FICA tax liability for the four quarters in the lookback period was $50,000 or less. A semiweekly depositor is an employer for which the total tax liability reported during the lookback period was more than $50,000. Employers that accumulate $100,000 or more of employment tax liability on any day are required to make deposits of those taxes by the close of the next banking day.

If the aggregate amount of tax reported on an employment tax return exceeds the total amount of deposits made by the employer for the same quarter, the balance due must be remitted in accordance with the applicable form and instructions.

A penalty may be imposed for the failure to deposit employment taxes by the prescribed date. The amount of the penalty varies depending on when the deposit is made in relation to the applicable deadline. The penalty is two percent of the unpaid amount if the payment is made within five days of the deadline, five percent if the payment is made within six and 15 days of the due date, 10 percent if the payment is made more than 15 days after the due date, and 15 percent for taxes still unpaid after the 10th day following a notice and demand from the Internal Revenue Service. The failure to deposit penalty may be waived if the taxpayer demonstrates the failure was due to reasonable cause and not willful neglect.

A penalty may also apply in the event that a taxpayer fails to make a payment of tax due on a tax return with the return absent a showing that the failure to pay was due to reasonable cause and not due to willful neglect. The amount of the penalty is equal to one-half percent of the net amount of tax due for each month that the return is not filed. This penalty is coordinated with the penalty for the failure to timely file a tax return, by reducing the failure to file penalty by the amount of the failure to pay penalty for that month. The maximum amount of the failure to pay penalty is 25 percent of the tax due.

With respect to self-employed individuals, estimated tax payments at least equal to (1) 90 percent of the current year’s tax li-

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1148 Sec. 3102(b).
1149 Treas. Reg. sec. 31.6302–1. In certain circumstances, employers may make employment tax payments with the filing of a return instead of periodic deposits under a monthly or semi-weekly schedule. For example, to the extent an employer’s total employment tax liability for the current or prior quarter is less than $2,500, the employer may make a payment with a timely filed IRS Form 944, Employer’s ANNUAL Federal Tax Return, or IRS Form 941, Employer’s QUARTERLY Federal Tax Return.
1150 Treas. Reg. sec. 31.6302–1(c).
1151 Treas. Reg. secs. 31.6302–1(h)(7) and 31.6302–1(i)(2).
1152 Sec. 6656.
1153 Sec. 6656(a).
1154 Secs. 6151(a) and 6651(a)(2).
1155 Sec. 6651(a)(1).
ability or (2) 100 percent of prior year’s tax liability, must be made by the applicable deadlines. A penalty is imposed by applying the underpayment interest rate to the amount of the underpayment for the period of underpayment. The penalty does not apply if the tax shown on the return is less than $1,000. There is no general reasonable cause waiver for the failure to pay estimated tax, but a waiver is available to the extent the Secretary determines that a taxpayer suffered a casualty or other unusual circumstance if imposition of a penalty would be against equity and good conscience.

**Third-party arrangements**

Responsibility for employment tax obligations generally rests with the person who is the employer of an employee under a common-law test that has been incorporated into Treasury regulations. An employer-employee relationship exists if the person for whom the services are performed has the right to direct and control the performance of services by an individual, not only to the result to be accomplished by the work but also the details and means by which that result is accomplished. In some cases, however, a person other than the common-law employer may be responsible for effectuating the employer's employment tax obligations.

An employer may designate a third-party agent to be responsible for employment tax withholding, depositing, and reporting requirements on behalf of the employer. The reporting functions undertaken by this third party, a “section 3504 agent,” may include filing employment tax returns and furnishing Forms W-2, *Wage and Tax Statement*, to the employer's employees. An employer remains jointly and severally liable with the section 3504 agent for satisfaction of the employer’s employment tax obligations.

Another third-party entity is a “professional employer organization,” which provides employees to perform services in the business of the professional employer organization’s customers, including small and medium-sized businesses. In many cases, before the professional employer organization arrangement is finalized, the employees already work in the customer's business as employees of the customer. A “certified professional employer organization” ("CPEO") is an entity that has applied to the Secretary to be treated as a CPEO and has been certified to meet certain requirements. A CPEO is treated as the employer of any work-site employee performing services for any customer of the CPEO but only with re-

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1156 Secs. 6654.
1157 Sec. 6654(e)(3).
1158 Treas. Reg. secs. 31.3401(c)–1, 31.3121(d)–1(c)(1), and 31.3306(i)–1(a). A similar concept for RRTA purposes applies under Treas. Reg. sec. 31.3231(b)–1(a)(1)(i).
1159 Sec. 3504. Treas. Reg. sec. 31–3504–1 provides the criteria for the designation by an employer of an agent by application to the IRS. IRS Form 2678 is used for this purpose. In addition, under Treas. Reg. sec. 31.3504–2, designation of an agent may result from the payment of wages or compensation by a payor to an individual performing services for a client of the payor pursuant to a services agreement meeting certain criteria. The rules for designating an agent are a departure from the general principle that a taxpayer has a nondelegable duty with respect to employment tax obligations. See *U.S. v. Boyle*, 469 U.S. 241 (1985).
1160 Treas. Reg. sec. 31.3405–1(a).
1161 “Professional employer organization” is not a legal term with a specific definition. The term “employee leasing company” is also occasionally used to describe the same or similar relationship between service provider and customer in this context, but both terms can be used to describe a variety of arrangements.
pect to remuneration remitted by the CPEO to a work-site employee. A CPEO is subject to employment tax withholding, depositing, and reporting requirements and associated liability with respect to the work-site employees performing services for a customer of the CPEO, subject to the limitations and requirements of section 3511.

Explanation of Provision

The provision allows eligible employers and self-employed individuals to delay the deposit of certain employment taxes. The deposit and payment of "applicable employment taxes" during the "payroll tax deferral period" is treated as made timely if made by an applicable date. For this purpose, the term "applicable employment taxes" includes the following: the employer's share of OASDI taxes, the employer's share of the equivalent Social Security portion of RRTA taxes and employee representative RRTA taxes, and, for self-employed individuals, the equivalent of the employer's Social Security portion of SECA taxes. The employer's share of OASDI taxes, and equivalent portions for RRTA and SECA taxes, is 6.2 percent of wages, compensation, or net earnings from self-employment, up to the 2020 wage base, $137,700.

The period beginning on March 27, 2020 and ending before January 1, 2021 is the "payroll tax deferral period." Half of the applicable employment taxes required to be deposited during the payroll tax deferral period must be deposited on or before December 31, 2021, and the remaining fifty percent of the applicable employment tax liability accrued during the payroll tax deferral period must be deposited on or before December 31, 2022. To the extent an employer deposits applicable employment taxes otherwise due during the payroll tax deferral period by the foregoing applicable dates, notwithstanding the requirements under section 6302, such deposits will be treated as timely. For SECA tax purposes, 50 percent of the tax liability incurred under section 1401(a) during the payroll tax deferral period shall not be treated as taxes requiring estimated tax payments until the applicable dates.

In order to be eligible to defer the deposit of applicable employment taxes, the employer or self-employed person must not have had indebtedness forgiven under sections 1106 or 1109 of the Act. In the case of a section 3504 agent designated by an employer to perform the employer's employment tax obligations, the employer will be solely liable for the payment of the applicable employment taxes by the applicable date for any wages paid by the agent on behalf of the employer during the payroll tax deferral period. For sole liability to attach to the employer, the employer must direct the agent to defer payment of applicable employment taxes during the payroll tax deferral period. Likewise, a customer of a CPEO that directs the CPEO to defer payment of applicable employment taxes shall, notwithstanding subsections (a) and (c) of

1162 Sec. 3511.
1163 Sec. 3111(a).
1164 Secs. 3221(a) and 3211(a).
1165 Sec. 1401(a).
1166 Secs. 6656 and 6651(a)(2).
1167 Sec. 6654.
section 3511, be solely liable for the subsequent payment of the applicable employment taxes by the deadlines outlined in the provision. The customer’s liability is only with respect to wages paid by the CPEO to any work-site employee performing services for such customer during the payroll tax deferral period.

The provision directs the Secretary (or the Secretary’s delegate) to promulgate regulations or other guidance as may be necessary to carry out the purposes of the provision, including the administration and enforcement of the liability of third-party entities, section 3504 agents and CPEOs. The IRS subsequently has implemented this provision.\footnote{1168 Notice 2020–22, 2020–17 I.R.B. 664, April 20, 2020.}

\begin{center}
\textbf{Effective Date}
\end{center}

The provision is effective on the date of enactment (March 27, 2020).

3. Modifications for net operating losses (sec. 2303 of the Act and sec. 172 of the Code)

\begin{center}
\textbf{Present Law}
\end{center}

A net operating loss (“NOL”) generally means the amount by which a taxpayer’s business deductions exceed its gross income.\footnote{1169 Sec. 172(a). Certain additional limitations apply to NOLs claimed by taxpayers other than a corporation. See sec. 172(d)(4).} A taxpayer generally may deduct in a taxable year an NOL carried to such year.\footnote{1170 Sec. 172(c).} For NOLs arising in taxable years beginning after December 31, 2017, the NOL deduction generally is limited to 80 percent of taxable income determined without regard to the NOL deduction (the “80-percent taxable income limitation”).\footnote{1171 Sec. 172(a). For this purpose, a real estate investment trust is subject to a limit based on 80 percent of its real estate investment trust taxable income (as defined in section 857(b)(2) but without regard to the deduction for dividends paid (as defined in section 561)). See sec. 172(d)(6)(C).} Excess losses generally may be carried forward indefinitely, but not back,\footnote{1172 Sec. 172(b)(1)(A). An NOL arising in a taxable year beginning before January 1, 2018, generally is carried back two years or forward 20 years.} and carryovers of such NOLs to other taxable years are adjusted to take account of the 80-percent taxable income limitation. NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.\footnote{1173 Sec. 172(b)(2). The amount of the NOL that may be carried to a taxable year is reduced by the taxable income for prior taxable years to which the NOL may be carried.} Special rules apply with respect to NOLs arising in certain circumstances. These include a special rule providing a two-year carryback in the case of certain farming losses.\footnote{1174 Sec. 172(b)(1)(B). For this purpose, the term “farming loss” means the lesser of (1) the amount that would be the NOL 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 NOL for such taxable year. For any loss year, a farming business may irrevocably elect out of the two-year carryback. The election must be made in the manner as prescribed by the Secretary by the due date (including extensions) of the taxpayer’s return for the taxable year of the NOL.} A separate special rule provides a two-year carryback and 20-year carryover for NOLs of a property and casualty insurance company (i.e., an insurance company as defined in section 816(a)) other than a life insur-
Further, the 80-percent taxable income limitation does not apply to the NOLs of such insurance companies. NOLs arising in taxable years beginning before January 1, 2018, are not subject to the 80-percent taxable income limitation. Further, such NOLs remain subject to the 20-year carryover limitation and the relevant carryback rules in effect for taxable years beginning before January 1, 2018.

A taxpayer with NOL carryovers to a taxable year from both taxable years beginning before 2018 (“pre-2018 NOL carryovers”) and taxable years beginning after 2017 (“post-2017 NOL carryovers”) computes its tax liability as follows. First, the taxpayer may deduct an NOL in the amount of its pre-2018 NOL carryovers without limitation. Second, the taxpayer may deduct an additional NOL equal to the lesser of (1) its post-2017 NOL carryovers or (2) 80 percent of the excess (if any) of the taxpayer’s taxable income (before any NOL deduction attributable to post-2017 NOL carryovers) over the NOL deduction attributable to pre-2018 NOL carryovers.

Explanation of Provision

The provision makes several changes with respect to NOLs arising in taxable years beginning after December 31, 2017.

80-percent taxable income limitation

The provision suspends the application of the 80-percent taxable income limitation for taxable years beginning after December 31, 2017, and before January 1, 2021. The 80-percent taxable income limitation continues to apply in the case of any taxable year beginning after December 31, 2020, and with respect to NOLs arising in taxable years beginning after December 31, 2017, carried to such a taxable year.

The provision clarifies that the 80-percent taxable income limitation is calculated without regard to the deductions allowable under sections 172, 199A, and 250. The provision also clarifies the method for calculating NOL carrybacks and carryovers under section 172(b)(2)(C) to ensure proper coordination with the taxable income limitation of section 172(a)(2). The provision makes conforming changes to the rules regarding the determination of taxable income of real estate investment trusts and holders of residual interests in real estate mortgage investment conduits.

Carryback of NOLs arising in 2018, 2019, and 2020

In general

The provision modifies the rules relating to NOLs arising in 2018, 2019, and 2020. Specifically, the provision provides that any NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, may be carried to the five taxable years preceding the taxable year of such loss (the “five-year
Special rules apply for real estate investment trusts and life insurance companies. The provision allows taxpayers to use NOLs to a greater extent to offset taxable income in prior or future years in order to provide taxpayers with liquidity in the form of tax refunds and reduced current and future tax liability.

Treatment of taxable years with section 965(a) inclusion

The provision also provides special rules relating to NOL carrybacks to years to which section 965 applies. If an NOL of a taxpayer is carried to a taxable year in which the taxpayer included an amount in income by reason of section 965(a) (i.e., 2017, 2018, or both), the taxpayer may elect to exclude section 965(a) inclusion years from the five-year carryback period. This election does not extend the five-year carryback period; instead, a taxpayer making this election is permitted to use the NOL in a subsequent year within the five-year carryback period in which the taxpayer has taxable income. This election, as well as an election under section 172(b)(3) to waive the entire carryback period with respect to an NOL arising in a taxable year beginning in 2018 or 2019, is required to be made by the due date (including extensions) for filing the taxpayer’s return for the first taxable year ending after the date of enactment of the Act. If a taxpayer does not elect to exclude its section 965(a) inclusion year(s) from the five-year carryback period and an NOL of the taxpayer arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, is carried to such year(s), then the taxpayer is treated as having made an election under section 965(n) (i.e., an election not to apply any NOL deduction to such taxpayer’s section 965(a) inclusion amount net of the section 965(c) deduction) with respect to such taxable year(s).

The following example illustrates the application of the special rules relating to NOL carrybacks to years to which section 965 applies:

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1179 See sec. 172(b)(1)(D)(ii). Pursuant to section 172(b)(2), any NOL carryback must be carried to the earliest taxable years to which such loss may be carried.

1180 See sec. 172(b)(1)(D)(ii). This rule provides that an NOL for any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer may not be carried to any taxable year preceding the taxable year of such loss. Further, an NOL for a taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) do not apply to the taxpayer may not be carried to any preceding taxable year in which such provisions do apply to the taxpayer.

1181 See sec. 172(b)(1)(D)(iii). An NOL of a life insurance company carried to a life insurance company taxable year beginning before January 1, 2018, is treated in the same manner as an operations loss carryback (within the meaning of section 810 as in effect before its repeal) of such company to such taxable year.

1182 Sec. 172(b)(1)(D)(i). (providing that “if the 5-year carryback period under clause (i)(I) with respect to any net operating loss of a taxpayer includes 1 or more taxable years in which an amount is includible in gross income by reason of section 965(a), the taxpayer may, in lieu of the election otherwise available under paragraph (3), elect under such paragraph to exclude all such taxable years from such carryback period.”).

1183 For guidance regarding elections to waive the carryback period with respect to NOLs arising in taxable years beginning in 2018 or 2019, see sec. 4.01(1) of Rev. Proc. 2020–24.

1184 Sec. 172(b)(1)(D)(v)(II). For guidance regarding this election, see sec. 4.01(2) of Rev. Proc. 2020–24.

1185 Sec. 172(b)(1)(D)(iv). For guidance regarding this deemed election, see sec. 4.02 of Rev. Proc. 2020–24.
Suppose, in 2020, a calendar-year taxpayer has a $120 loss. Because the provision (pursuant to section 172(b)(1)(D)) allows a special five-year carryback period in the case of NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, the taxpayer may carry the $120 NOL from 2020 to the five taxable years preceding the taxable year of such loss. For an NOL arising in 2020, the relevant taxable years within the relevant five-year carryback period are 2015, 2016, 2017, 2018, and 2019. If the taxpayer had $20 of taxable income in 2015 and $30 of taxable income in 2016 (both without regard to any NOL deduction), then the taxpayer is entitled to a $20 NOL deduction in 2015 and a $30 NOL deduction in 2016. The remaining unused portion of the 2020 NOL (i.e., the remaining $70 of the $120 NOL carryback) may be applied to the taxpayer’s 2017 taxable year and, to the extent allowed under section 172(b), to each subsequent year.

If, in 2017, the taxpayer had a section 965(a) inclusion (net of the section 965(c) deduction), which the taxpayer elected under section 965(h) to pay in installments, and other taxable income (before any NOL deduction), the taxpayer has two options: (1) apply the provision’s default rule, which deems the taxpayer to have made an election under section 965(n) not to apply the NOL to such taxpayer’s section 965(a) inclusion amount net of the section 965(c) deduction; or (2) elect to exclude 2017, the taxpayer’s section 965(a) inclusion year, from the five-year carryback period (i.e., carry back the 2020 NOL only to 2015, 2016, 2018, and 2019, before carrying forward).

The special rules relating to NOL carrybacks to years to which section 965 applies allow taxpayers to use NOLs to a greater extent to offset taxable income in prior or future years in order to provide taxpayers with liquidity in the form of tax refunds and reduced current and future tax liability. For example, the election to exclude section 965(a) inclusion years from the five-year carryback period allows taxpayers with an outstanding section 965 tax liability to use NOLs in another year such that any resulting overpayment would result in an authorized refund rather than offset the outstanding section 965 tax liability.

**Other rules relating to NOLs**

The provision makes technical and conforming amendments. Generally, the provision clarifies the effective date of certain changes made by Public Law 115–97 to section 172. The provision clarifies that the 80-percent taxable income limitation with respect to an NOL applies with respect to taxable years to which NOLs arising in taxable years beginning after December 31, 2017, may be carried. The provision also clarifies that the amendments made by Public Law 115–97 relating to NOL carryovers and carrybacks apply to NOLs arising in taxable years beginning after December 31, 2017. In addition, the provision clarifies the statutory language governing the operation of the rules relating to the taxable years to which NOLs may be carried back and carried forward.

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1186 Sec. 172(b)(1)(D)(iv).
1187 Sec. 172(b)(1)(D)(v)(I).
Timeliness of application for refund

The provision provides rules relating to the timeliness of refund applications with respect to NOL carryovers arising in fiscal taxable years beginning before January 1, 2018, and ending after December 31, 2017, and the timeliness with respect to an election to waive or change carrybacks under section 172(b). Specifically, the provision allows taxpayers until 120 days after the date of enactment of the Act to use the tentative carryback adjustment procedures of section 6411(a) for the carryback of an NOL arising in a taxable year beginning before January 1, 2018, and ending after December 31, 2017 (without regard to the 12-month limitation in section 6411). The provision also provides an election to forgo the carryback of such an NOL, or to reduce any period to which such an NOL may be carried back, if made by the date that is 120 days after the date of enactment of the Act (notwithstanding that section 172 requires such elections to be made by the due date (including extensions) for filing the taxpayer’s return for the taxable year of the loss). For example, under this election, a taxpayer may elect to reduce a five-year period to which such an NOL may be carried back to a two-year period to which such an NOL may be carried back. In addition, the provision provides that any election to forgo any carryback of such an NOL that may have already been made may be revoked within 120 days after the date of enactment of the Act (notwithstanding the irrevocability rule in section 172(b)).

Effective Date

The provision suspending application of the 80-percent taxable income limitation applies to taxable years beginning after December 31, 2017, and to taxable years beginning on or before December 31, 2017, to which net operating losses arising in taxable years beginning after December 31, 2017, are carried.

The provision modifying the rules relating to carrybacks applies to NOLs arising in taxable years beginning after December 31, 2017, and taxable years beginning before, on, or after such date to which such NOLs are carried.

The technical amendments made by the provision are effective as if included in section 13302 of Public Law 115–97.

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1188 For guidance regarding applications under section 6411(a) with respect to an NOL arising in a taxable year that began before January 1, 2018, and ended after December 31, 2017, see sec. 4.04(1) of Rev. Proc. 2020–24. For guidance regarding applications under section 6411(a) with respect to NOLs arising in taxable years beginning after December 31, 2017, sec. 4.04(2) of Rev. Proc. 2020–24 directs taxpayers to consult Notice 2020–26 for procedures on how to file applications under section 6411(a) for taxable years that may otherwise be outside the period for filing such applications. Notice 2020–26 grants a six-month extension of time to file an application for a tentative carryback adjustment under section 6411 with respect to the carryback of an NOL that arose in a taxable year that began during calendar year 2018 and that ended on or before June 30, 2019.
4. Modification of limitation on losses for taxpayers other than corporations (sec. 2304 of the Act and secs. 461(l) and (j) of the Code)

Present Law

Limitation on excess business loss of a taxpayer other than a corporation

For taxable years beginning after December 31, 2017, and before January 1, 2026, an excess business loss of a taxpayer other than a corporation is not allowed for the taxable year. The disallowed excess business loss is treated as an NOL for the taxable year for purposes of determining any NOL carryover to subsequent taxable years.

An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer (determined without regard to the limitation of the provision) over the sum of aggregate gross income or gain attributable to trades or businesses of the taxpayer plus a threshold amount. The threshold amount for a taxable year beginning in 2018 is $250,000 (or, in the case of a joint return, twice the otherwise applicable threshold amount, i.e., $500,000). The threshold amount is indexed for inflation for taxable years beginning after 2018.

The aggregate deductions taken into account to determine the excess business loss of the taxpayer for the taxable year that are attributable to trades or businesses of the taxpayer are determined without regard to the deductions under section 172 or 199A. For example, assume that a taxpayer has an NOL carryover from a prior taxable year to the current taxable year. Such NOL carryover is not part of the taxpayer’s aggregate deductions attributable to the trade or business for the current taxable year under section 461(l).

Note:

1189 Sec. 461(l). Section 461 was modified in 2017 by section 11012 of Public Law 115–97.
1190 See generally sec. 172. For a discussion of the changes made in 2017 to section 172, see the description of section 13302 of Public Law 115–97 (Modification of Net Operating Loss Deduction) in Joint Committee on Taxation, General Explanation of Public Law 115–97 (JCS–1–18), December 2018. Under section 461(l), excess business losses that are not allowed are treated as an NOL for the taxable year for purposes of determining any NOL carryover to subsequent taxable years.

An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer (determined without regard to the limitation of the provision) over the sum of aggregate gross income or gain attributable to trades or businesses of the taxpayer plus a threshold amount. The threshold amount for a taxable year beginning in 2018 is $250,000 (or, in the case of a joint return, twice the otherwise applicable threshold amount, i.e., $500,000). The threshold amount is indexed for inflation for taxable years beginning after 2018.

The aggregate deductions taken into account to determine the excess business loss of the taxpayer for the taxable year that are attributable to trades or businesses of the taxpayer are determined without regard to the deductions under section 172 or 199A. For example, assume that a taxpayer has an NOL carryover from a prior taxable year to the current taxable year. Such NOL carryover is not part of the taxpayer’s aggregate deductions attributable to the trade or business for the current taxable year under section 461(l).

1191 Aggregate deductions (for purposes of section 461(l)) do not include the amount of any NOL carryback or carryover under section 172 that is attributable to such trades or businesses from a different taxable year. For example, continuing the example in the preceding footnote, none of the $650,000 excess business loss in taxable year 2018 is subject to section 461(l) in a subsequent taxable year. Thus, any deduction with respect to any portion of the $650,000 that is carried over to a subsequent taxable year under the rules of section 172 is governed by the rules of section 172 (not section 461(l)). Similarly, any deduction with respect to any portion of the $500,000 remaining after carrybacks to 2016 and 2017 that is carried over to a subsequent year is governed by the rules of section 172 (not section 461(l)).
An excess business loss (the deduction for which is limited by section 461(l)) does not take into account gross income or gains or deductions attributable to the trade or business of the performance of services as an employee.1192 For this purpose, the trade or business of performance of services by the taxpayer as an employee has the same meaning as it does under section 62(a)(1). However, contrary to Congressional intent, IRS Form 461, Limitation on Business Losses, and the Instructions for Form 461 for 2018 and 2019, include wages and salaries (amounts from the trade or business of being an employee) in the determination of the taxpayer’s excess business loss amount.1193

In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. Each partner’s distributive share and each S corporation shareholder’s pro rata share of items of income, gain, deduction, or loss of a 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 require any additional reporting as the Secretary determines is appropriate to carry out the purposes of the provision (including with respect to any other passthrough entity to the extent necessary to carry out the purposes of the provision).

Section 461(l) applies after the application of certain other limitations on losses, namely, the passive activity loss limitation,1194 the at-risk limitation,1195 and in the case of a taxpayer who is a partner or S corporation shareholder, the rules limiting the taxpayer’s distributive or pro rata share of loss for the taxable year to the taxpayer’s adjusted basis in the partnership interest or in the S corporation stock and debt.1196 Thus, for example, the amount of any income, deduction, gain, or loss from a passive activity that is taken into account for purposes of the passive activity loss limitation is not taken into account in determining whether a taxpayer has an excess business loss.

**Excess farm losses**

For taxable years beginning before January 1, 2018, and after December 31, 2025, a limitation on excess farm losses applies to taxpayers other than C corporations.1197 Thus, for taxable years beginning after December 31, 2017, and before January 1, 2026, the limitation relating to excess farm losses does not apply.

Under the limitation relating to excess farm losses, if a taxpayer other than a C corporation receives an applicable subsidy1198 for

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1192 See also the IRS explanation of “Excess business losses” available at https://www.irs.gov/newsroom/excess-business-losses.
1193 See sec. 469.
1194 See sec. 465.
1195 Sec. 704(d) (for partners) and sec. 1366(d) (for S corporation shareholders). See sec. 461(l)(6) (applying section 461(l) after section 469), and Treas. Reg. sec. 1.469-2T(d)(6) (applying section 469 after sections 704(d), 1366(d), and 465). Note that other rules could potentially limit a taxpayer’s loss (e.g., section 267). A discussion of all potential loss limitation rules is beyond the scope of the description of this provision.
1196 For this purpose, an applicable subsidy means (A) any direct or counter-cyclical payment under title I of the Food, Conservation, and Energy Act of 2008, or any payment elected to be received in lieu of such payment, or (B) any Commodity Credit Corporation loan. Sec. 461(l)(3).
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 in the next taxable year. An excess farm loss for a taxable year means the excess of aggregate deductions that are attributable to farming businesses over the sum of aggregate gross 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 separately), or (2) for the five-consecutive-year period preceding the taxable year, the excess of the aggregate gross income or gain attributable to the taxpayer’s farming businesses over the aggregate deductions attributable to the taxpayer’s farming businesses.

**Treatment of capital losses**

In the case of a taxpayer other than a corporation, section 1211(b) limits the deduction for losses from sales or exchanges of capital assets to gains from such sales or exchanges plus up to $3,000. Section 172(d)(2)(A), relating to NOLs, provides a similar limitation but without regard to the $3,000 additional amount. Thus, for purposes of determining the amount of an NOL, the amount deductible on account of losses from sales or exchanges of capital assets cannot exceed the amount includible on account of gains from sales or exchanges of capital assets.

**Explanation of Provision**

The provision provides that the limitation on excess business loss of a taxpayer other than a corporation (section 461(l)) does not apply for taxable years beginning in 2018, 2019, or 2020. In addition, the limitation on excess farm losses (section 461(j)) does not apply for taxable years beginning after 2017 and before 2026. The provision does not change the applicability of other loss limitation rules that may affect a taxpayer for those taxable years, such as the passive activity loss limitation, the at-risk limitation, and in the case of a taxpayer who is a partner or S corporation shareholder, the rules limiting the taxpayer’s distributive or pro rata share of loss for the taxable year to the taxpayer’s adjusted basis in the partnership interest or in the S corporation stock and debt.

The provision also makes technical amendments. The provision clarifies the operation of the rule providing that, for any taxable year beginning after 2020 and before 2026, any excess business loss of a taxpayer other than a corporation is not allowed for the taxable year and excess business loss not allowed is carried forward and treated as part of the taxpayer’s NOL carryover in subsequent taxable years as determined under the NOL rules. The provision clarifies this rule using statutory language consistent with the

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Note that the Agricultural Act of 2014 repealed direct and counter-cyclical payments under the Food, Conservation, and Energy Act of 2008. See secs. 1101 and 1102 of Pub. L. No. 113–79, February 7, 2014. Thus, only Commodity Credit Corporation loans currently fall within the definition of an applicable subsidy for purposes of section 461(j).

An IRS explanation states that a taxpayer that filed a 2018 or 2019 return applying the 461(j) limitation for 2018 or 2019 may file an amended return (the explanation was posted on line before the due date for 2020 returns). See https://www.irs.gov/forms-pubs/limitation-on-business-losses-for-certain-taxpayers-repealed-for-2016-2019-and-2020.

Changes made by section 2303 of the Act to rules governing NOLs (section 172) are described elsewhere in this document.
NOL rules, providing that an excess business loss not allowed for a taxable year is treated as an NOL for the taxable year that is carried over to subsequent taxable years under the applicable NOL carryover rules.

The provision clarifies that the aggregate business deductions taken into account to determine the excess business loss of the taxpayer for the taxable year that are attributable to trades or businesses of the taxpayer are determined without regard to any deduction under section 172 (relating to NOLs) or 199A (relating to the deduction for qualified business income). This change clarifies the ordering rule for the calculation.

The provision clarifies the statutory language to provide specifically that an excess business loss under section 461(l) does not take into account any deductions, gross income, or gains attributable to any trade or business of performing services as an employee. For this purpose, the trade or business of performing services as an employee has the same meaning as it does under section 62(a)(1). For example, assume married taxpayers filing jointly for the taxable year have a loss from a trade or business conducted by one spouse as a sole proprietorship, as well as wage income of the other spouse from employment. The wage income is not taken into account in determining the amount of the deduction limited under section 461(l).

The provision clarifies that, because capital losses cannot offset ordinary income under the NOL rules, any capital loss deductions are not taken into account in computing the section 461(l) limitation. The provision also clarifies that the amount of capital gain taken into account in calculating the section 461(l) limitation cannot exceed the lesser of capital gain net income from a trade or business or capital gain net income.

Effective Date

The provision suspending the application of section 461(l) and (j) is effective for taxable years beginning after December 31, 2017. The technical amendments to section 461(l) made by the provision are effective as if included in section 11012 of Public Law 115–97.

5. Modification of credit for prior year minimum tax liability of corporations (sec. 2305 of the Act and sec. 53 of the Code)

Present Law

Minimum tax credit

Section 12001 of Public Law 115–97 repealed the corporate alternative minimum tax (“AMT”) for taxable years beginning after December 31, 2017. If a corporation was subject to AMT in a taxable year beginning before January 1, 2018, the amount of AMT was allowed as a minimum tax credit in any subsequent taxable year to the extent the corporation's regular tax liability exceeded its ten-

1201 Thus, the provision reverses the result that was previously provided with respect to this issue on IRS Form 461, Limitation on Business Losses, and the Instructions for Form 461 for 2018 and 2019, and in the IRS explanation of “Excess business losses” at https://www.irs.gov/newsroom/excess-business-losses.
Tentative minimum tax in the subsequent year. For taxable years beginning after December 31, 2017, a minimum tax credit may offset a corporation's entire regular tax liability for a taxable year. In addition, the minimum tax credit is allowable and refundable for a taxable year beginning after 2017 and before 2022 in an amount equal to 50 percent (100 percent in the case of a taxable year beginning in 2021) of the excess (if any) of the minimum tax credit for the taxable year over the amount of the credit allowable for the year against regular tax liability. Thus, in the case of a corporation, the full amount of the minimum tax credit will be allowed in taxable years beginning before 2022.

**Tentative carryback and refund adjustments**

Section 6411 provides a procedure under which taxpayers may apply for tentative carryback and refund adjustments with respect to net operating losses, net capital losses, and unused business credits (but not unused minimum tax credits). Such application generally must be filed within 12 months after the end of the taxable year in which the net operating loss, net capital loss, or unused business credit arose. The Secretary generally has 90 days to act on a claim for a tentative carryback refund once filed.

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### Explanation of Provision

The provision provides that a corporation's minimum tax credit is allowable and refundable for a taxable year beginning after 2017 and before 2020 in an amount equal to 50 percent (100 percent in the case of a taxable year beginning in 2019) of the excess (if any) of the minimum tax credit for the taxable year over the amount of the credit allowable for the year against regular tax liability. Thus, in the case of a corporation, the full amount of the minimum tax credit is allowed in taxable years beginning before 2020.

A corporation may elect instead to treat its minimum tax credit as fully refundable for its first taxable year beginning in 2018. A corporation making this election is eligible to file an application for a tentative refund adjustment for its first taxable year beginning in 2018 in such manner and form as the Secretary (or the Secretary's delegate) may prescribe. The application must be filed prior to December 31, 2020, and set forth (i) the amount of re-
changes made by the Act to the NOL rules, see the description above of section 2303 of the Act, “Modifications for Net Operating Losses.”

1207 Sec. 163(a). In addition to the limitations discussed herein, other limitations include: denial of the deduction for the disqualified portion of the original issue discount on an applicable high yield discount obligation (sec. 163(e)(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 25 (sec. 163(g)), disallowance of deduction for interest on debt with respect to certain life insurance contracts (sec. 264(a)), and disallowance of deduction for interest relating to tax-exempt income (sec. 265(a)(2)). Interest may also be subject to capitalization. See, e.g., secs. 263A(f) and 461(g).

1208 Business interest means any interest paid or accrued on indebtedness properly allocable to a trade or business and does not include investment interest (within the meaning of section 163(d)). Sec. 163(j)(5). Section 163(j) applies only to business interest that would otherwise be deductible in the current taxable year, absent the application of section 163(j). Treas. Reg. sec. 1.163(j)–3(b)(1). Thus, section 163(j) applies after the application of provisions that subject interest to deferral, capitalization, or other limitation (e.g., secs. 163(e)(3), 163(e)(5)(A)(ii), 246A, 263A, 263(g), 267, 1277, and 1282), but before application of sections 461(l), 465, and 469. See Treas. Reg. secs. 1.163(j)–3(b)(2)–(6). Note that at the time the Act was being considered by Congress, the Treasury Department had issued proposed regulations under section 163(j) (as amended by P.L. 115–97) but had not issued final regulations. In the period between enactment of the Act and publication of this explanation, Treasury issued final section 163(j) regulations, along with additional proposed regulations under section 163(j). The citations in this explanation reflect the final regulations, which are substantially unchanged from the proposed regulations with regard to the points for which they are cited.

1209 Business interest income means the amount of interest includible in the gross income of the taxpayer for the taxable year that is properly allocable to a trade or business and does not include investment income (within the meaning of section 163(d)). Sec. 163(j)(6).

1210 Adjusted taxable income means the amount of interest includible in the gross income of the taxpayer for the taxable year that is properly allocable to a trade or business and does not include investment income (within the meaning of section 163(d)). Sec. 163(j)(8)(A). Treasury regulations provide other adjustments to the definition of adjusted taxable income. Treas. Reg. sec. 1.163(j)–1(b)(1).

1211 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 property or to refinance existing floor plan financing indebtedness. Sec. 163(j)(8).
financing interest, business interest expense in excess of business interest income is generally deductible only to the extent of 30 percent of adjusted taxable income. The amount of any business interest expense not allowed as a deduction for any taxable year may be carried forward indefinitely.

The limitation generally applies at the taxpayer level (although special carryforward rules apply in the case of partnerships, described below). In the case of a group of affiliated corporations that file a consolidated return, the limitation applies at the consolidated tax return filing level.1212

**Carryforward of disallowed business interest**

The amount of any business interest expense not allowed as a deduction for any taxable year is generally treated as business interest expense paid or accrued by the taxpayer in the succeeding taxable year. Such business interest expense may be carried forward indefinitely.1213

**Application to passthrough entities**

**In general**

In the case of a partnership, the section 163(j) interest limitation is generally applied at the partnership level.1214 A partner must generally perform its own section 163(j) calculation for business interest expense it incurs at the partner level. To prevent double counting, the business interest income and adjusted taxable income of each partner are generally determined without regard to such partner's distributive share of any items of income, gain, deduction, or loss of the partnership.1215 However, in cases where the partnership has an excess amount of business interest income, an excess amount of adjusted taxable income, or both, section 163(j) may allow for partnership items to support additional business interest expense deductions by the partnership's partners. Specifically, a partner's business interest deduction limitation is increased by the sum of the partner's distributive share of the partnership's excess business interest income and 30 percent of the partner's distributive share of the partnership's excess taxable income.1216

Similar rules apply with respect to any S corporation and its shareholders.1217

1212 See Treas. Reg. sec. 1.163(j)–4(d) (providing that a consolidated group has a single section 163(j) limitation and generally treating all members of the consolidated group as a single taxpayer for section 163(j) purposes).
1213 See Sec. 163(j)(2). With respect to corporations, any carryforward of disallowed business interest of a corporation 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. Secs. 381(c)(20) and 382(d)(3).
1214 Sec. 163(j)(4A)(I).
1215 Sec. 163(j)(4A)(I); Treas. Reg. sec. 1.163(j)–6(e)(I).
1216 Sec. 163(j)(4A)(II); Treas. Reg. sec. 1.163(j)–6(e)(II).
1217 Sec. 163(j)(4A)(D).
Carryforward rules for partnerships

Special rules for the carryforward of disallowed business interest expense apply only to partnerships and their partners. In the case of a partnership, the general taxpayer-level carryforward rule does not apply. Instead, any business interest expense that is not allowed as a deduction to the partnership for the taxable year (referred to as “excess business interest expense”) is allocated to the partners. A partner may not deduct excess business interest expense in the year in which it is allocated to a partner. A partner may deduct its share of the partnership’s excess business interest expense in any future year, but only in an amount that is based on the partner’s distributive share of excess business interest income and excess taxable income of the partnership the activities of which gave rise to the disallowed business interest expense carryforward. Any amount that is not allowed as a deduction generally continues to be carried forward.

When excess business interest expense is allocated to a partner, the partner’s basis in its partnership interest is reduced (but not below zero) by the amount of such allocation, even though the excess business interest expense does not give rise to a deduction in the year of the basis reduction. However, the partner’s deduction in a subsequent year for excess business interest expense does not reduce the partner’s basis in its partnership interest. In the event the partner disposes of a partnership interest the basis of which has been reduced by an allocation of excess business interest expense, the partner’s basis in such interest is increased, immediately before such disposition, by the amount by which such basis reductions exceed any amount of excess business interest expense that has been treated as business interest expense paid or accrued by the partner as a result of an allocation of excess business interest income or excess taxable income by the same partnership. Under final Treasury regulations issued after enactment of the Act, this rule applies to both total and (on a proportionate basis) partial dispositions of a partnership interest.

These special carryforward rules do not apply to S corporations and their shareholders.

Exceptions

The section 163(j) limitation does not apply to any taxpayer (other than a tax shelter prohibited from using the cash method under section 448(a)(3)) that meets the $25 million gross receipts

1218 Sec. 163(j)(4)(B).
1219 Sec. 163(j)(4)(B)(ii)(I).
1220 Sec. 163(j)(4)(B)(iii)(I); Treas. Reg. sec. 1.163(j)–6(b)(3). See also Joint Committee on Taxation, General Explanation of Public Law 115–97 (JCS–1–18), December 2018, pp. 175–178 (describing section 163(j)(4) as it was intended to work).
1221 Sec. 163(j)(4)(B)(iii)(I).
1222 Sec. 163(j)(4)(B)(ii)(II); Treas. Reg. sec. 1.163(j)–6(h)(3). The special rule for dispositions also applies to transfers of a partnership interest (including by reason of death) in transactions in which gain is not recognized in whole or in part. No deduction is allowed to the transferor or transferee for any disallowed business interest resulting in a basis increase under this rule.
1223 Treas. Reg. sec. 1.163(j)–6(h)(3). Under the proposed regulations in effect at the time the Act was being considered by Congress, the basis adjustment rule only applied to dispositions of all or substantially all of a partnership interest. See Prop. Treas. Reg. sec. 1.163(j)–6(h)(3).
test of section 448(c).\textsuperscript{1225} Aggregation rules apply to determine the amount of a taxpayer's gross receipts under the gross receipts test of section 448(c).

The trade or business of performing services as an employee is not treated as a trade or business for purposes of the limitation.\textsuperscript{1226} As a result, for example, the wages of an employee are not counted in the adjusted taxable income of the taxpayer for purposes of determining the limitation.

At the taxpayer's election, any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business (i.e., any electing real property trade or business) 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.\textsuperscript{1227} Similarly, at the taxpayer's election, any farming business or any business engaged in the trade or business of a specified agricultural or horticultural cooperative (collectively, any electing farming business) is not treated as a trade or business for purposes of the limitation, and therefore the limitation does not apply to any such trade or business.\textsuperscript{1228} A taxpayer's election to be an electing real property trade or business or an electing farming business, once made, shall be irrevocable.\textsuperscript{1229}

The limitation does not apply to certain regulated public utilities. Specifically, 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 is not treated as a trade or business for purposes of the limitation, and thus any interest paid or accrued on indebtedness properly allocable to such trades or businesses is not business interest.\textsuperscript{1230}

**Explanation of Provision**

The provision permits taxpayers to increase the limit on the deduction of business interest expense paid or accrued in taxable years beginning in 2019 or 2020 in two ways.


\textsuperscript{1226}Sec. 163(j)(7)(A)(i).

\textsuperscript{1227}Sec. 163(j)(7)(A)(ii) and (B).

\textsuperscript{1228}Sec. 163(j)(7)(B) and (C).

\textsuperscript{1229}Secs. 163(j)(7)(A)(i), (ii), and (B).

\textsuperscript{1230}Secs. 163(j)(7)(A) and (C). In Rev. Proc. 2020–22, 2020–18 I.R.B. 1, the IRS provided guidance for making an election to be an electing real property trade or business or an electing farming business. The revenue procedure allows certain taxpayers to make a late election, or to withdraw an election, to be an electing real property trade or business or electing farming on an amended Federal income tax return, an amended Form 1065, or an administrative adjustment request under section 6227. In Rev. Proc. 2020–23, 2020–18 I.R.B. 1, the IRS provided guidance allowing certain partnerships to file an amended Form 1065, and to issue amended Schedules K–1, for taxable years beginning in 2018 and 2019. As a result, the IRS, for example, will allow certain partnerships to withdraw an election to be an electing real property trade or business made on a statement attached to a 2018 Form 1065 by filing an amended 2018 Form 1065.
Increase to 50 percent of adjusted taxable income

For taxable years beginning in 2019 or 2020, the provision generally increases the percentage of the taxpayer’s adjusted taxable income that factors into the calculation of the limitation on deduction of business interest from 30 percent to 50 percent. For example, a corporation with $100 of adjusted taxable income and $50 of business interest expense in its 2019 taxable year may deduct all $50.1231 of its 2019 business interest expense on its 2019 return, including on an amended return. If the corporation has $100 of adjusted taxable income and $70 of business interest expense in its 2020 taxable year, it may deduct $50.1232 of its 2020 business interest expense on its 2020 return, and $20.1233 of its 2020 business interest expense will carry forward.

For partnership taxable years beginning in 2019, this rule does not apply, and instead partners that were allocated excess business interest expense of a partnership for any taxable year of the partnership beginning in 2019 are permitted to deduct 50 percent of such excess business interest expense in the partner’s first taxable year beginning in 2020 (the other 50 percent of such excess business interest expense is subject to the limitations of section 163(j)(4)(B)(ii) described above).1234

For example, assume a partnership has $100 of adjusted taxable income and $70 of business interest expense in a taxable year beginning in 2019. The partnership has $30.1235 of deductible business interest expense for its 2019 taxable year and allocates $40.1236 in excess business interest expense to its partners. A partner in the partnership that was allocated $20 of excess business interest expense may deduct $10.1237 of such excess business interest expense in the partner’s first taxable year beginning in 2020. The other $10 of such excess business interest expense remains subject to the limitations of section 163(j)(4)(B)(ii).1238

Taxpayers are permitted to elect out of application of the increase in the adjusted taxable income percentage for any taxable year to which the increase potentially applies.1239 and partners are permitted to elect out of the special rule for 2019 excess business interest.1240

Election to substitute last taxable year beginning in 2019

The provision permits a taxpayer to elect to substitute the adjusted taxable income for its last taxable year beginning in 2019 for

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1231 $100 \times 50 \text{ percent} = $50.
1232 $100 \times 50 \text{ percent} = $50.
1233 $70 - $50 = $20.
1234 See Prop. Treas. Reg. sec. 1.163(j)-6(g)(4) for additional guidance.
1235 $100 \times 30 \text{ percent} = $30.
1236 $70 - $30 = $40.
1237 $20 \times 50 \text{ percent} = $10.
1238 This assumes that the partner does not sell its partnership interest in 2019 or 2020. If the partner sells its partnership interest in 2019 or 2020, the rules of section 163(j)(4)(B)(iii)(II), described above, apply.
1239 For partnership taxable years beginning in 2020, the election out of the increase in the adjusted taxable income percentage is made at the partnership level.
1240 In Treas. Reg. sec. 1.163(j)-2(b)(4) and Rev. Proc. 2020–22, the IRS describes the time and manner in which certain taxpayers may elect out of the 50 percent adjusted taxable income limitation for taxable years beginning in 2019 and 2020. In Prop. Treas. Reg. sec. 1.163(j)-2(g)(4) and Rev. Proc. 2020–22, the IRS describes the time and manner in which partners may elect out of deducting 50 percent of excess business interest expense for taxable years beginning in 2020.
its adjusted taxable income for any taxable year beginning in 2020.\textsuperscript{1241} In the case of a partnership, the election is made at the partnership level.\textsuperscript{1242} If the election to substitute adjusted taxable income from a taxpayer’s last taxable year beginning in 2019 is made with respect to a taxable year beginning in 2020 that is a short taxable year, the 2019 adjusted taxable income amount that is substituted is scaled down by multiplying the taxpayer’s 2019 adjusted taxable income by the ratio of (1) the number of months in the short taxable year beginning in 2020, to (2) 12.

For example, assume a taxpayer has $200 of adjusted taxable income in its last taxable year beginning in 2019, $10 of adjusted taxable income in a short taxable year starting on January 1, 2020, and ending on March 31, 2020, and $50 of business interest expense in its short 2020 taxable year. If the taxpayer makes the election to substitute its last taxable year beginning in 2019 in determining adjusted taxable income under the provision, the taxpayer may deduct $25\textsuperscript{1243} of such business interest expense.

\textit{Effective Date}

The provision is effective for taxable years beginning after December 31, 2018.

7. Technical amendments regarding qualified improvement property (sec. 2307 of the Act and sec. 168(e) of the Code)

\textbf{Present Law}

\textit{In general}

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.\textsuperscript{1244} The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.\textsuperscript{1245} 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 placed in service convention.\textsuperscript{1246} For some assets, the recovery period for the asset is provided in section 168.\textsuperscript{1247} In other cases, the recovery

\textsuperscript{1241} In Treas. Reg. sec. 1.163(j)–2(b)(4), Prop. Treas. Reg. sec. 1.163(j)–6(d)(5) and Rev. Proc. 2020–22, the IRS describes the time and manner in which taxpayers may elect to use the taxpayer’s adjusted taxable income for its last taxable year beginning in 2019 for its adjusted taxable income for any taxable year beginning in 2020.

\textsuperscript{1242} See Prop. Treas. Reg. sec. 1.163(j)–6(d)(5) for additional guidance.

\textsuperscript{1243} ($200 \times \frac{3}{12}) \times 50\% = \$25.

\textsuperscript{1244} See secs. 263(a) and 167. In general, only the tax owner of property (i.e., the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not used exclusively in a taxpayer’s business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, e.g., sec. 280A.

\textsuperscript{1245} See Treas. Regs. secs. 1.167(a)–10(b), –3, –14, and 1.197–2(f). See also Treas. Reg. sec. 1.167(a)–11(e)(1)(i).

\textsuperscript{1246} See 168.

\textsuperscript{1247} See sec. 168(e) and (g).
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 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 rental property. The straight line depreciation method is required for the aforementioned real property.

Depreciation of an asset begins when the asset is deemed to be placed in service under the applicable convention. Under MACRS, nonresidential real property, residential rental property, and any railroad grading or tunnel bore generally are subject to the mid-month convention, which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month. All other property generally is subject to the half-year convention, which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year to reflect the assumption that assets are placed in service ratably throughout the year. However, if substantial property is placed in service during the last three months of a taxable year, a special rule requires use of the mid-quarter convention, designed to prevent the recognition of disproportionately large amounts of first-year depreciation as a result of the half-year convention.

### Depreciation of additions or improvements to property

The recovery period for any addition or improvement to real or personal property begins on the later of (1) the date on which the addition or improvement is placed in service, or (2) the date on which the MACRS recovery period applicable to the property is generally set forth in Revenue Procedure 87–56.

<table>
<thead>
<tr>
<th>Recovery method</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>200-percent declining balance</td>
<td>285.71</td>
<td>204.08</td>
<td>145.77</td>
<td>104.12</td>
<td>86.77</td>
<td>86.77</td>
<td>86.77</td>
<td>1,000.00</td>
</tr>
<tr>
<td>150-percent declining balance</td>
<td>214.29</td>
<td>168.37</td>
<td>132.29</td>
<td>121.26</td>
<td>121.26</td>
<td>121.26</td>
<td>121.26</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Straight-line</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>142.86</td>
<td>1,000.00</td>
</tr>
</tbody>
</table>

Details may not add to totals due to rounding.

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1248 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785). Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87–56, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88–22, 1988–1 C.B. 785. In November 1988, Congress revoked the Secretary's authority to modify the class lives of depreciable property. Rev. Proc. 87–56, as modified, remains in effect except to the extent that the Congress has, since 1988, statutorily modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.

1249 Under the declining balance method, the depreciation rate is determined by dividing the appropriate percentage (here, 150 or 200 percent) by the appropriate recovery period. This leads to accelerated depreciation when the declining balance percentage is greater than 100. The table above illustrates depreciation for an asset with a cost of $1,000 and a seven-year recovery period under the 200-percent declining balance method, the 150-percent declining balance method, and the straight line method.

1250 Treas. Reg. sec. 1.167(a)–10(b).

1251 Sec. 168(d)(2) and (d)(4)(B).

1252 Sec. 168(d)(1) and (4)(A).

1253 The mid-quarter convention treats all property placed in service (or disposed of) during any quarter as placed in service (or disposed of) on the mid-point of such quarter. Sec. 168(d)(3) and (d)(4)(C).
which the property with respect to which such addition or improvement is made is placed in service.\footnote{\textit{Sec. 168(i)(6)}.} Any MACRS deduction for an addition or improvement to any property is to be computed in the same manner as the deduction for the underlying property would be if such property were placed in service at the same time as such addition or improvement. Thus, for example, the cost of an improvement to a building that constitutes nonresidential real property is recovered over 39 years using the straight line method and mid-month convention. However, an exception to the 39-year recovery period applies to qualified improvement property, as described below.

\textit{Qualified improvement property}

Qualified improvement property is any improvement made by the taxpayer\footnote{\textit{Sec. 168(e)(6)(A)}.} to an interior portion of a building that is nonresidential real property if such improvement is placed in service by the taxpayer after the date such building was first placed in service by any taxpayer.\footnote{\textit{Sec. 168(e)(6)(B)}.} 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.\footnote{\textit{Sec. 168(b)(3)(G)}.}

Qualified improvement property placed in service after December 31, 2017, is generally depreciable using the straight line method\footnote{\textit{Note that as 15-year property, qualified improvement property is generally eligible for the additional first-year depreciation deduction under section 168(k). Qualified improvement property is also eligible for section 179 expensing. See sec. 179(e)(1). Note that the amount of the additional first-year depreciation deduction is determined after basis adjustments for any section 179 expensing. See Treas. Reg. sec. 1.168(k)–1(a)(2)(iii).\footnote{\textit{Sec. 168(g)(1)(A)–(D)}.\footnote{\textit{As defined in section 163(j)(7)(B). See sec. 168(g)(1)(F) and (8). For a discussion of changes made to section 168(j) by the Act, see the description of section 2306 of the Act (\textit{Modifications of Limitation on Business Interest}) in this document.}}} and half-year convention, and Congressional intent was for a 15-year recovery period to apply.\footnote{\textit{Sec. 168(g)(1)(F) and (8).}} However, when the definition of qualified improvement property was added to section 168(e) by section 13204 of Public Law 115–97, language providing a 15-year recovery period for such property was inadvertently omitted from the statute. As a result, the IRS and Treasury have taken the position that such property is recoverable over 39 years, rather than the intended 15 years.\footnote{\textit{See T.D. 9874, 84 Fed. Reg. 50109–50110, September 24, 2019. Note that if treated as 39-year property, the property would not be eligible for the additional first-year depreciation deduction under section 168(k) as such property would not have a MACRS recovery period of 20 years or less. See sec. 168(k)(2)(A)(i)(B).\footnote{\textit{Sec. 168(g)(1A)–(D).}}}  

\textit{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 bond financed property, and certain imported property covered by an Executive order.\footnote{\textit{Sec. 168(k)(3)(G)}.} In addition, ADS is required to be used for certain property held by an electing real property trade or business\footnote{\textit{Sec. 168(k)(2)(A)(i)(I)}.} and an
An 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 over recovery periods that generally are equal to the class life of the property, with certain exceptions. For example, nonresidential real property has a 40-year ADS recovery period, and residential rental property placed in service after December 31, 2017, has a 30-year ADS recovery period, while qualified improvement property placed in service after December 31, 2017, is intended to have a 20-year ADS recovery period.

**Explanation of Provision**

The provision clarifies that qualified improvement property is 15-year property under MACRS and 20-year property under ADS. The provision also clarifies that the 15-year MACRS (or 20-year ADS) recovery period only applies if the qualified improvement property is made by the taxpayer. Thus, for example, if a taxpayer purchases a building in a taxable transaction, any qualified improvement property previously placed in service by the seller with respect to such building does not qualify as qualified improvement property with respect to the buyer.

**Effective Date**

The provision is effective as if included in section 13204 of Public Law 115–97 (i.e., for property placed in service after December 31, 2017).

8. **Temporary exception from excise tax for alcohol used to produce hand sanitizer (sec. 2308 of the Act and sec. 5214 of the Code)**

**Present Law**

Distilled spirits produced in or imported into the United States generally are subject to Federal excise tax upon withdrawal from

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1263 As defined in section 168(j)(7)(C). See also sec. 168(g)(1)(G). For a discussion of changes made to section 163(j) by the Act, see the description of section 2306 of the Act (Modifications of Limitation on Business Interest) in this document.
1264 Sec. 168(g)(1)(E) and (7).
1265 See sec. 168(g)(3).
1266 This rule expresses Congressional intent.
1267 Thus, the provision reverses the result in T.D. 9874, supra, with the result that qualified improvement property may be eligible for the additional first-year depreciation deduction under section 168(k). See T.D. 9916, 85 Fed. Reg. 71734–71770, November 10, 2020, modifying and clarifying T.D. 9874 to reflect these changes made by the Act. Note that if qualified improvement property placed in service after 2017 was improperly depreciated as 39-year property (or 40-year property under ADS), the taxpayer may be eligible to file an amended return, administrative adjustment request under section 6227, or IRS Form 3115, Application for Change in Accounting Method, to change to properly treat such property as 15-year property (or 20-year property under ADS). Similarly, a taxpayer wishing to make, revoke, or withdraw an election for such property under section 168(g)(7) (regarding an election to use ADS), section 168(k)(7) (regarding an election out of the additional first-year depreciation deduction under section 168(k)), or section 168(k)(10) (regarding an election to use a 50-percent allowance under section 168(k) for certain property placed in service during certain periods) may be eligible to do so by filing an amended return, administrative adjustment request, or IRS Form 3115. See sec. 446(e); Rev. Proc. 2020–50, 2020–48 I.R.B. 1122; Rev. Proc. 2020–25, 2020–19 I.R.B. 785, as modified by Rev. Proc. 2020–25, 2020–19 I.R.B. 785; and sec. 6 of Rev. Proc. 2019–43, 2019–48 I.R.B. 1107, as modified by Rev. Proc. 2020–25, 2020–19 I.R.B. 785, and Rev. Proc. 2020–50, 2020–48 I.R.B. 1122.
the bonded premises of a distilled spirits plant. Under certain circumstances, however, distilled spirits may be withdrawn from the bonded premises free of Federal excise tax, such as when such spirits are denatured or are withdrawn for use in hospitals, blood banks, sanitariums, or nonprofit clinics for non-beverage purposes and not for resale or use in the manufacture of any product for sale.

The Secretary, in the event of a disaster, has broad authority to temporarily exempt proprietors of distilled spirits plants from any provision of the Code related to distilled spirits, but such authority does not extend to those Code provisions requiring payment of the Federal excise tax on distilled spirits.

**Explanation of Provision**

Under the provision, distilled spirits that are removed after December 31, 2019, and before January 1, 2021, are free of Federal excise tax if they are withdrawn for use or contained in hand sanitizer produced and distributed in a manner consistent with any guidance issued by the Food and Drug Administration ("FDA") that is related to the outbreak of virus SARS–CoV–2 or coronavirus disease 2019 ("COVID–19").

**Effective Date**

The provision applies to distilled spirits removed after December 31, 2019.

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1269 Secs. 5001 and 5006.
1270 Sec. 5214(a).
1271 Sec. 5562.
TITLE III—SUPPORTING AMERICA’S HEALTH CARE SYSTEM IN THE FIGHT AGAINST THE CORONAVIRUS

Subtitle B—Education Provisions

1. Technical and other amendments relating to the FUTURE Act (sec. 3516 of the Act and sec. 6103 of the Code)

Present Law

General rule of confidentiality and exception for certain disclosures to administer certain student financial aid and loan programs

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26 (the Code). Among others, this general rule applies to officers and employees of the United States and any person who has or had access to returns or return information under section 6103(l)(13). The Fostering Undergraduate Talent by Unlocking Resources for Education (“FUTURE”) Act amended and rewrote section 6103(l)(13) to authorize the disclosure of certain return information for purposes of administering student financial aid and loan programs.

The provision requires the IRS to disclose certain return information to the Department of Education and others for the purpose of administering financial aid and loan programs. Upon receiving a written request from the Secretary of Education, the IRS must disclose specified return information to authorized persons for the purposes of (1) determining eligibility for, and repayment obligations under, income-contingent or income-based repayment plans; (2) monitoring and reinstating loans that were discharged based on a total and permanent disability; and (3) determining the eligibility for, and the amount of, awards of Federal student financial aid.

Authorized persons may only use the disclosed information for the purposes above and for three additional purposes related to the programs. These additional purposes are (1) reducing the net cost of improper payments under such plans, relating to such awards, or relating to such discharges; (2) oversight activities by the Office of Inspector General of the Department of Education as authorized by the Inspector General Act of 1978; and (3) conducting analyses and forecasts for estimating costs related to such plans, discharges, or awards. The additional purposes do not include conducting criminal investigations or prosecutions.

An "authorized person" is any person who is an officer, employee, or contractor of the Department of Education, and is specifically authorized and designated by the Secretary of Education for purposes of the specific disclosure authority programs (income-contingent or income-based repayment plans, loans discharged based on a total and permanent disability, awards of Federal student finan-
cial aid (the designation is applied separately with respect to each program)).

With the consent of the taxpayer, authorized persons may redisclose the return information received from the IRS to certain institutions of higher education, State higher education agencies, and scholarship organizations solely for use in financial aid programs.

Civil damage remedy for unauthorized disclosure or unauthorized inspection of returns and return information

A taxpayer whose return or return information is disclosed in violation of section 6103(a) may bring a lawsuit in a district court of the United States for actual or statutory damages, and in certain cases, punitive damages. If a Federal employee makes knowingly or by reason of negligence, a disclosure or inspection in violation of any provision of section 6103, a taxpayer may sue the United States. If a person other than a Federal employee knowingly or by reason of negligence inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, suit may be brought directly against such person.

No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection requested by the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of $1,000 per act of unauthorized disclosure (or inspection) or, the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure. In addition, the taxpayer is to be notified if the IRS or a Federal or State agency (upon notice to the Secretary by such Federal or State agency) proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee’s unauthorized inspection or disclosure of the taxpayer’s return or return information.

Safeguards and accountings

Unless specifically listed in the statute as excluded from the accounting requirement, section 6103(p)(3) requires the IRS to maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under section 6103 (and section 6104(c)). The IRS is required to account for all disclosures made under section 6103(l)(13), including those made to the Department of Education and its contractors, as well as redisclosures made by authorized persons to institutions of higher education, State higher education agencies, and scholarship organizations. The Secretary of Education is required to annually submit a written report to the Secretary of the Treasury regarding:
(1) redisclosures of return information to institutions of higher education, State higher education agencies, and scholarship organizations, including the number of such redisclosures; and (2) any unauthorized use, access, or disclosure of the return information under section 6103(l)(13).

Section 6103(p)(4) requires, as a condition of receiving returns and return information, that Federal and State agencies and specified other recipients provide safeguards to the satisfaction of the Secretary of the Treasury as necessary or appropriate to protect the confidentiality of returns or return information. It also requires that a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary, regarding the procedures established and utilized for ensuring the confidentiality of returns and return information. The Secretary, after an administrative review, may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information.

All agencies and other persons described in section 6103(l)(13) as authorized to receive confidential return information (i.e., the Department of Education, its contractors, certain institutions of higher education, State higher education agencies, and scholarship organizations) are required to safeguard such information to the satisfaction of the Secretary.

Explanation of Provision

General rule of confidentiality and civil actions for damages

Under the provision, a person who has or had access to return information under section 6103(l)(13)(D)(iii) (i.e., certain institutions of higher education, State higher education agencies, scholarship organizations, and the authorized persons designated to make redisclosures to such entities) is no longer required to maintain the confidentiality of that return information as provided by section 6103(a). As a result, the general rule of confidentiality and nondisclosure under section 6103(a) does not apply to these entities with respect to the information redisclosed to them, and a civil action for damages due to inspections and disclosures by such entities in violation of section 6103(a) is no longer available.

Accountings

Under the provision, the IRS is no longer required to maintain a permanent system of standardized records to account for disclosures the IRS makes to the Department of Education and its contractors. The IRS is still required to account for redisclosures made by authorized persons to institutions of higher education, State higher education agencies, and scholarship organizations.

Safeguards

For institutions of higher education, State higher education agencies, scholarship organizations, and the authorized persons designated to make redisclosures to such entities, the provision elimi-
nates the requirement that as a condition of receiving return information such entities establish safeguard requirements to the satisfaction of the Secretary of the Treasury.

**Technical amendment**

The provision corrects an erroneous cross-reference defining taxable income from a farming business.

**Effective Date**

The amendments made by the provision are effective as if included in the FUTURE Act (Pub. L. No. 116–91).

**Subtitle C—Labor Provisions**

1. **Advance refunding of credits (sec. 3606 of the Act)**

**Present Law**

Federal employment taxes are imposed on wages paid to employees with respect to employment and include Federal income tax as well as taxes levied under the Federal Insurance Contributions Act ("FICA") and Federal Unemployment Tax Act ("FUTA").

FICA taxes are comprised of two components: Old-Age, Survivors, and Disability Insurance ("OASDI") tax and Medicare taxes. With respect to OASDI tax, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer.

The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020). Generally, the OASDI wage base rises based on increases in the national average wage index. Generally, the term "wages" for OASDI tax purposes means all remuneration for "employment," including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions. The name given to the remuneration for employment is immaterial. OASDI wages includes salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term "employment" is generally defined for FICA tax purposes as any service, of whatever nature, performed by an employee for the person employing him or her, with certain specific exceptions.

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1278 Secs. 3401, 3101, 3111, and 3301.
1279 Sec. 3221.
1280 The Hospital Insurance ("HI") tax has two components: Medicare tax and Additional Medicare tax. Medicare tax is imposed on wages, as defined in section 3121(a), with respect to employment, as defined in section 3121(b), at a rate of 1.45 percent for the employer. Sec. 3101(b)(1). An equivalent 1.45 percent is withheld from employee wages. Sec. 3111(b)(1). For purposes of this description, Medicare tax does not include Additional Medicare tax. Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent. Sec. 3101(b)(2). There is no equivalent employer's share of Additional Medicare taxes.
1281 Sec. 3101.
1283 Sec. 3121(a).
Railroad retirement program

Railroad workers do not participate in the OASDI system. Accordingly, compensation subject to RRTA tax is exempt from FICA taxes. The RRRA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of services. Employees whose compensation is subject to RRTA are ultimately eligible for railroad retirement benefits that fall under a two-tier structure. Rail employees and employers pay tier 1 taxes at the same rate as FICA taxes. In addition, rail employees and employers both pay tier 2 taxes that are used to finance railroad retirement benefits over and above Social Security benefit levels. Tier 2 benefits are similar to a private defined benefit pension. Those taxes are funneled to the railroad retirement system and used to fund basic retirement benefits for railroad workers and an investment trust that generates returns for the pension fund.

Self-employment taxes

The Self-Employment Contributions Act ("SECA") imposes tax on the self-employment income of an individual. SECA taxes consist of OASDI tax and Medicare tax. Under the OASDI component, the first rate of tax is 12.4 percent on self-employment income up to the OASDI wage base ($137,700 for 2020). Under the basic Medicare tax component, the second rate of tax is 2.9 percent of all self-employment income (without regard to the OASDI wage base). As is the case with employees, an Additional Medicare tax applies to the Medicare portion of SECA tax on self-employment income in excess of a threshold amount.

Self-employment income subject to SECA tax is determined as the net earnings from self-employment derived by an individual during any taxable year, subject to certain exceptions. Net earnings from self-employment is the gross income derived by an individual from any trade or business less allowed deductions that are attributable to the trade or business and permitted under the SECA rules. Certain passive income and related deductions are not taken into account in determining net earnings from self-employment, including rentals from real estate (unless received in the course of a trade or business as a real estate dealer), dividends and interest (unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities), and sales or exchanges of capital assets and certain other property (unless the property is stock in trade that would properly be included...
in inventory or held primarily for sale to customers in the ordinary course of the trade or business).\footnote{1294Sec. 1402(a)(3).}

For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer’s net self-employment income (determined without regard to this deduction) and one-half of the sum of the rates for OASDI and Medicare taxes (i.e., 7.65 percent of net earnings).\footnote{1295Sec. 1402(a)(12).} This deduction is determined without regard to the additional 0.9 percent Additional Medicare tax that may apply to an individual. This deduction reflects the fact that the FICA rates apply to an employee’s wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual’s net earnings are economically equivalent to an employee’s wages plus the employer share of FICA taxes.\footnote{1296The deduction is intended to provide parity between FICA and SECA taxes because the employer may deduct, as a business expense, its share of the FICA taxes paid. As presently written, the deduction for SECA taxes is not the exact economic equivalent to the deduction for FICA taxes. See Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures (JCS–2–05), January 27, 2005, for a detailed description of this issue.} This is generally referred to as the “regular method” of determining net earnings from self-employment, and in IRS forms and publications is expressed as multiplying total net earnings from self-employment by 92.35 percent.

**Division G of the Families First Coronavirus Response Act**

Division G of the Families First Coronavirus Response Act\footnote{1297Division G of the Families First Coronavirus Response Act ("FFCRA") provided a tax credit for qualified sick leave wages and qualified family leave wages mandated under the FFCRA, as well as allocable qualified health plan expenses. See Joint Committee on Taxation, Technical Explanation of Division G, “Tax Credits for Paid Sick and Paid Family and Medical Leave,” of H.R. 6201, the “Families First Coronavirus Response Act” (JCX–10–20), March 2020.} (“FFCRA”) provided a tax credit for qualified sick leave wages and qualified family leave wages mandated under the FFCRA, as well as allocable qualified health plan expenses.\footnote{1298Section 7001 of the FFCRA requires certain employers to provide an employee with paid sick time to the extent that the employee is unable to work or telework due to enumerated conditions. Under the FFCRA, an employer is allowed a corresponding credit against the OASDI tax or RRTA tax imposed on the employer. The amount of the credit is equal to 100 percent of the qualified sick leave wages paid by the employer with respect to that calendar quarter, subject to some limitations. The provision limits the amount of qualified sick leave wages taken into account for purposes of the credit.} Section 7001 of the FFCRA requires certain employers to provide an employee with paid sick time to the extent that the employee is unable to work or telework due to enumerated conditions. Under the FFCRA, an employer is allowed a corresponding credit against the OASDI tax or RRTA tax imposed on the employer. The amount of the credit is equal to 100 percent of the qualified sick leave wages paid by the employer with respect to that calendar quarter, subject to some limitations. The provision limits the amount of qualified sick leave wages taken into account for purposes of the credit.

Section 7003 of the FFCRA required certain employers to provide qualified family leave wages to employees. Qualified family leave wages include public health emergency leave provided to employees under Family and Medical Leave Act.\footnote{1299Under the FFCRA, employers are allowed a credit against OASDI or RRTA taxes in an amount equal to 100 percent of qualified family leave wages paid by the employer during the quarter, subject to the limitations prescribed in the FFCRA.} For both sections 7001 and 7003, the credit allowed is increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified sick leave wages or qualified family leave wages for which the credit is allowed. In addition, the

\begin{footnotes}
\item[1294]Sec. 1402(a)(3).
\item[1295]Sec. 1402(a)(12).
\item[1296]The deduction is intended to provide parity between FICA and SECA taxes because the employer may deduct, as a business expense, its share of the FICA taxes paid. As presently written, the deduction for SECA taxes is not the exact economic equivalent to the deduction for FICA taxes. See Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures (JCS–2–05), January 27, 2005, for a detailed description of this issue.
\item[1297]Division G of the Families First Coronavirus Response Act ("FFCRA") provided a tax credit for qualified sick leave wages and qualified family leave wages mandated under the FFCRA, as well as allocable qualified health plan expenses. See Joint Committee on Taxation, Technical Explanation of Division G, “Tax Credits for Paid Sick and Paid Family and Medical Leave,” of H.R. 6201, the “Families First Coronavirus Response Act” (JCX–10–20), March 2020.
\item[1298]Pub. L. No. 103–3 (February 3, 1993).
\end{footnotes}
amount of the credit is increased by the amount of tax imposed by section 3111(b) on qualified sick leave wages or qualified family leave wages, for which a credit is allowed under such section 7001 or 7003, respectively.

With respect to sections 7001 and 7003 of the FFCRA, the credit allowed may not exceed the OASDI tax or RRTA tax imposed on the employer, reduced by any credits allowed for the employment of qualified veterans and research expenditures of qualified small businesses for that calendar quarter on the wages paid with respect to all the employer’s employees. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, subject to the foregoing reductions, such excess is treated as a refundable overpayment.

**Explanation of Provision**

The refundable portion of the credits allowed under the FFCRA may be advanced during the calendar quarter in which the qualified sick leave wages or qualified family leave wages are paid. The provision allows employers to choose to receive an offset, through a tax credit, of expenditures made for paid sick leave and paid family and medical leave mandated under the FFCRA at an earlier juncture during a calendar quarter rather than at the end of a quarter upon the filing of a quarterly employment tax return. The amount of the credit that may be advanced, according to forms and instructions provided by the Secretary (or the Secretary’s delegate), is limited to the amount of employer OASDI or RRTA taxes, reduced by any credits allowed for qualified veterans or research expenditures on qualified small businesses. The amount of the credit advancement is calculated through the end of the most recent payroll period in the quarter.

Penalties for the failure to timely deposit the employer portion of OASDI tax or equivalent employer’s share of RRTA tax shall be waived if the Secretary (or the Secretary’s delegate) determines that the failure to make such deposits was due to the anticipated credit allowed. The provision directed the Secretary (or the Secretary’s delegate) to provide regulations or other guidance as may be necessary to carry out the purposes of the provision.

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1300 Section 3111(b) imposes on the employer a Medicare hospital insurance excise tax of 1.45 percent on all earnings.

1301 This credit is described in section 3111(e).

1302 This credit is described in section 3111(f).

1303 The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b).

1304 This credit is described in section 3111(f).

1305 This credit is described in section 3111(e).

In addition, any amount that is due to an employer is treated in the same manner as a refund due from a credit provision. 31 U.S.C. sec. 1324. Thus, amounts are appropriated to the Secretary for refunding such excess amounts.

1302 Secs. 3111(a), 3221(a), and 6656.

1303 Notice 2020–22, 2020–17 I.R.B. 664, April 20, 2020. For 2020, the IRS provided Form 7200, Advance Payment of Employer Credits Due to COVID–19, to allow taxpayers to request advance payment of the credit. The instructions to Form 7200 for 2020 explain how employers will be allowed the full amount of this [FFCRA] refundable credit even if it exceeds their employment tax liability. If quarterly employment tax deposits that are otherwise required are less than the amount of credit for which the employer is eligible, the employer may receive the remaining credit in advance, using this form. FFCRA also provides similar credits for certain self-employed persons in similar circumstances. However, advance payments aren’t available for the credit for self-employed individuals. See instructions to IRS Form 7200, revised March 2020, available at https://www.irs.gov/pub/irs-prior/i7200–2020.pdf.
Effective Date

The provision is effective on the date of enactment (March 27, 2020).

2. Expansion of DOL authority to postpone certain deadlines (sec. 3607 of the Act, sec. 518 of ERISA, and sec. 319 of the Public Health Service Act)

Present Law

Employee benefit plans

Under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)
1306, the Secretary of Labor has the authority to postpone certain deadlines with respect to actions within its jurisdiction by reason of a Presidentially declared disaster
1307 or a terroristic or military action. The Secretary of Labor may, in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by such a Presidentially declared disaster or a terroristic or military action notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed by such a plan or person under ERISA. A plan will not be treated as failing to be operated in accordance with its terms solely as the result of disregarding any such period.

Under the Code, the Secretary has the authority to postpone certain tax deadlines affected by a Federally declared disaster, or a terroristic or military action. In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person, the Secretary may prescribe a period of up to one year that may be disregarded in determining the date by which any action by a pension or other employee benefit plan, or by a plan sponsor, administrator, participant, beneficiary or other person would be required or permitted to be completed.

Section 319 of the Public Health Service Act

Under section 319 of the Public Health Service (“PHS”) Act, the Secretary of the Department of Health and Human Services (“HHS”) can determine, after consulting with such public health officials as may be necessary, that (1) a disease or disorder presents

1306 29 U.S.C. 1001 et seq. In the past, questions had arisen concerning the scope of section 7508A with respect to employee benefit plans because a number of acts related to employee benefit plans may be required or provided for under ERISA, or the terms of the plan, rather than under the Code. For example, a plan sponsor or plan administrator may be required to provide a notice to plan participant or participant or to make a plan contribution.
1307 As defined in section 1033(h)(3), which provides that the term "Federally declared disaster" has the same meaning as under section 165(i)(5).
1308 Sec. 518 of ERISA. A terroristic or military action is defined in section 692(c)(2).
1309 A Federally declared disaster is defined in section 165(i)(5). A terroristic or military action is defined in section 165(i)(5)(A) as "any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act" (the "Stafford Act"). On March 13, 2020, President Trump declared the COVID–19 pandemic an "emergency" under section 501(b) of the Stafford Act. As part of that declaration, he instructed the Secretary to provide relief from tax deadlines pursuant to section 7508(A)(a).
1310 Sec. 7508A.
1311 Sec. 7508(b).
1312 42 U.S.C. 274(d).
a Public Health Emergency ("PHE") or (2) a PHE, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists. A PHE declaration allows the Secretary of HHS to take certain actions in response to the PHE. In addition, the determination of a public health emergency authorizes the Secretary of HHS to take a variety of discretionary actions to respond to the PHE under the statutes the Secretary of HHS administers.\footnote{On January 31, 2020, the Secretary of HHS declared COVID–19 a public health emergency for the entire United States under section 319 of the PHS Act.}

**Explanation of Provision**

Under the provision, the Secretary of Labor’s authority to postpone certain deadlines under ERISA is extended to include a public health emergency declared by the Secretary of HHS pursuant to section 319 of the PHS Act.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).

3. **Single-employer plan funding rules (sec. 3608 of the Act and secs. 430(j) and 436 of the Code)**

**Present Law**

**Minimum required contributions**

Single-employer defined benefit pension plans are generally subject to minimum funding requirements under the Employee Retirement Income Security Act of 1974, as amended ("ERISA")\footnote{29 U.S.C. 1001 et seq.} and the Code.

For plan years beginning after December 31, 2007,\footnote{Sec. 430(a). The Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109–280, August 17, 2006, repealed the funding rules that were applicable for plan years beginning before December 31, 2007 (including the requirement that a funding standard account be maintained) and provided a new set of rules for determining minimum required contributions. A delayed effective date applies to certain plans such as certain CSEC plans. Governmental plans and church plans are exempt from the funding rules to the extent provided under law.} the amount of the minimum required contribution\footnote{Sec. 430(b).} to a single-employer defined benefit pension plan for a plan year generally depends on a comparison of the value of the plan’s assets with the plan’s funding target and target normal cost.

A plan’s funding target is the present value of all benefits accrued or earned as of the beginning of the plan year.\footnote{Sec. 430(c).} A plan’s target normal cost for a plan year is generally the present value of benefits expected to accrue or be earned during the plan year plus the plan-related expenses expected to be paid from plan assets during the plan year.\footnote{Sec. 430(d) and (i)(1).} A shortfall amortization charge is generally the sum of the amounts required to amortize any shortfall amortization bases for the plan year and the six preceding plan years.\footnote{Sec. 430(e).} A shortfall amortization base is generally required to be...
Sec. 430(c)(3). A shortfall amortization base does not have to be established if the value of a plan’s assets (reduced by any prefunding balance, but only if the employer elects to use any portion of the prefunding balance to reduce required contributions for the year) is at least equal to the plan’s funding target for the plan year.

Sec. 430(c)(4). Contributions in excess of the minimum contributions required under the provision for plan years beginning after 2007 generally are credited to a prefunding balance that may be used in certain circumstances to reduce otherwise required minimum contributions. Credit balances determined under pre-PPA law are carried over into a funding standard carryover balance and generally may also be used (in certain circumstances) to reduce otherwise required minimum contributions. For example, a credit balance would have resulted where contributions in excess of minimum required contributions were made or from large net experience gains.

Sec. 430(e).

Sec. 430(i).

Sec. 430(j).

The amount of any quarterly installment must be sufficient to cover any liquidity shortfall.

The interest rates and mortality table that must be used in determining a plan’s target normal cost and funding target, as well as certain other actuarial assumptions, are specified, including special assumptions (“at-risk” assumptions) for a plan in at-risk status. A plan is generally in at-risk status for a year if the value of the plan’s assets (reduced by any prefunding and funding standard carryover balances) for the preceding year was less than (1) 80 percent of the plan’s funding target determined without regard to the at-risk assumptions and (2) 70 percent of the plan’s funding target determined using the at-risk assumptions.

Timing rules for contributions

The due date for the payment of a minimum required contribution for a plan year is generally 8 months after the end of the plan year. Any payment made on a date other than the valuation date for the plan year must be adjusted for interest accruing at the plan’s effective interest rate for the period between the valuation date and the payment date. Quarterly contributions must be made during a plan year if the plan had a funding shortfall for the preceding plan year (i.e., if the value of the plan’s assets, reduced by the funding standard carryover balance and prefunding balance, was less than the plan’s funding target for the preceding plan year). If a quarterly installment is not made, interest applies for the period of underpayment at the rate of interest otherwise applicable (i.e., the plan’s effective interest rate) plus five percentage points.

Excise tax on failure to make minimum required contributions

An employer is generally subject to an excise tax if it fails to make minimum required contributions and fails to obtain a waiver.
from the IRS. The excise tax is 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year. In addition, a tax of 100 percent of such unpaid required minimum contributions may be imposed if any unpaid minimum required contributions remain unpaid after a certain period.

**Benefit restrictions**

With respect to plan years beginning after December 31, 2007, the Code imposes the following funding-based limits on benefits and benefit accruals under single-employer plans.

*Plan shutdown and other unpredictable contingent event benefits*

If a participant is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan must provide that such benefits may not be provided if the plan's adjusted funding target attainment percentage for that plan year: (1) is less than 60 percent or (2) would be less than 60 percent taking into account the occurrence of the event. For this purpose, the term unpredictable contingent event benefit means any benefit payable solely by reason of: (1) a plant shutdown (or similar event, as determined by the Secretary) or (2) any event other than attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability.

The determination of whether the limitation applies is made in the year the unpredictable contingent event occurs. For example, suppose a plan provides for benefits upon the occurrence of a plant shutdown, and a plant shutdown occurs in 2019. Taking into account the plant shutdown, the plan's adjusted funding target attainment percentage is less than 60 percent. Thus, the limitation applies, and benefits payable solely by reason of the plant shutdown may not be paid (unless the employer makes contributions to the plan as described below), regardless of whether the benefits will be paid in the 2019 plan year or a later plan year.

The limitation ceases to apply with respect to any plan year, effective as of the first day of the plan year, if the plan sponsor makes a contribution (in addition to any minimum required contribution for the plan year) equal to: (1) if the plan's adjusted funding target attainment percentage is less than 60 percent, the amount of the increase in the plan's funding target for the plan year attributable to the occurrence of the event; or (2) if the plan's adjusted funding target attainment percentage would be less than 60 percent taking into account the occurrence of the event, the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

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1326 Sec. 4971. A lien in favor of the plan with respect to property of the employer (and members of the employer's controlled group) arises in certain circumstances in which the employer fails to make required contributions.

1327 Sec. 436.

1328 Sec. 436(b).

1329 Benefits already being paid as a result of a plant shutdown or other event that occurred in a preceding year are not affected by the limitation.
The limitation does not apply for the first five years a plan (or a predecessor plan) is in effect.

**Plan amendments increasing benefit liabilities**

Certain plan amendments may not take effect during a plan year if the plan’s adjusted funding target attainment percentage for the plan year (1) is less than 80 percent or (2) would be less than 80 percent taking into account the amendment. In such a case, no amendment may take effect if it has the effect of increasing the liabilities of the plan by reason of any increase in benefits, the establishment of new benefits, any change in the rate of benefit accrual, or any change in the rate at which benefits vest under the plan. The limitation does not apply to an amendment that provides for an increase in benefits under a formula that is not based on compensation, but only if the rate of increase does not exceed the contemporaneous rate of increase in average wages of the participants covered by the amendment.

The limitation ceases to apply with respect to any plan year, effective as of the first day of the plan year (or, if later, the effective date of the amendment), if the plan sponsor makes a contribution (in addition to any minimum required contribution for the plan year) equal to: (1) if the plan’s adjusted funding target attainment percentage is less than 80 percent, the amount of the increase in the plan’s funding target for the plan year attributable to the amendment; or (2) if the plan’s adjusted funding target attainment percentage would be less than 80 percent taking into account the amendment, the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

The limitation does not apply for the first five years a plan (or a predecessor plan) is in effect.

**Prohibited payments**

A plan must provide that, if the plan’s adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan will not make any prohibited payments after the valuation date for the plan year.

A plan must also provide that, if the plan’s adjusted funding target attainment percentage for a plan year is 60 percent or greater, but less than 80 percent, the plan may not pay any prohibited payments exceeding the lesser of: (1) 50 percent of the amount otherwise payable under the plan and (2) the present value of the maximum Pension Benefit Guaranty Corporation (“PBGC”) guarantee with respect to the participant (determined under guidance prescribed by the PBGC, using the interest rates and mortality table applicable in determining minimum lump-sum benefits). The plan must provide that only one payment under this exception may be made with respect to any participant during any period of consecutive plan years to which the limitation applies. For this purpose, a participant and any beneficiary of the participant (including an alternate payee) is treated as one participant. If the participant’s accrued benefit is allocated to an alternate payee and one or more

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1330 Sec. 436(c). The pre-PPA rules limiting benefit increases while an employer is in bankruptcy continue to apply.

1331 Sec. 436(d).
other persons, the amount that may be distributed is allocated in the same manner unless the applicable qualified domestic relations order provides otherwise.

In addition, a plan must provide that, during any period in which the plan sponsor is in bankruptcy proceedings, the plan may not pay any prohibited payment. However, this limitation does not apply on or after the date the plan’s enrolled actuary certifies that the adjusted funding target attainment percentage of the plan is not less than 100 percent.

For purposes of these limitations, “prohibited payment” is defined as (1) any payment in excess of the monthly amount paid under a single life annuity (plus any Social Security supplement provided under the plan) to a participant or beneficiary whose annuity starting date occurs during the period, (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits (e.g., an annuity contract), or (3) any other payment specified by the Secretary by regulations.1332

The prohibited payment limitation does not apply to a plan for any plan year if the terms of the plan (as in effect for the period beginning on September 1, 2005 and ending with the plan year) provide for no benefit accruals with respect to any participant during the period.

Cessation of benefit accruals

A plan must provide that, if the plan’s adjusted funding target attainment percentage is less than 60 percent for a plan year, all future benefit accruals under the plan must cease as of the valuation date for the plan year.1333 The limitation applies only for purposes of the accrual of benefits; service during the freeze period is counted for other purposes. For example, if accruals are frozen under the plan, service earned during the freeze period still counts for vesting purposes. As another example, suppose a plan provides that payment of benefits begins when a participant terminates employment after age 55 and with 25 years of service. Under this example, if a participant who is age 55 and has 23 years of service when the freeze on accruals becomes applicable terminates employment two years later, the participant has 25 years of service for this purpose and thus can begin receiving benefits. However (assuming the freeze on accruals is still in effect), the amount of the benefit is based on the benefit accrued before the freeze (i.e., counting only 23 years of service).

The limitation ceases to apply with respect to any plan year, effective as of the first day of the plan year, if the plan sponsor makes a contribution (in addition to any minimum required contribution for the plan year) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

The limitation does not apply for the first five years a plan (or a predecessor plan) is in effect.

1332 Sec. 436(d)(5).
1333 Sec. 436(e).
Adjusted funding target attainment percentage

In general

The term “funding target attainment percentage” is defined as under the minimum funding rules, that is, the ratio, expressed as a percentage, that the value of the plan’s assets (reduced by any funding standard carryover balance and prefunding balance) bears to the plan’s funding target for the year (determined without regard to at-risk status). A plan’s adjusted funding target attainment percentage is determined in the same way, except that the value of the plan’s assets and the plan’s funding target are both increased by the aggregate amount of purchases of annuities for employees, other than highly compensated employees, made by the plan during the two preceding plan years.1334

Special rule for fully funded plans

Under a special rule, if a plan’s funding target attainment percentage is at least 100 percent, determined without reducing the value of the plan’s assets by any funding standard carryover balance or prefunding balance, the value of the plan’s assets is not so reduced in determining the plan’s funding target attainment percentage for purposes of whether the benefit limitations apply.

Presumptions as to funded status

Certain presumptions apply in determining whether limitations apply with respect to a plan, subject to certification of the plan’s adjusted funding target attainment percentage by the plan’s enrolled actuary.

If a plan was subject to a limitation for the preceding year, the plan’s adjusted funding target attainment percentage for the current year is presumed to be the same as for the preceding year until the plan actuary certifies the plan’s actual adjusted funding target attainment percentage for the current year.

If (1) a plan was not subject to a limitation for the preceding year, but its adjusted funding target attainment percentage for the preceding year was not more than 10 percentage points greater than the threshold for a limitation, and (2) as of the first day of the fourth month of the current plan year, the plan actuary has not certified the plan’s actual adjusted funding target attainment percentage for the current year, the plan’s funding target attainment percentage is presumed to be reduced by 10 percentage points as of that day and that day is deemed to be the plan’s valuation date for purposes of applying the benefit limitation. As a result, the limitation applies as of that date until the actuary certifies the plan’s actual adjusted funding target attainment percentage.

In any other case, if the plan actuary has not certified the plan’s actual adjusted funding target attainment percentage by the first day of the tenth month of the current plan year, for purposes of the limitations, the plan’s adjusted funding target attainment percentage is conclusively presumed to be less than 60 percent as of that day and that day is deemed to be the valuation date for purposes of applying the benefit limitations.

1334 Sec. 436(j)(2).
Reduction of funding standard carryover and prefunding balances

The value of plan assets is generally reduced by any funding standard carryover or prefunding amounts in determining a plan’s funding target attainment percentage. As provided for under the funding rules applicable to single-employer plans, a plan sponsor may elect to reduce a funding standard carryover balance or prefunding balance, so that the value of plan assets is not required to be reduced by that amount in determining the plan’s funding target attainment percentage.

Contributions made to avoid a benefit limitation

An employer may make contributions (in addition to any minimum required contribution) in an amount sufficient to increase the plan’s adjusted funding target attainment percentage to a level to avoid a limitation on unpredictable contingent event benefits, a plan amendment increasing benefits, or additional accruals. An employer may not use a prefunding balance or funding standard carryover balance in lieu of such a contribution, and such a contribution does not result in an increase in any prefunding balance.

Instead of making additional contributions to avoid a benefit limitation, an employer may provide security in the form of a surety bond, cash, certain U.S. government obligations, or such other form as is satisfactory to the Secretary and the parties involved. In such a case, the plan’s adjusted funding target attainment percentage is determined by treating the security as a plan asset. Any such security may be perfected and enforced at any time after the earlier of (1) the date on which the plan terminates; (2) if the plan sponsor fails to make a required contribution for any subsequent plan year, the due date for the contribution; or (3) if the plan’s adjusted funding target attainment percentage is less than 60 percent for a consecutive period of seven years, the valuation date for the last year in the period. The security will be released (and any related amounts will be refunded with any accrued interest) at such time as the Secretary may prescribe in regulations (including partial releases by reason of increases in the plan’s funding target attainment percentage).

Treatment of plan as of close of prohibited or cessation period

If a limitation on prohibited payments or future benefit accruals ceases to apply to a plan, all such payments and benefit accruals resume, effective as of the day following the close of the period for which the limitation applies.\footnote{This rule does not apply to limitations on unpredictable contingent event benefits and plan amendments increasing liabilities.} Nothing in this rule is to be construed as affecting a plan’s treatment of benefits, which would have been paid or accrued but for the limitation.
Explanation of Provision

Under the provision, in the case of any minimum required contribution which, but for this provision, would have been due during calendar year 2020, such contribution is due on January 1, 2021, and the amount of each such contribution must be increased by interest accruing between the original due date for the contribution (determined without regard to this provision) and the payment date (as determined under this provision), at the effective rate of interest for the plan for the plan year that includes such payment date.

Additionally, under the provision, for purposes of determining whether benefit restrictions apply to a plan for a plan year that includes calendar year 2020, a plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the adjusted funding target attainment percentage for plan years that include calendar year 2020.

Effective Date

The provision is effective on the date of enactment (March 27, 2020).

4. Application of cooperative and small employer charity pension plan rules to certain charitable employers whose primary exempt purpose is providing services with respect to mothers and children (sec. 3609 of the Act, sec. 210(f) of ERISA, and sec. 414(y) of the Code)

Present Law

Defined benefit plans maintained by private employers are generally subject to minimum funding requirements under the Code and ERISA. Different minimum funding rules apply to (1) single employer plans and most multiple employer plans, (2) multiple-employer plans that are cooperative and small employer charity ("CSEC") plans, and (3) multiemployer plans. For purposes of the minimum funding rules, businesses and organizations that are members of a controlled group, a group under common control, or an affiliated service group are treated as one employer (referred to as "aggregation").

A single-employer plan is a plan maintained by one employer. A single-employer plan may cover employees who are also covered by a collective bargaining agreement ("collectively bargained employees"), pursuant to which the plan is maintained (a "collectively bargained plan"). An employer may maintain separate single-em-
employer plans for collectively and non-collectively bargained employees, or they may be covered by the same plan.

A multiple-employer plan is a single plan maintained by two or more unrelated employers (i.e., employers that are not treated as a single employer under the aggregation rules) and that is not a multiemployer plan (as defined below).\textsuperscript{1341} Multi-employer plans are commonly maintained by employers in the same industry. A multiple-employer plan may cover collectively bargained employees or non-collectively bargained employees.

Multiemployer plans (also known as “Taft-Hartley” plans and distinct from multi-employer plans) are plans maintained pursuant to one or more collective bargaining agreements with two or more unrelated employers and to which the employers are required to contribute under the collective bargaining agreement(s).\textsuperscript{1342} Multiemployer plans commonly cover collectively bargained employees in a particular industry.

**Minimum funding requirements**

Before the Pension Protection Act of 2006 (“PPA”),\textsuperscript{1343} the basic funding rules applicable to single-employer plans, multi-employer plans, and multiemployer plans were similar, with an additional contribution requirement, referred to as the “deficit reduction contribution” (“DRC”) requirement, for single-employer and multiemployer plans.\textsuperscript{1344} PPA replaced the funding rules for single-employer plans and multi-employer plans with new rules, effective for plan years beginning after December 31, 2007. However, PPA provided a delayed effective date (the “PPA delayed effective date”) for certain multi-employer plans, under which the PPA funding rules apply as of the earlier of (1) the first plan year for which the plan ceases to be an eligible cooperative plan (described below) or (2) January 1, 2017.\textsuperscript{1345} In the interim, as discussed below, these plans continue to be subject to the minimum funding rules in effect before PPA, with certain modifications.

The PPA delayed effective date applies to a plan that was in existence on July 26, 2005 and was an eligible cooperative plan for the plan year including that date. A plan is treated as an eligible cooperative plan for a plan year if it is maintained by more than one employer and at least 85 percent of the employers are (1) certain rural cooperatives or (2) certain cooperative organizations that are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or organizations that are more than 50-percent owned, or controlled by, one or more of

\textsuperscript{1341} Sec. 413(c) and ERISA sec. 210(a).
\textsuperscript{1342} Sec. 414(f) and ERISA sec. 2(37).
\textsuperscript{1344} Single-employer plans and multi-employer plans have generally been subject to the same funding rules. Under section 413(c)(4), in the case of a multi-employer plan established by December 31, 1988, the minimum funding requirement is generally determined as if all plan participants are employed by a single employer, and, in the case of a multi-employer plan established after December 31, 1988, each employer is treated as maintaining a separate plan for purposes of the funding requirements unless the plan uses a method for determining required contributions that provides for any employer to contribute not less than the amount that would be required if the employer maintained a separate plan. ERISA section 210(a)(3) provides that the minimum funding requirement for a multiple-employer plan is determined as if all plan participants are employed by a single employer.
\textsuperscript{1345} Sec. 104 of PPA.
Funding rules for CSEC plans

Funding rules for CSEC plans were enacted by the Cooperative and Small Employer Charity Pension Flexibility Act. For this purpose, a CSEC plan is a defined benefit plan (other than a multi-employer plan) that (1) is an eligible cooperative plan to which the PPA delayed effective date for funding rules applies (without regard to the January 1, 2017 end of the delayed effective date), or (2) was maintained by more than one employer (taking into account the aggregation rules for controlled groups and groups under common control) and all the employers were tax-exempt charitable organizations as of June 25, 2010.

If a plan is treated as a CSEC plan, the PPA delayed effective date ceases to apply to the plan as of the first date the plan is treated as a CSEC plan. However, a plan described in (1) or (2) in the preceding paragraph is not a CSEC plan if the plan sponsor elects, not later than the close of the first plan year beginning after December 31, 2013, not to be treated as a CSEC plan. An election takes effect for the first plan year beginning after December 31, 2013, and, once made, may be revoked only with the consent of the Secretary.

In general

CSEC plans are permanently exempted from the PPA funding rules generally applicable to single-employer plans and multiple-employer plans. New minimum funding rules for CSEC plans are established that are similar to the rules applicable to eligible cooperative and eligible charity plans under the PPA delayed effective date, with the following modifications:

• The deficit reduction contribution rules are repealed with respect to CSEC plans,
• New rules apply to a CSEC plan in “funding restoration status,” as discussed below,
• Supplemental cost attributable to past service liability and a reduction in unfunded past service liability as a result of a plan amendment decreasing plan benefits are amortized over 15 years (rather than 30 years) (any funding method available to a CSEC plan under the funding rules in effect before PPA continues to be available under the CSEC rules).\textsuperscript{1353}

• All costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods (each of which is reasonable taking into account the experience of the plan and reasonable expectations),\textsuperscript{1354} and

• The IRS may grant an amortization period extension to a CSEC plan if it determines that (1) the extension would carry out the purposes of ERISA and would provide adequate protection for participants and beneficiaries under the plan and (2) the failure to permit the extension would result in a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or employee compensation.

Rules relating to funding restoration status

If a CSEC plan is in funding restoration status for a plan year, as discussed below, a special minimum contribution requirement applies, the plan sponsor must adopt a funding restoration plan, and the plan generally may not be amended to increase benefits. Not later than the 90th day of a CSEC plan’s plan year, the plan actuary of a CSEC plan must certify to the plan sponsor whether or not the plan is in funding restoration status for the plan year, based on the plan’s funded percentage as of the beginning of the plan year.

A CSEC plan is in funding restoration status for a plan year if the plan’s funded percentage as of the beginning of the plan year is less than 80 percent. For this purpose, funded percentage means the ratio (expressed as a percentage) that the value of the plan’s assets bears to the plan’s funding liability. A plan’s funding liability for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, determined using the assumptions, including interest and mortality, used in other funding computations with respect to plan. In making the certification described above, the plan actuary may conclusively rely on an estimate of (1) the plan’s funding liability, based on the funding liability of the plan for the preceding plan year and on reasonable actuarial estimates, assumptions, and methods and (2) the amount of any contributions reasonably anticipated to be made for the preceding plan year.\textsuperscript{1355} Reasonably anticipated contributions for the preceding year are taken into account in determining the plan’s funded percentage as of the beginning of the plan year.

If a plan is in funding restoration status for a plan year, the minimum required contribution is the greater of (1) the amount other-
In certain cases, a specific funding method (i.e., the entry age normal funding method) must be used in determining normal cost for this purpose. Thus, an accumulated funding deficiency will result if contributions are less than normal cost.

If a CSEC plan is certified as being in funding restoration status, within 180 days after receipt of the certification, the plan sponsor must establish a written funding restoration plan. If a CSEC plan remains in funding restoration status for more than a year, the plan sponsor must update the funding restoration plan each year within 180 days after receipt of the certification of funding restoration status. If a plan sponsor fails to adopt or update a funding restoration plan as required, the plan sponsor may be subject to an excise tax under the Code or an ERISA penalty of up to $100 per day.

A funding restoration plan must consist of actions that are calculated, based on reasonably anticipated experience and reasonable actuarial assumptions, to increase the plan's funded percentage to 100 percent over seven years, or, if sooner, the shortest amount of time practicable. The funding restoration plan is to take into account contributions required under the minimum funding requirements (determined without regard to the funding restoration plan).

If a CSEC plan is in funding restoration status for a plan year, no plan amendment may take effect during the plan year if it has the effect of increasing plan liabilities by means of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits vest under the plan. However, this prohibition does not apply to any plan amendment required to comply with any applicable law. The prohibition ceases to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), if a plan contribution is made, in addition to any contribution otherwise required under the funding rules, in an amount equal to the increase in the plan's funding liability as a result of the plan amendment.

**Funding-related benefit restrictions**

CSEC plans are permanently exempted from the PPA funding-related benefit restrictions. CSEC plans are also exempted from (1) the restrictions on benefit increases when an employer maintaining a plan is involved in bankruptcy proceedings and (2) the ERISA restriction on prohibited payments if a plan has a liquidity shortfall, and a quarterly installment is less than the amount required to cover the liquidity shortfall.

**Explanation of Provision**

The provision amends the definition of CSEC plan to include a plan that, as of January 1, 2000, was maintained by an employer (1) that is a tax-exempt charitable organization, (2) has been in existence since at least 1938, (3) that conducts medical research directly or indirectly through grant making, and (4) whose primary

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1356 In certain cases, a specific funding method (i.e., the entry age normal funding method) must be used in determining normal cost for this purpose.
exempt purpose is to provide services with respect to mothers and children.

**Effective Date**

The provision is applicable to plan years beginning after December 31, 2018.

**Subtitle D—Finance Committee**

1. **Exemption for telehealth services (sec. 3701 of the Act and sec. 223 of the Code)**

**Present Law**

**Health savings accounts**

An individual may establish a health savings account (an “HSA”) only if the individual is covered under a plan that meets the requirements for a high deductible health plan, as described below. In general, HSAs provide tax-favored treatment for current medical expenses, as well as the ability to save on a tax-favored basis for future medical expenses. In general, an HSA is a tax-exempt trust or custodial account created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents.

Within limits, contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual. Contributions to an HSA are excludible from income and employment taxes if made by the employer. Earnings in HSAs are not taxable. Distributions from an HSA for qualified medical expenses are not includible in gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20-percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (age 65).

**High deductible health plans**

A high deductible health plan is a health plan that has an annual deductible which is not less than $1,400 (for 2020 and 2021) for self-only coverage (twice this amount for family coverage), and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed $6,900 (for 2020) and $7,000 (for 2021) for self-only coverage (twice this amount for family coverage). These dollar thresholds are subject to inflation adjustment, based on chained CPI.

An individual who is covered under a high deductible health plan is eligible to establish an HSA, provided that while such individual

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1357 For 2020, the basic limit on annual contributions that can be made to an HSA is $3,550 ($3,600 for 2021) in the case of self-only coverage and $7,100 ($7,200 for 2021) in the case of family coverage. The basic annual contributions 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).

1358 Sec. 223(c)(2).

1359 Sec. 223(g).
is covered under the high deductible health plan, the individual is not covered under any health plan that (1) is not a high deductible health plan and (2) provides coverage for any benefit (subject to certain exceptions) covered under the high deductible health plan.1360

Various types of coverage are disregarded for this purpose, including coverage of any benefit provided by permitted insurance, coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, as well as certain limited coverage through health flexible savings accounts.1361 Permitted insurance means insurance under which substantially all of the coverage provided relates to liabilities incurred under workers’ compensation laws, tort liabilities, liabilities relating to ownership or use of property, or such other similar liabilities as specified by the Secretary under regulations. Permitted insurance also means insurance for a specified disease or illness and insurance paying a fixed amount per day (or other period) of hospitalization.1362

Under a safe harbor, a high deductible health plan is permitted to provide coverage for preventive care (within the meaning of section 1861 of the Social Security Act, except as otherwise provided by the Secretary) before satisfaction of the minimum deductible.1363 IRS guidance provides a safe harbor of the types of coverage that constitute preventive care for this purpose.1364

**Explanation of Provision**

The provision provides that for plan years beginning on or before December 31, 2021, a high deductible health plan is permitted to provide telehealth and other remote care services without satisfaction of the plan’s minimum deductible. Thus, under the provision, a health plan will not fail to be treated as a high deductible health plan merely by reason of failing to require a deductible for telehealth and other remote care services for plan years beginning on or before December 31, 2021, and an individual who is covered under such a plan may contribute to an HSA.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).

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1360 Sec. 223(c)(1).
1361 Sec. 223(c)(1)(B).
1362 Sec. 223(c)(3).
1363 Sec. 223(c)(2)(C).
2. Inclusion of certain over-the-counter medical products as qualified medical expenses (sec. 3702 of the Act and secs. 106, 220, and 223 of the Code)

Present Law

Individual deduction for medical expenses

Under the rules relating to itemized deductions, an individual may deduct expenses for medical care, not reimbursed by insurance or otherwise, to the extent the expenses exceed 7.5 percent of AGI (10 percent for taxable years beginning on or after January 1, 2021). Medical care is defined broadly as amounts paid for the diagnoses, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure of the body.

Any amount paid during a taxable year for medicine or drugs is deductible as a medical expense only if the medicine or drug is a prescribed drug or insulin. The term prescribed drug means a drug or biological that requires a prescription of a physician for its use by an individual. Thus, any amount paid for a medicine or drug available without a prescription ("over-the-counter medicine") is not deductible as a medical expense, including any medicine or drug prescribed or recommended by a physician.

Exclusion for employer-provided health care

Employees generally may exclude from gross income the value of employer-provided health coverage under an accident or health plan. In addition, any reimbursements paid by an employer under an accident or health plan for medical care expenses for employees, their spouses, and their dependents generally are excluded from gross income and employment taxes. An employer may reimburse expenses for medical care of its employees (and their spouses and dependents) not covered by a health insurance plan through a health flexible spending arrangement (an "FSA") up to a specified dollar amount. An employer may also reimburse these expenses under a health reimbursement arrangement (an "HRA"). Reimbursements under these arrangements are also excludible from gross income as reimbursements for medical care under employer-provided health coverage.

Health savings accounts

An individual may establish a health savings account (an "HSA") only if the individual is covered under a plan that meets the requirements for a high deductible health plan and the individual is not covered under any other health plan (other than a plan that...
A high deductible health plan is a health plan that has an annual deductible which is not less than $1,400 (for 2020 and 2021) for self-only coverage and twice this amount for family coverage, and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed $6,900 (for 2020; $7,000 for 2021) for self-only coverage and twice this amount for family coverage. Sec. 223(c)(2).

For 2020, the basic limit on annual contributions that can be made to an HSA is $3,550 in the case of self-only coverage and $7,100 in the case of family coverage. (These amounts increased to $3,600 and $7,200 for 2021.) The basic annual contributions 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).

Medical care for excludable reimbursements and distributions

For purposes of the exclusion for reimbursements under employer-provided accident and health plans (including under health FSAs and HRAs), and for distributions from HSAs and Archer MSAs used for qualified medical expenses, the definition of medical care is generally the same as the definition that applies for the itemized deduction for the cost of medical care. However, prior to the enactment of the Patient Protection and Affordable Care Act (the “PPACA”), the limitation (applicable to the itemized deduction) that only prescription medicines or drugs and insulin are taken into account did not apply. Thus, for example, reimbursements from a health FSA or HRA or funds distributed from an HSA for expenses of nonprescription drugs, such as nonprescription aspirin, allergy medicine, antacids, or pain relievers, were excludable from income even though, if the taxpayer paid for such amounts directly, the expenses could not be taken into account in determining the itemized deduction for medical expenses.

For years beginning after December 31, 2010, the PPACA changed the definition of medical care for purposes of the exclusion for reimbursements for medical care under employer-provided accident and health plans and for distributions from HSAs and Archer MSAs.
MSAs used for qualified medical expenses. The revised definition required that over-the-counter medicine (other than insulin) be prescribed by a physician in order for the medicine to be medical care for these purposes.\textsuperscript{1378} Thus, a health FSA or an HRA is only permitted to treat a reimbursement for the cost of over-the-counter medicine as a qualified medical expense if the medicine or drug is prescribed by a physician, and a distribution from an HSA or an Archer MSA used to purchase over-the-counter medicine is not a qualified medical expense unless the medicine or drug is prescribed by a physician.

\textit{Explanation of Provision}

Under the provision, qualified medical expenses for purposes of distributions from an HSA are no longer limited to those medicines and drugs that are prescribed, allowing over-the-counter medicines and drugs to be paid for with HSA funds. In addition, qualified medical expenses include amounts paid for menstrual care products (defined as tampons, pads, liners, cups, sponges, or similar products used by individuals with respect to menstruation or other genital-tract secretions).

The provision similarly amends the definition of qualified medical expense for Archer MSAs to permit distributions for over-the-counter medicine and drugs and menstrual care products.

The provision also similarly amends the definition of qualified medical expense for health FSAs and HRAs to permit reimbursements for expenses incurred for over-the-counter medicine and drugs and for menstrual care products.

\textit{Effective Date}

The provision applies to distributions from HSAs and MSAs for amounts paid after December 31, 2019.

The provision applies to reimbursements from health FSAs and HRAs for expenses incurred after December 31, 2019.

\textbf{TITLE IV—ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY}

\textbf{Subtitle A—Coronavirus Economic Stabilization Act of 2020}

1. Suspension of certain aviation excise taxes (sec. 4007 of the Act)

\textbf{Present Law}

\textit{In general}

Excise taxes are imposed on amounts paid for commercial air passenger and freight transportation and on fuels used in commer-

\textsuperscript{1378}Sec. 9003 of the PPACA. Notice 2010–59, 2010–39 I.R.B. 388, provides guidance on this change to the definition of medical care for these purposes.
The Airport and Airway Trust Fund excise taxes (except for 4.3 cents per gallon of the taxes on aviation fuels) are scheduled to expire after September 30, 2023. The 4.3-cents-per-gallon fuels tax rate is permanent.

A segment consists of a single takeoff and a single landing, which is taxable transportation. The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation. Rev. Proc. 19-44, sec. 3.45 (2019).

Whether the transportation by air is “commercial aviation” for Code purposes is determined on a flight-by-flight basis and is not determined by Federal Aviation Administration classifications.

The Code imposes tax on certain removals, entries, and sales of taxable fuel, including kerosene. In general, kerosene is taxed at 24.3 cents per gallon. However, a reduced rate of 4.3 cents per gallon is imposed on kerosene removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation. As noted above, an additional 0.1-cent-per-gallon excise tax is imposed to fund the Leaking Underground Storage Tank Trust Fund. In the case of kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation, the operator of the aircraft is liable on the removal at the reduced tax rate of 4.3 cents per gallon.

If kerosene is taxed at the 24.3-cents-per-gallon rate and later used in commercial aviation, the reduced rate is effectuated and a surtax on fuel used in fractional ownership program aircraft (sec. 4043) is imposed at an additional 14.1 cents per gallon. 

Commercial aviation

“Commercial aviation” is defined as any use of an aircraft in the business of transporting persons or property by air for compensation or hire. It does not include aircraft used for skydiving, small aircraft on nonestablished lines, transportation for affiliated group members, transportation by seaplanes, or transportation when the fuel is subject to the surtax on fuel used in fractional ownership program aircraft. Whether the transportation by air is “commercial aviation” for Code purposes is determined on a flight-by-flight basis and is not determined by Federal Aviation Administration classifications.

The Code imposes tax on certain removals, entries, and sales of taxable fuel, including kerosene. In general, kerosene is taxed at 24.3 cents per gallon. However, a reduced rate of 4.3 cents per gallon is imposed on kerosene removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation. As noted above, an additional 0.1-cent-per-gallon excise tax is imposed to fund the Leaking Underground Storage Tank Trust Fund. In the case of kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation, the operator of the aircraft is liable on the removal at the reduced tax rate of 4.3 cents per gallon.

If kerosene is taxed at the 24.3-cents-per-gallon rate and later used in commercial aviation, the reduced rate is effectuated and a surtax on fuel used in fractional ownership program aircraft (sec. 4043) is imposed at an additional 14.1 cents per gallon. 

The Airport and Airway Trust Fund excise taxes (except for 4.3 cents per gallon of the taxes on aviation fuels) are scheduled to expire after September 30, 2023. The 4.3-cents-per-gallon fuels tax rate is permanent.

A segment consists of a single takeoff and a single landing, which is taxable transportation. The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation. Rev. Proc. 19-44, sec. 3.45 (2019).

Whether the transportation by air is “commercial aviation” for Code purposes is determined on a flight-by-flight basis and is not determined by Federal Aviation Administration classifications.

The Code imposes tax on certain removals, entries, and sales of taxable fuel, including kerosene. In general, kerosene is taxed at 24.3 cents per gallon. However, a reduced rate of 4.3 cents per gallon is imposed on kerosene removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation. As noted above, an additional 0.1-cent-per-gallon excise tax is imposed to fund the Leaking Underground Storage Tank Trust Fund. In the case of kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation, the operator of the aircraft is liable on the removal at the reduced tax rate of 4.3 cents per gallon.

If kerosene is taxed at the 24.3-cents-per-gallon rate and later used in commercial aviation, the reduced rate is effectuated and a surtax on fuel used in fractional ownership program aircraft (sec. 4043) is imposed at an additional 14.1 cents per gallon.
through claims filed for the difference. The 0.1-cent-per-gallon excise tax for the Leaking Underground Storage Tank Trust Fund is not refundable. A claim may be made by the ultimate purchaser (the operator) for taxed kerosene used in commercial aviation (other than foreign trade). The registered ultimate vendor of kerosene for use in commercial aviation (other than foreign trade) may make this claim if the ultimate purchaser waives its right to the credit or payment by providing the registered ultimate vendor with a waiver.

**Explanation of Provision**

The provision suspends the imposition of certain aviation excise taxes from March 28, 2020, through December 31, 2020 (the “excise tax holiday period”).

For commercial aviation only, the provision suspends certain excise taxes during the excise tax holiday period. For fuel used in commercial aviation, the 4.3 cents-per-gallon rate for commercial aviation is reduced to zero during the excise tax holiday period only when fuel is removed from a terminal directly into the fuel tank of an aircraft. If kerosene removed from the terminal rack at a higher rate is later used in commercial aviation, a claim for the difference can be made under section 6427(l). The provision does not affect the imposition of the 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund.

The provision also suspends the excise taxes imposed under sections 4261 and 4271 on amounts paid during the excise tax holiday period for the transportation by air of persons or property. The suspension only applies to amounts actually paid during the excise tax holiday period. The excise tax holiday does not apply to amounts paid before March 28, 2020, even if the travel occurs during the excise tax holiday period.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).

**OTHER PROVISIONS**

1. **Loan forgiveness (sec. 1106 of the Act)**

**Explanation of Provision**

In general

Under the provision, a recipient of a covered loan is eligible for forgiveness of indebtedness on the loan in an amount generally equal to the sum of certain costs incurred and payments made during the eight-week period beginning on the date of the origination of the covered loan, including payroll costs, certain mortgage interest payments, certain rent payments, and certain utility payments. For this purpose, a covered loan is a loan guaranteed under para-

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1385 Sec. 6427(l)(4).
1386 The CARES Act was signed by the President on March 27, 2020. The “excise tax holiday period” is the period beginning after the date of enactment and before January 1, 2021.
The amount forgiven may be reduced (by an amount not to exceed the principal amount of the covered loan) if the recipient reduces the number of the recipient’s employees, or the amount of salaries and wages paid, by a specified amount during the covered period.

A covered loan recipient must apply for loan forgiveness. Once an application is submitted to the lender with the required documentation, the lender must issue a decision on the loan forgiveness within 60 days.

Amounts that have been forgiven under the provision are considered canceled indebtedness by a lender authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)). The provision requires the Administrator of the Small Business Administration to remit to the lender, no later than 90 days after the date on which the amount of forgiveness under the provision is determined, an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.

**Federal tax consequences**

For Federal tax purposes, any amount which (but for the provision) would be includible in gross income of the recipient of a covered loan by reason of forgiveness pursuant to the provision is excluded from gross income.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).

2. **Emergency relief and taxpayer protections (sec. 4003 of the Act)**

**Explanation of Provision**

**In general**

The provision authorizes the Secretary, notwithstanding any other provision of law, to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus. The Secretary is authorized (1) to make loans, loan guarantees, and other investments in support of eligible businesses, States, and municipalities that do not, in the aggregate, exceed $500 billion and (2) to provide the subsidy amounts necessary for the loans, loan guarantees, and other investments in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

Under the provision, the Secretary must make a loan, loan guarantee, or other investment in such form and on such terms and conditions and with such covenants, representations, warranties,
and requirements (including requirements for audits) as the Secretary determines appropriate. The provision requires that any loans made by the Secretary under the provision be at a rate that the Secretary determines based on the risk and the current average yield on outstanding marketable obligations of the United States of comparable maturity.

**Federal tax consequences**

Any loan made by or guaranteed by the Treasury under the provision is treated as indebtedness for Federal tax purposes and as issued for its stated principal amount. Any stated interest on any such loan is treated as qualified stated interest.

The provision directs the Secretary (or the Secretary’s delegate) to prescribe such regulations or guidance as may be necessary or appropriate to carry out the purposes of the provision, including guidance providing that the acquisition of warrants, stock options, common or preferred stock or other equity under the provision does not result in an ownership change for purposes of section 382.

**Effective Date**

The provision is effective on the date of enactment (March 27, 2020).
PART SEVEN: CONTINUING APPROPRIATIONS ACT, 2021
AND OTHER EXTENSIONS ACT (PUBLIC LAW 116–159)\(^{1389}\)

DIVISION B—SURFACE TRANSPORTATION PROGRAM
EXTENSION

TITLE II—TRUST FUNDS

1. Extension of expenditure and contract liquidation authority for the Highway Trust Fund, the Sport Fish Restoration and Boating Trust Fund, and the Leaking Underground Storage Tank Trust Fund (secs. 1201, 1202, and 1203 of the Act and secs. 9503, 9504, and 9508 of the Code)

Present Law

The Highway Trust Fund, the Sport Fish Restoration and Boating Trust Fund, and the Leaking Underground Storage Tank Trust Fund serve as dedicated trust fund sources for certain program expenditures. Current expenditure authority is scheduled to expire on October 1, 2020. After that date, expenditures are only permitted to liquidate contracts entered into prior to that date.

Explanation of Provisions

The provisions extend expenditure and contract liquidation authority for an additional year, through October 1, 2021.

Effective Date

The provisions are effective on the date of enactment (October 1, 2020).

2. Further additional transfers to the Highway Trust Fund and additional transfer to the Airport and Airway Trust Fund (secs. 1204 and 1205 of the Act and secs. 9502 and 9503 of the Code)

Present Law

On several occasions, money has been transferred from the General Fund to the Highway Trust Fund to address revenue shortfalls. The most recent transfer occurred under the FAST Act, which

\(^{1389}\)H.R. 8337. The bill was introduced in the House of Representatives on September 22, 2020 and was passed by the House the same day. The Senate passed the bill without amendment on September 30, 2020. The President signed the bill on October 1, 2020.
transferred $51,900,000,000 to the Highway Account and $18,100,000,000 to the Mass Transit account.\(^{1390}\)

**Explanation of Provisions**

The provision provides that out of money in the Treasury that is not otherwise appropriated, the following transfers are to be made from the General Fund to the Highway Trust Fund: $10,400,000,000 to the Highway Account and $3,200,000,000 to the Mass Transit account.

The provision provides that out of money in the Treasury that is not otherwise appropriated, $14,000,000,000 is appropriated to the Airport and Airway Trust Fund.

**Effective Date**

The provisions are effective on the date of enactment (October 1, 2020).

\(^{1390}\)Pub. L. No. 114–94. An additional $300,000,000 also was transferred from the Leaking Underground Storage Tank Trust Fund to the Highway Trust Fund in three $100 million installments. See sec. 9508(c)(4).
PART EIGHT: CONSOLIDATED APPROPRIATIONS ACT, 2021 (PUBLIC LAW 116–260)\footnote{H.R. 132. On January 15, 2020, the Senate passed an amendment in the nature of a substitute to a House bill introduced and passed in January 2019. The House passed the Senate amendment with an amendment on December 21, 2020. The Senate passed the House amendment the same day. The President signed the bill on December 27, 2020.}

DIVISION N—ADDITIONAL CORONAVIRUS RESPONSE AND RELIEF

TITLE II—ASSISTANCE TO INDIVIDUALS, FAMILIES, AND BUSINESSES

Subtitle B—COVID–Related Tax Relief Act of 2020

1. Additional 2020 recovery rebates for individuals (sec. 272 of the Act and sec. 6428A of the Code)

Present Law

Background for the provision and a description of the 2020 recovery rebates for individuals that the provision relates to may be found above in the section describing section 2201 of the CARES Act (Pub. L. No. 116–136) in Part Six of this document.

Explanation of Provision

In general

The provision provides an additional one-year refundable income tax credit for 2020, referred to as the additional 2020 recovery rebate. Like the first 2020 recovery rebate, the additional 2020 recovery rebate includes rules, described below, under which the Secretary makes an advance payment to a taxpayer for the amount of the credit (determined based on prior year filing characteristics or other information) before the taxpayer files a 2020 Federal income tax return. Such additional advance payments are also known as the second round of economic impact payments. The additional 2020 recovery rebate has many of the same features as the first recovery rebate.

An eligible individual is allowed a refundable income tax credit for the first taxable year beginning in 2020 equal to the sum of:

- \$600 (\$1,200 in the case of a joint return), and
- \$600 for each qualifying child of such individual.\footnote{Sec. 6428A(a).}

An eligible individual is any individual other than: (1) a non-resident alien; (2) an estate or trust; or (3) a dependent.\footnote{Sec. 6428A(d).} For these purposes, the child tax credit definition of a qualifying child applies (generally, a qualifying child as defined in section 152 who is under the age of 17).
The amount of the credit is phased out at a rate of five percent of AGI above certain threshold amounts.\(^{1394}\) The threshold amount at which the credit begins phasing out is $150,000 of AGI for joint filers or a surviving spouse, $112,500 of AGI for head of household filers, and $75,000 of AGI for all other filers.\(^ {1395}\) Thus, the credit is fully phased out (i.e., reduced to zero) for joint filers with no children at $174,000 of AGI and for a single filer at $87,000 of AGI.

Identification number requirement

No credit is allowed to an individual who does not include a valid identification number on the individual’s income tax return.\(^ {1396}\) In the case of a joint return that does not include a valid identification number for either spouse, no credit is allowed. Unlike the first recovery rebate, in the case of a joint return that includes a valid identification number for only one spouse, a $600 credit is allowed (rather than no credit under the first recovery rebate). A qualifying child shall not be taken into account in determining the amount of the credit unless a valid identification number (i) for the taxpayer (or for at least one spouse in the case of a joint return) and (ii) for the child are included on the return.

For purposes of this requirement, a valid identification number is an SSN as defined for purposes of the child tax credit,\(^ {1397}\) which means that it must be issued by the Social Security Administration before the due date of the return (including extensions) to a citizen of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the United States.\(^ {1398}\) Two exceptions to the identification number requirement are provided. First, an adoption identification number is considered a valid identification number in the case of a qualifying child who is adopted or placed for adoption. Second, when a married couple files a joint return and at least one spouse was a member of the Armed Forces of the United States during the taxable year for which the return is filed, only one spouse is required to provide a valid identification number to receive the full $1,200 credit (subject to the income-based phaseout).

The failure to provide a correct valid identification number is treated as a mathematical or clerical error. If a taxpayer claims an individual as a qualifying child, but based on the SSN provided the individual is too old to be a qualifying child, the provision of the SSN is treated as a mathematical or clerical error.

Advance payments of the additional recovery rebate

Many taxpayers received the additional recovery rebate automatically as an advance refund in the form of a direct deposit to their bank account or as a check or prepaid debit card issued by

\(^{1394}\) Sec. 6428A(c).

\(^{1395}\) For example, a married couple that files jointly with two qualifying children and has an AGI below the phaseout range would be entitled to an additional recovery rebate of $2,400 ($1,200 + $600 + $600). If that couple’s AGI was $175,000, the additional recovery rebate would be $1,150 ($2,400 − 0.05 × ($175,000 − $150,000)). The credit would be fully phased out for this couple at $198,000 of AGI.

\(^{1396}\) Sec. 6428A(g).

\(^{1397}\) Sec. 24(h)(7).

\(^{1398}\) See also sec. 205(c)(2)(B)(i)(I) (or that portion of subclause (III) that relates to subclause (I)) of the Social Security Act.
The amount of the additional advance refund is computed in the same manner as the additional recovery rebate, except that the calculation is made on the basis of the income tax return filed for 2019 (instead of 2020), if available. Accordingly, the additional advance refund amount generally is based on a taxpayer's filing status, number of qualifying children, and AGI as reported for 2019. The Secretary is directed to issue additional advance refunds as rapidly as possible, and no advance refund is to be made or allowed after January 15, 2021.

If a taxpayer did not file an income tax return for 2019 at the time the Secretary makes a determination regarding payments, the Secretary may use information to administer the additional advance refund with respect to that taxpayer that is provided (1) in the case of a specified Social Security or Supplemental Security Income (SSI) recipient, by the Social Security Administration, (2) in the case of a specified railroad retirement beneficiary, by the Railroad Retirement Board, and (3) in the case of a specified veterans beneficiary, by the Department of Veterans Affairs (VA). Payments for such specified individuals may be provided to the individual's representative payee or fiduciary. The entire payment must be provided to the individual or used for the benefit of the individual. Enforcement provisions apply to prevent the misuse of the payment.

For other individuals who did not have a return-filing obligation, the Secretary could utilize information provided by such individuals who successfully registered for the first advance refund by filing a simplified tax return using the “non-filer portal,” a web tool developed by the IRS, or who submitted a simplified Federal income tax return to receive the first advance refund.

An individual who died before January 1, 2020, is not eligible to receive the additional advance refund. If a married couple files a joint return and one spouse died before January 1, 2020, the surviving spouse is allowed (subject to other requirements) a $600 payment. No payment may be issued with respect to qualifying children of a taxpayer who died before January 1, 2020 (or, in the case of joint return, if both taxpayers died before January 1, 2020).

The amount of the additional recovery rebate credit allowed on a taxpayer’s 2020 income tax return (based on 2020 information) must be reduced (but not below zero) by any additional advance re-

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1400 Sec. 6428A(f).

1401 In the case of a mirror Code territory, the additional recovery rebate credit payments can be made or allowed until September 30, 2021.

1402 Sec. 6428A(f)(5).


fund received (based on 2019 information). If the additional recovery rebate less the additional advance refund is a positive number (because, for example, a qualifying child was born to the taxpayer during 2020), the taxpayer is allowed that difference as a refundable credit against 2020 income tax liability. If, however, the result is negative (because, for example, the taxpayer’s AGI was higher in 2020 and was in the phaseout range), the taxpayer’s 2020 tax liability is not increased by that negative amount. In addition, an eligible taxpayer who does not receive an additional advance refund may claim the additional recovery rebate on his or her 2020 income tax return. A taxpayer’s failure to reduce the additional recovery rebate by any additional advance refund is treated as a mathematical or clerical error. The additional advance refund is not includible in gross income.

As soon as practicable after the distribution of the additional advance refund, the Secretary is required to send a notice by mail to the taxpayer’s last known address that indicates the method by which the payment was made, the amount of such payment, and a phone number at the IRS to report any failure to receive such payment. The Secretary is also required to carry out a public awareness campaign regarding the availability of the additional recovery rebate credit and the additional advance refund, including with regard to individuals who may not have filed a tax return for taxable year 2019.

Treatment of the U.S. territories

The provision directs the Secretary to make payments to each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) that relate to the cost (if any) of each territory’s additional recovery rebate. The Secretary is further directed to make similar payments to each non-mirror Code territory (American Samoa and Puerto Rico).

The provision directs the Secretary to pay to each mirror Code territory amounts equal to the aggregate amount of the credits allowable by reason of the provision to that territory’s residents against its income tax. Such amounts are determined by the Secretary based on information provided by the government of the respective territory.

To each non-mirror Code territory, the provision requires the Secretary to pay amounts estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that territory if a mirror Code tax system had been in effect in that territory. Accordingly, the amount of each payment to a non-mirror Code territory is an estimate of the aggregate amount of the credits that would be allowed to the territory’s residents if the credit provided by the provision to U.S. residents were provided by the territory to its residents. This payment will not be made to any U.S. territory unless it has a plan that has been ap-

1405 Sec. 6428A(e).
1406 Under section 6409, the additional recovery rebate is disregarded in the administration of Federal programs and Federally assisted programs. Any refund due to the credit, including any advance payment of the credit, is not taken into account as income and is not taken into account as resources for a period of 12 months from receipt for purposes of determining eligibility for benefits or assistance under any Federal program or under any State or local program financed with Federal funds.
proved by the Secretary under which the territory will promptly
distribute the payment to its residents.

No credit against U.S. income taxes is permitted under the provi-
sion for any person to whom a credit is allowed against territory
income taxes as a result of the provision (for example, under that
territory’s mirror income tax). Similarly, no credit against U.S. in-
come taxes is permitted for any person who is eligible for a pay-
ment under a non-mirror Code territory’s plan for distributing to
its residents the payment described above from the U.S. Treasury.

Exception from reduction or offset

Any refund payable as an additional advance refund or any simi-
lar payment to a resident of the U.S. territories is not subject to
reduction or offset by other assessed Federal taxes that would oth-
nerwise be subject to levy or collection. In addition, the overpay-
ments resulting from these credits generally are not subject to off-
set for other taxes or non-tax debts owed to the Federal govern-
ment or State governments.

Unlike the first advance refund, the additional advance refund is
not subject to reduction or offset for past-due child support. The ad-
ditional advance refund also is not subject to transfer, assignment,
execution, levy, attachment, garnishment, or other legal process, or
the operation of any bankruptcy or insolvency law. The provision
directs the Secretary to encode payments that are paid electroni-
cally as a result of any applicable payment with a unique identifier
that allows the financial institution maintaining the account to
identify the payment as protected.

Effective Date

The provision is effective on the date of enactment (December 27,
2020).

2. Amendments to recovery rebates under the CARES Act
(sec. 273 of the Act and sec. 6428 of the Code)

Present Law

Background for the provision and a description of the 2020 recov-
ery rebates for individuals that the provision modifies may be
found in the section describing section 2201 of the CARES Act

Explanation of Provision

The provision makes several modifications to the 2020 recovery
rebate credit.

The provision provides that surviving spouses are subject to
phase out of the credit at $150,000 of AGI, rather than $75,000 of
AGI. Surviving spouses, therefore, have the same AGI phase out
threshold as joint filers.

The provision provides that in the case of an individual for which
information to make an advance refund was provided by the Social
Security Administration, the Railroad Retirement Board, or the De-
partment of Veterans Affairs, such payment may be made to the
individual’s representative payee or fiduciary. The entire payment
must be provided to the individual or used for the benefit of the individual. Enforcement provisions apply to prevent the misuse of the payment.1407

The provision modifies the identification number requirements for the recovery rebate credit to provide that in the case of a joint return that includes a valid identification number for only one spouse, a $1,200 credit is allowed (subject to income-based phase-outs). Under prior law, no credit was allowed. In addition, in the case of a joint return, the provision allows an additional amount for a qualifying child if a valid identification number for at least one spouse and for the child are included on the return. Under prior law, a valid identification number for both spouses was required. The provision does not modify the identification number requirements for the first round of advance refunds, so no additional amounts of advance refunds are to be made on the basis of the modified identification number requirements. Any additional amount owed as a result of the modified identification number requirements may be claimed on the 2020 Federal income tax return. The provision provides that the restrictions against reduction or offset of the recovery rebate credit by other assessed Federal taxes, other taxes, and non-tax debts owed to the Federal government or States governments apply to the advance refunds only. Thus any recovery rebate credit claimed on a 2020 Federal income tax return may be subject to reduction or offset.

**Effective Date**

The provision applies as if included in section 2201 of the CARES Act (Pub. L. No. 116–136), which was effective on the date of enactment of the CARES Act, March 27, 2020.

**3. Extension of certain deferred payroll taxes (sec. 274 of the Act)**

**Present Law**

Federal employment taxes are imposed on wages paid to employees with respect to employment and include Federal income tax as well as taxes levied under the Federal Insurance Contributions Act ("FICA") and Federal Unemployment Tax Act ("FUTA").1408 In addition, tier 1 of the Railroad Retirement Tax Act ("RRTA") imposes a tax on compensation paid to railroad employees and representatives.1409

FICA taxes are comprised of two components: Old-Age, Survivors, and Disability Insurance ("OASDI") and Hospital Insurance ("HI") taxes.1410 With respect to OASDI taxes, the applicable rate

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1408 Secs. 3401, 3101, 3111, and 3301.

1409 Sec. 3221.

1410 The Hospital Insurance ("HI") tax has two components: Medicare tax and Additional Medicare tax. Medicare tax is imposed on wages, as defined in Section 3121(a), with respect to employment, as defined in Section 3121(b), at a rate of 1.45 percent for the employer. Sec. 3101(b)(1). An equivalent 1.45 percent is withheld from employee wages, Sec. 3111(b)(1). For purposes of this description, Medicare tax does not include Additional Medicare tax. Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent. Sec. 3101(b)(2). There is no equivalent employer’s share of Additional Medicare taxes.
is 12.4 percent with half of such rate (6.2 percent) imposed on employee wages and the remainder (6.2 percent) imposed on the employer.\textsuperscript{1411} The tax is assessed on covered wages up to the OASDI wage base ($142,800 in 2021). Generally, the OASDI wage base rises based on increases in the national average wage index.\textsuperscript{1412}

Generally, the term “wages” for OASDI tax purposes means all remuneration for “employment,” including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions.\textsuperscript{1413} The name given to the remuneration for employment is immaterial. OASDI wages includes remuneration such as salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term “employment” is generally defined for FICA tax purposes as any service, of whatever nature, performed by an employee for the person employing him or her, with certain specific exceptions.

**Railroad retirement program**

Railroad workers do not participate in the OASDI system. Accordingly, compensation subject to RRTA tax is exempt from FICA taxes.\textsuperscript{1414} The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of services.\textsuperscript{1415} Employees whose compensation is subject to RRTA taxes are ultimately eligible for railroad retirement benefits that fall under a two-tier structure. Railroad employees and employers pay tier 1 taxes at the same rate as FICA taxes.\textsuperscript{1416} In addition, rail employees and employers both pay tier 2 taxes that are used to finance railroad retirement benefits over and above Social Security benefit levels.\textsuperscript{1417} Tier 2 benefits are similar to benefits under a defined benefit plan. Those taxes are funneled to the railroad retirement system and used to fund basic retirement benefits for railroad workers and an investment trust that generates returns for the pension fund.

**Self-employment taxes**

The Self-Employment Contributions Act (“SECA”) imposes tax on the self-employment income of an individual. SECA taxes consist of OASDI tax and HI tax.\textsuperscript{1418} Under the OASDI component, the first rate of tax is 12.4 percent on self-employment income up to the OASDI wage base ($142,800 for 2021).\textsuperscript{1419} Under the basic HI tax component, the second rate of tax is 2.9 percent of all self-employ-
ment income (without regard to the OASDI wage base). The case with employees, an Additional Medicare tax applies to the HI portion of SECA tax on self-employment income in excess of a threshold amount.

Self-employment income subject to SECA tax is determined as the net earnings from self-employment derived by an individual during any taxable year, subject to certain exceptions. Net earnings from self-employment are equal to the gross income derived by an individual from any trade or business less allowed deductions that are attributable to the trade or business and permitted under the SECA rules. Certain passive income and related deductions are not taken into account in determining net earnings from self-employment, including rentals from real estate unless received in the course of a trade or business as a real estate dealer, dividends and interest unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities, and sales or exchanges of capital assets and certain other property unless the property is stock in trade that would properly be included in inventory or held primarily for sale to customers in the ordinary course of the trade or business.

For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer's net self-employment income (determined without regard to this deduction) and one-half of the sum of the rates for OASDI and HI, i.e., 7.65 percent of net earnings. This deduction is determined without regard to the additional 0.9 percent Additional Medicare tax that may apply to an individual. This deduction reflects the fact that the FICA rates apply to an employee's wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual's net earnings are economically equivalent to an employee's wages plus the employer's share of FICA taxes. This is generally referred to as the "regular method" of determining net earnings from self-employment, and in Internal Revenue Service ("IRS") forms and publications it is expressed as multiplying total net earnings from self-employment by 92.35 percent.

Deposit requirements

The employee portion of OASDI taxes must be withheld and remitted to the Federal government by the employer during the quarter, as required by the applicable deposit rules. The employer is liable for the employee portion of OASDI taxes, in addition to its own share, whether or not the employer withheld the amount from the employee's wages. Employers that make payments of wages

1420 Sec. 1401(b)(1).
1421 Sec. 1401(b)(2).
1422 Sec. 1402(a)(1).
1423 Sec. 1402(a)(2).
1424 Sec. 1402(a)(3).
1425 Sec. 1402(a)(12).
1426 The deduction is intended to provide parity between FICA and SECA taxes because the employer may deduct, as a business expense, its share of the FICA taxes paid. As presently written, the deduction for SECA taxes is not the exact economic equivalent to the deduction for FICA taxes. See Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures (JCS–2–05), January 27, 2005, for a detailed description of this issue.
1427 Sec. 3102(a) and Treas. Reg. sec. 31.3121(a)–2. Sec. 6302.
1428 Sec. 3102(b).
and withhold Federal income and FICA taxes are required to make deposits of those taxes in a timely manner.

Employers generally must deposit employment taxes under a monthly or semi-weekly schedule, with certain exceptions. The applicable deposit schedule is determined based on the total tax liability reported on an employer’s quarterly employment tax return during a lookback period. In general, an employer is a monthly depositor if the total Federal income and FICA tax liability for the four quarters in the lookback period was $50,000 or less. A semi-weekly depositor is an employer for which the total tax liability reported during the lookback period was more than $50,000. Employers that accumulate $100,000 or more of employment tax liability on any day are required to make deposits of those taxes by the close of the next banking day.

If the aggregate amount of tax reported on an employment tax return exceeds the total amount of deposits made by the employer for the same quarter, the balance due must be remitted in accordance with the applicable form and instructions. A penalty may be imposed for the failure to deposit employment taxes by the prescribed date. The amount of the penalty varies depending on when the deposit is made in relation to the applicable deadline. The penalty is two percent of the unpaid amount if the payment is made within five days of the deadline, five percent if the payment is made within six to 15 days of the due date, 10 percent if the payment is made more than 15 days after the due date, and 15 percent for taxes still unpaid after the 10th day following a notice and demand from the IRS. The failure to deposit penalty may be waived if the taxpayer demonstrates the failure was due to reasonable cause and not willful neglect.

A penalty may also apply in the event that a taxpayer fails to make a payment of tax due on a tax return with the return absent a showing that the failure to pay was due to reasonable cause and not due to willful neglect. The amount of the penalty is equal to one-half percent of the net amount of tax due for each month that the return is not filed. This penalty is coordinated with the penalty for the failure to timely file a tax return, by reducing the failure to file penalty by the amount of the failure to pay penalty for that month. The maximum amount of the failure to pay penalty is 25 percent of the tax due.

With respect to self-employed individuals, estimated tax payments at least equal to (1) 90 percent of the current year’s tax liability or (2) 100 percent of the prior year’s tax liability, must be made by the applicable deadlines. A penalty is imposed by ap-

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1430 Treas. Reg. sec. 31.6302–1(c).
1431 Treas. Reg. secs. 31.6302–1(h)(7) and 31.6302–1(i)(2).
1432 Sec. 6656.
1433 Sec. 6656(a).
1434 Secs. 6151(a) and 6651(a)(2).
1435 Sec. 6651(a)(1).
1436 Sec. 6654.
Third-party arrangements

Responsibility for employment tax obligations generally rests with the person who is the employer of an employee under a common-law test that has been incorporated into Treasury regulations. An employer-employee relationship exists if the person for whom the services are performed has the right to direct and control the performance of services by an individual, not only to the result to be accomplished by the work but also the details and means by which that result is accomplished. In some cases, however, a person other than the common-law employer may be responsible for effectuating the employer’s employment tax obligations.

An employer may designate a third-party agent to be responsible for employment tax withholding, depositing, and reporting requirements on behalf of that employer. The reporting functions undertaken by this third party, a “section 3504 agent,” may include filing employment tax returns and furnishing and filing Forms W–2, Wage and Tax Statement, to the employer’s employees. An employer remains jointly and severally liable with the section 3504 agent for satisfaction of the employer’s employment tax obligations.

Another type of third-party entity is a professional employer organization ("PEO"), which provides employees to perform services in the business of the PEO’s customers, including small and medium-sized businesses. In many cases, before the PEO arrangement is finalized, the employees already work in the customer’s business as employees of the customer. Depending on the facts and circumstances, the customer may be the common law employer ultimately liable for the satisfaction of employment tax obligations with respect to its work-site employees under the PEO arrangement.

A “certified professional employer organization” ("CPEO") is a PEO that has applied to the Secretary to be treated as a CPEO and

1437 Sec. 6654(e)(3).
1438 Treas. Reg. secs. 31.3401(c)–1, 31.3121(d)–1(c)(1) and 31.3306(i)–1(a). A similar concept for RRTA purposes applies under Treas. Reg. sec. 31.3231(b)–1(a)(1)(i).
1439 Sec. 3504. Treas. Reg. sec. 31–3504–1 provides the criteria for the designation by an employer of an agent by application to the IRS. IRS Form 2678 is used for this purpose. In addition, under Treas. Reg. sec. 31–3504–2, designation of an agent may result from the payment of wages or compensation by a payor to an individual performing services for a client of the payor pursuant to a services agreement meeting certain criteria. The rules for designating an agent is a departure from the general principle that a taxpayer has a nondelegable duty with respect to employment tax obligations. See U.S. v. Boyle, 469 U.S. 241 (1985).
1440 “Professional employer organization” is not a legal term with a specific definition. The term "employee leasing company" is also occasionally used to describe the same or similar relationship between service provider and customer in this context, but both terms can be used to describe a variety of arrangements.
has been certified to meet certain requirements. A CPEO is treated as the employer of any work-site employee performing services for any customer of the CPEO but only with respect to remuneration remitted by the CPEO to a work-site employee.\textsuperscript{1442} A CPEO is subject to employment tax withholding, depositing, and reporting requirements and associated liability with respect to the work-site employees performing services for a customer of the CPEO, subject to the limitations and requirements of section 3511.

\textbf{Delay of employment tax deadlines}

The President of the United States issued a Presidential Memorandum on August 8, 2020, which directed the Secretary to defer the withholding, deposit, and payment of certain payroll tax obligations pursuant to section 7508A.\textsuperscript{1443} The IRS subsequently implemented this provision.\textsuperscript{1444} In Notice 2020–65, the due date for the withholding and payment of the employee’s share of OASDI tax, and the equivalent amount of RRTA tax, on applicable wages by affected taxpayers was postponed until the period beginning January 1, 2021 and ending on April 30, 2021. Affected taxpayers includes employers that were impacted by COVID–19 and that were required to withhold and pay the employee’s share of OASDI tax or the equivalent amount of RRTA tax.

The delay of withholding, deposit, and payment of applicable employment taxes applies to wages, as defined in section 3121(a) for OASDI tax purposes, or compensation, as defined in section 3231(e)(3) for RRTA tax purposes, paid to an employee on a pay date during the period beginning on September 1, 2020, and ending on December 31, 2020. This delay only applies if the amount of such wages or compensation paid for a bi-weekly pay period is less than the threshold amount of $4,000, or the equivalent threshold amount with respect to other pay periods. The IRS provided that affected taxpayers must deposit the deferred employment taxes on applicable wages between January 1, 2021 and April 30, 2021; otherwise, interest, penalties, and additions to tax would begin to accrue with respect to unpaid taxes on May 1, 2021.

\textbf{Explanation of Provision}

The provision directs the Secretary (or the Secretary’s delegate) to extend the relief provided in IRS Notice 2020–65. First, the date April 30, 2021 is replaced with December 31, 2021 in each place that it appeared in the notice. The result is that affected taxpayers may delay the withholding, deposit, and payment of applicable employment taxes on wages and compensation paid to employees until December 31, 2021. Second, the date May 1, 2021 is replaced with January 1, 2022 in each place that it appeared. In effect, penalties and interest will not begin to accrue on amounts to be repaid until January 1, 2022.

\textsuperscript{1442} Sec. 3511.
Effective Date

The provision is effective on the date of enactment (December 27, 2020).

4. Regulations or guidance clarifying application of educator expense tax deduction (sec. 275 of the Act and sec. 62 of the Code)

Present Law

Educator expense deduction

In general, ordinary and necessary business expenses are deductible. However, unreimbursed employee business expenses that are miscellaneous itemized deductions are not deductible for taxable years beginning before January 1, 2026.

Certain expenses of eligible educators are allowed as an above-the-line deduction from gross income to determine adjusted gross income. Specifically, an above-the-line deduction is allowed for up to $250 annually of expenses paid or incurred by an eligible educator for (1) participation in professional development courses related to the curriculum in which he or she provides instruction to students; and (2) books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom. The $250 maximum deduction amount is indexed for inflation. To be eligible for this deduction, the expenses must be otherwise deductible under section 162 as a trade or business expense. A deduction is allowed only to the extent the amount of expenses exceeds the amount excludable from income under section 135 (relating to education savings bonds), section 529(c)(1) (relating to qualified tuition programs), and section 530(d)(2) (relating to Coverdell education savings accounts).

An eligible educator is a kindergarten through grade twelve teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year. A school means any school that provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

COVID–19 expenses

In response to a Congressional inquiry, the IRS advised that cleaning supplies, air purifiers, personal protective equipment (including face masks), and similar items purchased during the COVID–19 pandemic are not deductible as an above-the-line educator expense deduction because they are not otherwise deductible under section 162. Specifically, such expenses are not deductible under section 162 because they are not customary and directly related to the subject matter that the educator may teach, even though the expenses may be helpful or appropriate.


1445 Sec. 62(a)(2)(D).
Explanation of Provision

The provision directs the Secretary to issue regulations or other guidance clarifying that personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of COVID–19 are treated as deductible expenses for purposes of the above-the-line educator expense deduction. Such regulations or other guidance shall apply to expenses paid or incurred after March 12, 2020.

The IRS subsequently has implemented this provision.1447

Effective Date

The provision is effective on the date of enactment (December 27, 2020).

5. Clarification of tax treatment of forgiveness of covered loans, clarification of tax treatment of certain loan forgiveness and other business financial assistance, and authority to waive certain information reporting requirements (secs. 276, 278, and 279 of the Act)

Present Law

Tax treatment relating to amounts excluded from income

Exclusions from income

Gross income means all income from whatever source derived.1448 Specific exclusions from income apply to certain otherwise includable amounts and payments, however. For example, income exclusions apply to qualified disaster relief payments and qualified disaster mitigation payments.1449

Tax treatment of forgiveness of loans

The forgiveness of a loan is generally treated as income from discharge of indebtedness.1450 As a simple example, if a taxpayer borrows $1,000 from a lender, and if the lender subsequently forgives the loan so the taxpayer does not repay it, the taxpayer has discharge of indebtedness income of $1,000 that is taken into account in determining income tax. However, limited exclusions apply to income from a discharge of indebtedness that occurs in a Title 11 case (generally, a bankruptcy case), or that occurs when the taxpayer is insolvent to the extent of the insolvency amount, or arises from the discharge of qualified farm indebtedness.1451

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1447 In Revenue Procedure 2021–15, the IRS provides a safe harbor for eligible educators to treat unreimbursed expenses paid or incurred after March 12, 2020 for personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of COVID-19 in the classroom as deductible expenses for purposes of the above-the-line educator expense deduction. See also IRS, Instructions for Form 1040 and Form 1040–SR, January 6, 2021, at 89.

1448 Sec. 61; U.S. v. Kirby Lumber Co., 284 U.S. 1 (1931).

1449 Sec. 139.

1450 Sec. 61(a)(11).

1451 Sec. 108(a).
Effect of income exclusion on deductions, tax attributes, and basis

In general.—Several provisions limit deductions, tax attributes, or basis increases associated with excluded income. These provisions maintain accurate income measurement by preventing the reduction of taxable income for costs associated with untaxed income.

Limitations on deductions.—One such rule, section 265, disallows deductions that are allocable to a class of income wholly exempt from income tax.\textsuperscript{1452} Similarly, a pro rata limitation on interest deductions applies in the case of a financial institution with tax-exempt interest income.\textsuperscript{1453} An interest deduction limitation rule applies in the case of a life insurance contract, the death benefit under which is excludable from income by section 101(a).\textsuperscript{1454}

Limitations in tax attributes.—In the case of discharge of indebtedness income that is excluded from income,\textsuperscript{1455} rules for reduction of tax attributes apply.\textsuperscript{1456} The excluded amount is applied to reduce the tax attributes of the taxpayer in the order prescribed by statute: (1) net operating losses, (2) general business credit, (3) minimum tax credit, (4) capital loss carryovers, (5) basis of the taxpayer’s property, (6) passive activity loss and credit carryovers, and (7) foreign tax credit carryovers.

Limitations on basis increases.—Limitations apply to otherwise allowable increases in the basis of property associated with excluded income. For example, in the case of qualified disaster mitigation payments that are excluded from income, no increase in the basis or adjusted basis of property is allowed for any amount so excluded.\textsuperscript{1457}

Circumstances in which limitations not imposed.—Limitations on deductions, tax attributes, or basis increases are not imposed in certain situations in which the policy of the exclusion may outweigh the income tax policy of accurate income measurement. For example, in the case of excludable parsonage and military housing allowances, no deduction is denied for mortgage interest or real property taxes on the taxpayer’s home under the section 265 deduction limitation by reason of the receipt of the excludable amount.\textsuperscript{1458} As another example, the pro rata interest deduction limitation for financial institutions with exempt income generally does not apply in the case of tax-exempt obligations issued in 2009 or 2010.\textsuperscript{1459}

\textsuperscript{1452} Sec. 265(a)(1). This rule applies with respect to exempt income other than interest; section 265 also disallows the deduction for interest expense on debt incurred or continued to purchase or carry obligations the interest income on which is wholly exempt from income tax (sec. 265(a)(2)), and disallows deductions otherwise allowable under section 212 for expenses for the production of interest income wholly exempt from income tax.

\textsuperscript{1453} The limitation ratio is (1) the average adjusted bases of certain types of tax-exempt obligations, to (2) average adjusted bases for all assets of the taxpayer (sec. 265(b)).

\textsuperscript{1454} Sec. 264(f). This pro rata interest deduction limitation permits no deduction for that portion of the taxpayer’s interest expense determined by applying the ratio of (1) unborrowed policy cash values, to (2) the sum of all the taxpayer’s average unborrowed policy cash values and average adjusted bases of all other assets (sec. 264(f)(1) and (2)).

\textsuperscript{1455} Sec. 108(b) and 1017.

\textsuperscript{1456} Sec. 139(g)(3). See also section 139(h) (denial of double benefit rule). As another example, the basis of property is reduced to the extent of contributions to capital of a corporation excludable from gross income under section 118 (see sec. 362).

\textsuperscript{1457} Sec. 265(a)(6).

\textsuperscript{1458} Sec. 265(b)(7). This rule is subject to the proviso that the amount of such tax-exempt obligations does not exceed two percent of the taxpayer’s average adjusted bases of tax-exempt obli-
Tax treatment of partnerships.—A partnership generally is not subject to Federal income tax, but rather, income and gain of the partnership are generally taxed to partners. Items of partnership income (including tax exempt income), gain, loss, deduction, and credit pass through to partners.1460 Although loss (including capital loss) and deductions of the partnership pass through to partners, a partner is allowed a loss or deduction only to the extent of the adjusted basis of the partnership interest, generally measured at the end of the partnership year in which the loss occurs or the deduction arises.1461

Tax exempt or excluded income items of the partnership can affect the partner’s basis in the partnership interest. Adjustments are made to the basis of a partner’s interest to account for the partner’s distributive share of partnership items.1462 The basis in the partnership interest is increased by the partner’s distributive share of partnership income, including income that is exempt from tax.1463 A partner’s basis in the partnership interest generally is increased by an increase in the partner’s share of partnership liabilities and is decreased by a decrease in the partner’s share of liabilities.1464

The basis of a partner’s interest that is acquired by contribution to the partnership is generally the amount of money and the adjusted basis of property contributed (sec. 722) and is adjusted under section 705. Section 705 provides that the basis of the partnership interest in increased by the sum of the partner’s distributive share of taxable income, income exempt from tax, and the excess of depletion deductions over the basis of the depletable property. The basis of the partnership interest is decreased by distributions from the partnership and by the sum of the partner’s distributive share of losses, expenditures that are not deductible in computing taxable income and not properly chargeable to capital account, and certain depletion deductions.

Tax treatment of S corporations.—Income of an S corporation is taxed to the S corporation shareholders. Each S corporation shareholder’s pro rata share of S corporation income (including tax exempt income), gain, loss, deduction and credit is passed through to the shareholder.1465 The basis of an S corporation shareholder’s stock is adjusted to account for the shareholder’s pro rata share of S corporation income (including tax exempt income), loss, deduction or credit. An S corporation shareholder’s stock basis is not adjusted to take account of S corporation-level debt (unlike a partner’s basis in its partnership interest).

Certain loans, advances, and payments made under the CARES Act 1467

Paycheck Protection Program loan forgiveness

The CARES Act established the Paycheck Protection Program and provided rules for covered loans.1468 A recipient of a covered loan...
loan is eligible for forgiveness of indebtedness on the loan in an amount generally equal to the sum of certain costs incurred and payments made during the eight-week period beginning on the date of the origination of the covered loan, including payroll costs, certain mortgage interest payments, certain rent payments, and certain utility payments.1469

The amount forgiven may be reduced (by an amount not to exceed the principal amount of the covered loan) if the recipient reduces the number of the recipient’s employees, or the amount of salaries and wages paid, by a specified amount during the covered period. A covered loan recipient must apply for loan forgiveness. Once an application is submitted to the lender with the required documentation, the lender must issue a decision on the loan forgiveness within 60 days.

Amounts that have been forgiven under the provision are considered as canceled indebtedness. The provision requires the Administrator of the Small Business Administration to remit to the lender, no later than 90 days after the date on which the amount of forgiveness under the provision is determined, an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.

The CARES Act provides that for Federal tax purposes, any amount which (but for the provision) would be includible in gross income of the recipient of a covered loan by reason of forgiveness pursuant to the provision is excluded from gross income.1470

Treasury program management authority loan forgiveness

The CARES Act provides authority to the Treasury Department to establish criteria for additional lenders to participate in the Paycheck Protection Program.1471 Requirements for lenders generally provide that the rate of interest may not exceed the maximum permissible rate for Paycheck Protection Program loans, and that, to the maximum extent practicable, terms and conditions are consistent with those applicable to Paycheck Protection Program loans.1472

The provision requires that loans under the authority provide for loan forgiveness under terms and conditions that are consistent with forgiveness under the Paycheck Protection Program.1473 As a condition of receiving loan under this provision, the borrower must certify that the borrower does not have an application pending for a loan under the Paycheck Protection Program1474 for the same purpose, and has not received such a loan during the period beginning February 15, 2020 and ending on December 31, 2020.

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1470 CARES Act sec. 1106(i).

1471 CARES Act sec. 1109.

1472 CARES Act sec. 1109(d)(2)(A) and (B).

1473 CARES Act secs. 1109(d)(2)(D) and 1106.

1474 CARES Act sec. 1109(f).
Targeted EIDL advances that are not required to be repaid

An eligible entity that applies for a specified type of Small Business Act loan may request an advance. The advance generally may not exceed $10,000. The applicant is not required to repay the advance, even if the loan for which the applicant applied is subsequently denied.

Subsidy for certain loan payments

The Small Business Administration (rather than the borrower) must pay principal, interest, and fees for a specified six-month period on certain loans guaranteed through the Small Business Administration. Thus, the borrower is relieved of the obligation to make these payments. The provision generally applies to loans guaranteed by the Small Business Administration and made under the Community Advantage Pilot Program or under title V of the Small Business Investment Act.

Treasury guidance regarding deductibility of costs relating to excluded income from forgiven loans under the Paycheck Protection Program

After the CARES Act was enacted on March 27, 2020, the Treasury Department issued Notice 2020–32 providing that no deduction is allowed for an expense that is otherwise deductible if the payment of the expense results in the forgiveness of a covered loan under the Paycheck Protection Program and the income associated with the forgiveness is excluded from gross income.

Notice 2020–32 describes the CARES Act rules regarding what the recipient of the loan must do to obtain loan forgiveness in an amount equal to the sum of payments for certain eligible section 1106 expenses. Such CARES Act section 1106 eligible expenses are payroll costs, certain interest on mortgage obligations, certain rent obligations, and certain utility payments. The Notice points to the exclusion from gross income under CARES Act section 1106(i) for any amount otherwise includable in gross income by reason of the loan forgiveness under CARES Act section 1106(b). Because the income exclusion results in a class of exempt income, Notice 2020–32 states, Code section 265 disallows any otherwise allowable deduction for the amount of any payment of an eligible CARES Act section 1106 expense to the extent of the resulting loan forgiveness because the payment is allocable to tax-exempt income.

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1475 Economic Injury Disaster Loan (“EIDL”). This is a loan under section 7(b)(2) of the Small Business Act, 15 U.S.C. 636(b)(2) (elsewhere in this Act redesignated to another statutory location).
1476 CARES Act sec. 110(e).
1477 CARES Act sec. 1110(c)(5).
1478 CARES Act sec. 1112(c).
1479 These loans are defined in CARES Act section 1112(a)(1) and (2) as loans “guaranteed by the Administration under (A) section 7(a) of the Small Business Act (15 U.S.C. 636(a) (elsewhere in this Act redesignated to another statutory location))—(i) including a loan made under the Community Advantage Pilot Program of the Administration; and (ii) excluding a loan made under paragraph (36) of such section 7(a), as added by section 1102; or (B) title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.); or (2) made by an intermediary to a small business concern using loans or grants received under section 7(m) of the Small Business Act (15 U.S.C. 636(m)).” The six-month period for which the payments are made on the borrower’s behalf depends on when the loan is made, as set forth in CARES Act section 1112(c)(1).
Reporting requirements

Information returns and payee statements in general

Information returns are required to be filed concerning a variety of transactions and payments. A person that is required to file an information return generally is also required to furnish a statement to the other party to the transaction or the recipient of the payment.

Reporting of cancellation of indebtedness income

Reporting of cancellation of indebtedness income on Form 1099-C or 1099-A generally is required if debt is discharged in whole or in part. A person required to report such income includes certain financial institutions and their affiliates and organizations engaged in a significant trade or business of lending, as well as certain governmental entities (and quasi-governmental entities, such as the FDIC, and their affiliates).

Explanation of Provision

Paycheck Protection Program loans

Tax treatment of forgiveness in general

In the case of a Paycheck Protection Program loan that is forgiven in whole or in part, the provision clarifies that for Federal income tax purposes no amount is included in the income of an eligible recipient of such a loan by reason of the forgiveness. Similarly, no amount is included in the income of an eligible entity by reason of such forgiveness in a taxable year ending after December 27, 2020.

Further, no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income. As a result, otherwise deductible costs remain deductible if the costs are paid with proceeds of the forgiven loan, or are associated with the forgiven loan, even though the forgiven amount is excluded from income. Similarly, because section 108 does not apply, no tax attribute is reduced by reason of the exclusion from income. Further, an otherwise allowable increase in the basis

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1481 See Chapter 61 of the Code, relating to information and returns, which includes sections 6001-6117.
1482 Sec. 6050P. The reporting requirement applies when a debt is cancelled or when an identifiable event (described in guidance) occurs. Treas. Reg. 1.6050P-1 and -2; and see Instructions for Forms 1099-A and 1099-C, https://www.irs.gov/pub/irs-pdf/i1099ac.pdf, page 4 (“When a Debt is Cancelled”).
1483 Sec. 276 of the Act.
1484 Elsewhere in this Act, these rules regarding Paycheck Protection Program loans are transferred to section 7A of the Small Business Act, and the Paycheck Protection Program is expanded and extended. The transfer and redesignation is made in section 304 of the “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act,” Title III of Division N of the Consolidated Appropriations Act, 2021; that section and following sections of Title III of Division N modify the rules for the Paycheck Protection Program. In particular, section 311 of Title III of Division N expands the costs that may result in forgiveness to include, for example, “covered worker protection expenditures” and “covered supplier costs.” The transfer and redesignation of rules regarding Paycheck Protection Program loans also modify the term "eligible recipient" to refer to an “eligible entity.”
1486 By removing the parenthetical in CARES Act section 1106(i) as originally enacted, the provision clarifies that the exclusion in Act section 276 operates independently of any exclusion
of property remains allowable even if the expenditure giving rise to the basis increase is paid with proceeds of the forgiven loan or is associated with the forgiven loan that is excluded from income.

For example, if a taxpayer that is engaged in a trade or business receives a Paycheck Protection Program loan and uses the proceeds to pay deductible wages of employees of the business, the section 162 deduction for the wages is not disallowed even though the loan is forgiven and the amount of the forgiveness is excluded from income.1487 If that taxpayer uses the proceeds to pay wages that are properly capitalized into inventory, the taxpayer may increase the basis of such inventory even though the amount of the forgiveness is excluded from income.

**Partnerships and S corporations**

In the case of an eligible recipient (or eligible entity) that is a partnership or S corporation, any amount excluded from income by reason of the provision is treated as tax exempt income for purposes of sections 705 (the determination of a partner's basis in the partnership interest) and 1366 (the passthrough of items to an S corporation shareholder). In general, this allows for an owner of an eligible recipient (or eligible entity) that is a partnership or S corporation to increase its basis in the interest in, or the stock of, the entity so that the deduction allowable under the provision may be allowed. 1488

For example, assume that an S corporation has two shareholders (A and B). Each of A and B owns 50 percent of the stock of the S corporation. A's stock basis is $50. B's stock basis is $0. The S corporation is an eligible recipient and receives a $100 Paycheck Protection Program loan in 2020, pays $100 in amounts giving rise to forgiveness in 2020; and the Paycheck Protection Program loan is forgiven in 2021. The S corporation has no other items of income, gain, loss or deduction in 2021. While the S corporation (and thus each of A and B) does not have income as a result of the forgiveness, the S corporation is treated as having $100 of tax-exempt income for purposes of section 1366. Thus, each of A and B's basis in S corporation stock is increased by $50.1489 Assuming that the $100 is used to pay wages that are properly deductible, each of A and B may deduct $50.1490 A's basis in S corporation stock is sufficient for A to claim the deduction in 2020 1491 and, by reason of the

1487 Separate rules provide for coordination between use of proceeds of Paycheck Protection Program loans, and expenditure requirements for employee retention tax credit; see section 206(b) of Division N of this Act.

1488 Subchapter K and Subchapter S each provide analogous rules that the partner's, or shareholder's, share of deductions of the entity is limited to the adjusted basis of the partnership interest or of the stock and debt of the S corporation (secs. 704(d) and 1366(d)), and that tax exempt income gives rise to a basis increase under these rules (secs. 705(a)(1)(B) and 1366(a)(1)(A)). Thus, a basis increase (correlating to the deduction allowed) in the partner's adjusted basis in the partnership interest, or in the shareholder's adjusted basis in the S corporation stock, allows the owner to utilize the deduction that is allowable under the Act.

1489 Secs. 1363(a)(1)(A) and 1366(a)(1)(A).

1490 Secs. 1363(a) and 1366.

1491 With respect to A, the provision ensures that the benefit of the exclusion is not later reversed when, for example, A later claims a deduction or loss of the S corporation or A sells its interests in the S corporation.
An additional rule applies when the eligible recipient (or eligible entity) is a partnership. Except as provided by the Secretary of the Treasury (or the Secretary’s delegate), any increase in the adjusted basis of a partner’s interest in a partnership under section 705 (the determination of the basis of a partner’s interest) with respect to any amount excluded from income under the provision equals the partner’s distributive share of deductions resulting from costs giving rise to forgiveness. This rule addresses the allocation of the amount treated as tax exempt income for purposes of determining a partner’s basis in its partnership interest. It generally ensures that the benefit of deductions and basis increases not denied are allowed at the partner level.\textsuperscript{1492} The grant of authority allows the Secretary of the Treasury (or the Secretary’s delegate) to, for example, address situations in which the costs giving rise to excluded amounts are capitalized or are nondeductible amounts.\textsuperscript{1493}

For example, assume that a partnership has two partners (A and B). A and B are each entitled to 50 percent of the partnership’s income and gain. A is entitled to 100 percent of the partnership’s losses. B is entitled to 100 percent of the partnership’s deductions. A’s basis in its partnership interest is $50. B’s basis in its partnership interest is $0. The partnership is an eligible recipient and receives a $100 Paycheck Protection Program loan in 2020, and in 2020 pays $100 in payroll costs, rent payments, and utility payments that qualify for loan forgiveness, and the loan is forgiven in 2020. The partnership (and thus each of A and B) exclude from income the forgiven amount. Assuming that the $100 of costs paid are otherwise deductible and are all properly allocated to B, B’s basis in the partnership is increased by $100 as a result of the provision. That is, the adjusted basis of B’s partnership is increased by the $100 forgiven loan amount that is excluded from income and that is treated as tax exempt income so that B may claim the $100 deduction for the costs.\textsuperscript{1494}

\textit{Treasury Department guidance}

Guidance issued on January 6, 2021, by the Treasury Department provides that IRS Notice 2020–32 (applying section 265 to deny deductions for certain expenses relating to Paycheck Protection Program loans for which a forgiven amount is excluded from income) is obsolete.\textsuperscript{1495}

\textit{Effective Date}

These provisions of the Act apply both to original loans issued under the Paycheck Protection Program under the terms of the

\textsuperscript{1492} Furthermore, the provision ensures that the benefit of the exclusion is not later reversed when, for example, the partnership later allocates a deduction or loss to the partner or the partner sells its interests in the partnership.

\textsuperscript{1493} The grant of authority also, for example, allows the Secretary of the Treasury (or the Secretary’s delegate) to address situations in which specific rules are needed to carry out the purposes of the provision, for example, if interests in a partnership are transferred or redeemed while a Paycheck Protection Program loan is outstanding.

\textsuperscript{1494} That is, the section 704(d) limitation does not prevent B from claiming the deduction.

In the case of a loan made under Treasury program management authority that is forgiven in whole or in part, the provision provides that, for Federal income tax purposes, no amount is included in the income of a borrower by reason of the forgiveness.

Further, no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income of the forgiven amount. As a result, otherwise deductible costs remain deductible if the costs are paid with proceeds of the forgiven loan or are associated with the forgiven loan, even though the amount of the forgiveness is excluded from income. Similarly, because section 108 does not apply to the forgiveness provided under the provision, no tax attribute is reduced by reason of the exclusion from income.

For example, if a taxpayer that is engaged in a trade or business receives a loan under the Treasury program management authority and uses the proceeds to pay deductible wages of employees of the business, the section 162 deduction for the wages is not disallowed even though the loan is forgiven and the amount of the forgiveness is excluded from income.

Partnerships and S corporations

In the case of a borrower that is a partnership or S corporation, any amount excluded from income by reason of the provision is treated as tax exempt income for purposes of sections 705 (the determination of a partner’s basis in the partnership interest) and 1366 (the passthrough of items to an S corporation shareholder). An additional rule applies when a borrower is a partnership. Except as provided by the Secretary of the Treasury (or the Secretary’s delegate), any increase in the adjusted basis of a partner’s interest in a partnership under section 705 with respect to any amount excluded from income under the provision equals the partner’s distributive share of deductions resulting from costs giving rise to forgiveness.

\[1496\] CARES Act sec. 1109.

\[1497\] CARES Act sec. 1109(d)(2)(D) provides for forgiveness.

\[1498\] Sec. 278(a) of Division N of the Act.

\[1499\] Because the exclusion from income is allowed under section 278(a) of Division N of the Act, and not under Internal Revenue Code section 108, the tax attribute reduction requirements that relate to the income exclusion under section 108 do not apply.

\[1500\] Separate rules provide for coordination between use of proceeds of Paycheck Protection Program loans and the expenditure requirements for employee retention tax credit; see section 206(b) of Division N of the Act, and see IRS Notice 2021–20, Guidance on the Employee Retention Credit under Section 2301 of the Coronavirus Aid, Relief, and Economic Security Act, March 1, 2021.
Effective Date

These rules apply to taxable years ending after the date of enactment of the CARES Act (March 27, 2020).

Emergency EIDL grants and targeted EIDL advances

Tax treatment of advance or funding in general

An EIDL advance that is not repaid in whole or in part is not included in the income of the person that receives the advance, for Federal income tax purposes. In the case of funding that is received relating to small business continuity, adaptation, and resiliency, the funding is not included in the income of the person that receives the funding.

Further, no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income. As a result, otherwise deductible costs remain deductible even though the costs are paid with the excluded income or are associated with the excluded amount. Similarly, because section 108 does not apply to the exclusion from income provided under the provision, no tax attribute is reduced by reason of the exclusion.

Further, an otherwise allowable increase in the basis of property remains allowable even if the expenditure giving rise to the basis increase is paid with the excluded income or is associated with the excluded amount.

For example, if a person engaged in a trade or business receives an EIDL advance or funding described in the provision and uses the proceeds to pay deductible wages of employees of the business, the section 162 deduction for the wages is not disallowed even though the advance or funding is excluded from income.

Partnerships and S corporations If the person that receives the advance or funding is a partnership or S corporation, any amount excluded from income by reason of the provision is treated as tax exempt income for purposes of sections 705 (the determination of a partner’s basis in the partnership interest) and 1366 (the pass-through of items to an S corporation shareholder). The provision also requires the Secretary of the Treasury (or the Secretary’s delegate) to prescribe rules for determining a partner’s distributive share of any amount treated as tax exempt income under the provision.

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1501 CARES Act sec. 1110(e).
1502 CARES Act sec. 1110(e)(5) provides that the advance is not required to be repaid.
1504 This funding is provided in section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which is in Division N of this Act. The total amount of such funding that a covered entity may receive is $10,000, and if a covered entity received an EIDL grant (advance) under section 1110(c) of the CARES Act, the amount of the grant under this section is the difference between $10,000 and the amount of the previously received grant (sec. 331(b)). A covered entity for this purpose is generally defined as an entity that is eligible for a specified type of Small Business Administration loan, applies for such a loan during the period January 31, 2020 and ending December 31, 2021, is located in a low-income community, has suffered an economic loss of greater than 30 percent, and employs no more than 300 employees.
1505 Sec. 278(b) of Division N of the Act.
1506 Because the exclusion from income is allowed under section 278(b) of Division N of the Act, and not under Internal Revenue Code section 108, the tax attribute reduction requirements that relate to the income exclusion under section 108 do not apply.
For example, assume that a partnership has two partners (A and B). The partnership is engaged in a trade or business, receives an EIDL advance of $10,000, and uses the proceeds to pay deductible wages of employees of the business. The section 162 deduction for the wages is not disallowed even though the advance is excluded from income. A’s and B’s aggregate basis in the partnership is increased by $10,000. Treasury guidance will determine by how much each of A’s and B’s basis in their partnership interests, respectively, is increased.

**Effective Date**

The rules governing EIDL advances apply to taxable years ending after the date of enactment of the CARES Act (March 27, 2020). The rules governing funding relating to small business continuity, adaptation, and resiliency apply to taxable years ending after the date of enactment of this Act (December 27, 2020).

**Subsidy for certain loan repayments**

*Tax effects of payments by Small Business Administrator of loan principal, interest, and fees*

In the case of a payment made on behalf of a person by the Small Business Administrator of principal, interest, and fees with respect to certain loans guaranteed through the Small Business Administration, the payment is not included in the gross income of the person on whose behalf the payment is made.

Further, no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income. As a result, otherwise deductible costs remain deductible even though the costs are paid with funds made available by reason of the payment on the person’s behalf that is excluded from income, or are associated with the excluded amount. Similarly, because section 108 does not apply to the exclusion from income provided under the provision, no tax attribute is reduced by reason of the exclusion. Further, an otherwise allowable increase in the basis of property remains allowable even though the expenditure giving rise to the basis increase is associated with the excluded income.

For example, assume a person is engaged in a trade or business, and payments of principal, interest, or fees with respect to certain loans are made by the Small Business Administrator on the person’s behalf. If the person (in lieu of making those payments of principal, interest, or fees) pays deductible wages of employees of the business, the section 162 deduction for the wages is not disallowed even though the payments of principal, interest, or fees made on behalf of the person that were excluded from income permitted the person to pay the wages.

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1507 CARES Act section 1112(a) defines covered loans in more detail. Section 325 of this Act provides additional rules relating to the extension of the debt relief program originally enacted in CARES Act section 1112. 1508 Sec. 278(c) of Division N of the Act. And see Treasury guidance mentioning the exclusion in IRS Publication 525, Taxable and Nontaxable Income, “What’s New,” pages 1–2, rev. April 6, 2021, https://www.irs.gov/pub/irs-pdf/p525.pdf. 1509 Because the exclusion from income is allowed under section 278(c) of Division N of the Act, and not under Internal Revenue Code section 108, the tax attribute reduction requirements that relate to the income exclusion under section 108 do not apply.
Partnerships and S corporations

If the person on whose behalf the loan payment is made is a partnership or S corporation, any amount excluded from income by reason of the provision is treated as tax exempt income for purposes of sections 705 (the determination of a partner’s basis in the partnership interest) and 1366 (the passthrough of items to an S corporation shareholder).

An additional rule applies if the person on whose behalf the loan payment is made is a partnership. In such a case, except as provided by the Secretary of the Treasury (or the Secretary’s delegate), any increase in the adjusted basis of a partner’s interest in a partnership under section 705 equals the sum of the partner’s distributive share of deductions resulting from interest and fees paid by the Small Business Administrator on the partnership’s behalf and the partner’s share, as determined under section 752 (the treatment of liabilities of a partnership), of principal paid by the Small Business Administrator on the partnership’s behalf.

For example, assume that a partnership has two partners (A and B). A and B are each entitled to 50 percent of partnership income and gain. B is entitled to 100 percent of the deductions. Ignoring partnership liabilities, each of A and B’s adjusted basis in its partnership interest is $0. But assume that the partnership has a $50 outstanding loan described in section 1112(c) of the CARES Act that is wholly allocated to A under the rules of section 752. Thus, A’s basis in its partnership interest is $50 and B’s basis in its partnership interest is $0. Assume that the Small Business Administrator pays, on behalf of the partnership, all $50 in loan principal. After the payment is made, A’s basis in its partnership interest remains $50 and B’s basis in its partnership interest remains $0.

Effective Date

The rules governing emergency payments made on behalf of a person by the Small Business Administrator of principal, interest, and fees with respect to certain loans guaranteed through the Small Business Administration apply to taxable years ending after the date of enactment of the CARES Act (March 27, 2020).

Shuttered venue grants

In general

The Act provides authority for the Office of Disaster Assistance to coordinate and formulate policies relating to the administration of grants for certain shuttered venues. A person eligible for such a grant is generally a live venue operator or promoter, a theatrical producer, a live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative that meets statutory requirements. Amounts received under such a grant are to be used for specified costs incurred during the period beginning March 1, 2020, and ending December 31, 2021 (ending June 30, 2022 for certain supplemental

\textsuperscript{1510} Sec. 324(b) of Division N of the Act.

\textsuperscript{1511} Sec. 324(a) of Division N of the Act. The requirements relate to, among other criteria, a reduction in revenue in 2020 over 2019.
The total amount of initial and supplemental grants received by any one person may not exceed $10,000,000.  

**Tax treatment of shuttered venue grants**

For Federal income tax purposes, any such grant is not included in the income of the person that receives the grant. Further, no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of the exclusion from income. As a result, otherwise deductible costs remain deductible if the costs are paid with grant proceeds that are excluded from income, or are associated with grant proceeds that are excluded. Similarly, because section 108 does not apply to the exclusion provided under the provision, no tax attribute is reduced by reason of the exclusion from income. Further, an otherwise allowable increase in the basis of property remains allowable even though the expenditure giving rise to the basis increase is paid with grant proceeds that are excluded from income, or are associated with grant proceeds that are excluded.

For example, if a taxpayer that is engaged in a trade or business receives a grant that is excluded from income under the provision and uses the proceeds to pay deductible wages of employees of the business, the section 162 deduction for the wages is not disallowed even though the grant is excluded from income.

**Partnerships and S corporations**

If the person that receives the grant is a partnership or S corporation, any amount excluded from income by reason of the provision is treated as tax exempt income for purposes of sections 705 (the determination of a partner’s basis in the partnership interest) and 1366 (the pass-through of items to an S corporation shareholder).

The provision requires the Secretary of the Treasury (or the Secretary’s delegate) to prescribe rules for determining a partner’s distributive share of any amount treated as tax exempt income under the provision.

**Effective Date**

The rules governing the grants apply to taxable years ending after the date of enactment of this Act (December 27, 2020).

**Treasury may waive reporting requirements**

The Secretary of the Treasury (or the Secretary’s delegate) may provide an exception from the requirement to file an information...
return by the rules of Chapter 61 of the Code, relating to information and returns, with respect to any amount excluded from gross income by reason of the provisions of the Act that are described above. Implementing this authority, IRS Notice 2021–06 waives the requirement to file certain information returns or furnish certain payee statements otherwise required by Chapter 61 of the Code with respect to certain amounts excluded from income by reason of the provisions of the Act that are described above.


Present Law

Higher education grants and qualified scholarships

Gross income includes all income from whatever source derived unless a specific exception applies. In general, grants received for higher education are includible in gross income unless such amounts constitute qualified scholarships. Qualified scholarships are amounts received as a scholarship or fellowship grant to the extent that the individual establishes that such amounts are used for qualified tuition and related expenses. The exclusion for qualified scholarships does not apply to any amount received by a student that represents payment for teaching, research, or other services by the student required as a condition for receiving the scholarship.

Sections 3504, 18004, and 18008 of the CARES Act, allow higher education institutions to use certain funds allocated by the Department of Education to support students and higher education institutions with expenses and financial needs related to the COVID–19 pandemic. These provisions allow higher education institutions to use additional grant funds to award emergency financial aid grants to students for expenses related to the COVID–19 pandemic. Such expenses are not limited to qualified tuition and related expenses and may including living expenses.

Disaster relief payments

Gross income does not include amounts received by individuals as qualified disaster relief payments under section 139. Qualified disaster relief payments include amounts paid to or for the benefit of an individual: (1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; (2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster; (3) by a person engaged in the furnishing or sale of transportation by reason of death or personal

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1517 For example, Chapter 61 of the Code includes section 6050P, which requires returns relating to the cancellation of indebtedness by certain entities.
1519 Sec. 117.
injuries as a result of a qualified disaster; or (4) by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare.

Pursuant to Frequently Asked Questions released by the IRS, a student who receives an emergency financial aid grant under sections 3504, 18004, or 18008 of the CARES Act for unexpected expenses, unmet financial need, or expenses related to the disruption of campus operations on account of the COVID–19 pandemic may exclude such grants from gross income because the grants are qualified disaster relief payments under section 139.1 Unexpected expenses may include expenses for food, housing materials, technology, health care, or child care. However, qualified tuition and related expenses paid with emergency financial aid grant money may not be used to claim any deduction or credit for such expenses, including the American Opportunity Tax Credit, the Lifetime Learning Credit, or the tuition and fees deduction.

**American Opportunity Tax Credit**

The American Opportunity Tax Credit ("AOTC") is a partially refundable income tax credit for certain costs associated with postsecondary education. The amount of the AOTC is 100 percent of the first $2,000 of qualifying expenses and 25 percent of the next $2,000 of these expenses.

Expenses for which the credit are allowed are qualified tuition and related expenses that an individual pays in the taxable year for education furnished in any academic period that begins in that year to an eligible student for whom an election is in effect for the year.1521 Qualified tuition and related expenses are tuition, fees, and course materials required for the taxpayer’s, the taxpayer’s spouse’s, or the taxpayer’s dependent’s enrollment or attendance at an eligible educational institution for courses of instruction.1522 Qualified tuition and related expenses do not, however, include (1) expenses for any course or other education involving sports, games, or hobbies unless the course or other education is part of the individual’s degree program or (2) student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual’s academic course of instruction.1523 Examples of non-qualifying expenses are room and board and transportation expenses.1524

The AOTC is determined on a per-student basis, with a maximum credit of $2,500 for any single eligible student.1525 As an example of the per-student calculation, a taxpayer who pays $4,000 or more of qualified expenses for each of two eligible students may, subject to other AOTC rules, be allowed a credit of $5,000.

The Lifetime Learning Credit (also in section 25A) generally allows a taxpayer a 20-percent credit for up to $10,000 in qualified

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1521 Sec. 25A(a)(1), (b)(1).
1522 Sec. 25A(f)(1)(A), (D).
1523 Sec. 25A(f)(1)(B), (C).
1525 See Treas. Reg. sec. 1.25A–3(b).
tuition and related expenses that the taxpayer pays during a taxable year for education furnished in an academic period beginning that year. Qualified tuition and related expenses taken into account for the AOTC may not be taken into account for determining the Lifetime Learning Credit.

For the purpose of determining the amount of the AOTC, the Lifetime Learning Credit, and the tuition and fees deduction, qualified tuition and related expenses that may be taken into account for an individual for any academic period must be reduced by the amount of tax-free educational assistance that is paid for the benefit of that individual and is allocable to that period. For this purpose, tax-free educational assistance means a qualified scholarship that is excludable from gross income under section 117; a veterans or member-of-the-armed-forces educational assistance allowance under certain provisions of the U.S. Code; employer-provided educational assistance that is excludable from income under section 127; or any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

**Explanation of Provision**

The provision follows the IRS Frequently Asked Questions in stating that amounts received as a qualified emergency financial aid grants shall not be included in gross income. In addition, such amounts shall not be treated as reducing qualified tuition and related expenses that may be taken into account for purposes of claiming the AOTC, the Lifetime Learning Credit, or the tuition and fees deduction.

A qualified emergency financial aid grant is defined as an emergency financial aid grant awarded under sections 3504 and 18004 of the CARES Act and any other emergency financial aid grant made to a student from a Federal agency, a State, an Indian tribe, an institution of higher education, or a scholarship-granting organization for the purpose of providing financial relief to students enrolled at institutions of higher education in response to a qualifying emergency.
The provision does not apply to any amount received that represents payment for teaching, research, or other services required as a condition for receiving the emergency financial aid grant.

**Effective Date**

The provision is shall apply to qualified emergency financial aid grants made after March 26, 2020.

7. Application of special rules to money purchase pension plans (sec. 280 of the Act and sec. 401 of the Code)

**Present Law**

**Distributions from tax-favored retirement plans**

**In general**

A distribution from a tax-qualified plan described in section 401(a) (a “qualified retirement plan”), a tax-sheltered annuity plan (a “section 403(b) plan”), an eligible deferred compensation plan of a State or local government employer (a “governmental section 457(b) plan”), or an individual retirement arrangement (an “IRA”) generally is included in income for the year distributed. In addition, unless an exception applies, a distribution from a qualified retirement plan, a section 403(b) plan, or an IRA received before age 59½ is subject to a 10-percent additional tax (referred to as the “early withdrawal tax”) on the amount includible in income.

In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual.

The terms of a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan generally determine when distributions are permitted. However, for many types of plans, restrictions apply to distributions before an employee’s termination of employment, referred to as “in-service” distributions or withdrawals. Despite such restrictions, an in-service distribution from a qualified retirement plan that includes a qualified cash-or-deferred arrangement (a “section 401(k) plan”) or a section 403(b) plan may be permitted in the case of financial hardship. Similarly, a governmental...
section 457(b) plan may permit distributions in the case of an unforeseeable emergency. Under a qualified retirement plan that is a pension plan (i.e., defined benefit pension plan or money purchase pension plan), distributions generally may be made only in the event of retirement, death, disability, or other separation from service, although in-service distributions may be permitted after age 59 1/2.1536

Coronavirus-related distributions

Section 2202 of the CARES Act1537 allows an exception to the 10-percent early withdrawal tax for a “coronavirus-related distribution” from a qualified retirement plan, a section 403(b) plan, or an IRA.1538 The provision also allows a taxpayer to include income attributable to a coronavirus-related distribution ratably over three years and to recontribute the amount of the distribution to an eligible retirement plan within three years.

A “coronavirus-related distribution” is any distribution from a qualified retirement plan, section 403(b) plan, governmental section 457(b) plan, or an IRA, made on or after January 1, 2020, and before December 31, 2020, to an individual (1) who was diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (“COVID–19”) by a test approved by the Centers for Disease Control and Prevention; (2) whose spouse or dependent1539 is diagnosed with such virus or disease by such a test; or (3) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary (or the Secretary’s delegate).1540 The administrator of the plan may rely on the individual’s certification that he or she satisfies the conditions described in clauses (1), (2), or (3) in determining whether any distribution is a coronavirus-related distribution.

A plan is not treated as violating any Code requirement merely because it treats a distribution as a coronavirus-related distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer’s controlled group or affiliated service group does not exceed $100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $100,000, taking into account distributions from plans of other employers or IRAs. A plan is not required to treat a distribution as a coronavirus-related distribution.

A coronavirus-related distribution is treated as meeting certain requirements relating to the timing of distributions under a section 401(k) plan, section 403(b) plan, governmental section 457(b) plan,
and the Thrift Savings Plan. However, it is not treated as meeting requirements relating to the timing of distributions under a pension plan (including a money purchase pension plan).

Any amount required to be included in income as a result of a coronavirus-related distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply.

Any portion of a coronavirus-related distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed in one or more contributions to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income.

For example, if an individual receives a coronavirus-related distribution in 2020, that amount is included in income, generally ratably over the year of the distribution and the following two years and is not subject to the 10-percent early withdrawal tax. If, in 2022, the amount of the coronavirus-related distribution is recontributed to an eligible retirement plan, the individual may file amended returns to claim a refund of the tax attributable to the amounts previously included in income. In addition, if a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includible in income.

**Explanation of Provision**

The provision amends section 2202(a) of the CARES Act to provide that, in the case of a money purchase pension plan, a coronavirus-related distribution that is an in-service withdrawal is treated as meeting the distribution requirements applicable to qualified retirement plans.

**Effective Date**

The provision is effective as if included in the enactment of section 2202 of the CARES Act.

8. Election to waive application of certain modifications to farming losses (sec. 281 of the Act and sec. 172 of the Code)

**Present Law**

A taxpayer generally may deduct in a taxable year a net operating loss (“NOL”) carried to such year. Special rules apply with respect to NOLs arising in certain circumstances. These in-

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1541 Secs. 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A), and 5 U.S.C. 8433(h)(1).
1545 Sec. 172(a). Certain additional limitations apply to NOLs claimed by taxpayers other than a corporation. See sec. 172(d)(2).
include a special rule generally providing a two-year carryback in the case of certain farming losses.

The CARES Act made several changes with respect to NOLs arising in taxable years beginning after December 31, 2017, and before January 1, 2021. For example, the limitation of the NOL deduction to 80 percent of taxable income determined without regard to the NOL deduction (the “80-percent taxable income limitation”) is suspended for taxable years beginning after December 31, 2017, and before January 1, 2021. However, in the case of any taxable year beginning after December 31, 2020, and with respect to NOLs arising in taxable years beginning after December 31, 2017, carried to such a taxable year, the 80-percent taxable income limitation applies.

In addition, any NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, may be carried to the five taxable years preceding the taxable year of such loss (the “five-year carryback period”). NOLs eligible for the five-year carryback period include, for example, those arising with respect to farming losses, which would otherwise be subject to a two-year carryback period. For any loss year, a farming business may irrevocably elect out of a carryback. The election must be made in the manner as prescribed by the Secretary by the due date (including extensions) of the taxpayer's return for the taxable year of the NOL.

Special rules also apply to NOL carrybacks to years to which section 965 applies.

**Explanation of Provision**

In the case of farming losses arising in taxable years beginning in 2018, 2019, or 2020, the provision allows a taxpayer to elect out of the modifications made by the CARES Act to the 80-percent taxable income limitation and the rules relating to NOL carrybacks. Thus, a farming business that previously claimed a two-year carryback (after application of the 80-percent taxable income limitation) may elect to keep such carryback without having to amend any applicable returns to reflect a five-year carryback period after suspension of the 80-percent taxable income limitation. If such an election is made, it applies to all of the taxpayer’s taxable years before

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1546 Sec. 172(b)(1)(B). For this purpose, the term “farming loss” means the lesser of (1) the amount that would be the NOL 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 NOL for such taxable year.

1547 Background for the provision and a description of the net operating loss rules that the provision modifies may be found above in the section describing section 2303 of the CARES Act (Pub. L. No. 116–136) in Part Six of this document.

1548 Sec. 172(a).

1549 Sec. 172(a)(2). Section 172(a)(2)(A) provides that NOLs arising in taxable years beginning before January 1, 2018, carried to a taxable year beginning after December 31, 2020, are not subject to the 80-percent taxable income limitation.

1550 See sec. 172(b)(1)(D)(i). Pursuant to section 172(b)(2), any NOL carryback must be carried to the earliest taxable years to which such loss may be carried.

1551 See sec. 172(b)(1)(B). For this purpose, the term “farming loss” means the lesser of (1) the amount that would be the NOL 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 NOL for such taxable year.

1552 See sec. 172(b)(1)(B) and (3).
gning in 2018, 2019, and 2020 (i.e., farming losses arising in all such years will only be eligible for a two-year carryback period after application of the 80-percent taxable income limitation).

The election is made (under rules prescribed by the Secretary) by the due date (including extensions) for filing the taxpayer’s return for the taxpayer’s first taxable year ending after December 27, 2020. Once made, the election is irrevocable. A taxpayer who previously claimed a two-year carryback of a farming loss after application of the 80-percent taxable income limitation and does not amend the applicable returns to reflect the suspension of the 80-percent taxable income limitation and a five-year carryback period by the due date (including extensions) for filing the taxpayer’s return for the taxpayer’s first taxable year ending after December 27, 2020, is deemed to have made the election to disregard such modifications. Authority is provided to promulgate regulations or other guidance necessary to carry out the purposes of the provision, including regulations or other guidance relating to the application of section 172(a) as in effect before March 27, 2020, to taxpayers making the election.1553

In addition, the provision provides that any election to forgo any carryback of a farming loss arising in a taxable year beginning in 2018 or 2019 that was made before December 27, 2020, may be revoked.

**Effective Date**

The provision is effective as if included in section 2303 of the CARES Act.

9. **Oversight and audit reporting (sec. 282 of the Act and sec. 19010 of the CARES Act)**

**Present Law**

The Comptroller General monitors and oversees the exercise of authorities, or the receipt, disbursement, and use of funds made available under the CARES Act or any other Act to prepare for, respond to, and recover from the Coronavirus 2019 pandemic.1554 In conducting monitoring and oversight, the Comptroller General offers regular briefings to the appropriate congressional committees regarding Federal public health and homeland security efforts and publishes reports regarding the monitoring and oversight efforts (which, along with any audits and investigations conducted by the Comptroller General are submitted to the appropriate congressional committees and posted on the website of the Government Accountability Office).

Appropriate congressional committees include: the Committee on Appropriations of the Senate; the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Health, Education, Labor, and Pensions of the Senate; the Committee on Appropriations of the House of Representatives; the Committee on Homeland Security of the House of Representatives; the Committee on Oversight and Reform of the House of Representatives; and the

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Explanation of Provision

The provision amends section 19010 of the CARES Act to add the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives to the list of appropriate congressional committees.

Effective Date

The provision is effective as of the date of enactment (December 27, 2020).

10. Disclosures to identify tax receivables not eligible for collection pursuant to qualified tax collection contracts (sec. 283 of the Act and new sec. 6103(k)(15) and current sec. 6306 of the Code)

Present Law

Under the Code, the IRS is permitted to use private debt collection companies to locate and contact taxpayers owing outstanding Federal tax liabilities of any type and to arrange payment of those taxes by the taxpayers. Specifically, the Code requires the Secretary to enter into qualified tax collection contracts for the collection of inactive tax receivables. Inactive tax receivables are defined as any tax receivable (i) removed from the active inventory for lack of resources or inability to locate the taxpayer, (ii) for which more than 1/3 of the applicable limitations period has lapsed and no IRS employee has been assigned to collect the receivable (and for tax receivables identified by the Secretary or the Secretary’s delegate after December 31, 2020, more than two years have passed since assessment and receivable has not been assigned for collection to any employee of the IRS), or (iii) for which a receivable has been assigned for collection but more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection. Tax receivables are defined as any outstanding assessment which the IRS includes in potentially collectible inventory.

Certain tax receivables are not eligible for collection under qualified tax collection contracts. A receivable is not eligible if the receivable: (i) is subject to a pending or active offer-in-compromise or installment agreement; (ii) is classified as an innocent spouse case; (iii) involves a taxpayer identified by the Secretary as being (a) deceased, (b) under the age of 18, (c) in a designated combat zone, (d) a victim of identity theft; (iv) is currently under examination, litigation, criminal investigation, or levy; or (v) is currently subject to a proper exercise of a right of appeal under Title 26.

In addition, certain tax receivables identified by the Secretary (or the Secretary’s delegate) after December 31, 2020 are not eligible

1555 Sec. 6306(a).
1556 Sec. 6306(c).
1557 Sec. 6306(c)(2).
1558 Sec. 6306(d).
for collection under qualified tax collection contracts. In this category, a receivable is not eligible if the receivable involves a taxpayer identified by the Secretary as being (a) a taxpayer substantially all of whose income consists of Social Security disability insurance or supplemental security income benefits, or (b) a taxpayer who is an individual with adjusted gross income (as determined for the most recent taxable year for which such information is available) which does not exceed 200 percent of the poverty level as determined by the Secretary.1559

Under the Code, returns and return information are confidential, and no officer or employee of the United States, and certain other persons, can disclose such information unless a specific Title 26 exception allowing the disclosure applies.1560 Civil and criminal penalties apply to the unauthorized disclosure or inspection of a return or return information. Return information includes, among other items, a taxpayer’s identity, tax payments, and any data collected by the Secretary with respect to the determination of the existence or possible existence of liability for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.1561 The term “taxpayer identity” means the name of a person with respect to whom a return is filed, their mailing address, their taxpayer identification number, or a combination of these items.1562

**Explanation of Provision**

The provision amends the Code to allow the Secretary of the Treasury to disclose taxpayer identities (within the meaning of the Code) and dates of birth to the Social Security Administration (“SSA”) and contractors of the SSA to determine if tax receivables involving such individuals are ineligible for collection. The provision requires the Commissioner of Social Security to respond to the Secretary’s inquiry with an indication as to whether the individual receives Social Security disability insurance or supplemental security income benefits. The provision restricts the IRS’s use of this information to determining whether the individual’s tax receivables are eligible for collection pursuant to a qualified tax collection contract. The Secretary is required to pay for the full costs (including administrative and system costs) of SSA providing the indication.

The provision subjects SSA contractors to the general rule of confidentiality for information SSA contractors receive and to civil and criminal penalties for unauthorized inspection or disclosure of the information. Disclosures to SSA and its contractors under the provision are subject to recordkeeping, reporting, and safeguarding requirements for the information received.

**Effective Date**

The provision applies to disclosures made on or after the date of enactment (December 27, 2020).

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1559 Sec. 6306(d)(3)(E), (F).
1560 Sec. 6103(a).
1561 Sec. 6103(b)(6).
1562 Sec. 6103(b)(6).
11. Modification of certain protections for taxpayer return information (sec. 284 of the Act and sec. 6103(l)(13) of the Code)

Present Law

As discussed below, the Fostering Undergraduate Talent by Unlocking Resources for Education ("FUTURE") Act\textsuperscript{1563} amended and rewrote section 6103(l)(13) to authorize the disclosure of certain return information for purposes of administering student financial aid and loan programs. Further revisions were made by the CARES Act.\textsuperscript{1564}

General rule of confidentiality and exception for certain disclosures to administer certain student financial aid and loan programs

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26 (the Code).\textsuperscript{1565} Among others, this general rule applies to officers and employees of the United States and to any person who has or had access to returns or return information under section 6103(l)(13). The FUTURE Act substantially revised section 6103(l)(13) to authorize the disclosure of certain return information for purposes of administering student financial aid and loan programs.

The provision requires the IRS to disclose certain return information to the Department of Education and others for the purpose of administering financial aid and loan programs. Upon receiving a written request from the Secretary of Education,\textsuperscript{1566} the IRS must disclose specified return information to authorized persons for the purposes of (1) determining eligibility for, and repayment obligations under, income-contingent or income-based repayment plans; (2) monitoring and reinstating loans that were discharged based on a total and permanent disability; and (3) determining the eligibility for, and the amount of, awards of Federal student financial aid.

Authorized persons may only use the disclosed information for the purposes above and for three additional purposes related to the programs. These additional purposes are (1) reducing the net cost of improper payments under such plans, relating to such awards, or relating to such discharges; (2) oversight activities by the Office of Inspector General of the Department of Education as authorized by the Inspector General Act of 1978; and (3) conducting analyses and forecasts for estimating costs related to such plans, discharges, or awards. The additional purposes do not include conducting criminal investigations or prosecutions.

An "authorized person" is any person who is an officer, employee, or contractor of the Department of Education, and is specifically authorized and designated by the Secretary of Education for purposes of the specific disclosure authority programs (income-contingent or income-based repayment plans, loans discharged based on

\textsuperscript{1565}Sec. 6103(a).
\textsuperscript{1566}The Secretary of Education can make a request for disclosure under section 6103(l)(13) with respect to an individual only if the Secretary of Education has obtained approval from the individual for such disclosure.
a total and permanent disability, and awards of Federal student financial aid (the designation is applied separately with respect to each program)).

With the approval of the taxpayer, authorized persons may redisclose the return information received from the IRS to certain institutions of higher education, State higher education agencies, and scholarship organizations solely for use in financial aid programs.

Civil damage remedy for unauthorized disclosure or unauthorized inspection of returns and return information

A taxpayer whose return or return information is disclosed in violation of section 6103(a) may bring a lawsuit in a district court of the United States for actual or statutory damages and, in certain cases, punitive damages. If a Federal employee makes knowingly or by reason of negligence, a disclosure or inspection in violation of any provision of section 6103, a taxpayer may sue the United States. If a person other than a Federal employee knowingly or by reason of negligence inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, suit may be brought directly against such person.

No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection requested by the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of $1,000 per act of unauthorized disclosure (or inspection) or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure. In addition, the taxpayer is to be notified if the IRS or a Federal or State agency (upon notice to the Secretary by such Federal or State agency) proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee’s unauthorized inspection or disclosure of the taxpayer’s return or return information.

Safeguards and accountings

Unless specifically listed in the statute as excluded from the accounting requirement, section 6103(p)(3) requires the IRS to maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under section 6103 (and section 6104(c)). Pursuant to the FUTURE Act, prior to amendment by the CARES Act as described below, the IRS was required to account for all disclosures made under section 6103(l)(13), including those made to the Department of Education and its contractors, as well as redisclosures made by authorized persons to institutions of higher education, State higher education
agencies, and scholarship organizations. The Secretary of Education is required to annually submit a written report to the Secretary of the Treasury regarding: (1) redisclosures of return information to institutions of higher education, State higher education agencies, and scholarship organizations, including the number of such redisclosures; and (2) any unauthorized use, access, or disclosure of the return information under section 6103(l)(13).

Section 6103(p)(4) requires, as a condition of receiving returns and return information, that Federal and State agencies and specified other recipients provide safeguards to the satisfaction of the Secretary of the Treasury as necessary or appropriate to protect the confidentiality of returns or return information. It also requires that a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary, regarding the procedures established and utilized for ensuring the confidentiality of returns and return information. The Secretary, after an administrative review, may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information.

Pursuant to the FUTURE Act, prior to amendment by the CARES Act as described below, all agencies and other persons described in section 6103(l)(13) as authorized to receive confidential return information (i.e., the Department of Education, its contractors, certain institutions of higher education, State higher education agencies, and scholarship organizations) were required to safeguard such information to the satisfaction of the Secretary.

CARES Act amendments to confidentiality, accounting, and safeguard provisions

The CARES Act amended section 6103(l)(13) to remove certain confidentiality, accounting, and safeguard requirements.

Specifically, pursuant to the CARES Act, a person who has or had access to return information under section 6103(l)(13)(D)(iii) (i.e., certain institutions of higher education, State higher education agencies, scholarship organizations, and the authorized persons designated to the make redisclosures to such entities) is no longer required to maintain the confidentiality of that return information as provided by section 6103(a). As a result, the general rule of confidentiality and nondisclosure under section 6103(a) does not apply to these entities with respect to the information redisclosed to them, and a civil action for damages due to inspections and disclosures by such entities in violation of section 6103(a) is no longer available.

In addition, pursuant to the CARES Act, the IRS is no longer required to maintain a permanent system of standardized records to account for disclosures the IRS makes to the Department of Education and its contractors. The IRS is still required to account for redisclosures made by authorized persons to institutions of higher education, State higher education agencies, and scholarship organizations.

Finally, for institutions of higher education, State higher education agencies, scholarship organizations, and the authorized persons designated to make redisclosures to such entities, the CARES Act eliminated the requirement that as a condition of receiving return information such entities establish safeguard requirements to the satisfaction of the Secretary of the Treasury.

**Explanation of Provision**

**Redisclosure to contractors of institutions of higher education or State higher education agencies**

The provision allows an institution of higher education or a State higher education agency to designate a contractor to receive directly return information on such entity’s behalf pursuant to section 6103(l)(13)(D)(iii) for the purposes of administering aspects of the entity’s activities for the application, award, and administration of financial aid. The designation must occur under such terms and conditions as may be prescribed by the Secretary after consultation with the Department of Education.

**Additional redisclosure authority**

The provision extends authority to disclose return information to additional persons in three situations.

First, any return information redisclosed pursuant to section 6103(l)(13)(D)(iii) (that is, disclosed from the IRS to the Department of Education and redisclosed to certain institutions of higher education, State higher education agencies, designated scholarship organizations, or contractors on behalf of institutions of higher education and State higher education agencies) may be further disclosed by such entities to the Office of the Inspector General of the Department of Education and independent auditors conducting audits of the entity’s administration of the programs for which return information was received. An institution of higher education, a State higher education agency, or designated scholarship organization also may further disclose return information it has received to its contractors. These further disclosures are allowed only to the extent necessary for purposes of the application, award, and administration of financial aid.

Second, any return information that has been disclosed and used for purposes of (1) determining eligibility for, and repayment obligations under, income-contingent or income-based repayment plans or (2) determining the eligibility for, and the amount of, awards of Federal student financial aid, or has been redisclosed pursuant to section 6103(l)(13)(D)(iii), may be further disclosed to certain family members that have provided approval for such disclosure and redisclosure of their return information. For disclosures related to income-contingent or income-based repayment plans, such family members are the plan applicant and the applicant’s spouse. For disclosures related to Federal student financial aid, such family members are the plan applicant, the applicant’s parent, and the applicant’s spouse.

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1568 Sec. 6103(l)(13xDxiv).
1569 Sec. 6103(l)(13xDxv).
Third, any return information received for purposes of determining the eligibility for, and the amount of, awards of Federal student financial aid may be redisclosed in the form of a complete, unredacted Student Aid Report to the aid applicant and, with the written consent of the applicant, directly from an institution of higher education to a scholarship granting organization or an organization assisting the applicant in applying for and receiving Federal, State, local, or tribal assistance, as designated by the applicant. The redisclosure must be for the purposes of assisting the applicant in applying for and receiving financial assistance as specified in section 494(c) of the Higher Education Act of 1965 (as in effect on the date of enactment of the provision).

Reinstating confidentiality, accounting, and safeguard provisions

The provision reinstates certain requirements that were removed by the CARES Act.

First, the provision reinstates the requirement that a person who has or had access to return information under section 6103(l)(13)(D)(iii) (i.e., certain institutions of higher education, State higher education agencies, scholarship organizations, and contractors of institutions of higher education and State higher education agencies) must maintain the confidentiality of that return information as provided by section 6103(a). Accordingly, the general rules of confidentiality and nondisclosure under section 6103(a) apply to these entities with respect to information redisclosed to them, and a civil action for damages may be pursued against such entities in violation of section 6103(a). The general rules of confidentiality and nondisclosure under section 6103(a) are also extended to redisclosures to the Office of the Inspector General of the Department of Education and independent auditors. The general rules of confidentiality and nondisclosure are not extended to redisclosures to family members or to scholarship granting organizations or organizations assisting the applicant in applying for financial assistance.

Second, the provision reinstates the requirement that the IRS maintain a permanent system of standardized records to account for disclosures the IRS makes to the Department of Education and its contractors. The IRS is not required to account for certain redisclosures. Specifically, the IRS is not required to account for redisclosures made by institutions of higher education, State higher education agencies, or designated scholarship organizations to: their contractors, or, when such entity is under audit, the Office of the Inspector General of the Department of Education or independent auditors. The IRS is not required to account for redisclosures of return information to family members, nor of financial aid information provided pursuant to an applicant’s consent to scholarship granting organizations or organizations assisting the applicant in applying for financial assistance as described in section 494(c) of the Higher Education Act as added by the provision.

1570 Sec. 6103(l)(13)(D)(vi).
1571 20 U.S.C. 1098h.
1572 See secs. 6103(l)(13)(D)(v) and (vi).
1573 See secs. 6103(l)(13)(D)(iv), (v), and (vi).
The amendments made by the provision apply to disclosures made after the date of enactment of the FUTURE Act (Pub. L. No. 116–91) (December 19, 2019).

12. **2020 election to terminate transfer period for qualified transfers from pension plan for covering future retiree costs (sec. 285 of the Act and sec. 420 of the Code)**

**Present Law**

**Defined benefit pension plan reversions**

Defined benefit plan assets generally may not revert to an employer prior to termination of the plan and satisfaction of all plan liabilities. Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested. A reversion prior to plan termination may constitute a prohibited transaction and may result in plan disqualification. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to an excise tax. The excise tax rate is 20 percent if the employer maintains a replacement plan or makes certain benefit increases in connection with the termination; if not, the excise tax rate is 50 percent.

**Retiree medical accounts**

A defined benefit plan may provide medical benefits to retired employees through a separate account that is part of the plan (“retiree medical accounts”). Medical benefits provided through a retiree medical account are generally not includible in the retired employee’s gross income.

**Transfers of excess pension assets**

**In general**

A qualified transfer of excess assets of a defined benefit plan, including a multiemployer plan, may be made to a retiree medical account or life insurance account within the plan to fund retiree health benefits and group term life insurance coverage (“applicable retiree benefits”). A qualified transfer does not result in plan disqualification, is not a prohibited transaction, and is not treated as a reversion. Thus, transferred assets are not includible in the gross income of the employer and are not subject to the excise tax on reversions. No more than one qualified transfer may be made in any taxable year. For this purpose, a transfer to a retiree medical account and a transfer to a retiree life insurance account in the same year are treated as one transfer. No qualified transfer may be made after December 31, 2025.

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1574 In addition, a reversion may occur only if the terms of the plan so provide.
1575 Sec. 401(h) and Treas. Reg. sec. 1.401–1(b).
1577 Sec. 420.
Excess assets generally means the excess, if any, of the value of the plan’s assets over 125 percent of the sum of the plan’s funding target and target normal cost for the plan year. In addition, excess assets transferred in a qualified transfer may not exceed the amount reasonably estimated to be the amount that the employer will pay out of such account during the taxable year of the transfer for qualified current retiree liabilities. No deduction is allowed to the employer for (1) a qualified transfer, or (2) the payment of applicable retiree benefits out of transferred funds (and any income thereon). In addition, no deduction is allowed for amounts paid other than from transferred funds for qualified current retiree liabilities to the extent such amounts are not greater than the excess of (1) the amount transferred (and any income thereon), over (2) qualified current retiree liabilities paid out of transferred assets (and any income thereon). An employer may not contribute any amount to a health benefits account or welfare benefit fund with respect to qualified current retiree liabilities for which transferred assets are required to be used.

Transferred assets (and any income thereon) must be used to pay qualified current retiree liabilities for the taxable year of the transfer. Transferred amounts generally must benefit pension plan participants, other than key employees, who are entitled upon retirement to receive applicable retiree benefits through the separate account or accounts. Applicable retiree benefits of key employees may not be paid out of transferred assets.

Amounts not used to pay qualified current retiree liabilities for the taxable year of the transfer are to be returned to the general assets of the plan. These amounts are not includable in the gross income of the employer, but are treated as an employer reversion and are subject to a 20-percent excise tax.

In order for the transfer to be qualified, accrued retirement benefits under the pension plan generally must be 100-percent vested as if the plan terminated immediately before the transfer (or in the case of a participant who separated in the one-year period ending on the date of the transfer, immediately before the separation). A maintenance of effort requirement also applies (separately to transfers to retiree medical accounts and the life insurance accounts), under which the employer generally must maintain applicable retiree benefits at the same cost level for the taxable year of the transfer and the following four years.

In addition, the Employee Retirement Income Security Act of 1974 ("ERISA") provides that, at least 60 days before the date of a qualified transfer, the employer must notify the Secretary of

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1578 The value of plan assets for this purpose is the lesser of fair market value or actuarial value, reduced by any prefunding balance or standard carryover balance.

1579 "Qualified current retiree liabilities" means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits and applicable life insurance benefits provided during such taxable year if (i) such benefits were provided directly by the employer, and (ii) the employer used the cash receipts and disbursements method of accounting. Sec. 420(e)(1).

1580 In the case of group term life insurance coverage, the transfer may be provided only to the extent that coverage is provided under a policy for retired employees and the cost of such coverage is excludable from the retired employee’s gross income under section 79. Thus, generally, only group term life insurance coverage not in excess of $50,000 may be purchased with such transferred assets.

Labor, the Secretary of the Treasury, employee representatives, and the plan administrator of the transfer, and the plan administrator must notify each plan participant and beneficiary of the transfer.\textsuperscript{1582}

**Qualified future transfers and collectively bargained transfers**

If certain requirements are satisfied, transfers of excess pension assets under a single-employer plan to retiree medical accounts and life insurance accounts to fund the expected cost of applicable retiree benefits are permitted for the current and future years (a "qualified future transfer") and such transfers are also allowed in the case of benefits provided under a collective bargaining agreement (a "collectively bargained transfer").\textsuperscript{1583} Transfers must be made for at least a two-year period, and for no more than a 10-year period. An employer can elect to make a qualified future transfer or a collectively bargained transfer rather than a qualified transfer. A qualified future transfer or collectively bargained transfer must meet the requirements applicable to qualified transfers with modifications related to: (1) the determination of excess pension assets; (2) the limitation on the amount transferred; and (3) the maintenance of effort requirement.

With respect to the determination of excess pension assets, in the case of a qualified future transfer or a collectively bargained transfer, excess assets generally means the excess, if any, of (i) the value of the plan’s assets\textsuperscript{1584} over (ii) 120 percent (rather than 125 percent) of the sum of the plan’s funding target and target normal cost for the plan year. In addition, a special rule applies relating to the maintenance of a plan’s funded status. If, as of any valuation date of any plan year in the transfer period, the amount described in clause (ii) above exceeds the amount described in clause (i), than an amount not less than the amount required to reduce such excess to zero as of such date must either be contributed to the plan by the employer maintaining the plan, or must be transferred to the plan from the retiree medical account or life insurance account (as applicable).\textsuperscript{1585}

With respect to the limitation on the amount transferred, in the case of a qualified future transfer, the amount of excess pension assets that may be transferred may not exceed the sum of (i) if the transfer period includes the taxable year of the transfer, the amount reasonably estimated to be the amount that the employer will pay out of the retiree medical account or life insurance account during the taxable year of the transfer for qualified current retiree liabilities, and (ii) in the case of all other taxable years in the transfer period, the sum of the qualified current retiree liabilities that the plan reasonably estimates (in accordance with guidance issued by the Secretary) will be incurred for each of such years. In the case of a collectively bargained transfer, the amount of excess pension assets that may be transferred may not exceed the amount

\textsuperscript{1582}ERISA sec. 101(e). ERISA also provides that a qualified transfer is not a prohibited transaction under ERISA or a prohibited reversion.

\textsuperscript{1583}Sec. 420(f). The rules for qualified future transfers and collectively bargained transfers were added by the PPA and apply to transfers after the date of enactment (August 17, 2006).

\textsuperscript{1584}The value of plan assets for this purpose is the lesser of fair market value or actuarial value, reduced by any prefunding balance or standard carryover balance.

\textsuperscript{1585}Sec. 420(f)(2)(B)(ii).
that is reasonably estimated, in accordance with the provisions of the collective bargaining agreement and generally accepted accounting principles, to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the collectively bargained cost maintenance period\1586 for collectively bargained retiree liabilities. Any assets transferred to a retiree medical account or life insurance account in a qualified future transfer or collectively bargained transfer that are not used as described in this paragraph must be returned to the general assets of the plan.\1587

The general sunset applicable to qualified transfers applies in this context (i.e., no transfers can be made after December 31, 2025).

**Explanation of Provision**

The provision provides a special rule for 2021 for plans that have made qualified future transfers. Under the provision, the employer of such a plan may, not later than December 31, 2021, elect to terminate the transfer period with respect to the qualified future transfer effective as of any taxable year specified by the taxpayer that begins after the date of the election.

Under the provision, certain requirements apply to plans that elect to terminate the transfer period. Any assets transferred to a retiree medical account or life insurance account in a qualified future transfer (and any income allocable thereto) that are not used as of the effective date of the election must be transferred to the transferor plan within a reasonable period of time. Such a transfer is treated as an employer reversion unless, before the end of the five-year period beginning after the original transfer period,\1588 an equivalent amount is transferred back to such retiree medical account or life insurance account (as applicable).\1589

In addition, modifications apply to the rules relating to the determination of excess assets and the maintenance of a plan’s funded status during the transfer period. Under the provision, these rules apply to the plan without regard to the plan’s election to terminate the transfer period, and in applying such rules during the original transfer period, the value of the plan’s assets is compared to 100 percent of the sum of the plan’s funding target and target normal cost for the plan year, rather than 120 percent.\1590 If, as of the valuation date of the plan year in the last year of the original transfer period, the required funding level of the plan exceeds the value of the plan's assets,\1591 the rules relating to the determination of excess assets for a qualified future transfer and the mainte-
nance of a plan’s funded status apply for five years after the end of the original transfer period, except that the “applicable percentage” is substituted for 120 percent. The “applicable percentage” is determined, under the provision, according to the table below.

For the valuation of the plan year in the following:
The applicable percentage is: year after the original transfer period:
- 1st—104 percent
- 2nd—108 percent
- 3rd—112 percent
- 4th—116 percent
- 5th—120 percent

However, this rule (relating to the five years after the original transfer period) ceases to apply if, as of the valuation date of any plan year in the first four years after the original transfer period, the plan’s required funding level would not exceed the value of the plan’s assets if the applicable percentage were 120 percent.

**Effective Date**

The provision is effective for taxable years beginning after December 31, 2019.

13. Extension of credits for paid sick and family leave (sec. 286 of the Act)

**Present Law**

**In general**

Federal employment taxes are imposed on wages paid to employees with respect to employment and include Federal income tax as well as taxes levied under Federal Insurance Contributions Act (“FICA”) and Federal Unemployment Tax Act (“FUTA”). In addition, tier 1 of the Railroad Retirement Tax Act (“RRTA”) imposes a tax on compensation paid to railroad employees and representatives.

FICA taxes are comprised of two components: the Old-Age, Survivors, and Disability Insurance (“OASDI”) taxes and Medicare taxes. With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer. The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020). Generally, the OASDI wage base rises based on increases in the national average wage index.

Generally, the term “wages” for OASDI tax purposes means all remuneration for “employment,” including the cash value of all re-
remuneration (including benefits) paid in any medium other than cash, with certain exceptions. The name given to the remuneration for employment is immaterial. OASDI wages includes salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term “employment” is generally defined for FICA tax purposes as any service, of whatever nature, performed by an employee for the person employing him or her, with certain specific exceptions.

**Railroad retirement program**

Railroad workers do not participate in the OASDI system. Accordingly, compensation subject to RRTA is exempt from FICA taxes. The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of services. Employees whose compensation is subject to RRTA are ultimately eligible for railroad retirement benefits that fall under a two-tier structure. Rail employees and employers pay tier 1 taxes at the same rate as FICA taxes. In addition, rail employees and employers both pay tier 2 taxes that are used to finance railroad retirement benefits over and above Social Security benefit levels. Tier 2 benefits are similar to benefits under a defined benefit plan. Those taxes are funneled to the railroad retirement system and used to fund basic retirement benefits for railroad workers and an investment trust that generates returns for the pension fund.

**Self-employment taxes**

The Self-Employed Contributions Act (“SECA”) imposes tax on the self-employment income of an individual. SECA taxes consist of OASDI tax and Medicare tax. Under the OASDI component, the first rate of tax is 12.4 percent on self-employment income up to the OASDI wage base ($137,700 for 2020). Under the basic Medicare tax component, the second rate of tax is 2.9 percent of all self-employment income (without regard to the OASDI wage base). As is the case with employees, an Additional Medicare tax applies to the Medicare portion of SECA tax on self-employment income in excess of a threshold amount.

Self-employment income subject to SECA tax is determined as the net earnings from self-employment derived by an individual during any taxable year, subject to certain exceptions. Net earnings from self-employment are equal to the gross income derived by an
individual from any trade or business less allowed deductions that are attributable to the trade or business and permitted under the SECA rules. Certain passive income and related deductions are not taken into account in determining net earnings from self-employment, including rentals from real estate (unless received in the course of a trade or business as a real estate dealer), dividends and interest (unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities), sales or exchanges of capital assets and certain other property (unless the property is stock in trade that would properly be included in inventory or held primarily for sale to customers in the ordinary course of the trade or business).

For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer's net self-employment income (determined without regard to this deduction) and one-half of the sum of the rates for OASDI and Medicare (i.e., 7.65 percent of net earnings). This deduction is determined without regard to the additional 0.9 percent Additional Medicare tax that may apply to an individual. This deduction reflects the fact that the FICA rates apply to an employee's wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual’s net earnings are economically equivalent to an employee’s wages plus the employer’s share of FICA taxes. This is generally referred to as the “regular method” of determining net earnings from self-employment, and in Internal Revenue Service forms and publications it is expressed as multiplying total net earnings from self-employment by 92.35 percent.

**Paid sick and family leave for employees**

The Families First Coronavirus Response Act (“FFCRA”) required certain employers with fewer than 500 employees to provide paid sick and expanded family and medical leave to employees unable to work or telework for specified reasons related to COVID–19. The paid sick leave requirements in the Emergency Paid Sick Leave Act (“EPSLA”), and the expanded family and medical leave requirements in the Emergency Family and Medical Leave Expansion Act (“EFMLEA”), expired on December 31, 2020.

An employer is allowed a credit against the OASDI tax or the equivalent amount of tax under the Railroad Retirement Tax

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1607 Sec. 1402(a)(1).
1608 Sec. 1402(a)(2).
1609 Sec. 1402(a)(3).
1610 Sec. 1402(a)(12).
1611 The deduction is intended to provide parity between FICA and SECA taxes because the employer may deduct, as a business expense, its share of the FICA taxes paid. As presently written, the deduction for SECA taxes is not the exact economic equivalent to the deduction for FICA taxes. See Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures (JCX–2–05), January 2005, for a detailed description of this issue.
1615 The Federal Insurance Contributions Act (“FICA”) imposes taxes on “wages,” as defined in Section 3121(a), with respect to “employment,” as defined in Section 3121(b). The term wages is defined as any service, of whatever nature, performed by an employee for the person employing him, with certain specific exceptions. FICA taxes consist of the OASDI...
Act ("RRTA") imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages and qualified family leave wages paid by the employer with respect to that calendar quarter, subject to limitations. Qualified sick leave wages are defined as wages and compensation paid by an employer which are required to be paid by reason of the EPSLA.

Qualified family leave wages are wages and compensation paid by an employer which are required to be paid by reason of the EFMLEA. In addition to qualified sick leave wages and qualified family leave wages, the credit could be increased by certain health plan expenses of the employer.

Amount of credit for paid sick leave

Certain employers must provide an employee with up to 80 hours of paid sick time to the extent that: (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19; (3) the employee is experiencing symptoms of COVID–19 and is seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to a quarantine or isolation order or has been advised by a health care provider to self-quarantine; (5) the employee is caring for the employee’s son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID–19 precautions; or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

The amount of qualified sick leave wages that may be taken into account for an employee for purposes of the credit is limited based on the circumstances under which qualified sick leave wages are paid. In the case of paid sick time qualifying under categories (1), (2), or (3) above, the amount of qualified sick leave wages taken into account for purposes of the credit may not exceed $511 for any day (or portion thereof) when the individual is paid such sick time. In the case of paid sick time qualifying under categories (4), (5), or (6) above, the amount of qualified sick leave wages taken into account may not exceed $200 for any day (or portion thereof) for which the individual is paid such sick time. In addition, the aggregate number of days that may be taken into account with respect to an individual under all six circumstances may not exceed the excess (if any) of 10 days over the aggregate number of days taken into account for all preceding calendar quarters.

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1617 Sec. 3121(a).
1618 Sec. 3231(e).
1619 Sec. 3121(a).
1620 Sec. 3231(e).
1622 Sec. 5102(a), Division E, FFCRA, Pub. L. No. 116–127.
Amount of credit for expanded family and medical leave

Certain employers must provide public health emergency leave to employees under the Family and Medical Leave Act of 1993 ("FMLA"), as amended by EFMLEA. This requirement generally applies when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency. An employer with employees who are health care providers or emergency responders may elect to exclude such employees from this requirement to provide paid family leave. A public health emergency for this purpose is an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

The first 10 days of public health emergency leave required under the EFMLEA may consist of unpaid leave, after which paid leave is required for ten weeks until December 31, 2020. The amount of required paid leave is calculated based on: (a) an amount that is not less than two-thirds of an employee's regular rate of pay; and (b) the number of hours the employee would otherwise be normally scheduled to work. The paid leave mandated by the EFMLEA does not exceed $200 per day and $10,000 in the aggregate.

Employers are allowed a credit against OASDI taxes or the equivalent amount of RRTA taxes in an amount equal to 100 percent of qualified family leave wages paid by the employer during the quarter. Consistent with the mandate, the maximum amount of the qualified family leave wages eligible for the credit is $200 for any day (or portion thereof) for which the employee is paid qualified family leave wages, and in the aggregate with respect to all quarters, $10,000. Employers are not allowed the credit in respect of unpaid leave.

Additional rules

The credit allowed for paid sick or paid family leave is increased by the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which the credit is allowed. Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan. Qualified health plan expenses are allocated to qualified sick leave wages in such manner as the Secretary of Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocations are treated as properly made if they are pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

The credit allowed may not exceed the OASDI tax or equivalent amount of RRTA tax imposed on the employer, reduced by any

\footnotetext[1]{Sec. 3102, Division C, FFCRA, Pub. L. No. 116–127.}  
\footnotetext[2]{Sec. 5000(b)(1).}  
\footnotetext[3]{Sec. 106(a).}
credits allowed for the employment of qualified veterans\textsuperscript{1626} and research expenditures of qualified small businesses\textsuperscript{1627} for that calendar quarter on the wages paid with respect to all the employer’s employees. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.\textsuperscript{1628}

If a taxpayer claims a credit, the amount so claimed is included in gross income. Thus, the credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction or deduction for qualified sick leave wages or qualified family leave wages (or any amount capitalizable to basis).

Any qualified sick leave wages taken into account for purposes of a credit are not taken into account for purposes of determining the section 45S general business credit for employer paid family and medical leave. Thus, the employer may not claim a credit under section 45S with respect to the qualified sick leave wages or qualified family leave wages paid but may be allowed a credit under section 45S with respect to any additional wages paid.

An employer may elect not to claim a tax credit for a calendar quarter for qualified sick leave wages or qualified family leave wages. Further, the credit allowed does not apply to the government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of those entities. Employers in the U.S. territories may claim the credit by filing their quarterly Federal employment tax returns.

An eligible self-employed individual may claim an income tax credit for any taxable year for a qualified sick leave equivalent amount or qualified family leave equivalent amount. An eligible self-employed individual is defined as an individual who regularly carries on any trade or business\textsuperscript{1630} and who would be entitled to

\begin{footnotes}
\item[1626]Sec. 3111(e).
\item[1627]Sec. 3111(f).
\item[1628]The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b). In addition, any amount that is due to an employer is treated in the same manner as a refund due from a credit provision. 31 U.S.C. 1324. Thus, amounts are appropriated to the Secretary of Treasury for refunding such excess amounts.
\item[1629]An amount equal to the reduction in revenues to the Treasury by reason of the FFCRA is appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974. This amount is transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the OASDI Trust Funds or Social Security Equivalent Benefit Account had this provision not been enacted.
\item[1630]Within the meaning of sec. 1402.
\end{footnotes}
receive paid leave during the taxable year under the EPSLA or EFMLEA.

The qualified sick leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days during the taxable year that the self-employed individual cannot perform services for which that individual would have been entitled to sick leave pursuant to the EPSLA (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) $511 in the case of paid sick time described in categories (1), (2), or (3) above with respect to section 5102(a) of the EPSLA ($200 in the case of paid sick time described in categories (4), (5), or (6) above); or (2) 100 percent of the average daily self-employment income of the individual for the taxable year in the case of any day of paid sick time described in categories (1), (2), or (3) above (67 percent in the case of paid sick time described in categories (4), (5), or (6) above).

The number of days taken into account in determining the qualified sick leave equivalent amount may not exceed, with respect to any taxable year, 10 days, taking into account any days taken in all preceding taxable years. The individual’s average daily self-employment income under the provision is an amount equal to the net earnings from self-employment for the taxable year divided by 260.

If an eligible self-employed individual receives qualified sick leave wages, the individual’s qualified sick leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified sick leave equivalent amount and the qualified sick leave wages received exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in category (1), (2), or (3) above).

The qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 50) during the taxable year that the self-employed individual cannot perform services for which that individual would be entitled to paid leave pursuant to the EFMLEA (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) 67 percent of the average daily self-employment income of the individual for the taxable year, or (2) $200. The individual’s average daily self-employment income under the provision is an amount equal to the individual’s net earnings from self-employment for the year divided by 260.

The credit allowed for the qualified sick leave equivalent amount or qualified family leave equivalent amount is applied against federal income taxes and is a refundable credit.

If an eligible self-employed individual receives qualified family leave wages, the individual’s qualified family leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified family leave equiv-
The Secretary of Treasury is directed to make payments to each territory with a mirror Code tax system that relate to the cost (if any) of each territory’s credits for sick leave or expanded family and medical leave for certain self-employed individuals. The Secretary is further directed to make similar payments to each non-mirror Code territory.

With respect to mirror Code territories, the Secretary is required to make payments equal to the loss in revenue by reason of the application of the credit for sick leave or expanded family and medical leave for certain self-employed individuals to the territory’s mirror Code. This amount is determined by the Secretary based on information provided by the governments of the respective territories.

With respect to Puerto Rico and American Samoa (non-mirror Code territories), the Secretary is directed to make payments in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of each territory from the credit for sick leave or expanded family and medical leave for certain self-employed individuals if a mirror Code tax system had been in effect in such territory. The Secretary must not make these payments unless the territory has a plan approved by the Secretary to promptly distribute the payments to its residents.

The Secretary of Treasury is directed to prescribe such regulations or other guidance as may be necessary to carry out the purposes of the provision, including (1) to effectuate the purposes of this Act, and (2) to minimize compliance and record-keeping burdens under the provision.\textsuperscript{1636}

\textbf{Explanation of Provision}

The provision allows eligible employers to continue to receive tax credits for qualifying wages paid to employees on paid sick or expanded family leave until March 31, 2021. The EPSLA and EFMLEA, which were the provisions requiring certain employers to provide paid sick and expanded family and medical leave as noted above, expired on December 31, 2020. This mandate was not extended. However, the provision modifies qualified sick leave wages to include wages and compensation that would have been required to be paid if the EPSLA had been effective until March 31, 2021.\textsuperscript{1637} Qualified family leave wages also includes wages and compensation that would have been required to be paid if the EFMLEA had been effective until March 31, 2021.\textsuperscript{1638} Employers that provide qualified sick leave wages and qualified family leave wages in the first quarter of 2021 may receive a tax credit.

An eligible self-employed individual may also claim an income tax credit for any taxable year for a qualified sick leave equivalent amount or qualified family leave equivalent amount. Under the provision, an eligible self-employed individual is defined as an indi-
individual who regularly carries on any trade or business and who would be entitled to receive paid leave during the taxable year under the EPSLA or EFMLEA, if the individual were an employee of an employer (other than himself or herself) that would be subject to the requirements of the Acts and as if the Acts were in effect through March 31, 2021.

**Effective Date**

The provision is effective on the date of enactment (December 27, 2020) as if included in the provisions of the FFCRA to which they relate.

14. Election to use prior year net earnings from self-employment in determining average daily self-employment income for purposes of credits for paid sick and family leave (sec. 287 of the Act)

**Present Law**

**In general**

The Self-Employed Contributions Act ("SECA") imposes tax on the self-employment income of an individual. SECA taxes consist of the Old-Age, Survivors, and Disability Insurance ("OASDI") tax and Medicare tax. Under the OASDI component, the first rate of tax is 12.4 percent on self-employment income up to the OASDI wage base ($137,700 for 2020). Under the basic Medicare tax component, the second rate of tax is 2.9 percent of all self-employment income (without regard to the OASDI wage base). As is the case with employees, an Additional Medicare tax applies to the Medicare portion of SECA tax on self-employment income in excess of a threshold amount.

Self-employment income subject to SECA tax is determined as the net earnings from self-employment derived by an individual during any taxable year, subject to certain exceptions. Net earnings from self-employment are equal to the gross income derived by an individual from any trade or business less allowed deductions that are attributable to the trade or business and are permitted under the SECA rules. Certain passive income and related deductions are not taken into account in determining net earnings from self-employment, including rentals from real estate (unless received in the course of a trade or business as a real estate dealer), dividends and interest (unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities), and sales or exchanges of capital assets and certain other property (unless the property is stock in trade that would properly be in-

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1639 Within the meaning of sec. 1402.
1640 Sec. 1401(a) and (b).
1641 Sec. 1401(a). In calculating the SECA tax for OASDI, the OASDI wage base taken into account is reduced by FICA wages paid to the individual during the taxable year. Indexed for inflation, the OASDI wage base for 2021 is $142,800.
1642 Sec. 1401(b)(1).
1643 Sec. 1401(b)(2).
1644 Sec. 1402(a)(1).
1645 Sec. 1402(a)(2).
cluded in inventory or held primarily for sale to customers in the ordinary course of the trade or business).  

For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer’s net self-employment income (determined without regard to this deduction) and one-half of the sum of the rates for OASDI and Medicare (i.e., 7.65 percent of net earnings). This deduction is determined without regard to the additional 0.9 percent Additional Medicare tax that may apply to an individual. This deduction reflects the fact that the FICA rates apply to an employee’s wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual’s net earnings are economically equivalent to an employee’s wages plus the employer’s share of FICA taxes.

**Paid sick leave and expanded family and medical leave for self-employed individuals**

An eligible self-employed individual may claim an income tax credit for any taxable year for a qualified sick leave equivalent amount or qualified family leave equivalent amount. An eligible self-employed individual is defined as an individual who regularly carries on any trade or business and who would be entitled to receive paid leave during the taxable year under the Emergency Paid Sick Leave Act (“EPSLA”) or Emergency Family and Medical Leave Expansion Act (“EFMLEA”).

The qualified sick leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days during the taxable year that the self-employed individual cannot perform services for which that individual would have been entitled to sick leave pursuant to the EPSLA (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) $511 in the case of paid sick time described in categories (1), (2), or (3) with respect to section 5102(a) of the EPSLA ($200 in the case of paid sick time described in categories (4), (5), or (6)); or (2) 100 percent of the average daily self-employment income of the individual for the taxable year in the case of any day of paid sick time described in categories (1), (2), or (3) (67 percent in the case of paid sick time described in categories (4), (5), or (6)).

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1646 See sec. 1402(a)(3).
1647 See sec. 1402(a)(12).
1648 The deduction is intended to provide parity between FICA and SECA taxes because the employer may deduct, as a business expense, its share of the FICA taxes paid. This deduction is not the exact economic equivalent to the deduction for FICA taxes. See Joint Committee on Taxation, *Options to Improve Tax Compliance and Reform Tax Expenditures* (JCS–2–05), January 2005, for a detailed description of this issue. This is generally referred to as the “regular method” of determining net earnings from self-employment, and in Internal Revenue Service forms and publications it is expressed as multiplying total net earnings from self-employment by 92.35 percent.
1649 Within the meaning of sec. 1402.
1651 Certain employers must provide an employee with up to 80 hours of paid sick time to the extent that (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19; (3) the employee is experiencing symptoms of COVID–19 and is seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to a quarantine or isolation order or has been advised by a health care provider to self-quarantine; (5) the employee is caring for the employee’s son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or
The number of days taken into account in determining the qualified sick leave equivalent amount may not exceed, with respect to any taxable year, 10 days, taking into account any days taken in all preceding taxable years. The individual's average daily self-employment income under the provision is an amount equal to the net earnings from self-employment for the taxable year divided by 260.

If an eligible self-employed individual receives qualified sick leave wages,\footnote{As defined by sec. 7001(c) of FFCRA, Pub. L. No. 116–127.} the individual’s qualified sick leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified sick leave equivalent amount and the qualified sick leave wages received exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in category (1), (2), or (3) above).

The qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 50) during the taxable year that the self-employed individual cannot perform services for which that individual would be entitled to paid leave pursuant to the EFMLEA\footnote{Division C, FFCRA, Pub. L. No. 116–127.} (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) 67 percent of the average daily self-employment income of the individual for the taxable year; or (2) $200. The individual’s average daily self-employment income under the provision is an amount equal to the individual’s net earnings from self-employment for the year divided by 260.

The credit allowed for the qualified sick leave equivalent amount or qualified family leave equivalent amount is applied against federal income taxes and is a refundable credit.\footnote{Any refund due to an individual is treated in the same manner as a refund due from a credit provision. 31 U.S.C. sec. 1324. Thus, amounts are appropriated to the Secretary (or the Secretary’s delegate) for refunding such amounts.}

If an eligible self-employed individual receives qualified family leave wages,\footnote{As defined by sec. 7003(c) of the FFCRA, Pub. L. No. 116–127.} the individual’s qualified family leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified family leave equivalent amount and the qualified family leave wages received exceeds $10,000.

**Explanation of Provision**

The provision modifies the definition of the qualified sick leave equivalent amount and qualified family leave equivalent amount. For purposes of determining the qualified sick leave equivalent amount and qualified family leave equivalent amount, self-employed individuals may elect to calculate the average daily self-employment income by dividing the net earnings from self-employment of the individual for 2019 (rather than 2020) by 260.
Effective Date

The provision is effective on the date of enactment (December 27, 2020) as if included in the provisions of the Families First Coronavirus Response Act to which they relate.

15. Certain technical improvements to credits for paid sick and family leave (sec. 288 of the Act)

Present Law

In general

Federal employment taxes are imposed on wages paid to employees with respect to employment and include Federal income taxes as well as taxes levied under Federal Insurance Contributions Act ("FICA") and Federal Unemployment Tax Act ("FUTA"). In addition, tier 1 of the Railroad Retirement Tax Act ("RRTA") imposes a tax on compensation paid to railroad employees and representatives. FICA taxes are comprised of two components: Old-Age, Survivors, and Disability Insurance ("OASDI") taxes and Medicare taxes. With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employer and the remainder (6.2 percent) imposed on the employee. The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020). Generally, the OASDI wage base rises based on increases in the national average wage index.

Generally, the term "wages" for OASDI tax purposes means all remuneration for "employment," including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions. The name given to the remuneration for employment is immaterial. OASDI wages includes salaries, vacation allowances, bonuses, deferred compensation, commissions, and fringe benefits. The term "employment" is generally defined for FICA tax purposes as any service, of whatever nature, performed by an employee for the person employing him or her, with certain specific exceptions.

Railroad retirement program

Railroad workers do not participate in the OASDI system. Accordingly, compensation subject to RRTA tax is exempt from FICA taxes. The RRTA imposes a tax on compensation paid by covered employers to employees in recognition for the performance of

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Sec. 3401, 3101, 3111, and 3301.
Sec. 3221.
Sec. 3101(b)(1).
Sec. 3111(b)(1).
Sec. 3121(b)(2).
Sec. 3101(b)(9).
Sec. 3401, 3101, 3111, and 3301.
Sec. 3221.
The Hospital Insurance ("HI") tax has two components: Medicare tax and Additional Medicare tax. Medicare tax is imposed on wages, as defined in Section 3121(a), with respect to employment, as defined in Section 3121(b), at a rate of 1.45 percent for the employer. An equivalent 1.45 percent is withheld from employee wages. For purposes of this description, Medicare tax does not include Additional Medicare tax. Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent. There is no equivalent employer's share of Additional Medicare taxes.
Sec. 3401, 3101, 3111, and 3301.
Sec. 3221.
Sec. 3401, 3101, 3111, and 3301.
Sec. 3221.
Sec. 3101(b)(9).
Sec. 3401, 3101, 3111, and 3301.
Sec. 3221.
Sec. 3101(b)(1).
Sec. 3111(b)(1).
Sec. 3121(b)(2).
Sec. 3101(b)(9).
Sec. 3401, 3101, 3111, and 3301.
Sec. 3221.

Indexed for inflation, the OASDI wage base is $142,800 in 2021.
Sec. 3121(a).
Sec. 3121(b)(9).
Employees whose compensation is subject to RRTA are ultimately eligible for railroad retirement benefits that fall under a two-tier structure. Rail employees and employers pay tier 1 taxes at the same rate as FICA taxes. In addition, rail employees and employers both pay tier 2 taxes that are used to finance railroad retirement benefits over and above Social Security benefit levels. Tier 2 benefits are similar to benefits under a defined benefit plan. Those taxes are funneled to the railroad retirement system and used to fund basic retirement benefits for railroad workers and an investment trust that generates returns for the pension fund.

Self-employment taxes

The Self-Employed Contributions Act ("SECA") imposes tax on the self-employment income of an individual. SECA taxes consist of OASDI tax and Medicare tax. Under the OASDI component, the first rate of tax is 12.4 percent on self-employment income up to the OASDI wage base ($137,700 for 2020). Under the basic Medicare tax component, the second rate of tax is 2.9 percent of all self-employment income (without regard to the OASDI wage base). As is the case with employees, an Additional Medicare tax applies to the Medicare portion of SECA tax on self-employment income in excess of a threshold amount.

Self-employment income subject to SECA tax is determined as the net earnings from self-employment derived by an individual during any taxable year, subject to certain exceptions. Net earnings from self-employment are equal to the gross income derived by an individual from any trade or business less allowed deductions that are attributable to the trade or business and permitted under the SECA rules. Certain passive income and related deductions are not taken into account in determining net earnings from self-employment, including rentals from real estate (unless received in the course of a trade or business as a real estate dealer), dividends and interest (unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities), and sales or exchanges of capital assets and certain other property (unless the property is stock in trade that would properly be included in inventory or held primarily for sale to customers in the ordinary course of the trade or business).

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1664 Secs. 3201 through 3233. Instead of FICA taxes, railroad employers and employees are subject, under the RRTA, to taxes equivalent to the Social Security and Medicare taxes under FICA. Under the RRTA, employers and employees are also subject to an additional tax, referred to as the "tier 2" tax, on compensation up to a certain amount.

1665 Sec. 1401(a), consisting of 6.2 percent for retirement on earnings up to $137,700 in 2020, 1.45 percent for Medicare hospital insurance on all earnings. An additional 0.9 percent in Medicare taxes are withheld from employees on earnings above $200,000.

1666 In 2020, the tier 2 tax rate on earnings up to $102,300 is 4.9 percent for employees and 13.1 percent for employers. In 2021, the tier 2 tax rates remain the same with an increase in taxable earnings to $106,200.

1667 Sec. 1401(a) and (b).

1668 Sec. 1401(a). In calculating the SECA tax for OASDI, the OASDI wage base taken into account is reduced by FICA wages paid to the individual during the taxable year.

1669 Sec. 1401(b).

1670 Sec. 1401(b)(1).

1671 Sec. 1401(b)(2).

1672 Sec. 1402(a)(1).

1673 Sec. 1402(a)(2).

1674 Sec. 1402(a)(3).
For purposes of computing net earnings from self-employment, taxpayers are permitted a deduction equal to the product of the taxpayer's net self-employment income (determined without regard to this deduction) and one-half of the sum of the rates for OASDI and Medicare (i.e., 7.65 percent of net earnings). This deduction is determined without regard to the additional 0.9 percent Additional Medicare tax that may apply to an individual. This deduction reflects the fact that the FICA rates apply to an employee's wages, which do not include FICA taxes paid by the employer, whereas the self-employed individual's net earnings are economically equivalent to an employee's wages plus the employer's share of FICA taxes. This is generally referred to as the "regular method" of determining net earnings from self-employment, and in Internal Revenue Service forms and publications it is expressed as multiplying total net earnings from self-employment by 92.35 percent.

Paid sick and family leave for employees

The Families First Coronavirus Response Act ("FFCRA") required certain employers with fewer than 500 employees to provide paid sick and expanded family and medical leave to employees unable to work or telework for specified reasons related to COVID–19. The paid sick leave requirements in the Emergency Paid Sick Leave Act ("EPSLA"), and the expanded family and medical leave requirements in the Emergency Family and Medical Leave Expansion Act ("EFMLEA"), expired on December 31, 2020.

An employer is allowed a credit against the Old-Age, Survivors and Disability Insurance ("OASDI") tax or the equivalent amount of tax under the Railroad Retirement Tax Act ("RRTA") imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages and qualified family leave wages paid by the employer with respect to that calendar quarter, subject to limitations. Qualified sick leave wages are defined as wages and compensation paid by an employer which are required to be paid by reason of the EPSLA. Qualified family leave wages are wages and compensation paid by an employer which are required to be paid by reason of the EPSLA.

\[1674\text{Sec. 1402(a)(12).}\]
\[1675\text{The deduction is intended to provide parity between FICA and SECA taxes because the employer may deduct, as a business expense, its share of the FICA taxes paid. As presently written, the deduction for SECA taxes is not the exact economic equivalent to the deduction for FICA taxes. See Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures (JCS–2–05), January 2005, for a detailed description of this issue.}\]
\[1676\text{Pub. L. No. 116–127 (March 18, 2020).}\]
\[1677\text{Division E, FFCRA, Pub. L. No. 116–127.}\]
\[1678\text{Division C, FFCRA, Pub. L. No. 116–127.}\]
\[1679\text{The Federal Insurance Contributions Act ("FICA") imposes taxes on "wages," as defined in Section 3121(a), with respect to "employment," as defined in Section 3121(b). The term wages is defined for FICA purposes as all remuneration for employment, with certain specific exceptions. Employment is defined as any service, of whatever nature, performed by an employee for the person employing him, with certain specific exceptions. FICA taxes consist of the OASDI tax and the HI tax. HI tax includes an employer's share imposed on wages at a rate of 1.45 percent under Section 3111(b). The employer's share of HI tax is imposed on wages at a rate of 1.45 percent under Section 3111(b). Unlike OASDI, there is no contribution limit on wages subject to HI tax.}\]
\[1680\text{Notice 2020–21, 2020–16 I.R.B. 660, April 13, 2020.}\]
\[1681\text{Sec. 3121(a).}\]
\[1682\text{Sec. 3231(e).}\]
\[1683\text{Sec. 3121(a).}\]
\[1684\text{Sec. 3231(e).}\]
son of the EFMLEA. In addition to qualified sick leave wages and qualified family leave wages, the credit could be increased by certain health plan expenses of the employer.

**Amount of credit for paid sick leave**

Certain employers must provide an employee with up to 80 hours of paid sick time to the extent that (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19; (3) the employee is experiencing symptoms of COVID–19 and is seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to a quarantine or isolation order or has been advised by a health care provider to self-quarantine; (5) the employee is caring for the employee’s son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID–19 precautions; or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

The amount of qualified sick leave wages that may be taken into account for an employee for purposes of the credit is limited based on the circumstances under which qualified sick leave wages are paid. In the case of paid sick time qualifying under categories (1), (2), or (3) above, the amount of qualified sick leave wages taken into account for purposes of the credit may not exceed $511 for any day (or portion thereof) when the individual is paid such sick time. In the case of paid sick time qualifying under categories (4), (5), or (6) above, the amount of qualified sick leave wages taken into account may not exceed $200 for any day (or portion thereof) for which the individual is paid such sick time. In addition, the aggregate number of days that may be taken into account with respect to an individual under all six circumstances may not exceed the excess (if any) of 10 days over the aggregate number of days taken into account for all preceding calendar quarters.

**Amount of credit for expanded family and medical leave**

Certain employers must provide public health emergency leave to employees under the Family and Medical Leave Act of 1993 (“FMLA”), as amended by the EFMLEA. This requirement generally applies when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency. An employer with employees who are health care providers or emergency responders may elect to exclude such employees from this requirement to provide paid family leave. A public health emergency for this purpose is an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

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1686 Sec. 5102(a), Division E, FFCRA, Pub. L. No. 116–127.
The first 10 days of public health emergency leave required under the EFMLEA may consist of unpaid leave, after which paid leave is required for ten weeks until December 31, 2020. The amount of required paid leave is calculated based on: (a) an amount that is not less than two-thirds of an employee's regular rate of pay; and (b) the number of hours the employee would otherwise be normally scheduled to work. The paid leave mandated by the EFMLEA does not exceed $200 per day and $10,000 in the aggregate.

Employers are allowed a credit against OASDI taxes or the equivalent amount of RRTA taxes in an amount equal to 100 percent of qualified family leave wages paid by the employer during the quarter. Consistent with the mandate, the maximum amount of the qualified family leave wages eligible for the credit is $200 for any day (or portion thereof) for which the employee is paid qualified family leave wages, and in the aggregate with respect to all quarters, $10,000. Employers are not allowed the credit in respect of unpaid leave.

**Additional rules**

The credit allowed for paid sick or paid family leave is increased by the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which the credit is allowed. Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan. Qualified health plan expenses are allocated to qualified sick leave wages in such manner as the Secretary of Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocations are treated as properly made if they are pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

The credit allowed may not exceed the OASDI tax or equivalent amount of RRTA tax imposed on the employer, reduced by any credits allowed for the employment of qualified veterans and research expenditures of qualified small businesses for that calendar quarter on the wages paid with respect to all the employer's employees. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

If a taxpayer claims a credit, the amount so claimed is included in gross income. Thus, the credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction.
An amount equal to the reduction in revenues to the Treasury by reason of the FFCRA is appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974. This amount is transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the OASDI Trust Funds or Social Security Equivalent Benefit Account had this provision not been enacted.

Within the meaning of sec. 1402.


An employer may elect not to claim a tax credit for a calendar quarter for qualified sick leave wages or qualified family leave wages. Further, the credit allowed does not apply to the government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of those entities. Employers in the U.S. territories may claim the credit by filing their quarterly Federal employment tax returns.

Any wages or compensation required to be paid to employees pursuant to the EPSLA or EFMLEA before December 31, 2020, are not considered wages for purposes of OASDI tax or compensation for purposes of RRTA tax. In addition, or, in the case of wages or compensation paid after December 31, 2020 and before April 1, 2021, any wages or compensation with respect to which a credit is allowed, are not considered wages for purposes of OASDI tax or compensation for purposes of RRTA tax. As a result, no taxes are collected on these amounts from employers or employees.

Paid sick leave and expanded family and medical leave for self-employed individuals

An eligible self-employed individual may claim an income tax credit for any taxable year for a qualified sick leave equivalent amount or qualified family leave equivalent amount. An eligible self-employed individual is defined as an individual who regularly carries on any trade or business and who would be entitled to receive paid leave during the taxable year under the EPSLA or EFMLEA.

The qualified sick leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days during the taxable year that the self-employed individual cannot perform services for which that individual would have been entitled to sick leave pursuant to the EPSLA (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) $511 in the case of paid sick time described in categories (1), (2), or (3) above with respect to section 5102(a) of the EPSLA ($200 in the case of paid sick time described in categories (4), (5), or (6) above); or (2) 100 percent of the average daily self-employment income of the individual for the taxable year in the case of any day of paid sick time described in categories (1), (2), or (3) above with respect to section 5102(a) of the EPSLA ($200 in the case of paid sick time described in categories (4), (5), or (6) above).

An amount equal to the reduction in revenues to the Treasury by reason of the FFCRA is appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974. This amount is transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the OASDI Trust Funds or Social Security Equivalent Benefit Account had this provision not been enacted.
(3) above (67 percent in the case of paid sick time described in categories (4), (5), or (6) above).

The number of days taken into account in determining the qualified sick leave equivalent amount may not exceed, with respect to any taxable year, 10 days, taking into account any days taken in all preceding taxable years. The individual’s average daily self-employment income under the provision is an amount equal to the net earnings from self-employment for the taxable year divided by 260.

If an eligible self-employed individual receives qualified sick leave wages,\textsuperscript{1696} the individual’s qualified sick leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified sick leave equivalent amount and the qualified sick leave wages received exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in category (1), (2), or (3) above).

The qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 50) during the taxable year that the self-employed individual cannot perform services for which that individual would be entitled to paid leave pursuant to the EFMLEA\textsuperscript{1697} (if the individual were employed by an employer), multiplied by the lesser of two amounts: (1) 67 percent of the average daily self-employment income of the individual for the taxable year; or (2) $200. The individual’s average daily self-employment income under the provision is an amount equal to the individual’s net earnings from self-employment for the year divided by 260.

The credit allowed for the qualified sick leave equivalent amount or qualified family leave equivalent amount is applied against federal income taxes and is a refundable credit.\textsuperscript{1698}

If an eligible self-employed individual receives qualified family leave wages,\textsuperscript{1699} the individual’s qualified family leave equivalent amount determined under the provision is reduced (but not below zero) to the extent that the sum of the qualified family leave equivalent amount and the qualified family leave wages received exceeds $10,000.

\textbf{Application of credit in certain territories}

The Secretary of Treasury is directed to make payments to each territory with a mirror Code tax system that relate to the cost (if any) of each territory’s credits for sick leave or expanded family and medical leave for certain self-employed individuals. The Secretary is further directed to make similar payments to each non-mirror Code territory.

With respect to mirror Code territories, the Secretary is required to make payments equal to the loss in revenue by reason of the application of the credit for sick leave or expanded family and medical leave for certain self-employed individuals to the territory’s mirror Code. This amount is determined by the Secretary based on information provided by the governments of the respective territories.

\begin{itemize}
  \item \textsuperscript{1696}As defined by sec. 7001(c) of FFCRA, Pub. L. No. 116–127.
  \item \textsuperscript{1697}Division C, FFCRA, Pub. L. No. 116–127.
  \item \textsuperscript{1698}Any refund due to an individual is treated in the same manner as a refund due from a credit provision. 31 U.S.C. sec. 1324. Thus, amounts are appropriated to the Secretary (or the Secretary’s delegate) for refunding such amounts.
  \item \textsuperscript{1699}As defined by sec. 7003(c) of the FFCRA, Pub. L. No. 116–127.
\end{itemize}
With respect to Puerto Rico and American Samoa (non-mirror Code territories), the Secretary is directed to make payments in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of each territory from the credit for sick leave or expanded family and medical leave for certain self-employed individuals if a mirror Code tax system had been in effect in such territory. The Secretary must not make these payments unless the territory has a plan approved by the Secretary to promptly distribute the payments to its residents.

The Secretary of Treasury is directed to prescribe such regulations or other guidance as may be necessary to carry out the purposes of the provision, including (1) to effectuate the purposes of this Act, and (2) to minimize compliance and record-keeping burdens under the provision.\textsuperscript{1700}

**Explanation of Provision**

Generally, the term “wages” for OASDI tax purposes means all remuneration for “employment,” including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions.\textsuperscript{1701} The provision amends the definitions of qualified sick leave wages and qualified family leave wages to define such wages without regard to the exceptions in paragraphs (1) through (22) of section 3121(b), which define wages for OASDI purposes. In addition, the definition of qualified sick leave wages and qualified family leave wages for RRTA purposes does not include the exceptions to the definition of compensation for RRTA purposes outlined in section 3231(e). The provision provides that paid sick and family leave wages and compensation which may be otherwise excluded from OASDI or RRTA tax may be eligible for the credit.

The provision also clarifies that the amount of the credit allowed for qualified sick leave wages and qualified family leave wages is increased by the amount of Medicare taxes on such wages for which a credit is allowed as well as so much of the RRTA tax as is attributable to the Medicare tax rate in effect.

**Effective Date**

The provision is effective on the date of enactment (December 27, 2020) as if included in the provisions of the Families First Coronavirus Response Act to which they relate.


\textsuperscript{1701} Sec. 3121(a).
DIVISION Y—AMERICAN MINER BENEFITS
IMPROVEMENT ACT OF 2020

1. Transfers to 1974 UMWA pension plan (sec. 2 of the Act and sec. 402 of the Surface of Mining Control and Reclamation Act of 1977)

Present Law

United Mineworkers of America ("UMWA") retiree health benefits

In general

Three multiemployer plans provide retiree health benefits for employees in the coal industry (and their beneficiaries): the UMWA Combined Benefit Fund ("Combined Fund"), the UMWA 1992 Benefit Plan ("1992 Benefit Plan"), and the UMWA 1993 Benefit Plan ("1993 Benefit Plan"). In addition, retiree health benefits are provided to some retirees through plans maintained by their particular employers ("individual employer plans"). Moreover, pension benefits are provided by the UMWA 1974 Pension Plan (the "Pension Plan").

The Combined Fund and the 1992 Benefit Plan were established under the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"). The Combined Fund provides health benefits with respect to retirees (and related beneficiaries) who, on July 20, 1992, were receiving health benefits under previous UMWA plans. The 1992 Benefit Plan provides benefits with respect to participants (and related beneficiaries) who were eligible for health benefits under previous UMWA plans based on age and service earned as of February 1, 1993, or to whom coverage was required to be provided by an individual employer plan but who does not receive coverage, provided that the participant retired from the coal industry by September 30, 1994.

The 1993 Benefit Plan was established under the National Bituminous Coal Wage Agreement of 1993. Generally, the 1993 Benefit Plan provides health benefits to certain retired and disabled mine workers who are not eligible for benefits under the Combined Fund or the 1992 Benefit Plan and would have been eligible for benefits under the previous UMWA plans, but for enactment of the Coal Act. The UMWA 1993 Benefit Plan also provides benefits to certain retirees under the Pension Plan whose last employer contributed to the 1993 Benefit Plan and whose retiree health benefits would end because, inter alia, the employer is no longer engaged in mining op-
Retiree health plan funding

The Combined Fund and the 1992 Benefit Plan are funded in part by premiums required under the Code to be paid by coal mining operators. The 1993 Benefit Plan is funded in part by contributions by employers that are bargaining agreement signatories. The three plans (collectively, the “UMWA Health Plans”) are funded also in part by transfers under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”).

Under SMCRA, coal mining operators are required to pay certain fees to the Secretary of the Interior, which are deposited in the Abandoned Mine Reclamation Fund (commonly referred to as the “Abandoned Mine Land Fund” or the “AML Fund”). In addition to transfers to States and Indian tribes relating to mining reclamation, the Secretary of the Treasury (“Secretary”) is authorized to transfer interest earned on the AML Fund to the UMWA Health Plans for financial assistance. To the extent interest transferred from the AML Fund is not sufficient to provide benefits under the UMWA Health Plans, the Secretary is authorized under SMCRA to make supplemental payments on an annual basis from the General Fund of the U.S. Treasury. The supplemental payments to the UMWA Health Plans, together with payments from the General Fund for certain States and Indian Tribes, are subject to a combined annual limit of $750 million.

In the case of transfers of interest from the AML Fund to the 1993 Benefit Plan, the benefits due under the plan are determined by taking into account those retirees (and related beneficiaries) who were actually enrolled in the plan as of December 31, 2006, and who are eligible for benefits on the first day of the calendar year for which the transfer is made, even though those benefits were provided to the individual pursuant to a settlement agreement approved by order of a bankruptcy court entered on or before September 30, 2004; in other words, those individuals are considered to be actually enrolled in the Plan and receive benefits under the Plan beginning on December 31, 2006.

In 2016, SMCRA was amended to authorize the transfer of federal funds to the 1993 Benefit Plan through April 30, 2017, for an expanded group, including (1) retirees (and related beneficiaries) actually enrolled in the 1993 Benefit Plan as of the date of enactment of the Continued Health Benefits for Miners Act (the “2016 Act”), and who are eligible for benefits on the first day of the

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1706 Secs. 9704 and 9712(d). Failure to pay the required premiums under section 9704 may result in the imposition of a penalty under section 9707. In addition, under section 9721, a civil action may be brought by a plan fiduciary, employer, or plan participant or beneficiary with respect to an obligation to pay the required premiums, in the same manner as a claim arising from an employer’s obligation to pay withdrawal liability under section 4301 of the Employee Retirement Income Security Act of 1974 (“ERISA”).


1708 Sec. 402(i)(3) of SMCRA; 30 U.S.C sec. 1232(i)(3). Amounts to be transferred to the recipients are adjusted as needed to come within this limit.

1709 Under SMCRA, the 1993 Benefit Plan is referred to as the “Multiemployer Health Benefit Plan.”

calendar year for which the transfer is made,\textsuperscript{1711} and (2) retirees (and related beneficiaries) whose health benefits would be denied or reduced as a result of a bankruptcy proceeding commenced in 2012 or 2015.\textsuperscript{1712} In 2017, SMCRA was further amended to permanently authorize the annual transfer of funds to the 1993 Plan for those retirees. In 2019, SMCRA was amended to authorize additional transfers from the General Fund to the 1993 Benefit Plan to also cover beneficiaries whose health benefits, which are payable following death or retirement or upon a finding of disability directly by an employer in the bituminous coal industry under a coal wage agreement,\textsuperscript{1714} would otherwise be denied or reduced as a result of a coal industry bankruptcy in 2018 or 2019.\textsuperscript{1715}

In determining the amount of the excess that may be transferred to the 1993 Benefit Plan, the costs of administering the dispute resolution process (as of December 31, 2019) by the Trustees of the plan are to be taken into account.

The 2016 Act also contains additional rules with respect to a voluntary employees’ beneficiary association (“VEBA”)\textsuperscript{1716} established as a result of a bankruptcy proceeding described in (2). The administrator of the VEBA is directed to transfer to the 1993 Benefit Plan any amounts received as a result of the bankruptcy proceeding, reduced by the amount of the VEBA’s administrative costs. Further, the amount that would otherwise be transferred by the Secretary to the 1993 Benefit Plan under SMCRA, as amended by the 2016 Act, is reduced by any amount transferred to the 1993 Benefit Plan by the VEBA.

**UMWA 1974 Pension Plan**

The Pension Plan is a multiemployer defined benefit plan established by the National Bituminous Coal Wage Agreement of 1974 between the United Mine Workers of America (“UMWA”) and the Bituminous Coal Operators Association (“BCOA”), effective December 6, 1974.\textsuperscript{1717} The Pension Plan provides retirement, disability, and survivors’ benefits to employees in the coal industry and their beneficiaries in accordance with plan terms. Prior to the enactment of the Bipartisan American Miners Act,\textsuperscript{1718} SMCRA did not provide for funds to be transferred to the Pension Plan.

For fiscal years beginning after September 30, 2016, if amounts available for transfer under the $750 million annual limit exceed the amounts required to be transferred for other purposes (including to the UMWA Health Plans), the Secretary is to transfer the excess to the Pension Plan to pay plan benefits.\textsuperscript{1719} Transfers are

\textsuperscript{1711}However, this group does not include individuals (and related beneficiaries) enrolled in the 1993 Benefit Plan under the terms of a participation agreement with the current or former employer of the individuals.

\textsuperscript{1712}The Act further provides that individuals described in (2) are to be treated as eligible to receive health benefits under the 1993 Benefit Plan for the plan year that includes April 1, 2017.


\textsuperscript{1714}Defined in sec. 9701(b)(3).


\textsuperscript{1716}A VEBA is an organization exempt from tax under section 501(c)(9).

\textsuperscript{1717}In a multiemployer defined benefit pension, participants typically receive a monthly payment in retirement that is based on a formula that uses the participant’s length of service and a benefit rate.


\textsuperscript{1719}The provision describes the Pension Plan as the 1974 UMWA Pension Plan under section 9701(a)(3), but without regard to the limitation on participation to individuals who retired in
to end as of the first fiscal year beginning after the first plan year for which the Pension Plan’s funded percentage (as defined under the Code’s funding rules)\textsuperscript{1720} is at least 100 percent. Until that time, the Pension Plan will be treated as if it is in critical status\textsuperscript{1721} and will maintain and comply with its rehabilitation plan (including any updates).\textsuperscript{1722}

During any fiscal year in which the Pension Plan receives a transfer, no plan amendment may be adopted that increases plan liabilities by reason of a benefit increase, a change in the accrual of benefits, or a change in the rate at which benefits vest under the plan unless the amendment is required as a condition for qualified retirement plan status under the Code. In addition, a transfer is not to be made for a fiscal year unless the persons obligated to contribute to the Pension Plan on the date of the transfer are obligated to make contributions at rates that are not less than those in effect on the date 30 days before the date of enactment of the provision (December 20, 2019). Any amounts transferred to the Pension Plan are disregarded in determining the unfunded vested benefits of the Pension Plan and the allocation of unfunded vested benefits to an employer for withdrawal liability purposes.

Like other pension plans, the Pension Plan is subject to various annual reporting and notice requirements under the Code and ERISA.\textsuperscript{1723} Some of these reporting requirements are met by the filing of Form 5500, Annual Return/Report of Employee Benefit Plan. Additional requirements apply in the case of an underfunded multiemployer defined benefit plan in endangered or critical status, including with respect to a funding improvement or rehabilitation plan.\textsuperscript{1724}

Not later than the 90th day of each plan year beginning after December 20, 2019, the Pension Plan trustees must also file with the Secretary\textsuperscript{1725} and the Pension Benefit Guaranty Corporation ("PBGC") a report (including appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary) that provides—

- Whether the Pension Plan is in endangered or critical status;
- The Pension Plan’s funded percentage as of the first day of the plan year and the underlying actuarial value of assets and liabilities taken into account in determining the funded percentage;
- The market value of plan assets as of the last day of the preceding plan year;
- The total of all plan contributions made during the preceding plan year;

\textsuperscript{1726} and thereafter, thereby reflecting the merger of the UMWA 1950 Pension Plan into the Pension Plan.\textsuperscript{1727} See sec. 432(j)(2).
\textsuperscript{1728} For purposes of secs. 412(b)(3), 432(e)(3) and 4971(g) and secs. 302(b)(3) and 305(e)(3) of ERISA.
\textsuperscript{1729} However, the provisions of section 432(c) and (d) and section 305(c) and (d) of ERISA will not apply.
\textsuperscript{1730} See, for example, secs. 6057–6059 and ERISA secs. 101(f), 103 and 104.
\textsuperscript{1731} For a discussion of the rules relating to plans in endangered or critical status, see Part I.D.3 of Joint Committee on Taxation, Present Law, Data, and Selected Proposals Relating to Multiemployer Defined Benefit Plans (JCX–9–16), February 26, 2016, available at www.jct.gov.
\textsuperscript{1732} References in this description to "Secretary" include the Secretary’s delegate, for this purpose, the Internal Revenue Service.
The total benefits paid during the preceding plan year;
- Cash flow projections for the plan year and either the six or 10 succeeding plan years, at the election of the trustees, and the assumptions relied on in making the projections;
- Funding standard account projections for the plan year and the nine succeeding plan years, and the assumptions relied on in making the projections;
- The total investment gains or losses during the preceding plan year;
- Any significant reduction in the number of active participants during the preceding plan year and the reason for the reduction;
- A list of employers that withdrew from the Pension Plan in the preceding plan year and the resulting reduction in contributions;
- A list of employers that paid withdrawal liability to the Pension Plan during the preceding plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to the withdrawal liability;
- Any material changes to benefits, accrual rates, or contribution rates during the preceding plan year;
- Any scheduled benefit increase or decrease in the preceding plan year having a material effect on plan liabilities;
- Details of any funding improvement plan or rehabilitation plan and updates;
- The number of participants and beneficiaries during the preceding plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries;
- The information contained in the Pension Plan’s most recent annual funding notice;
- The information contained in the Pension Plan’s most recent Form 5500; and
- Copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the Pension Plan and contribution obligations under those plans, a breakdown of the Pension Plan’s administrative expenses, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary may require, in consultation with the Secretary of Labor and the Director of the PBGC.

This report must be submitted electronically, and the Secretary is directed to share the information in the report with the Secretary of Labor. A failure to file the report on or before the date required results in a tax reporting penalty of $100 per day while the failure continues unless the Secretary determines that reasonable diligence was exercised by the plan sponsor in attempting to timely file the report.
Explanation of Provision

Under the provision, transfers from the General Fund to the 1993 Benefit Plan are expanded to cover beneficiaries who are enrolled in the plan as of the date of enactment of the Act (December 27, 2020), as well as beneficiaries whose health benefits, which are payable following death or retirement or upon a finding of disability directly by an employer in the bituminous coal industry under a coal wage agreement, or a related coal wage agreement, would otherwise be denied or reduced as a result of a coal industry bankruptcy in 2018 or 2019, or any year thereafter (or, in the case of any such health benefits confirmed in any bankruptcy proceeding, would be subsequently denied or reduced).

The provision also states that the $750 million dollar cap on the combined annual limit on supplemental payments to the UMWA Health Plans, together with payments from the General Fund for certain States and Indian Tribes, is to be increased by the amount of the cost to provide benefits which are taken into account as described in the preceding paragraph.

Effective Date

The provision is generally effective on the date of enactment of the Act.

DIVISION BB—PRIVATE HEALTH INSURANCE AND PUBLIC HEALTH PROVISIONS

TITLE I—NO SURPRISES ACT

1. Health savings accounts and the No Surprises Act (sec. 102 of the Act and sec. 223 of the Code)

Present Law

A group health plan is a plan of, or contributed to by, an employer or employee organization to provide health care to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. Self-insured plans managed by an employer are included in the definition of group health plan.

Various requirements generally apply to group health plans, including limitations on exclusions on benefits for preexisting conditions.
These requirements for group health plans are contained in Chapter 100 of the Code, sections 9801, et seq. Certain group health plans (e.g., governmental plans and plans covering fewer than two active employees) and certain types of coverage are exempt from these Code requirements.

Sec. 4980D.

Part 7 of Title I of ERISA, 29 U.S.C. 1181 et seq., and Title XXVII of the PHSA, 42 U.S.C. 300gg et seq. Similar requirements apply also under the Federal Employees Health Benefits Program. Some requirements apply also to individual health insurance under the PHSA.

Health savings accounts

An individual may establish a health savings account (an “HSA”) only if the individual is covered under a plan that meets the requirements for a high deductible health plan and the individual is not covered under any other health plan (other than a plan that provides certain permitted insurance or permitted coverage). In general, an HSA is a tax-exempt trust or custodial account created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents. Accordingly, HSAs provide tax-favored treatment for current medical expenses as well as

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1732 These requirements for group health plans are contained in Chapter 100 of the Code, sections 9801, et seq. Certain group health plans (e.g., governmental plans and plans covering fewer than two active employees) and certain types of coverage are exempt from these Code requirements.

1733 Sec. 4980D.

1734 Part 7 of Title I of ERISA, 29 U.S.C. 1181 et seq., and Title XXVII of the PHSA, 42 U.S.C. 300gg et seq. Similar requirements apply also under the Federal Employees Health Benefits Program.

1735 A high deductible health plan is a health plan that has an annual deductible which is not less than $1,400 (for 2021) for self-only coverage and twice this amount for family coverage, and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed $7,000 (for 2021) for self-only coverage and twice this amount for family coverage. Sec. 223(c)(2).
as the ability to save on a tax-favored basis for future medical expenses.

Within limits, contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual. Contributions to an HSA made by the employer are excludable from income and exempt from employment taxes. Earnings in HSAs are not taxable.

Distributions from an HSA for qualified medical expenses are excludable from gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20-percent additional tax does not apply if the distribution is made after death or disability, or the individual attains the age of Medicare eligibility (age 65). Similar rules apply for another type of medical savings arrangement called an Archer MSA.

**High deductible health plans**

A high deductible health plan is a health plan that has an annual deductible which is not less than $1,400 (for 2021) for self-only coverage and twice this amount for family coverage, and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed $7,000 (for 2021) for self-only coverage and twice this amount for family coverage. These dollar thresholds are subject to inflation adjustment, based on chained CPI.

Various types of coverage are disregarded for this purpose, including coverage of any benefit provided by permitted insurance; coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term; and certain limited coverage through health flexible savings arrangements. Permitted insurance means insurance under which substantially all of the coverage provided relates to liabilities incurred under workers’ compensation laws, tort liabilities, liabilities relating to ownership or use of property, or such other similar liabilities as specified by the Secretary under regulations. Permitted insurance also means insurance for a specified disease or illness, and insurance paying a fixed amount per day (or other period) of hospitalization.

**Individuals eligible**

Individuals eligible for HSAs are individuals who are covered by a high deductible health plan and no other health plan that (1) is not a high deductible health plan and (2) provides coverage for any benefit which is covered under the high deductible health plan. After an individual has attained age 65 and becomes enrolled in

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1736 For 2021, the basic limit on annual contributions that can be made to an HSA is $3,600 in the case of self-only coverage and $7,200 in the case of family coverage. The basic annual contributions 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).
1737 Sec. 220.
1738 Sec. 223(c)(2).
1739 Sec. 223(g).
1740 Sec. 223(c)(1)(B).
1741 Sec. 223(c)(3).
1742 Sec. 223(c)(1).
Medicare, contributions cannot be made to the individual’s HSA.\textsuperscript{1743}

\textit{Explanation of Provision}

\textbf{No Surprises Act}

The No Surprises Act (the “Act”)\textsuperscript{1744} amends the PHSA, ERISA, and the Code to provide generally that if a group health plan provides or covers benefits with respect to services in an emergency department of a hospital or with respect to emergency services in a freestanding emergency department, the plan or issuer must cover emergency services in accordance with certain requirements.\textsuperscript{1745} The Act generally expands restrictions on certain billing and charging practices.

In addition, the Act provides certain requirements related to the provision of emergency services. For example:

\begin{itemize}
\item The plan or coverage must cover emergency services (as defined) whether the health care provider is a participating provider or a participating emergency facility, with respect to such services;
\item Emergency services provided by a nonparticipating provider must be provided without imposing any pre-authorization requirement on services or any limitation in coverage that is more restrictive than the requirements or limitations that apply to emergency services provided by participating providers;
\item The cost-sharing requirement must not be greater for a non-participating provider (or emergency facility) than would apply if a participating provider (or emergency facility) were providing the service;
\item Any cost-sharing payments made by the participant or beneficiary with respect to such emergency services must be counted toward any in-network deductible or out-of-pocket maximums applied under the plan or coverage, respectively, (and such in-network deductible and out-of-pocket maximums must be applied) in the same manner as if such cost-sharing payments were made with respect to emergency services furnished by a participating provider or a participating emergency facility; and
\item The plan or coverage must provide such emergency services without regard to any other term or condition of such plan or coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, otherwise permitted,\textsuperscript{1746} and other than applicable cost-sharing).
\end{itemize}

The Act also imposes certain requirements related to the provision of non-emergency services covered by a group health plan furnished to a participant or beneficiary of such plan performed by


\textsuperscript{1744}Title 1 of Div. BB of Pub. L. No. 116–260.

\textsuperscript{1745}In accordance with section 2799A–1 of the PHSA; section 9816 of the Code; and section 716 of ERISA, as added by this Act.

\textsuperscript{1746}Under section 2704 of the Act, including as incorporated pursuant to section 715 of ERISA and section 9815 of the Code.
nonparticipating providers at certain participating facilities. For example:

- The plan may not impose a cost-sharing requirement for non-emergency items or services that is greater than the cost-sharing requirement that would apply under the plan had those items or services been furnished by a participating provider;
- The plan must calculate the cost-sharing requirement as if the total amount that would have been charged for the items and services by the participating provider were equal to the recognized amount for such items and services, plan, and year;
- Not later than 30 calendar days after the bill for such items or services is transmitted by the provider, the plan must send the provider an initial payment or notice of denial of the payment;
- The plan must pay a total plan payment directly, in accordance with the applicable timing requirement, to the provider furnishing such items and services to the participant or beneficiary that is, with application of the initial payment described above, equal to the amount by which the out-of-network rate for such items and services exceeds the cost sharing amount imposed under the plan for such items and services; and
- The plan must count any cost-sharing payments made by the participant or beneficiary (and must apply any in-network deductible and out-of-pocket maximum) with respect to such items and services that are furnished in the same manner as if the cost-sharing payments were with respect to items and services furnished by a participating provider.

**Health savings accounts**

Under the provision, an individual does not fail to be treated as an individual eligible to participate in an HSA merely because the individual receives benefits for medical care subject to and in accordance with the applicable provisions of the Code, the PHSA or ERISA, relating to preventing surprise medical billing, or any State law providing similar protections to such individual.

**High deductible health plan**

Under the provision, a plan does not fail to be treated as a high deductible health plan by reason of providing benefits for medical care in accordance with the applicable provisions of the Code, the PHSA or ERISA or any State law providing similar protections to individuals, prior to the satisfaction of the annual deductible.

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1747 Sec. 9816 or 9817, or sec. 2799A–1 or 2799A–2 of the PHSA.
1748 Sec. 716 or 717 of ERISA.
1749 Sec. 9816 or 9817, or sec. 2799A–1 or 2799A–2 of the PHSA.
1750 Sec. 716 or 717 of ERISA.
1751 The annual deductible is defined in section 223(c)(2)(A)(i).
The amendments relating to health savings accounts and high deductible health plans apply for plan years beginning on or after January 1, 2022.

DIVISION EE—TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF 2020

TITLE I—EXTENSION OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Certain Provisions Made Permanent

1. Reduction in medical expense deduction floor (sec. 101 of the Act and sec. 213 of the Code)

Present Law

For taxable years beginning before January 1, 2021, individuals may claim an itemized deduction for unreimbursed medical expenses paid during the taxable year, but only to the extent that the expenses exceed 7.5 percent of adjusted gross income ("AGI") for purposes of regular tax and the alternative minimum tax ("AMT"). For taxable years beginning after December 31, 2020, the 7.5-percent threshold is increased to 10 percent.

Explanation of Provision

The provision permanently reduces the threshold for deducting medical expenses to 7.5 percent of AGI. The 7.5-percent threshold applies for purposes of regular tax as well as the AMT.

Effective Date

The provision applies to taxable years beginning after December 31, 2020.

2. Energy efficient commercial buildings deduction (sec. 102 of the Act and sec. 179D of the Code)

Present Law

In general

Section 179D permits a taxpayer an immediate deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property is defined as property (1) which is installed on or in any building located in the United States that is within the scope of Standard 90.1–2007 of the American Society of Heating, Refrigerating, and

Explanation of Provision

The provision permanently reduces the threshold for deducting medical expenses to 7.5 percent of AGI. The 7.5-percent threshold applies for purposes of regular tax as well as the AMT.

Effective Date

The provision applies to taxable years beginning after December 31, 2020.

Present Law

In general

Section 179D permits a taxpayer an immediate deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property is defined as property (1) which is installed on or in any building located in the United States that is within the scope of Standard 90.1–2007 of the American Society of Heating, Refrigerating, and

Note: Sec. 213, The threshold was amended by the Patient Protection and Affordable Care Act (Pub. L. No. 111–148). For taxable years beginning after December 31, 2012, the threshold was 10 percent for regular tax purposes and AMT purposes. A temporary special rule applied in the case of a taxpayer who attained age 65 (or, in the case of a married taxpayer, if either the taxpayer or the taxpayer’s spouse attained age 65) before the close of the taxable year, in which case the threshold was 7.5 percent for regular tax purposes. The 2017 Tax Act (Pub. L. No. 115–97) reduced the floor to 7.5 percent for all taxpayers for taxable years beginning after December 31, 2016, and ending before January 1, 2019. The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Pub. L. No. 116–94) extended the reduction of the floor to 7.5 percent for all taxpayers for taxable years ending after December 31, 2018 and beginning before January 1, 2021.
Air Conditioning Engineers and the Illuminating Engineering Society of North America ("ASHRAE/IESNA"), (2) which is installed as part of (i) the interior lighting systems, (ii) the heating, cooling, ventilation, and hot water systems, or (iii) the building envelope, and (3) which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2007 (as in effect before the date of the adoption of ASHRAE/IESNA Standard 90.1–2010). For each building, the deduction is limited to an amount equal to $1.80 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

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

The Secretary is granted authority to prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a Federal, state, or local government or a political subdivision thereof, such as a public school, the deduction may be allocated to the person primarily responsible for designing the energy efficient commercial building property in lieu of the government or political subdivision thereof.

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

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

**Partial allowance of deduction**

**System-specific deductions**

In the case of a building that does not meet the overall building requirement of 50-percent energy savings, a partial deduction is al-
Ibid.

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

Interim rules for lighting systems

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

Explanation of Provision

The provision adds an inflation adjustment, updates the standards, and makes the energy efficient commercial buildings deduction permanent. The inflation adjustment uses calendar year 2019 as the base year.

The building standard is updated from ASHRAE/IESNA standard 90.1–2007 to the most recent ASHRAE/IESNA standard 90.1 that has been published, and affirmed by the Secretary in consultation with Secretary of Energy, at least two years prior to the date that construction begins on the property for which the deduction will be claimed. Similarly, the provision requires that the Treasury regulations based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual be updated to conform with the most recent such manual as in effect, and affirmed by the Secretary in consultation with the Secretary
of Energy, at least two years prior to the date that construction begins on the property for which the deduction will be claimed.

**Effective Date**

The provision applies to property placed in service after December 31, 2020.

3. **Benefits provided to volunteer firefighters and emergency medical responders (sec. 103 of the Act and sec. 139B of the Code)**

**Present Law**

Background for this provision may be found above in the section describing section 301 of the SECURE Act (Division O of Pub. L. No. 116–94) in Part Three of this document.

**Explanation of Provision**

The provision makes permanent the income exclusions for qualified State or local tax benefits and qualified payments provided to members of qualified volunteer emergency response organizations.

**Effective Date**

The provision is effective for taxable years beginning after December 31, 2020.

4. **Lifetime learning credit (sec. 104 of the Act and secs. 25A and 222 of the Code)**

**Present Law**

A variety of provisions offer tax benefits to taxpayers for education expenses. These provisions include tax benefits for current expenses, such as the American Opportunity credit and the Lifetime Learning credit\(^\text{1757}\), as well as the above-the-line deduction for certain higher education expenses.\(^\text{1758}\) For each taxable year, a taxpayer may claim either the American Opportunity credit and the Lifetime Learning credit or an above-the-line deduction for qualified higher education expenses.

**American Opportunity credit**

The American Opportunity credit is a credit of up to $2,500 per eligible student per year for qualified tuition and related expenses paid for each of the first four years of the student’s post-secondary education in a degree or certificate program. The amount of the credit 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.

Qualified tuition and related expenses generally include tuition, fees, and course materials required for enrollment or attendance of the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer at an eligible institution. They do not include student activ-
ity fees, other fees and expenses unrelated to an individual's academic course of instruction, or expenses with respect to a course of education involving sports, games, or hobbies that is not part of the individual's degree program. In addition, an eligible student must be carrying at least half the normal work load for the course of study being pursued.

The credit that a taxpayer may otherwise claim 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.

**Lifetime Learning credit**

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).

A taxpayer may claim the Lifetime Learning credit for an unlimited number of taxable years and 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. The Lifetime Learning credit amount that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified AGI between $59,000 and $69,000 ($118,000 and $138,000 for married taxpayers filing a joint return) in 2020.

The Lifetime Learning credit is available in the taxable year the expenses are paid, subject to the requirement that the education is furnished to the student during that year or during an academic period beginning during the first three months of the next taxable year. Qualified tuition and related expenses paid with the proceeds of a loan generally are eligible for the Lifetime Learning credit. However, repayment of a loan is not a qualified tuition expense.

A taxpayer may claim the Lifetime Learning credit with respect to a student who is not the taxpayer or the taxpayer's spouse (e.g., in cases in which the student is the taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If a student is claimed as a dependent by a parent or other taxpayer, the student may not claim the Lifetime Learning credit for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a de-

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1759 Qualified tuition and related expenses for the lifetime learning credit generally include tuition and fees required for enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer at an eligible institution. However, unlike the American opportunity credit, they do not include course materials.

1760 Sec. 25A. The Lifetime Learning credit may be claimed against a taxpayer's AMT liability.

1761 For tax year 2021, the AGI amount used by joint filers to determine the reduction in the Lifetime Learning Credit is $119,000.
pendent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of the provision.

A taxpayer may claim the Lifetime Learning credit for a taxable year with respect to one or more students, even though the taxpayer also claims an American Opportunity tax credit for that same taxable year with respect to other students. If, for a taxable year, a taxpayer claims an American Opportunity tax credit with respect to a student, then the Lifetime Learning credit is not available with respect to that same student for that year (although the Lifetime Learning credit may be available with respect to that same student for other taxable years). As with the American Opportunity tax credit, a taxpayer may not claim the Lifetime Learning credit and also claim a deduction for qualified tuition and related expenses.

**Deduction for qualified tuition and related expenses**

A taxpayer is allowed a deduction for qualified tuition and related expenses for higher education paid by the taxpayer during the taxable year. The deduction is allowed in computing AGI. The term qualified tuition and related expenses is defined in the same manner as for the American Opportunity and Lifetime Learning credits, and includes tuition and fees required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction for a personal exemption 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 period beginning during the taxable year or during the first three months of the next taxable year. The deduction is not available for tuition and related expenses paid for elementary or secondary education.

The maximum deduction is $4,000 for a taxpayer whose AGI for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for an individual whose AGI does not exceed $80,000 ($160,000 in the case of a joint return). No deduction is allowed for a taxpayer 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 deduction is allowable to another taxpayer for the taxable year. Generally, no deduction is allowed unless the taxpayer receives a payee statement furnished by the eligible institution of higher education or other entity subject to reporting that reports qualified tuition and related expenses.

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1762 Sec. 222.

1763 Notwithstanding that the exemption amount is zero for taxable years beginning after December 31, 2017, and before January 1, 2026, the reduction of the exemption amount to zero is not taken into account in determining whether a deduction for a personal exemption is still allowed or allowable. Sec. 151(d)(5)(B).

1764 The deduction generally is not available for expenses with respect to a course or education involving sports, games, or hobbies, and is not available for student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction. Secs. 222(d)(6) and 25A(f).

1765 Secs. 222(d)(6) and 6050S.
The amount of qualified tuition and related expenses must be reduced by certain scholarships, educational assistance allowances, and other amounts paid for the benefit of such individual, and by the amount of such expenses taken into account for purposes of determining any exclusion from gross income of: (1) income from certain U.S. savings bonds used to pay higher education tuition and fees; and (2) income from a Coverdell education savings account. Additionally, such expenses must be reduced by the earnings portion (but not the return of principal) of distributions from a qualified tuition program if an exclusion under section 529 is claimed with respect to expenses eligible for the qualified tuition deduction. No deduction is allowed for any expense for which a deduction is otherwise allowed or with respect to a student for whom an American Opportunity credit or a Lifetime Learning credit is elected for such taxable year.

The deduction for qualified tuition and expenses is not available for taxable years beginning after December 31, 2020.

**Explanation of Provision**

The provision increases the income threshold for claiming the Lifetime Learning credit to $80,000 of modified AGI (or $160,000 for married taxpayers filing jointly). The credit phases out between $80,000 and $90,000 of modified AGI (or $160,000 and $180,000 for married taxpayers filing jointly).

The provision also repeals the deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year.

**Effective Date**

The provision applies to taxable years beginning after December 31, 2020.

**5. Railroad track maintenance credit (sec. 105 of the Act and sec. 45G of the Code)**

**Present Law**

A business tax credit is allowed for 50 percent of qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during taxable years beginning before January 1, 2023 (the “railroad track maintenance credit” or “credit”). For purposes of calculating the credit, all members of a controlled group of corporations or a group of businesses under common control are treated as a single taxpayer, and each member’s credit is determined on a proportionate basis to each member’s share of the aggregate qualified railroad track maintenance expenditures taken.

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1. Secs. 222(d)(1) and 25A(g)(2).
2. Sec. 222(c). These reductions are the same as those that apply to the American Opportunity and Lifetime Learning credits.
3. Sec. 45G(a) and (f). An eligible taxpayer generally claims the railroad track maintenance credit by filing Form 8900, Qualified Railroad Track Maintenance Credit. If a taxpayer’s only source of the credit is a partnership or S corporation, the taxpayer may report the credit directly on Form 3800, General Business Credit (see Part III, line 4g).
into account by the group for the credit.\textsuperscript{1770} The credit may reduce a taxpayer's tax liability below its tentative minimum tax.\textsuperscript{1771}

**Limitation**

The railroad track maintenance credit is limited to the product of $3,500 times the number of miles of railroad track\textsuperscript{1772} (1) owned or leased by an eligible taxpayer as of the close of its taxable year,\textsuperscript{1773} and (2) assigned to the eligible taxpayer by a Class II or Class III railroad that owns or leases such track at the close of the taxable year.\textsuperscript{1774} Amounts that exceed the limitation are not carried over to another taxable year.\textsuperscript{1775}

**Assignments**

Each mile of railroad track may be taken into account only once, either by the owner of such mile or by the owner's assignee, in computing the per-mile limitation.\textsuperscript{1776} Any assignment of a mile of railroad track may be made only once per taxable year of the Class II or Class III railroad, and is treated as made of the close of such taxable year.\textsuperscript{1777} Such assignment is taken into account for the taxable year of the assignee that includes the date that such assignment is treated as effective. However, assignments, including related expenditures paid or incurred, for a taxable year beginning on or after January 1, 2018, and ending before January 1, 2020, are treated as effective as of the close of such taxable year if made pursuant to a written agreement entered into no later than March 19, 2020.\textsuperscript{1778}

**Eligible taxpayer**

An eligible taxpayer means any Class II or Class III railroad, and any person (including a Class I railroad\textsuperscript{1779}) who transports


\textsuperscript{1771}Sec. 38(c)(4).

\textsuperscript{1772}Double track is treated as multiple lines of railroad track, rather than as a single line of railroad track (i.e., one mile of single track is one mile, but one mile of double track is two miles). Treas. Reg. sec. 1.45G–1(b)(9).

\textsuperscript{1773}A Class II or Class III owns railroad track if the railroad track is subject to the allowance for depreciation under section 167 by such Class II or Class III railroad. Treas. Reg. sec. 1.45G–1(b)(2). Railroad track generally has a seven-year MACRS recovery period. Sec. 168(e)(3)(C)(i) and asset class 40.4 of Rev. Proc. 87–56, 1987–2 C.B. 674. Alternatively, railroad structures and similar improvements (e.g., bridges, elevated structures, fences, etc.) generally have a 20-year MACRS recovery period (see asset class 40.2 of Rev. Proc. 87–56), while railroad grading and tunnel bores have a 50-year recovery period (see sec. 168(c)). The term "railroad grading or tunnel bore" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track. Sec. 168(e)(4).

\textsuperscript{1774}Sec. 45G(b)(1).

\textsuperscript{1775}Treas. Reg. sec. 1.45G–1(c)(2)(iii).

\textsuperscript{1776}Sec. 45G(b)(2). See also Treas. Reg. sec. 1.45G–1(d).

\textsuperscript{1777}An assignor must file Form 8900 with its timely filed (including extensions) Federal income tax return for the taxable year for which it assigns any mile of eligible railroad track, even if it is not itself claiming the railroad track maintenance credit for that taxable year. Treas. Reg. sec. 1.45G–1(d)(4). Both the assignor and the assignee must attach a statement to Form 8900 detailing the information required by Treas. Reg. sec. 1.45G–1(d)(4).


\textsuperscript{1779}The Surface Transportation Board currently classifies a Class I railroad as a carrier with annual operating revenue of $504,803,294 or more ($489,935,956 or more for 2018). See the Surface Transportation Board Railroad Revenue Deflator Factors, available at https://prod.stb.gov/reports-data/economic-data/railroad-revenue-deflator-factors/. The seven Class I railroads are BNSF Railway Company, Canadian National Railway (Grand Trunk Corporation), Canadian Pa-
property using the rail facilities \(^{1780}\) of a Class II or Class III railroad or who furnishes railroad-related property \(^{1781}\) or services \(^{1782}\) to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such railroad under the provision. \(^{1783}\)

The terms Class II or Class III railroad have the meanings given by the Surface Transportation Board without regard to the controlled group rules under section 45G(e)(2). \(^{1784}\)

**Qualified railroad track maintenance expenditures**

Qualified railroad track maintenance expenditures are defined as gross expenditures (whether or not otherwise chargeable to capital account \(^{1785}\)) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad, determined without regard to any consideration for such expenditure given by the Class II or Class III railroad which made the assignment of such track. \(^{1786}\) However, consideration received directly or indirectly from persons other than the Class II or Class III railroad reduces the amount of qualified railroad track maintenance expenditures. \(^{1787}\) Any amount that an assignor pays an assignee in exchange for an assignment of one or more miles of eligible railroad is treated as qualified railroad track maintenance expenditures paid or incurred by the assignee at the time and to the extent the assignor pays or incurs qualified railroad track maintenance expenditures. \(^{1788}\)

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\(^{1781}\) Rail facilities of a Class II or Class III railroad are railroad yards, tracks, bridges, tunnels, wharves, docks, stations, and other related assets that are used in the transport of freight by a railroad and owned or leased by that railroad. Treas. Reg. sec. 1.45G–1(b)(6).

\(^{1782}\) Railroad-related property is property that is unique to railroads and provided directly to a Class II or Class III railroad. See Treas. Reg. sec. 1.45G–1(b)(7) for a detailed description.

\(^{1783}\) Railroad-related services are services that are provided directly to, and are unique to, a railroad and that relate to railroad shipping, loading and unloading of railroad freight, or repairs of rail facilities or railroad-related property. See Treas. Reg. sec. 1.45G–1(b)(8) for a detailed description.

\(^{1784}\) Sec. 45G(e)(1) and Treas. Reg. sec. 1.45G–1(b)(1). The Surface Transportation Board currently classifies a Class II railroad as a carrier with annual operating revenue of $40,384,263 or more, but less than $504,803,294 ($39,194,876 or more, but less than $489,935,956, for 2018), and a Class III railroad as a carrier with annual operating revenue of less than $40,384,263 (less than $39,194,876 for 2018). See the Surface Transportation Board Railroad Revenue Deflator Factors, available at https://prod.stb.gov/reports-data/economic-data/railroad-revenue-deflator-factors/.

\(^{1785}\) All or some of the qualified railroad track maintenance expenditures may be required to be capitalized under section 263(a) as a tangible or intangible asset. See, e.g., Treas. Reg. sec. 1.263(a)–4(d)(8), which requires the capitalization of amounts paid or incurred by a taxpayer to produce or improve real property owned by another (except to the extent the taxpayer is selling services at fair market value to produce or improve the real property) if the real property can reasonably be expected to produce significant economic benefits for the taxpayer. The basis of the tangible or intangible asset includes the capitalized amount of the qualified railroad track maintenance expenditures. Treas. Reg. sec. 1.45G–1(e)(1). Note that for purposes of Treas. Reg. sec. 1.263(a)–4(d)(8), real property includes property that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time. Treas. Reg. sec. 1.263(a)–4(d)(8)(iii). Intangible assets described in Treas. Reg. sec. 1.263(a)–4(d)(8) are generally depreciable ratably over 25 years. See Treas. Reg. sec. 1.167(a)–3.

\(^{1786}\) Sec. 45G(e)(1) and Treas. Reg. sec. 1.45G–1(b)(1).

\(^{1787}\) Treas. Reg. sec. 45G(e)(1) and Treas. Reg. sec. 1.45G–1(b)(1). The Surface Transportation Board currently classifies a Class II railroad as a carrier with annual operating revenue of $40,384,263 or more, but less than $504,803,294 ($39,194,876 or more, but less than $489,935,956, for 2018), and a Class III railroad as a carrier with annual operating revenue of less than $40,384,263 (less than $39,194,876 for 2018). See the Surface Transportation Board Railroad Revenue Deflator Factors, available at https://prod.stb.gov/reports-data/economic-data/railroad-revenue-deflator-factors/.

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Basis adjustment

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

Explanation of Provision

The provision makes the credit permanent and reduces the credit to 40 percent of qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during taxable years beginning on or after January 1, 2023.

Effective Date

The provision applies to taxable years ending after the date of enactment (December 27, 2020).

6. Provisions related to beer, wine, and distilled spirits

Production period for beer, wine, and distilled spirits

Present Law

The uniform capitalization ("UNICAP") rules require certain direct and indirect costs allocable to real property or tangible personal property produced by the taxpayer to be included in either inventory costs 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.

In the case of interest expense, the UNICAP rules apply only to interest paid or incurred during the property’s production period and that is allocable to property produced by the taxpayer which (1) is either real property or property with a class life of at least 20 years, (2) has an estimated production period exceeding 20 years, and (3) meets the gross receipts test of section 448(c) as determined for the taxable year. The gross receipts test looks to whether the average annual gross receipts for the three-taxable-year period ending with the prior taxable year are under a threshold amount (less than $26 million for 2020). See sec. 448(c) and Rev. Proc. 2019–44, 2019–47 I.R.B. 1065.

two years, or (3) has an estimated production period exceeding one year and a cost exceeding $1,000,000.\footnote{Sec. 263A(f).} The production period with respect to any property is the period beginning on the date on which production of the property begins,\footnote{In the case of tangible personal property, the production period begins on the first date the taxpayer’s accumulated production expenditures, including planning and design expenditures, are at least five percent of the taxpayer’s total estimated accumulated production expenditures for the property unit. Treas. Reg. sec. 1.263A–12(c)(3). Thus, the production period may begin before physical production activity has commenced. See Treas. Reg. sec. 1.263A–12(c)(3).} and, except as described below, ending on the date on which the property is ready to be placed in service or held for sale.\footnote{Sec. 263A(f)(5)(B).}

For interest costs paid or accrued after December 31, 2017, and before January 1, 2021, the aging period for beer,\footnote{As defined in section 5052(a).} wine,\footnote{As defined in section 5041(a).} or distilled spirits\footnote{As defined in section 5002(a)(8), except such spirits that are unfit for use for beverage purposes.} is excluded from the production period as determined for purposes of the UNICAP interest capitalization rules. Thus, producers of beer, wine, or distilled spirits (other than spirits unfit for beverage purposes) are able to deduct interest expenses (subject to any other applicable limitation) attributable to the aging period of beer, wine, or distilled spirits. In the case of interest costs paid or accrued after December 31, 2020, the production period as determined for purposes of the UNICAP interest capitalization rules will include the aging period for beer, wine, or distilled spirits.

**Explanation of Provision**

The provision makes permanent the exclusion of the aging period for beer, wine, or distilled spirits from the production period as determined for purposes of the UNICAP interest capitalization rules.

**Effective Date**

The provision applies to interest costs paid or accrued after December 31, 2020.

**Present Law**

**In general**

Federal excise taxes are imposed at different rates on distilled beer, wine, and distilled spirits and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the Alcohol and Tobacco Tax and Trade Bureau (the “TTB”), except the taxes on imported bottled beer, wine, and distilled spirits are collected by the Customs and Border
Protection Bureau (the “CBP”) of the Department of Homeland Security (under delegation by the Secretary). Liability for the excise tax on beer arises when the alcohol is produced or imported but is not payable until the beer is removed from the brewery or customs custody for consumption or sale. Generally, beer may be transferred between commonly owned breweries without payment of tax; however, tax liability follows these products. Imported bulk beer may be released from customs custody without payment of tax and transferred in bond to a brewery, which becomes liable for the tax on such beer. Beer may be exported without payment of tax and may be withdrawn from a brewery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.\textsuperscript{1801}

\textit{Temporary reduced rates}

Notwithstanding the temporary rates for calendar years 2018, 2019, and 2020 described below, the rate of tax on beer is $18 per barrel.\textsuperscript{1802} Small brewers are eligible for a reduced tax rate of $7 per barrel on the first 60,000 barrels of beer domestically produced and removed each year.\textsuperscript{1803} Small brewers are brewers producing not more than two million barrels of beer during a calendar year. The lower rates for small producers reduce the effective per-gallon tax rate from approximately 58 cents per gallon to approximately 22.6 cents per gallon for this beer.

In the case of a controlled group, the two million barrel limitation for small brewers is applied to the controlled group,\textsuperscript{1804} and the 60,000 barrels eligible for the reduced rate of tax are apportioned among the brewers that are component members of such group. Additionally, two or more entities (whether or not under common control) that produce beer marketed under a similar brand, license, franchise, or other arrangement are treated as a single taxpayer (the “beer single taxpayer rule”).

Individuals may produce limited quantities of beer for personal or family use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

\textit{Temporary reduced rates}

For calendar years 2018, 2019, and 2020, the rate of tax on beer is temporarily lowered to $16 per barrel on the first six million barrels brewed by the brewer or imported by the importer. For an importer to receive the tax benefit, the importer must be an electing importer and the barrels of beer must be assigned to the importer by the person producing the beer. In general, in the case of a controlled group of brewers, the six million barrel limitation is applied and apportioned at the level of the controlled group. Beer brewed
or imported in excess of the six million barrel limitation continues to be taxed at $18 per barrel. In the case of small brewers, such brewers are taxed at a rate of $3.50 per barrel on the first 60,000 barrels domestically produced, and $16 per barrel on any further barrels produced.

**Transfer rules and removals without tax**

Certain removals or transfers of beer are exempt from tax. Beer may be transferred without payment of tax between bonded premises under certain conditions specified in the regulations.\textsuperscript{1805} The tax liability accompanies the beer that is transferred in bond. However, beer may only be transferred without payment of tax between breweries if both breweries are owned by the same brewer (the “shared ownership requirement”).

The shared ownership requirement is temporarily relaxed for calendar years 2018, 2019, and 2020. Thus, a brewer may transfer beer from one brewery to another without payment of tax, including instances where (1) the breweries are owned by the same person; (2) one brewery owns a controlling interest in the other; (3) the same person or persons have a controlling interest in both breweries; or (4) the proprietors of the transferring and receiving premises are independent of each other, and the transferor has divested itself of all interest in the beer so transferred, and the transferee has accepted responsibility for payment of the tax.

For purposes of transferring the tax liability pursuant to (4) above, such relief from liability will be effective from the time of removal from the transferor's bonded premises, or from the time of divestment, whichever is later.

**Explanation of Provision**

The provision makes permanent the reduced rate schedule on beer.

The provision modifies the rules for transfers of beer without payment of tax between bonded breweries. Under the provision, such transfers do not require the bonded breweries to be owned by the same brewer. As under present law, a brewer may transfer beer from one brewery to another without payment of tax, including instances where (1) the breweries are owned by the same person; (2) one brewery owns a controlling interest in the other; (3) the same person or persons have a controlling interest in both breweries; or (4) the proprietors of the transferring and receiving premises are independent of each other, and the transferor has divested itself of all interest in the beer so transferred, and the transferee has accepted responsibility for payment of the tax.

The provision clarifies that beer smuggled into the United States or produced other than as authorized under chapter 51 of the Code is not eligible for reduced tax rates.

Under the provision modifying the beer single taxpayer rule, two or more entities (whether or not under common control) that produce beer under a license, franchise, or other arrangement are treated as a single taxpayer.

\textsuperscript{1805} Sec. 5414.
Refunds in lieu of reduced rates

The provision provides that barrels of beer that are produced outside the United States, imported into the United States, and removed after December 31, 2022, do not qualify for reduced excise tax rates, but the importer may claim a refund in lieu of reduced rates. Refunds are treated as overpayment of tax and determined for periods no less frequently than quarterly. As under prior law, in order for an importer to receive the tax benefit, the importer must be an electing importer and the barrels of beer must be assigned to the importer by the person producing the beer.

Under the provision, the amount of refund with respect to any importer for a given filing period is equal to (1) the excess (if any) of (a) the amount of tax imposed on the barrels of beer removed during the filing period over (b) the amount of tax that would have been imposed on such barrels if the importer had been eligible to receive reduced rates, plus (2) the amount of interest that would be allowed and paid on an overpayment of tax at the overpayment rate, if that rate applied to the amount determined in (1) for the number of days in the filing period. The overpayment rate is the rate established under section 6621(a)(1), but without regard to the lower rate for corporate overpayments of tax exceeding $10,000. Generally, no additional interest is paid on the refund if the refund is paid within 90 days after the tax return is filed.

Information reporting in case of assignment of lower rates or refunds by foreign producers of beer

The provision requires that a foreign producer that elects to make an assignment of lower rates or refunds to an importer must provide the documentation required by the Secretary, which may include providing information about the controlled group structure of the foreign producer.

The provision also requires the Secretary (or the Secretary’s delegate within the Treasury Department) to implement and administer the new refund regime for beer, in coordination with the CBP. The Secretary (or the Secretary’s delegate within the Treasury Department) must prescribe such regulations as may be necessary or appropriate, including regulations to require foreign producers to provide the information necessary to enforce the volume limitations for beer. The Secretary (or the Secretary’s delegate within the Treasury Department), in coordination with CBP, must make publicly available a report detailing plans for implementing and administering the new refund regime not later than 180 days after the date of enactment.

Effective Date

The provision to make permanent the reduced rate schedule on beer applies to beer removed after December 31, 2020.

The provision to modify the rules regarding transfer of beer between bonded breweries applies to calendar quarters beginning after December 31, 2020.

The provision to clarify the treatment of smuggled beer applies to beer produced after the date of enactment (December 27, 2020).
The provision to modify the beer single taxpayer rule applies to beer removed after December 31, 2020.

The provision to provide refunds in lieu of reduced rates for imported beer applies to beer removed after December 31, 2022.

The provision requiring information reporting by foreign producers is effective for elections to make an assignment of lower rates or refunds for beer after December 31, 2020.

Credits against excise tax on certain wine, refunds in lieu of credits for wine produced outside the United States, and other provisions related to wine

Present Law

In general

Excise taxes are imposed on wine, based on the wine’s alcohol content and carbonation levels. In general, notwithstanding the temporary changes made for calendar years 2018, 2019, and 2020, the following table outlines the rates of tax on wine.

<table>
<thead>
<tr>
<th>Wines (sec. 5041)</th>
<th>Tax Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Still wines” not more than 14 percent alcohol</td>
<td>$1.07 per wine gallon</td>
</tr>
<tr>
<td>“Still wines” more than 14 percent, but not more than 21 percent, alcohol</td>
<td>$1.57 per wine gallon</td>
</tr>
<tr>
<td>“Still wines” more than 21 percent, but not more than 24 percent, alcohol</td>
<td>$3.15 per wine gallon</td>
</tr>
<tr>
<td>“Still wines” more than 24 percent alcohol</td>
<td>$13.50 per proof gallon (taxed as distilled spirits)</td>
</tr>
<tr>
<td>Champagne and other sparkling wines</td>
<td>$3.40 per wine gallon</td>
</tr>
<tr>
<td>Artificially carbonated wines</td>
<td>$3.30 per wine gallon</td>
</tr>
</tbody>
</table>

Liability for the excise taxes on wine arises when the wine is produced or imported but is not payable until the wine is removed from the bonded wine cellar or winery, or from customs control, for consumption or sale. Generally, bulk and bottled wine may be transferred between bonded premises; however, the tax liability on such wine becomes the responsibility of the transferee. Bulk natural wine may be released from customs custody without payment of tax and transferred in bond to a winery. Wine may be exported without payment of tax and may be withdrawn from a wine cellar or winery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.

Credits and exemptions for certain wine producers

Notwithstanding the temporary modifications described below, domestic wine producers having aggregate annual production not exceeding 250,000 wine 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 wine gallons of wine domestically produced and removed during a calendar year. The credit is reduced (but not below

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1806 A “still wine” is a non-effervescent or minimally effervescent wine containing no more than 0.392 grams of carbon dioxide per hundred milliliters of wine. Champagne wine typically contains more than twice that amount.

1807 A wine gallon is a U.S. liquid gallon.

1808 Sec. 5042.

1809 Sec. 5041(c).
zero) by one percent for each 1,000 gallons produced in excess of 150,000 wine gallons; the credit may not be applied to the tax liability on sparkling wines. In the case of a controlled group, the 250,000 wine gallon limitation for wineries is applied to the controlled group, and the 100,000 wine gallons eligible for the credit are apportioned among the wineries that are component members of such group. Additionally, two or more entities (whether or not under common control) that produce wine marketed under a similar brand, license, franchise, or other arrangement are treated as a single taxpayer (the “wine single taxpayer rule”).

Temporary modifications

The credit against the wine excise tax for small domestic producers is temporarily modified for calendar years 2018, 2019, and 2020 in several ways. First, the 250,000 wine gallon domestic production limitation is removed (thus making the credit available for all wine producers and importers). In order for an importer to receive the tax benefit, the importer must be an electing importer and the wine gallons of wine must be assigned to the importer by the person producing the wine. Second, under the modifications, the credit may be applied to the tax liability on sparkling wine. Third, with respect to wine produced in, or imported into, the United States during a calendar year, the credit amount is modified to (1) $1 per wine gallon for the first 30,000 wine gallons of wine, plus; (2) 90 cents per wine gallon on the next 100,000 wine gallons of wine, plus; (3) 53.5 cents per wine gallon on the next 620,000 wine gallons of wine. Finally, there is no phaseout of the credit with additional production.

Alcohol-by-volume levels of the first two tiers of the excise tax on wine are temporarily modified for calendar years 2018, 2019, and 2020, by changing 14 percent to 16 percent. Thus, a wine producer or importer may temporarily produce or import “still wine” that has an alcohol-by-volume level of up to 16 percent and remain subject to the lowest rate of $1.07 per wine gallon.

Mead and certain sparkling, low alcohol-by-volume wines are temporarily designated to be taxed at the lowest rate applicable to “still wine,” $1.07 per wine gallon of wine, for calendar years 2018, 2019, and 2020. To qualify for the lowest rate, mead is defined as wine that contains not more than 0.64 grams of carbon dioxide per hundred milliliters of wine, which is derived solely from honey and water, contains no fruit product or fruit flavoring, and contains less than 8.5 percent alcohol-by-volume. The sparkling wines eligible to be taxed at the lowest rate are those wines that contain not more than 0.64 grams of carbon dioxide per hundred milliliters of wine.

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1810 The term “controlled group” has the meaning assigned to it by section 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in section 1563(a).

1811 The credit rate for hard cider is tiered at the same level of production or importation, but is equal to 6.2 cents, 5.6 cents, and 3.3 cents, respectively.

1812 Section 5041(b)(1) and (2).

1813 Section 5041(h).

1814 The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.
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.

**Explanation of Provision**

The provision makes permanent the temporary changes that were in effect for calendar years 2018, 2019, and 2020. Specifically, the provision makes permanent

- the modifications to the credit against the wine excise tax,
- the modifications to the alcohol-by-volume levels for application of the wine excise tax, and
- the rates on mead and certain sparkling, low alcohol-by-volume wines.

The provision also clarifies that wine smuggled into the United States or produced other than as authorized under chapter 51 of the Code is not eligible for the wine excise tax credit.

Under the provision modifying the wine single taxpayer rule, two or more entities (whether or not under common control) that produce wine under a license, franchise, or other arrangement are treated as a single taxpayer.

**Refunds in lieu of tax credits**

The provision provides that wine gallons of wine that are produced outside the United States, imported into the United States, and removed after December 31, 2022, do not qualify for credit against wine excise tax, but the importer may claim a refund in lieu of credits. Refunds are treated as overpayment of tax and determined for periods no less frequently than quarterly. As under prior law, in order for an importer to receive the tax benefit, the importer must be an electing importer and the wine gallons of wine must be assigned to the importer by the person producing the wine.

Under the provision, the amount of refund with respect to any importer for a given filing period is equal to (1) the excess (if any) of (a) the amount of tax imposed on wine gallons of wine removed during the filing period over (b) the amount of tax that would have been imposed on such wine gallons if the importer had been eligible to receive a credit against wine excise tax, plus (2) the amount of interest that would be allowed and paid on an overpayment of tax at the overpayment rate, if that rate applied to the amount determined in (1) for the number of days in the filing period. The overpayment rate is the rate established under section 6621(a)(1), but without regard to the lower rate for corporate overpayments of tax exceeding $10,000. Generally, no additional interest is paid on the refund if the refund is paid within 90 days after the tax return is filed.

**Information reporting in case of assignment of credits or refunds by foreign producers of wine**

The provision requires that a foreign producer that elects to make an assignment of credits or refunds to an importer must pro-
vide the documentation required by the Secretary, which may include providing information about the controlled group structure of the foreign producer.

The provision also requires the Secretary (or the Secretary’s delegate within the Treasury Department) to implement and administer the new refund regime for wine, in coordination with the CBP. The Secretary (or the Secretary’s delegate within the Treasury Department) must prescribe such regulations as may be necessary or appropriate, including regulations to require foreign producers to provide the information necessary to enforce the volume limitations for wine. The Secretary (or the Secretary’s delegate within the Treasury Department), in coordination with CBP, must make publicly available a report detailing plans for implementing and administering the new refund regime not later than 180 days after the date of enactment.

Effective Date

The provision to make permanent the modifications to the wine excise credit applies to wine removed after December 31, 2020.

The provision to make permanent the modifications to the alcohol-by-volume levels applies to wine removed after December 31, 2020.

The provision to make permanent the rates on mead and certain sparkling, low alcohol-by-volume wines applies to wine removed after December 31, 2020.

The provision to clarify the treatment of smuggled wine applies to wine produced after the date of enactment (December 27, 2020).

The provision to modify the wine single taxpayer rule applies to wine removed after December 31, 2020.

The provision to provide refunds in lieu of credits for imported wine applies to wine removed after December 31, 2022.

The provision requiring information reporting by foreign producers is effective for elections to make an assignment of credits or refunds for wine after December 31, 2020.

Reduced rate of excise tax on certain distilled spirits, refunds in lieu of reduced rates for distilled spirits, and other provisions related to distilled spirits

Present Law

Notwithstanding the current, temporary rates described below, distilled spirits are taxed at a rate of $13.50 per proof gallon. Liability for the excise tax on distilled spirits arises when the distilled spirits are produced or imported but is not determined and payable until bottled distilled spirits are removed from the bonded premises of the distilled spirits plant where they are produced, or customs custody. Generally, bulk distilled spirits may be transferred in bond between bonded premises; however, tax liability follows these products. Imported bulk distilled spirits may be released from customs custody without payment of tax and transferred in bond to a distillery. Distilled spirits be exported without payment of tax and may be withdrawn from a distillery without payment of tax.

1816 Secs. 5001, 5006, 5043, and 5054.
tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.

**Temporary reduced rates**

For calendar years 2018, 2019, and 2020, there is a temporary tax rate schedule for distilled spirits based on the annual quantity (1) distilled or processed and removed for consumption or sale, or (2) imported into the United States. The rate of tax is lowered to $2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits produced, $13.34 on the next 22,130,000 proof gallons, and $13.50 for amounts thereafter.

In the case of a controlled group, the 100,000 and 22,130,000 proof gallon limitations are applied to the controlled group and apportioned among the distillers that are component members of such group. In order for an importer to receive the tax benefit, the importer must be an electing importer and the proof gallons of distilled spirits must be assigned to the importer by the person producing the distilled spirits. Two or more entities (whether or not under common control) that produce distilled spirits marketed under a similar brand, license, franchise, or other arrangement are treated as a single taxpayer for purposes of the temporary lower rates (the “distilled spirits single taxpayer rule”).

For calendar years 2018, 2019, and 2020, distillers may also transfer distilled spirits in bond in containers other than bulk containers without payment of tax.

**Cover over rules**

For purposes of the excise tax on distilled spirits, the territories of Puerto Rico and the U.S. Virgin Islands are not considered part of the United States. Additionally, distilled spirits brought into the United States from these territories are not considered imports for purposes of the excise tax. Thus, distilled spirits produced in these territories, whether or not brought into the United States, are not subject to tax under section 5001. However, section 7652(a) imposes an equalization tax equal to the tax imposed in the United States upon like articles of merchandise of domestic manufacture, including distilled spirits, produced in Puerto Rico and brought into the United States, and section 7652(b) imposes an equalization tax equal to the tax imposed in the United States upon like articles of merchandise of domestic manufacture, including distilled spirits, produced in the U.S. Virgin Islands and brought into the United States.

The revenue from the equalization tax on rum produced in Puerto Rico and brought into the United States is transferred (“covered over”) to the Treasury of Puerto Rico. The revenue from the equalization tax on rum produced in the U.S. Virgin Islands and brought into the United States is covered over to the Treasury of

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1817 The term “controlled group” has the meaning assigned to it by section 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in section 1563(a).

1818 Sec. 7701(a)(9).


1820 Sec. 7652(a)(3). For purposes of this provision, only distilled spirits for which at least 92 percent of the alcohol content is attributable to rum are eligible for cover over of equalization taxes. See sec. 7652(c).
the U.S. Virgin Islands.\footnote{Sec. 7652(b)(3). For purposes of this provision, only distilled spirits for which at least 92 percent of the alcohol content is attributable to rum are eligible for cover over of equalization taxes. See sec. 7652(c).} In addition, the revenues from the excise tax imposed on rum imported into the United States (less certain administrative costs) are covered over to the Treasury of Puerto Rico and the Treasury of the U.S. Virgin Islands.\footnote{Sec. 7652(e)(1). For purposes of this provision the term "rum" means any article classified under subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Sec. 7652(e)(4).} The revenues are apportioned between the two treasuries according to a formula determined by the Secretary.\footnote{Sec. 7652(e)(2).}

For purposes of both the cover over of the equalization tax on rum and the cover over of the tax imposed on rum imported into the United States, the amount covered over is the lesser of the tax imposed or $10.50 per proof gallon. The $10.50 per proof gallon limitation is increased to $13.25 per proof gallon during the period from July 1, 1999, through December 31, 2021.\footnote{Sec. 7652(f)(1).} The amount covered over of tax imposed on rum imported into the United States is determined without regard to the temporary lower rates of tax for distilled spirits removed after December 31, 2017.

**Explanation of Provision**

The provision makes permanent the reduced rate schedule on distilled spirits.

The provision modifies the rules for transfer of distilled spirits, allowing distillers to transfer spirits in bond in containers other than bulk containers without payment of tax if (1) distilled spirits are transferred between bonded premises belonging to the same person or members of the same controlled group (within the meaning of section 5001(c)(2)), or (2) distilled spirits are transferred in bond from the person who distilled (or processed) the distilled spirits (the “transferor”) to another person for bottling or storage and returned to the transferor for removal, and the transferor retained title during the entire period between distillation (or processing) and removal.

The provision provides that a distilled spirit is not treated as processed for purposes of the reduced tax rates unless a process described in section 5002(a)(5)(A) (other than bottling) is performed with respect to the distilled spirit.\footnote{Sec. 7652(a)(5)(A). For purposes of this provision the term “rum” means any article classified under subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Sec. 7652(e)(4).}

The provision clarifies that distilled spirits smuggled into the United States or produced other than as authorized under chapter 51 of the Code are not eligible for reduced tax rates.

The provision modifies the distilled spirits single taxpayer rule and expands it to apply to processors of distilled spirits. Under the provision, two or more entities (whether or not under common control) that produce or process distilled spirits under a license, franchise, or other arrangement are treated as a single taxpayer.

\footnote{Sec. 7652(e)(2).}
\footnote{Sec. 7652(e)(1).}
\footnote{Processes described in section 5002(a)(5)(A) include manufacturing and mixing.}
Refunds in lieu of reduced rates

In general

The provision provides that proof gallons of distilled spirits produced outside the United States, imported into the United States, and removed after December 31, 2022, do not qualify for reduced excise tax rates, but the importer may claim a refund in lieu of reduced rates. Refunds are treated as overpayment of tax and determined for periods no less frequently than quarterly. As under prior law, in order for an importer to receive the tax benefit, the importer must be an electing importer and the proof gallons of distilled spirits must be assigned to the importer by the person producing the distilled spirits.

Under the provision, the amount of refund with respect to any importer for a given filing period is equal to (1) the excess (if any) of (a) the amount of tax imposed on the proof gallons of distilled spirits removed during the filing period over (b) the amount of tax that would have been imposed on such proof gallons if the importer had been eligible to receive reduced rates, plus (2) the amount of interest that would be allowed and paid on an overpayment of tax at the overpayment rate, if that rate applied to the amount determined in (1) for the number of days in the filing period. The overpayment rate is the rate established under section 6621(a)(1), but without regard to the lower rate for corporate overpayments of tax exceeding $10,000. Generally, no additional interest is paid on the refund if the refund is paid within 90 days after the tax return is filed.

Coordination with cover over to Puerto Rico and Virgin Islands

With respect to both the cover over of the equalization tax on rum and the cover over of the tax imposed on rum imported into the United States, the provision clarifies that the amounts covered over to Puerto Rico and the Virgin Islands are determined without regard to reduced rates or refunds in lieu of reduced rates. The provision also clarifies that refunds in lieu of reduced rates are not treated as refunds for purposes of determining the amounts of cover over.

Information reporting in case of assignment of lower rates or refunds by foreign producers of distilled spirits

The provision requires that a foreign producer that elects to make an assignment of lower rates or refunds to an importer must provide the documentation required by the Secretary, which may include providing information about the controlled group structure of the foreign producer.

The provision also requires the Secretary (or the Secretary's delegate within the Treasury Department) to implement and administer the new refund regime for distilled spirits, in coordination with the CBP. The Secretary (or the Secretary's delegate within the Treasury Department) must prescribe such regulations as may be necessary or appropriate, including regulations to require foreign producers to provide the information necessary to enforce the volume limitations for distilled spirits. The Secretary (or the Sec-
retary’s delegate within the Treasury Department), in coordination with CBP, must make publicly available a report detailing plans for implementing and administering the new refund regime not later than 180 days after the date of enactment.

**Effective Date**

The provision to make permanent the reduced rate schedule applies to distilled spirits removed after December 31, 2020.

The provision to modify the rules for transfers of distilled spirits between bonded premises applies to distilled spirits transferred in bond after December 31, 2020.

The provision to provide minimum processing requirements applies to distilled spirits removed after December 31, 2021.

The provision to clarify the treatment of smuggled distilled spirits applies to distilled spirits produced after the date of enactment (December 27, 2020).

The provision modifying the distilled spirits single taxpayer rule applies to distilled spirits removed after December 31, 2020.

The provision to provide refunds in lieu of reduced rates for imported distilled spirits and coordinate with cover over rules applies to distilled spirits brought into the United States and removed after December 31, 2022.

The provision requiring information reporting by foreign producers is effective for elections to make an assignment of lower rates or refunds for distilled spirits after December 31, 2020.

**Simplification of rules regarding records, statements, and returns**

**Present Law**

The Code requires those liable for taxation on alcoholic beverages to keep such records, render such statements, make such returns, and comply with such rules and regulations as prescribed by the Secretary.\footnote{Sec. 5555(a).} For calendar quarters beginning after February 9, 2018, and before January 1, 2021, the Secretary must permit a unified system for any records, statements, and returns required to be kept, rendered, or made for any beer produced in a brewery for which tax is imposed, including any beer which has been removed for consumption on the premises of the brewery.

**Explanation of Provision**

The provision makes permanent the requirement that the Secretary permit a unified system for any records, statements, and returns required to be kept, rendered, or made for any beer produced in a brewery for which tax is imposed, including any beer which has been removed for consumption on the premises of the brewery.

**Effective Date**

The provision applies to calendar quarters beginning after December 31, 2020.
Subtitle B—Certain Provisions Extended Through 2025

1. Extension of look-through treatment of payments between related controlled foreign corporations under foreign personal holding company rules (sec. 111 of the Act and sec. 954(c)(6) of the Code)

Present Law

In general

The rules of subpart F\textsuperscript{1827} require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("CFC") to include certain income of the CFC (referred to as "subpart F income") on a current basis for U.S. tax purposes.\textsuperscript{1828}

Subpart F income includes foreign base company income.\textsuperscript{1829} One category of foreign base company income is foreign personal holding company income, which includes passive income such as dividends, interest, rents, and royalties, among other types of income.\textsuperscript{1830} There are several exceptions to these rules. For example, foreign personal holding company income does not include dividends and interest received by a CFC from a related corporation organized and operating in the same foreign country in which the CFC is organized, or rents and royalties received by a CFC from a related corporation for the use of property within the country in which the CFC is organized.\textsuperscript{1831} Interest, rent, and royalty payments do not qualify for this exclusion to the extent that such payments reduce the subpart F income of the payor.

In addition, subpart F income of a CFC does not include any item of income from sources within the United States that is effectively connected with the conduct by such CFC of a trade or business within the United States ("ECI") unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a tax treaty.\textsuperscript{1832}

"CFC look-through"

Section 954(c)(6), colloquially referred to as "CFC look-through," provides that dividends, interest (including factoring income that is treated as equivalent to interest under section 954(c)(1)(E)), rents, and royalties received or accrued by one CFC from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to income of the payor that is neither subpart F income nor treated as ECI. For this purpose, a related CFC is a CFC that controls or is controlled by the other CFC, or a CFC that is controlled by the same person or persons that control the other CFC. Ownership of more than 50 percent of the CFC’s stock (by vote or value) constitutes control for these purposes.

The Secretary is authorized to prescribe regulations that are necessary or appropriate to carry out CFC look-through, including

\begin{itemize}
  \item \textsuperscript{1827} Secs. 951–964.
  \item \textsuperscript{1828} Sec. 953(a).
  \item \textsuperscript{1829} Secs. 952(a)(2) and 954.
  \item \textsuperscript{1830} Sec. 954(c)(1).
  \item \textsuperscript{1831} Sec. 954(c)(3).
  \item \textsuperscript{1832} Sec. 952(b).
\end{itemize}
such regulations as may be necessary or appropriate to prevent the abuse of the purposes of such rule.

CFC look-through applies to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2021, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Explanation of Provision

The provision extends for five years the application of CFC look-through, to taxable years of foreign corporations beginning before January 1, 2026, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Effective Date

The provision applies to taxable years of foreign corporations beginning after December 31, 2020, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

2. New markets tax credit (sec. 112 of the Act and sec. 45D of the Code)

Present Law

In general

The New Markets Tax Credit (“NMTC”) is a geography-based tax credit program. Under section 45D(a), an investor may claim tax credits for a qualified equity investment in a qualified community development entity (“CDE”). The qualified CDE designates equity investments as qualified equity investments, rendering the investor eligible to receive tax credits. The qualified CDE can only designate up to an amount allocated to it by the Department of the Treasury’s Community Development Financial Institutions Fund (“CDFI Fund”). The CDFI Fund allocates amounts to qualified CDEs through a competitive application process.

The amount of the NMTC is determined on a credit allowance date as an amount equal to the applicable percentage of the investment in the qualified CDE on that date. The applicable percentage is five percent for the first three years of the investment and six percent for the remaining four years, for a total credit of 39 percent over seven years. The credit allowance date is the date of the investment and the next six anniversary dates of the investment.

To continue to be eligible for tax credits, the taxpayer must continue to hold the qualified equity investment on the credit allowance date of each year. In other words, if the qualified equity investment ceases, or ceases to be qualified, the remaining tax credits are no longer allowed. The credits already claimed may also be subject to recapture if the CDE ceases to be qualified, if the proceeds of the investment cease to be used in a qualified manner, or if the taxpayer redeems its qualified equity investment.

Regulated financial institutions provide most of the equity for NMTC transactions. In addition to receiving the NMTC, financial institutions often receive credit under the Community Reinvestment Act for investing in low-income census tracts.
Substantially all of the qualified equity investment must be used by the qualified CDE to provide investments in low-income communities through qualified active low-income community businesses.

**Qualifying geography**

The NMTC provisions require CDEs to serve or provide investment capital for low-income communities or low-income persons. A low-income community is either (1) a population census tract that meets certain criteria or (2) a specific area designated by the Secretary. Specifically, 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 nonmetropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the NMTC 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.

CDEs may also qualify for the NMTC if they serve targeted populations, as designated by the Secretary, regardless of the composition of the population census tract or tracts in which the targeted populations live. For this purpose, a “targeted population” is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the “Act”) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that “low-income” means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a nonmetropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide nonmetropolitan area median family income.

**Project structures**

In a typical NMTC structure, an intermediary entity (the “investment fund LLC”) receives equity investments from investors (usually financial institutions) and debt from other sources. The investment fund LLC’s proceeds are then invested as equity investment into a qualified CDE. The qualified CDE in turn makes a qualified low-income community investment in a qualified active low-income community business.

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

Although equity investments in qualified active low-income community businesses qualify under the NMTC rules, generally, such investments are in the form of loans. Equity investors that own a majority interest in a low-income community business can have their NMTC credits recaptured if the business violates the rules for qualification. However, Treasury regulations provide a “reasonable expectation” safe harbor for CDEs that lend to such a business; if the CDE “reasonably expects” that the rules are being satisfied, NMTC credits are not subject to recapture.1833

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

Allocation process

The CDFI Fund annually allocates NMTCs to CDEs under a competitive application process. CDEs, in turn, allocate NMTCs to equity investors. The maximum annual amount of NMTCs that the CDFI Fund can allocate is $3.5 billion for calendar years 2010 through 2019 and $5 billion for calendar year 2020. No amount of unused allocation limitation may be carried to any calendar year after 2025.

For the 2019 allocation application round, the CDFI Fund awarded 76 CDEs more than $3.5 billion in NMTCs from a total of 206 applications requesting $14.7 billion.1834 Out of the total awarded,

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1833Treas. Reg. sec. 1.45(D)–1(d)(6)(i).
approximately $2.6 billion (74.6 percent) of NMTC investment proceeds will likely be used to finance and support loans to or investments in operating businesses in low-income communities, and approximately $882.8 million (25.4 percent) of NMTC investment proceeds will likely be used to finance and support real estate projects in low-income communities.\footnote[1835]{Information is available in the 2019 NMTC Award Book. It is available at https://www.cdfifund.gov/sites/cdfi/files/documents/2019-nmtc-award-book-finalforwebsite-13july2020.pdf (last visited April 26, 2021).}

Applications for NMTCs are reviewed in two phases.\footnote[1836]{The 2019 NMTC program allocation application provides information on reviewer criteria. It is available at https://www.cdfifund.gov/sites/cdfi/files/documents/cy-2019-nmtc-application-final.pdf (last visited April 26, 2021).} In Phase 1, applications are reviewed, scored, and ranked based on two criteria: business strategy and community outcomes. Applicants that meet the minimum scoring thresholds in Phase 1 advance to Phase 2 review and will be provided with “preliminary” awards, in descending order of final rank score, until the available allocation authority is fulfilled. Final rank scores are determined by evaluating management capacity, capitalization strategy, and information regarding previous awards.\footnote[1837]{Information on the allocation application review process, general characteristics of a highly ranked application, and application ratings is available at https://www.cdfifund.gov/sites/cdfi/files/documents/2019-nmtc-program-allocation-evaluation-process_508-compliant.pdf (last visited April 26, 2021).}

In Phase 1, in evaluating and scoring the business strategy criteria, the CDFI Fund is looking for a CDE to articulate, with specificity, its strategy to use an allocation and to describe a long track record serving low-income communities, and of providing products and services like those that it intends to provide through its investments. The CDE can earn “priority points” if it has a track record of five or more years of experience providing capital and/or technical assistance to disadvantaged businesses and communities. For the community outcomes criteria, the CDFI Fund considers the extent to which the CDE is working in particularly economically distressed or otherwise underserved communities, shows that its projected financing activities will generate demonstrable community outcomes, and demonstrates meaningful engagement with community stakeholders when vetting potential investments. In general, the highest ranked applications provide specifics concerning job creation, community development benefits, and a track record of providing capital and/or technical assistance to disadvantaged businesses and communities.

In Phase 2, management capacity is evaluated based on management experience in low-income communities, asset and risk management, and fulfilling government compliance requirements. Capitalization is evaluated based on an applicant’s track record of raising capital, investor commitments (or a strategy to secure such commitments), plan to pass along the benefits of the credit to the underlying businesses, and willingness to invest in amounts that exceed the minimum statutory requirements. Applicants with prior year allocations are evaluated on their effective use of prior-year allocations and whether they have substantiated a need for additional allocation authority.
**Explanation of Provision**

This provision extends the new markets tax credit for five years, from 2021 through 2025, permitting up to $5 billion in qualified equity investments for each calendar year. The provision also extends for five years, through 2030, the carryover period for unused new markets tax credits.

**Effective Date**

The provision applies to calendar years beginning after December 31, 2020.

**3. Work opportunity credit (sec. 113 of the Act and sec. 51 of the Code)**

**Present Law**

Background for the provision and a description of the work opportunity credit that the provision extends may be found above in the section describing section 143 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

**Expiration**

The work opportunity tax credit is not available for individuals who begin work for an employer after December 31, 2020.

**Explanation of Provision**

The provision extends for five years the work opportunity tax credit, making it available with respect to individuals who begin work for an employer before January 1, 2026.

**Effective Date**

The provision generally applies to individuals who begin work for an employer after December 31, 2020.


**Present Law**

Background for the provision and a description of the exclusion from gross income of discharge of qualified principal residence indebtedness that the provision modifies may be found above in the section describing section 101 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

**Explanation of Provision**

The provision extends for five additional years the exclusion from gross income for discharges of qualified principal residence indebtedness. Thus, the exclusion for qualified principal residence indebtedness is effective for discharges of indebtedness before January 1, 2026 and for discharges of indebtedness on or after January 1,
2026 if the discharge is subject to a written arrangement entered into prior to January 1, 2026.

The provision also reduces the maximum amount of acquisition indebtedness that may be taken into account for qualified principal residence indebtedness to $750,000.\textsuperscript{1838}

\textbf{Effective Date}

The provision generally applies to discharges of indebtedness after December 31, 2020.

5. Seven-year recovery period for motorsports entertainment complexes (sec. 115 of the Act and sec. 168(i)(15) of the Code)

\textbf{Present Law}

\textit{In general}

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.\textsuperscript{1839} The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.\textsuperscript{1840} 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 placed in service convention.\textsuperscript{1841} For some assets, the recovery period for the asset is provided in section 168.\textsuperscript{1842} In other cases, the recovery period of an asset is generally set forth in Revenue Procedure 87–56.\textsuperscript{1843}

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,\textsuperscript{1844} switch-

\begin{tabular}{|c|c|c|c|c|c|c|}
\hline
Recovery method & Year 1 & Year 2 & Year 3 & Year 4 & Year 5 & Total \\
\hline
200-percent declining balance & 285.71 & 204.08 & 145.77 & 104.12 & 86.77 & 86.77 & 86.77 & 1,000.00 \\
\hline
\end{tabular}

\textsuperscript{1838} The limitation is $375,000 in the case of a married individual filing a separate return. See sec. 114(b) of the Act.

\textsuperscript{1839} See secs. 263(a) and 167. In general, only the tax owner of property (i.e., the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not use 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. 260A.

\textsuperscript{1840} See Treas. Reg. secs. 1.167(a)–10(b), –3, –14, and 1.197–2(f). See also Treas. Reg. sec. 1.167(a)–11(e)(1)(i).

\textsuperscript{1841} Sec. 168.

\textsuperscript{1842} See sec. 168(e) and (g).

\textsuperscript{1843}1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785). Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87–56, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88–22, 1988–1 C.B. 785. In November 1988, Congress revoked the Secretary’s authority to modify the class lives of depreciable property. Rev. Proc. 87–56, as modified, remains in effect except to the extent that the Congress has, since 1988, statutorily modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.

\textsuperscript{1844} Under the declining balance method the depreciation rate is determined by dividing the appropriate percentage (here 150 or 200) by the appropriate recovery period. This leads to accelerated depreciation when the declining balance percentage is greater than 100. The table below illustrates depreciation for an asset with a cost of $1,000 and a seven-year recovery period under the 200-percent declining balance method, the 150-percent declining balance method, and the straight line method.
ing to the straight line method for the first taxable year where using the straight line method with respect to the adjusted basis as of the beginning of that year yields a larger depreciation allowance.

**Real property**

The recovery periods for most real property are 39 years for nonresidential real property, 27.5 years for residential rental property, and 15 years for qualified improvement property. The straight line depreciation method is required for the aforementioned real property. In addition, nonresidential real and residential rental property are both subject to the mid-month convention, which treats all property placed in service during any month (or disposed of) on the mid-point of such month. All other property generally is subject to the half-year convention, which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

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

Although racetrack facilities are excluded from asset class 80.0, the statute assigns a recovery period of seven years to motorsports entertainment complexes placed in service before January 1, 2005.

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150-percent declining balance | 214.29 | 168.37 | 132.29 | 121.26 | 121.26 | 121.26 | 121.26 | 1,000.00
Straight-line | 142.86 | 142.86 | 142.86 | 142.86 | 142.86 | 142.86 | 142.86 | 1,000.00

* Details may not add to totals due to rounding.

Sec. 168(c) and (e).
Sec. 168(b)(3).
Sec. 168(d)(2) and (d)(4)(B).
Sec. 168(d)(1) and (d)(4)(A). However, if substantial property is placed in service during the last three months of a taxable year, a special rule requires use of the mid-quarter convention, which treats all property placed in service (or disposed of) during any quarter as placed in service (or disposed of) on the mid-point of such quarter. Nonresidential real property, residential rental property, and railroad grading or tunnel bore are not taken into account for purposes of the mid-quarter convention.

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

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

expensing rules for certain productions (sec. 116 of the Act and sec. 181 of the Code)

Under section 181, a taxpayer may elect to deduct up to $15 million of the aggregate production costs of any qualified film, television or live theatrical production, commencing prior to January 1, 2021, in the year the costs are paid or incurred by the taxpayer, in lieu of capitalizing the costs and recovering them through depreciation allowances once the production is placed in service.

Explanation of Provision

The provision extends the seven-year recovery period for motorsports entertainment complexes for five years to apply to property placed in service before January 1, 2026.

Effective Date

The provision applies to property placed in service after December 31, 2020.
The dollar limitation is increased to $20 million if a significant amount of the production costs are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress.\(^{1859}\)

A section 181 election may only be made by an owner of the production.\(^{1860}\) An owner of a production is any person that is required under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person.\(^{1861}\) In addition, the aggregate production costs of a qualified production that is co-produced include all production costs, regardless of funding source, in determining if the applicable dollar limit is exceeded. Thus, the term “aggregate production costs” means all production costs paid or incurred by any person, whether paid or incurred directly by an owner or indirectly on behalf of an owner.\(^{1862}\) The costs of the production in excess of the applicable dollar limitation are capitalized and recovered under the taxpayer’s method of accounting for the recovery of such property once placed in service.\(^{1863}\)

A qualified film, television, or live theatrical production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format), television program, or live staged play if at least 75 percent of the total compensation expended on the production is for services performed in the United States by actors, directors, producers, and other relevant production personnel.\(^{1864}\) Solely for purposes of this rule, the term “compensation” does not include participations and residuals (as defined in section 167(g)(7)(B)).\(^{1865}\) Each episode of a television series is treated as a separate production, and only the first 44 episodes of a particular series qualify for the taxable year the property is placed in service does not apply for purposes of section 181. Treas. Reg. sec. 1.181–1(a)(8). Thus, under section 181, a taxpayer may only include participations and residuals actually paid or incurred in eligible production costs. Further, production costs do not include the cost of obtaining a production after its initial release or broadcast. See Treas. Reg. sec. 1.181–1(a)(3). For this purpose, “initial release or broadcast” means the first commercial exhibition or broadcast of a production to an audience. Treas. Reg. sec. 1.181–1(a)(7). Thus, e.g., a taxpayer may not expense the purchase of an existing film library under section 181. See T.D. 9551, 76 Fed. Reg. 64816, October 19, 2011.

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\(^{1859}\) Sec. 181(a)(2)(B).

\(^{1860}\) Treas. Reg. sec. 1.181–1(a).


\(^{1862}\) Treas. Reg. sec. 1.181–1(a)(4). See Treas. Reg. sec. 1.181–2(c)(3) for the information required to be provided to the Internal Revenue Service when more than one person will claim deductions under section 181 for a production (to ensure that the applicable deduction limitation is not exceeded).

\(^{1863}\) See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 110th Congress (JCS–1–09), March 2009, p. 448, and Treas. Reg. sec. 1.181–1(c)(2). A production is generally considered to be placed in service at the time of initial release, broadcast, or live staged performance (i.e., at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience). See, e.g., Rev. Rul. 79–285, 1979–2 C.B. 91; and Priv. Ltr. Rul. 9010011, March 9, 1990. See also, Treas. Reg. sec. 1.181–1(a)(7). However, a production generally may not be considered to be placed in service if it is only exhibited, broadcast or performed for a limited test audience in advance of the commercial exhibition, broadcast, or performance to general audiences. See Priv. Ltr. Rul. 9010011 and Treas. Reg. sec. 1.181–1(a)(7).

\(^{1864}\) Sec. 181(d)(3)(A). Participations and residuals are defined as, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property. See also Treas. Reg. sec. 1.181–3(c).
under the provision. Qualified productions do not include sexually explicit productions as referenced by section 2257 of title 18 of the U.S. Code.

A qualified live theatrical production is defined as a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a commercial entity in any venue which has an audience capacity of not more than 3,000, or a series of venues the majority of which have an audience capacity of not more than 3,000. 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. In general, in the case of multiple live-staged productions, each such live-staged production is treated as a separate production. Similar to the exclusion for sexually explicit productions from the definition of qualified film or television productions, qualified live theatrical productions do not include productions that include or consist of any performance of conduct described in section 2257(h)(1) of title 18 of the U.S. Code.

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

**Explanation of Provision**

The provision extends the special treatment for qualified film, television, and live theatrical productions under section 181 for five years to qualified productions commencing prior to January 1, 2026.

**Effective Date**

The provision applies to productions commencing after December 31, 2020.

7. **Oil Spill Liability Trust Fund rate (sec. 117 of the Act and sec. 4611 of the Code)**

**Present Law**

Background for the provision and a description of the Oil Spill Liability Trust Fund financing rate that the provision modifies may be found above in the section describing section 134 of the Tax-
The provision extends the Oil Spill Liability Trust Fund financing rate for an additional five years, through December 31, 2025.

Effective Date

The provision applies on and after January 1, 2021.

8. Empowerment zone tax incentives (sec. 118 of the Act and secs. 1391, 1394, 1396, 1397A, and 1397B of the Code)

Present Law

The Omnibus Budget Reconciliation Act of 1993 (“OBRA 93”)1873 authorized the designation of nine empowerment zones (“Round I empowerment zones”)1874 to provide tax incentives for businesses to locate within certain targeted areas designated by the Secretaries of the Department of Housing and Urban Development (“HUD”) and the U.S. Department of Agriculture (“USDA”). The first empowerment zones were established in large rural areas and large cities. OBRA 93 also authorized the designation of 95 enterprise communities,1875 which were located in smaller rural areas and cities.1876

The Taxpayer Relief Act of 19971877 authorized the designation of two additional urban Round I empowerment zones and 20 additional empowerment zones (“Round II empowerment zones”). The Community Renewal Tax Relief Act of 2000 (“2000 Community Renewal Act”)1878 authorized a total of 10 new empowerment zones (“Round III empowerment zones”), bringing the total number of authorized, and not relinquished, empowerment zones to 41.1879 In

1874 The targeted areas are those that have pervasive poverty, high unemployment, and general economic distress, and that satisfy certain eligibility criteria, including specified poverty rates and population and geographic size limitations.
1875 Sec. 1391(b)(1).
1876 Enterprise communities were eligible for only one tax benefit: tax-exempt bond financing. For tax purposes, the areas designated as enterprise communities continued as such for the ten-year period starting 1995 and ending at the end of 2004. However, after 2004 the enterprise communities may still be eligible for other Federal benefits (e.g., grants and preferences).
1877 Pub. L. No. 10.
1879 The 2000 Community Renewal Act also authorized the designation of 40 “renewal communities” within which special tax incentives were available. The tax incentives were generally available through December 31, 2009 when the renewal community designation expired. One of the tax incentives involving the exclusion of capital gain from the sale or exchange of a qualified community asset continued through 2014.
1879 The urban part of the program is administered by HUD, and the rural part of the program is administered by USDA. The eight urban Round I empowerment zones are Atlanta, GA; Baltimore, MD; Chicago, IL; Cleveland, OH; Detroit, MI; Los Angeles, CA; New York, NY; and Philadelphia, PA/Camden, NJ. Atlanta relinquished its empowerment zone designation in Round III. The three rural Round I empowerment zones are Kentucky Highlands, KY; Mid-Delta, MI; and Rio Grande Valley, TX. The 15 urban Round II empowerment zones are Boston, MA; Cincinnati, OH; Columbia, SC; Columbus, OH; Cumberland County, NJ; El Paso, TX; Gary/Hammond/East Chicago, IN; Ironton, OH/Huntington, WV; Knoxville, TN; Miami/Dade County, FL; Minneapolis, MN; New Haven, CT; Norfolk/Portsmouth, VA; Santa Ana, CA; and St. Louis, MO/East St. Louis, IL. The five rural Round II empowerment zones are Desert Communities, CA; Griggs-Steele, ND; Ogala Sioux Tribe, SD; Southernmost Illinois Delta, IL; and Southwest Georgia Unit, GA. The eight urban Round III empowerment zones are Fresno, CA; Jacksonville, FL; Oklahoma City, OK; Pulaski County, AR; San Antonio, TX; Syracuse, NY; Tucson, AZ; Continued
addition, the 2000 Community Renewal Act conformed the tax incentives that are available to businesses in the Round I, Round II, and Round III empowerment zones and extended the empowerment zone incentives through December 31, 2009. Subsequent legislation, most recently the Further Consolidated Appropriations Act, 2020, extended the empowerment zone incentives through December 31, 2020.1880

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

The following is a description of the empowerment zone tax incentives as in effect through 2020.

**Wage credit**

A 20-percent wage credit is available to employers for the first $15,000 of qualified wages paid to each employee (i.e., a maximum credit of $3,000 with respect to each qualified employee) who (1) is a resident of the empowerment zone, and (2) performs substantially all employment services within the empowerment zone in a trade or business of the employer.1881

The wage credit rate applies to qualifying wages paid before January 1, 2018. Wages paid to a qualified employee who earns more than $15,000 are eligible for the wage credit (although only the first $15,000 of wages is eligible for the credit). The wage credit is available with respect to a qualified full-time or part-time employee (employed for at least 90 days), regardless of the number of other employees who work for the employer. In general, any taxable business carrying out activities in the empowerment zone may claim the wage credit.1882

An employer’s deduction otherwise allowed for wages paid is reduced by the amount of wage credit claimed for that taxable year.1883 Wages are not to be taken into account for purposes of the wage credit if taken into account in determining the employer’s work opportunity tax credit under section 51.1884 In addition, the $15,000 cap is reduced by any wages taken into account in com-

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1881 Sec. 1396. The $15,000 limit is annual, not cumulative, such that the limit is the first $15,000 of wages paid in a calendar year which ends with or within the taxable year.

1882 Sec. 1396(c)(3)(A).

1883 Sec. 280C(a).

1884 Sec. 1396(c)(3)(A).
puting the work opportunity tax credit. The wage credit may be used to offset up to 25 percent of the employer's alternative minimum tax liability.

**Increased section 179 expensing limitation**

An enterprise zone business is allowed up to an additional $35,000 of section 179 expensing for qualified zone property placed in service before January 1, 2021. For taxable years beginning in 2020, the total amount that may be expensed is $1,075,000. The section 179 expensing allowed to a taxpayer is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds a specified dollar amount. However, only 50 percent of the cost of qualified zone property placed in service during the year by the taxpayer is taken into account in determining whether the cost of qualifying property placed in service during the taxable year exceeds the specified dollar amount.

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

Special rules are provided in the case of property that is substantially renovated by the taxpayer.

An enterprise zone business means any qualified business entity and any qualified proprietorship. A qualified business entity means any corporation or partnership if for such year: (1) every trade or
business of such entity is the active conduct of a qualified business within an empowerment zone; (2) at least 50 percent of the total gross income of such entity is derived from the active conduct of such business; (3) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone; (4) a substantial portion of the intangible property of such entity is used in the active conduct of any such business; (5) a substantial portion of the services performed for such entity by its employees are performed in an empowerment zone; (6) at least 35 percent of its employees are residents of an empowerment zone; (7) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (8) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.\footnote{Sec. 1397C(d).}

A qualified proprietorship is any qualified business carried on by an individual as a proprietorship if for such year: (1) at least 50 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone; (2) a substantial portion of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone; (3) a substantial portion of the intangible property of such business is used in the active conduct of such business; (4) a substantial portion of the services performed for such individual in such business by employees of such business are performed in an empowerment zone; (5) at least 35 percent of such employees are residents of an empowerment zone; (6) less than five percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (7) less than five percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.\footnote{Sec. 1397C(d).}

A qualified business is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license or any business prohibited in connection with the empowerment zone employment credit.\footnote{Sec. 1397C(c).} In addition, the leasing of real property that is located within the empowerment zone is treated as a qualified business only if (1) the leased property is not residential rental property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property is not a qualified business unless at least 50 per-

\footnote{Sec. 1397C(b). For these purposes, the term “employee” includes the proprietor.}

\footnote{Sec. 1397C(c). Excluded businesses include any private or commercial golf course, country club, massage parlor, hot tub facility, sun tan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for off-premises consumption. Sec. 144(c)(6). Also, a qualified business does not include certain large farms. Sec. 1397C(d)(5)(B).}
cent of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

**Expanded tax-exempt financing for certain zone facilities**

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

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

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

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1897 Sec. 1394.  
percent of the area median family income, or (b) 80 percent of the statewide nonmetropolitan area median family income.

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

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

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

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

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

Explanation of Provision

The provision extends for five years, through December 31, 2025, the period for which the designation of an empowerment zone is in effect, thus extending for five years two empowerment zone tax incentives: the wage credit and tax-exempt bond financing.

The provision terminates the two other empowerment zone tax incentives: increased section 179 expensing for qualified zone property under section 1397A and deferral of capital gains tax on the sale of qualified assets replaced with other qualified assets under section 1397B. Section 1397A will not apply to any property placed in service in taxable years beginning after December 31, 2020, and

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1899 Sec. 1394(b)(3).
1900 Sec. 1397B.
section 1397B will not apply to sales in taxable years beginning after December 31, 2020.

The provision also provides that in the case of a designation of an empowerment zone the nomination for which included a termination date which is December 31, 2020, termination shall not apply with respect to such designation if the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary may provide.

Effective Date

The provision applies to taxable years beginning after December 31, 2020.

9. Employer credit for paid family and medical leave (sec. 119 of the Act and sec. 45S of the Code)

In general

The Family and Medical Leave Act of 1993, as amended (the “FMLA”), generally requires employers to provide employees with up to 26 weeks of leave under certain circumstances.1901 In general, FMLA does not require that the employer continue to pay employees during such leave, although employers may choose to pay for all or a portion of such leave. State and local governments may provide, or State and local laws may require employers to provide, employees with up to a certain amount of paid leave for types of leave that may or may not fall under the FMLA.

Employer credit for paid family and medical leave

For wages paid in taxable years beginning after December 31, 2017, and before January 1, 2021, eligible employers may temporarily claim a general business credit equal to 12.5 percent of the amount of eligible wages (based on the normal hourly wage rate)1902 paid to “qualifying employees” during any period in which such employees are on “family and medical leave” if the rate of payment under the program is 50 percent of the wages normally paid to an employee for actual services performed for the employer.1903 The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. The maximum amount of family and medical leave that may be taken into account with respect to any qualifying employee for any taxable year is 12 weeks.

An “eligible employer” is one which has in place a written policy that allows all qualifying full-time employees not less than two weeks of annual paid family and medical leave, and which allows all less-than-full-time qualifying employees a commensurate

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1902 Wages for this purpose are Federal Unemployment Tax Act wages defined in section 3306(b), without regard to the dollar limitation, but do not include amounts taken into account for purposes of determining any other credit under subpart D of the Code. A technical correction may be necessary to reflect that the wages with respect to the credit are limited to the employee’s normal hourly wage rate and do not include additional amounts, such as a bonus, that could be paid during the leave period.
amount of leave (on a pro rata basis) compared to the leave provided to full-time employees. The policy must also provide that the rate of payment under the program is not less than 50 percent of the wages normally paid to any such employee for services performed for the employer.

In addition, in order to be an eligible employer, the employer is prohibited from certain practices or acts which are also prohibited under the FMLA, regardless of whether the employer is subject to the FMLA. Specifically, the employer must provide paid family and medical leave in compliance with a written policy that ensures that the employer will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy and will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

A “qualifying employee” means any individual who is an employee under tax rules and principles and is defined in section 3(e) of the Fair Labor Standards Act of 1938, as amended, who has been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60 percent of the compensation threshold for highly compensated employees. For 2020 and 2021, this 60 percent amount is $78,000.

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

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

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1905 Sec. 414(q)(1)(B) ($130,000 for 2020).
1906 FMLA section 102(a)(1) provides leave for FMLA purposes due to (A) the birth of a son or daughter of the employee and in order to care for such son or daughter; (B) the placement of a son or daughter with the employee for adoption or foster care; (C) caring for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; (D) a serious health condition that makes the employee unable to perform the functions of the employee’s position; (E) any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. In addition, FMLA section 102(a)(3) provides leave for FMLA purposes due to the need of an employee who is a spouse, son, daughter, parent, or next of kin of an eligible service member to care for such service member.
1907 These terms mean these types of leave within the meaning of FMLA section 102(d)(2).
**Employer credit and paid sick and family leave related to COVID–19**

The Families First Coronavirus Response Act ("FFCRA")\(^{1908}\) required certain employers with fewer than 500 employees to provide paid sick and expanded family and medical leave to employees unable to work or telework for specified reasons related to COVID–19. Employers that paid sick or family leave wages could receive a corresponding payroll tax credit. The paid sick leave requirements in the Emergency Paid Sick Leave Act,\(^{1909}\) and the expanded family and medical leave requirements in the Emergency Family and Medical Leave Expansion Act,\(^{1910}\) expired on December 31, 2020, but the credits were extended to March 31, 2021.\(^{1911}\)

Any qualified sick leave wages or qualified family leave wages taken into account for the payroll tax credit on such wages are not taken into account for purposes of determining the employer credit for certain paid family and medical leave under section 45S.\(^{1912}\) Thus, the employer may not claim a credit under section 45S with respect to the qualified sick leave or family leave wages paid, but may be able to take a credit under section 45S with respect to any additional wages paid, provided the requirements of section 45S are met with respect to the additional wages.

**Explanation of Provision**

The provision extended the employer credit for paid family and medical leave so that it will expire on December 31, 2025 rather than December 31, 2021.

**Effective Date**

The provision is effective for all wages paid in taxable years beginning after December 31, 2020.

10. **Exclusion for certain employer payments of student loans (sec. 120 of the Act and secs. 127, 3121, 3306, and 3401 of the Code)**

**Present Law**

Employer-provided educational assistance programs

Under section 127, an employee may exclude from gross income for income tax purposes\(^{1913}\) and the employer may exclude from wages for employment tax purposes\(^{1914}\) up to $5,250 annually of educational assistance provided by the employer to the employee. For the exclusion to apply, certain requirements must be satisfied: (1) the educational assistance must be provided pursuant to a separate written plan of the employer; (2) employers must provide reasonable notification of the terms and availability of the program to eligible employees; (3) the employer’s educational assistance pro-

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\(^{1913}\) See also sec. 3401(a)(18).
\(^{1914}\) Secs. 3121(a)(18) and 3306(b)(13).
gram must not discriminate in favor of highly compensated employees; and (4) no more than five percent of the amounts paid or incurred by the employer during the year for educational assistance under a qualified educational assistance program may be provided for the class of individuals consisting of (i) more than five-percent owners of the employer and (ii) the spouses or dependents of such owners.

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 similar payments, books, supplies, and equipment. Educational assistance also includes the provision by the employer of courses of instruction for the employee, including books, supplies, and equipment. Educational assistance does not include payment for or the provision of (1) tools or supplies that may be retained by the employee after completion of a course, (2) meals, lodging, or transportation, or (3) any education involving sports, games, or hobbies. The education need not be job-related or part of a degree program. Educational assistance qualifies for the exclusion only if the employer does not give the employee a choice between educational assistance and other remuneration includible in the employee’s income.

Educational assistance also includes certain payments of principal or interest made by an employer on a qualified education loan incurred by an employee of the employer, discussed more below.

The exclusion for employer-provided educational assistance applies only with respect to education provided to the employee. The exclusion does not apply, for example, to assistance provided directly or indirectly for the education of the spouse or a child of the employee.

The employer’s costs for providing such educational assistance are generally deductible as a trade or business expense.

In the absence of the specific exclusion for employer-provided educational assistance under section 127, employer-provided educational assistance is excludable from gross income for income tax purposes and wages for employment tax purposes only if the education expenses qualify as a working condition fringe benefit under section 132(d) or as a qualified tuition reduction under section 117(d). In general, education qualifies as a working condition fringe benefit if the employee could have deducted the education expenses under section 162 if the employee paid for the education. In general, education expenses are deductible by an individual under section 162 if the education (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer’s employer, applicable law, or regulations imposed as a condition of continued employment. However, education expenses are generally not deductible if they relate to certain minimum edu-
cational requirements or to education or training that enables a taxpayer to begin working in a new trade or business.\footnote{1921}{For taxable years beginning before January 1, 2026, trade or business expenses relating to the trade or business of the performance of services by the taxpayer as an employee are disallowed miscellaneous itemized deductions. Secs. 62(a)(1), 67(g), and 162(a).}

Section 117(d) provides an exclusion from gross income and wages for qualified tuition reductions for certain education provided to employees of certain educational organizations, and to the spouses and dependents of such employees.

**Deduction for student loan interest**

Under section 221, certain individual taxpayers may claim an above-the-line deduction for interest paid on student loans.\footnote{1922}{Sec. 62(a)(17), 221; see also sec. 163(h)(2)(F).}

Only interest paid on a “qualified education loan” is eligible for the deduction.

A qualified education loan generally is defined as any indebtedness incurred to pay for the costs of attendance at an eligible educational institution on at least a half-time basis.\footnote{1923}{Secs. 221(d)(1)–(3); see also sec. 25A(b)(3).}

The payments may be for the attendance of the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred. Eligible educational institutions are (1) post-secondary educational institutions and certain vocational schools defined by reference to section 481 of the Higher Education Act of 1965, and (2) institutions conducting internship 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.\footnote{1924}{Secs. 25A(f)(2) and 221(d)(2).}

Additionally, to qualify as an eligible educational institution, an institution must be eligible to participate in Department of Education student aid programs.

The maximum allowable deduction per year is $2,500. The deduction is phased out and reduced to zero at higher-income levels.\footnote{1925}{Sec. 221(b)(2)(B); Rev. Proc. 2019–44, 2019–47 I.R.B. 1093.}

Dependents are ineligible to claim the deduction.

**Employer payment of employee student loans**

For payments made before January 1, 2021, the term “educational assistance” under section 127 includes payments of principal or interest made by an employer on a qualified education loan incurred by an employee of the employer.\footnote{1926}{Sec. 127(c)(1)(B).}

Thus, the employee may exclude these payments from gross income for income tax purposes and the employer may exclude these payments from wages for employment tax purposes. The term “qualified education loan” is defined in section 221(d)(1). The loan must be incurred for the education of the employee. The exclusion applies to payments made to the employee or a lender.

The employee may not claim a deduction under section 221 for interest paid on student loans on an amount for which an exclusion is allowable under the provision.\footnote{1927}{Sec. 127(c)(1)(B).}
These amounts are generally deductible by the employer as a trade or business expense.\textsuperscript{1928}

**Explanation of Provision**

The provision extends the exclusion of payments of principal or interest made by an employer on a qualified education loan incurred by an employee of the employer to payments made before January 1, 2026.

**Effective Date**

The provision is effective for payments made after December 31, 2020.

11. Credit for carbon oxide sequestration (sec. 121 of the Act and sec. 45Q of the Code)

**Present Law**

**In general**

A credit is available for the capture and sequestration of carbon oxide and carbon dioxide. Significant changes to the credit rate and structure were made in 2018 by the Bipartisan Budget Act of 2018 ("BBA").\textsuperscript{1929} These changes were effective for taxable years beginning after December 31, 2017. This description of present law describes the rules in effect after the effective date of the BBA.

**Carbon dioxide captured using equipment placed in service before February 9, 2018 (Pre-BBA)**

For carbon dioxide captured using equipment placed in service before February 9, 2018, a credit of $10 per metric ton is available for qualified carbon dioxide that is captured by the taxpayer at a qualified facility, used by such taxpayer as a tertiary injectant (including carbon dioxide augmented waterflooding and immiscible carbon dioxide displacement) in a qualified enhanced oil or natural gas recovery project ("EOR uses") and disposed of by such taxpayer in secure geological storage.\textsuperscript{1930}

For carbon dioxide captured in taxable years beginning after December 31, 2017, using equipment placed in service before February 9, 2018, a credit of $10 per metric ton is also available for carbon dioxide that is “utilized” by a taxpayer in a prescribed manner. For this purpose, “utilization” of qualified carbon dioxide means: (1) the fixation of such carbon dioxide through photosynthesis or chemosynthesis, such as through the growing of algae or bacteria, (2) the chemical conversion of such qualified carbon dioxide to a material or compound which results in secure storage, or (3) the use of such carbon dioxide for any other purpose for which a commercial market exists (except for EOR uses), as determined by the Secretary.\textsuperscript{1931}

Finally, for carbon dioxide captured using equipment placed in service before February 9, 2018, a credit of $20 per metric ton is available for carbon dioxide captured using equipment placed in service before February 9, 2018, that is utilized by a taxpayer in a prescribed manner.\textsuperscript{1932}

\textsuperscript{1928}\textsuperscript{1929}\textsuperscript{1930}\textsuperscript{1931}\textsuperscript{1932}

\textsuperscript{1928} See sec. 162.  
\textsuperscript{1929} Pub. L. 115–123, sec. 411.  
\textsuperscript{1930} Sec. 45Q(a)(2).  
\textsuperscript{1931} Sec. 45Q(f)(5).  
\textsuperscript{1932} Sec. 45Q(f)(5).
available for qualified carbon dioxide captured by a taxpayer at a qualified facility and disposed of by such taxpayer in secure geological storage without being used as a tertiary injectant or utilized by a taxpayer in a prescribed manner.

All three credit amounts are adjusted for inflation using 2008 as the base year. For 2020, as adjusted for inflation, the $10 credit is increased to $11.91 per metric ton and the $20 credit is increased to $23.82 per metric ton of carbon dioxide.\footnote{Notice 2020–40, 2020–25 I.R.B. 953, June 15, 2020.}

Secure geological storage includes storage at deep saline formations, oil and gas reservoirs, and unminable coal seams. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior, is required to establish regulations for determining adequate security measures for the secure geological storage of carbon dioxide such that the carbon dioxide does not escape into the atmosphere.\footnote{Final Treasury regulations for section 45Q were published in the Federal Register on January 15, 2021. T.D. 9944, 86 Fed. Reg. 4728, January 15, 2021.}

Qualified carbon dioxide is defined as carbon dioxide captured from an industrial source that (1) would otherwise be released into the atmosphere as an industrial emission of greenhouse gas, and (2) is measured at the source of capture and verified at the point or points of injection. Qualified carbon dioxide includes the initial deposit of captured carbon dioxide used as a tertiary injectant but does not include carbon dioxide that is recaptured, recycled, and reinjected as part of an enhanced oil or natural gas recovery project process. A qualified enhanced oil or natural gas recovery project is a project that would otherwise meet the definition of an enhanced oil recovery project under section 43, if natural gas projects were included within that definition.

In general, a qualified facility is any industrial facility or direct air capture facility located in the United States or a possession of the United States the construction of which begins before January 1, 2024, and the construction of carbon capture equipment begins before such date or is integrated into the original planning and design of the facility.

Qualified facilities also must capture a minimum amount of carbon dioxide. For electricity generation facilities that emit 500,000 metric tons or more of carbon dioxide in a taxable year, the facility must capture at least 500,000 metric tons of carbon dioxide. For facilities that emit less than 500,000 metric tons of carbon dioxide or non-power facilities that emit at least 500,000 metric tons of carbon dioxide, the facility must generally capture at least 100,000 metric tons of carbon dioxide per taxable year. However, where the carbon dioxide is captured at a facility that emits less than 500,000 metric tons of carbon dioxide and is being utilized for commercial purposes, this minimum amount is reduced to 25,000 metric tons of carbon dioxide. Direct air capture facilities (described below) must also capture at least 100,000 metric tons of carbon dioxide per taxable year to be qualified facilities.

Credits are generally attributable to the person that captures and physically or contractually ensures the disposal, utilization, or use as a tertiary injectant, of the qualified carbon dioxide. Such
persons may elect to transfer the credit to the taxpayer that disposes of, utilizes, or uses (as a tertiary injectant) the qualified carbon dioxide.

Credits are subject to recapture with respect to any qualified carbon dioxide that ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the credit rules.\footnote{Sec. 45Q(f)(4).}

The credit is part of the general business credit. The credit sunsets at the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that 75 million metric tons of qualified carbon dioxide have been taken into account for purposes of the credit. As of May 11, 2018, the credit had been claimed for 72,087,903 tons of qualified carbon dioxide.\footnote{Notice 2020–40, 2020–25 I.R.B. 954, June 15, 2020.}

**Carbon oxide captured using equipment placed in service on or after February 9, 2018 (Post-BBA)**

For carbon captured using equipment placed in service on or after February 9, 2018, the definition of qualified carbon is expanded to include all carbon oxides, not just carbon dioxide. In addition, qualified carbon is no longer limited to carbon capture from industrial sources, but includes carbon captured directly from the ambient air (excluding the capture of carbon dioxide deliberately released from naturally occurring subsurface springs or carbon dioxide captured using natural photosynthesis).

For EOR uses and for qualified carbon oxide utilization, the credit rate for carbon oxide captured using equipment placed in service on or after February 9, 2018, is $12.83 per metric ton in 2017, increasing linearly each calendar year to $35 per metric ton by December 31, 2026, and adjusted for inflation thereafter. For qualified carbon oxide disposed of in secure geological storage, the credit rate is $22.66 per metric ton in 2017, increasing linearly each calendar year to $50 per metric ton by December 31, 2026, and adjusted for inflation thereafter. For 2020, the credit rates are $20.22 and $31.77 respectively.\footnote{Treas. Reg. sec. 1.45Q–1(d).}

Carbon oxide captured using equipment placed in service on or after February 9, 2018, is not subject to the 75 million metric ton cap applicable to the pre-February 9, 2018 credit rules. Instead, taxpayers may claim the credit during the 12-year period beginning on the date the carbon capture equipment is originally placed in service. For this purpose, eligible carbon capture equipment must be placed in service at a qualified facility the construction of which begins before January 1, 2024.\footnote{Sec. 45Q(d).} In general, a qualified facility has the same definition as a pre-BBA qualified facility, except that it is placed in service on or after February 9, 2018.

**Explanation of Provision**

The provision extends for two years, through calendar year 2025, the period in which the construction of an otherwise qualified carbon capture facility must begin.
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Effectie Date

The provision is effective on the date of enactment (December 27, 2020).

Subtitle C—Extension of Certain Other Provisions

1. Credit for electricity produced from certain renewable resources (secs. 131 and 204 of the Act and secs. 45 and 48 of the Code)

Present Law

Renewable electricity production credit

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

SUMMARY OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

<table>
<thead>
<tr>
<th>Eligible electricity production activity (sec. 45)</th>
<th>Credit amount for 2020</th>
<th>Expiration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind</td>
<td>2.5</td>
<td>December 31, 2020</td>
</tr>
<tr>
<td>Closed-loop biomass</td>
<td>2.5</td>
<td>December 31, 2020</td>
</tr>
<tr>
<td>Open-loop biomass (including agricultural livestock nutrient facilities)</td>
<td>1.3</td>
<td>December 31, 2020</td>
</tr>
<tr>
<td>Geothermal</td>
<td>2.5</td>
<td>December 31, 2020</td>
</tr>
<tr>
<td>Municipal solid waste (including landfill gas facilities and trash combustion facilities)</td>
<td>1.3</td>
<td>December 31, 2020</td>
</tr>
<tr>
<td>Qualified hydropower</td>
<td>1.3</td>
<td>December 31, 2020</td>
</tr>
<tr>
<td>Marine and hydrokinetic</td>
<td>1.3</td>
<td>December 31, 2020</td>
</tr>
</tbody>
</table>

1 In general, the credit is available for electricity produced during the first 10 years after a facility has been placed in service. For wind facilities, the credit is reduced by 20 percent for facilities the construction of which begins in calendar year 2017, by 40 percent for facilities the construction of which begins in calendar years 2018 and 2020, and by 60 percent for facilities the construction of which begins in calendar year 2019. Inflation adjustment calculations may be found in IRS Notice 2020–38, Internal Revenue Bulletin 2020–23, p. 303, June 1, 2020.

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

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

A taxpayer may make an irrevocable election to have certain property which is part of a qualified renewable electricity production facility be treated as energy property eligible for a 30 percent investment credit under section 48. For wind facilities, the credit is reduced by 20 percent for facilities the construction of which begins in calendar year 2017, by 40 percent for facilities the construction of which begins in calendar years 2018 and 2020, and by 60 percent for facilities the construction of which begins in calendar year 2019. For purposes of the investment credit, qualified facilities

1938 Sec. 45. In addition to the renewable electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.
are facilities otherwise eligible for the renewable electricity production credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the renewable electricity production credit. The eligible basis for the investment credit for taxpayers making this election is the basis of the depreciable (or amortizable) property that is part of a facility capable of generating electricity eligible for the renewable electricity production credit.

**Explanation of Provision**

In general, for renewable power facilities, the provisions extend for one year, through December 31, 2021, the beginning of construction deadline for the renewable electricity production credit and the election to claim the energy credit in lieu of the electricity production credit. For wind facilities the construction of which begins in calendar year 2021, the credit is reduced by 40 percent.

The provisions create a special rule for property used in qualified offshore wind facilities. Qualified offshore wind facilities are qualified wind facilities (within the meaning of the section 45 renewable electricity production credit, without regard to any sunset date) that are located in the inland navigable waters of the United States or in the coastal waters of the United States, and include property owned by the taxpayer necessary to condition electricity for use on the grid such as subsea cables and voltage transformers. For this purpose, coastal waters include the waters of the Great Lakes, the territorial seas, the exclusive economic zone, and the outer continental shelf, but only if such waters are treated as within the United States or a possession of the United States for purposes of section 45(e)(1). Such property the construction of which begins before January 1, 2026, is eligible for a 30 percent investment credit and is not subject to the phasedown applicable to other wind facilities.

**Effective Date**

The provision extending the renewable electricity production credit takes effect on January 1, 2021. The provision creating a special rule for qualified offshore wind facility property is effective for periods after December 31, 2016, under rules similar to the rules of section 48(m) of the Code (as in effect on the date before the date of the enactment of the Revenue Reconciliation Act of 1990).

2. Modification of energy investment credit (secs. 132 and 203 of the Act and sec. 48 of the Code)

**Present Law**

**In general**

A permanent nonrefundable 10-percent business energy credit is allowed for the cost of new property that is equipment that

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1939 See sec. 131 of the Act.
1940 See sec. 204 of the Act.
1941 A technical correction may be necessary to clarify the meaning of this term.
1942 Sec. 48.
either (1) uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat 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 (but not including) the electric transmission stage. Property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property.

In addition to the permanent credit, a number of energy technologies are entitled to the energy credit at rates of 10 percent or 30 percent, depending on the technology. These credits sunset for property the construction of which begins after the expiration date for that technology. In addition, the credit rate for solar energy property has been temporarily increased.

The energy credit is a component of the general business credit. An unused general business credit generally may be carried back one year and carried forward 20 years. The taxpayer’s basis in the property is reduced by one-half of the amount of the credit claimed. For projects whose construction time is expected to equal or exceed two years, the credit may be claimed as progress expenditures are made on the project, rather than during the year the property is placed in service. The credit is allowed against the alternative minimum tax.

**Increased credit rate for solar energy property**

For property the construction of which begins before January 1, 2022, the credit rate for otherwise eligible solar energy property is increased to 30 percent. For property the construction of which begins in calendar year 2020 and that is placed in service by the end of calendar year 2023, the credit rate for otherwise eligible solar energy property is 26 percent. For property the construction of which begins in calendar year 2021 and that is placed in service by the end of calendar year 2023, the credit rate for otherwise eligible solar energy property is 22 percent. For property the construction of which begins after calendar year 2021 or that does not meet the 2023 deadline described above, the credit rate drops to the permanent 10-percent rate.

**Fiber optic solar property**

Equipment that uses fiber-optic distributed sunlight to illuminate the inside of a structure is eligible for a 30-percent credit (subject to a phase-down rule) for property the construction of which begins prior to January 1, 2022. Under the phase-down rule, the credit rate is reduced to 26 percent for property the construction of which begins in calendar year 2020 and to 22 percent for property the construction of which begins in calendar year 2021. Eligible property must be placed in service before January 1, 2024.

**Fuel cells and microturbines**

The energy credit applies to qualified fuel cell power plants, but only for the construction of which begins prior to January 1, 2022.

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1943 Sec. 38(b)(1)
1944 Sec. 39.
1945 Sec. 50(c)(3).
The credit rate is 30 percent and is subject to the same phase-down rule as fiber optic solar property (described above).

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-only generation efficiency 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 qualifying stationary microturbine power plants for property placed in service prior to January 1, 2022. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

A qualified stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components that converts a fuel into electricity and thermal energy. Such system also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency and power factors. Such system must have an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions and a nameplate capacity of less than 2,000 kilowatts.

Geothermal heat pump property

The energy credit applies to qualified geothermal heat pump property the construction of which begins prior to January 1, 2022. 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 or as a thermal energy sink to cool a structure.

Small wind property

The energy credit applies to qualified small wind energy property the construction of which begins prior to January 1, 2022. The credit rate is 30 percent and is subject to the same phase-down rule as fiber optic solar property (described above). Qualified small wind energy property is property that uses a qualified wind turbine to generate electricity. A qualifying wind turbine means a wind turbine of 100 kilowatts of rated capacity or less.

Combined heat and power property

The energy credit applies to combined heat and power ("CHP") property the construction of which begins prior to January 1, 2022. 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 forms of useful thermal energy (including heating and cooling applications); (2) that has an electrical capacity of not more than 50 megawatts or a mechanical energy capacity of 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 (or a combination thereof), and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent. CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

The otherwise allowable credit with respect to CHP property is reduced to the extent the property has an electrical capacity or mechanical capacity in excess of any applicable limits. Property in excess of the applicable limit (15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities) is permitted to claim a fraction of the otherwise allowable credit. The fraction is equal to the applicable limit divided by the capacity of the property. For example, a 45 megawatt property would be eligible to claim 15/45ths, or one third, of the otherwise allowable credit. Again, no credit is allowed if the property exceeds the 50 megawatt or 67,000 horsepower limitations described above.

Additionally, systems whose fuel source is at least 90 percent open-loop biomass and that would qualify for the credit but for the failure to meet the efficiency standard are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a five-percent credit).

Election of energy credit in lieu of section 45 production tax credit

In general, a taxpayer may make an irrevocable election to have certain property used in qualified facilities whose construction begins before January 1, 2021, be treated as energy property. For this purpose, qualified facilities are facilities otherwise eligible for the renewable electricity production credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the renewable electricity production credit. For wind facilities, the credit is reduced by 20 percent for facilities the construction of which begins in calendar year 2017, by 40 percent for facilities the construction of which begins in calendar years 2018 and 2020, and by 60 percent for facilities the construction of which begins in calendar year 2019.1946

1946 See section 131 of the Act for the provision extending section 45 and the election to claim an energy credit in lieu of that credit.
Explanation of Provision

The provisions generally extend the energy credit for 2 years, through December 31, 2023.\textsuperscript{1947} For fiber optic solar property, fuel cell property, and small wind energy property, the energy credit is extended for property the construction of which begins before January 1, 2024, subject to a credit rate phasedown. For property the construction of which begins in calendar years 2020, 2021, and 2022, and that is placed in service by the end of calendar year 2025, the credit rate is 26 percent. For property the construction of which begins in calendar year 2023 and that is placed in service by the end of calendar year 2025, the credit rate is 22 percent. No credit is available for property the construction of which begins after calendar year 2023 or that does not meet the 2025 placed-in-service deadline.

For solar energy property, the provisions extends the enhanced credit rate through December 31, 2023, subject to a credit rate phasedown. For property the construction of which begins in calendar years 2020, 2021, and 2022, and that is placed in service by the end of calendar year 2025, the credit rate is 26 percent. For property the construction of which begins in calendar year 2023 and that is placed in service by the end of calendar year 2025, the credit rate is 22 percent. For property the construction of which begins after calendar year 2023 or that began in any year before calendar year 2024 but which is not placed in service by the end of calendar year 2025, no enhanced credit rate is available, but taxpayers may still claim the permanent 10 percent credit.

For geothermal heat pump property, microturbine property, and combined heat and power system property, the 10-percent credit is extended for property the construction of which begins before January 1, 2024.

The provisions also add waste energy recovery property to the energy credit.\textsuperscript{1948} Waste energy recovery property is property that generates electricity solely from heat from buildings or equipment if the primary purpose of such building or equipment is not the generation of electricity. Qualified property does not include any property which has a capacity in excess of 50 megawatts. In the case of property that qualifies as both waste energy recovery property and CHP system property, no double benefit is permitted but a taxpayer may elect to claim the higher credit. The credit rate for waste energy recovery property is initially 30 percent, subject to the same phase-down and sunset rules as fiber optic solar property, fuel cell property, and small wind energy property.

Effective Date

The provision extending the energy credit is effective beginning January 1, 2020. The provision adding waste energy recovery property to the energy credit is effective for periods after December 31, 2020, under rules similar to the rules of section 48(m), as in effect for the date of enactment of the Revenue Reconciliation Act of 1990.

\textsuperscript{1947} See section 132 of the Act.
\textsuperscript{1948} See section 203 of the Act.
3. Treatment of mortgage insurance premiums as qualified residence interest (sec. 133 of the Act and sec. 163(h) of the Code)

*Present Law*

Background for the provision and a description of the treatment of mortgage insurance premiums as qualified residence interest that the provision modifies may be found above in the section describing section 102 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

*Explanation of Provision*

The provision extends the deduction for qualified mortgage insurance premiums for one year (with respect to contracts entered into after December 31, 2006). Thus, the provision applies to amounts paid or accrued in 2021 (and not properly allocable to any period after December 31, 2021).

*Effective Date*

The provision applies to amounts paid or accrued after December 31, 2020.

4. Credit for health insurance costs of eligible individuals (sec. 134 of the Act and sec. 35 of the Code)

*Present Law*

Background for the provision and a description of the health coverage tax credit that the provision extends may be found above in the section describing section 146 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

*Explanation of Provision*

The provision extends the availability of the health coverage tax credit for 12 months by amending the definition of eligible coverage month to include months beginning before January 1, 2022.

*Effective Date*

The provision is effective for months beginning after December 31, 2020.

5. Indian employment credit (sec. 135 of the Act and sec. 45A of the Code)

*Present Law*

Background for the provision and a description of the Indian employment credit that the provision modifies may be found above in the section describing section 111 of the Taxpayer Certainty and
Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.\textsuperscript{1949}

\textbf{Explanation of Provision}

The provision extends the Indian employment credit for one year (through taxable years beginning on or before December 31, 2021).

\textbf{Effective Date}

The provision applies to taxable years beginning after December 31, 2020.

\textbf{6. Mine rescue team training credit (sec. 136 of the Act and sec. 45N of the Code)}

\textbf{Present Law}

An eligible employer may claim a general business credit against income tax with respect to each qualified mine rescue team employee equal to the lesser of: (1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of the qualified mine rescue team employee (including the wages of the employee while attending the program); or (2) $10,000 (the “mine rescue team training credit”).\textsuperscript{1950}

A qualified mine rescue team employee is any full-time employee of the taxpayer who is a miner eligible for more than six months of a taxable year to serve as a mine rescue team member by virtue of either having completed the initial 20-hour course of instruction prescribed by the Mine Safety and Health Administration’s Office of Educational Policy and Development, or receiving at least 40 hours of refresher training in such instruction.\textsuperscript{1951}

An eligible employer is any taxpayer which employs individuals as miners in underground mines in the United States.\textsuperscript{1952} The term “wages” has the meaning given to such term by section 3306(b)\textsuperscript{1953} (determined without regard to any dollar limitation contained in that section).\textsuperscript{1954}

No deduction is allowed for the portion of the expenses otherwise allowable as a deduction for the taxable year that is equal to the amount of the mine rescue team training credit determined for the taxable year.\textsuperscript{1955} The credit does not apply to taxable years beginning after December 31, 2020.\textsuperscript{1956} Additionally, the credit is not allowable for purposes of computing the alternative minimum tax.\textsuperscript{1957}

\textsuperscript{1949} An employee is not treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during the taxable year exceeds an amount determined at an annual rate of $30,000 (which after adjustment for inflation is $50,000 for 2019). See Instructions for Form 8845, Indian Employment Credit (Rev. January 2020).

\textsuperscript{1950} Sec. 45N(a).

\textsuperscript{1951} Sec. 45N(b).

\textsuperscript{1952} Sec. 45N(c).

\textsuperscript{1953} Section 3306(b) defines wages for purposes of Federal Unemployment Tax.

\textsuperscript{1954} Sec. 45N(d).

\textsuperscript{1955} Sec. 280C(e).

\textsuperscript{1956} Sec. 45N(e).

\textsuperscript{1957} Sec. 38(c). Note that the corporate alternative minimum tax was repealed for taxable years beginning after December 31, 2017. See Pub. L. No. 115–97, sec. 12001, December 22, 2017.
**Explanation of Provision**

The provision extends the credit for one year through taxable years beginning before January 1, 2022.

**Effective Date**

The provision applies to taxable years beginning after December 31, 2020.

7. **Classification of certain race horses as three-year property (sec. 137 of the Act and sec. 168(e)(3)(A) of the Code)**

**Present Law**

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization. In general, only the tax owner of property (i.e., the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not used exclusively in a taxpayer’s business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, e.g., sec. 167(a).

**Recovery method**

<table>
<thead>
<tr>
<th>Recovery method</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Total</th>
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<td>Straight-line</td>
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<td>142.86</td>
<td>1,000.00</td>
</tr>
</tbody>
</table>

* Details may not add to totals due to rounding.
as of the beginning of that year yields a larger depreciation allowance.

**Race horses**

The statute assigns a three-year recovery period to any race horse that is (1) placed in service before January 1, 2021, and (2) placed in service after December 31, 2020, and more than two years old at such time it is placed in service by the purchaser.\(^{1964}\) A seven-year recovery period applies to any race horse that is placed in service after December 31, 2020, and that is two years old or younger at the time it is placed in service.\(^{1965}\)

**Explanation of Provision**

The provision extends the three-year recovery period for race horses for one year to apply to any race horse (regardless of age when placed in service) which is placed in service before January 1, 2022. Subsequently, the three-year recovery period for race horses will only apply to those which are more than two years old when placed in service by the purchaser after December 31, 2021.

**Effective Date**

The provision applies to property placed in service after December 31, 2020.

**8. Accelerated depreciation for business property on Indian reservations (sec. 138 of the Act and sec. 168(j) of the Code)**

**Present Law**

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

- 3-year property—2 years
- 5-year property—3 years
- 7-year property—4 years
- 10-year property—6 years
- 15-year property—9 years
- 20-year property—12 years
- Nonresidential real property—22 years\(^{1966}\)

"Qualified Indian reservation property" eligible for accelerated depreciation includes property described in the table above which

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\(^{1964}\) Sec. 168(e)(3)(A)(i). A horse is more than two years old after the day that is 24 months after its actual birthdate. See Prop. Treas. Reg. sec. 1.168–3(c)(1)(i) (interpreting ACRS); and Rev. Proc. 87–56, as clarified and modified by Rev. Proc. 88–22. Note that this measurement of a horse's age for depreciation purposes is different from the horse racing industry's convention that a race horse ages one year each January 1. See, e.g., U.S. Department of the Treasury, Report to Congress on the Depreciation of Horses, March 1990, p. 35 (''Although the conventional age of a horse is usually derived from a fictional January 1 birthdate, the current classification of horses for depreciation purposes is dependent upon their true ages.''); and Jennifer Caldwell, ''Why do Thoroughbreds share the same birth date of New Year's Day?'' Kentucky Derby News, November 17, 2017, available at https://www.kentuckyderby.com/horses/news/why-do-thoroughbreds-share-the-same-birth-date-of-new-years-day.


\(^{1966}\) Section 168(j)(2) does not provide shorter recovery periods for water utility property, residential rental property, or railroad grading and tunnel bores.
is: (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; (2) not used or located outside the reservation on a regular basis; (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer; and (4) is not property placed in service for purposes of conducting or housing certain gaming activities.

Certain “qualified infrastructure property” may be eligible for the accelerated depreciation, even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities).

An “Indian reservation” means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)) or section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)). The definition in section 3(d) of the Indian Financing Act of 1974 includes, in addition to current Indian reservations and certain other lands, “former Indian reservations in Oklahoma.” For purposes of section 168(j), section 3(d) is applied by treating “former Indian reservations in Oklahoma” as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).

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

The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2021. A taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis.

**Explanation of Provision**

The provision extends for one year the accelerated depreciation for qualified Indian reservation property to apply to property placed in service before January 1, 2022.

**Effective Date**

The provision applies to property placed in service after December 31, 2020.

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1967 For these purposes, the term “related persons” is defined in section 465(b)(3)(C).
1968 Sec. 168(j)(4)(A).
1969 Sec. 168(j)(4)(C).
1974 Sec. 168(j)(9).
1975 Sec. 168(j)(8).
9. American Samoa economic development credit (sec. 139 of the Act)

Present Law

Beginning in 2006, certain domestic corporations have been entitled to an economic development credit with respect to operations in American Samoa. The credit is not part of the Code but is computed based on the rules of former sections 30A, 199, and 936.1

For taxable years beginning before January 1, 2011, as originally enacted, the credit was limited to domestic corporations that were existing credit claimants with respect to American Samoa who had elected the application of section 936 for its last taxable year beginning before January 1, 2006. The credit is based on the corporation's economic activity-based limitation with respect to American Samoa. An existing claimant is a domestic corporation that (1) was engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, and (2) elected the benefits of the possession tax credit1 in an election in effect for its taxable year that included October 13, 1995, or that acquired all of the assets of a trade or business that met the foregoing conditions. A corporation that added a substantial new line of business (other than in a qualifying acquisition of all the assets of a trade or business of an existing credit claimant) ceased to be an existing credit claimant as of the close of the taxable year ending before the date on which that new line of business was added.

The amount of the credit allowed to a qualifying domestic corporation under the provision is equal to the sum of the amounts used in computing the corporation's economic activity-based limitation with respect to American Samoa, except that no credit is allowed for the amount of any American Samoa income taxes. Thus, for any qualifying corporation the amount of the credit equals the

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1976 This credit was previously extended during the 116th Congress by section 119 of the Taxpayer Certain and Disaster Tax Relief Act of 2019 (Division Q of the “Further Consolidated Appropriations Act of 2020,” Pub. L. No. 116–94), as described above in Part Three of this document.

1977 For taxable years beginning before January 1, 2006, certain domestic corporations with business operations in the U.S. possessions were eligible for the possession tax credit. Secs. 27(b) and 936. This credit offset the U.S. tax imposed on certain income related to operations in the U.S. possessions. Subject to certain limitations, the amount of the possession tax credit allowed to any domestic corporation equalled the portion of that corporation’s U.S. tax that was attributable to the corporation’s non-U.S. source taxable income from (1) the active conduct of a trade or business within a U.S. possession, (2) the sale or exchange of substantially all of the assets that were used in such a trade or business, or (3) certain possessions investment. No deduction or foreign tax credit was allowed for any possessions or foreign tax paid or accrued with respect to taxable income that was taken into account in computing the credit under section 936. Under the economic activity-based limit, the amount of the credit could not exceed an amount equal to the sum of (1) 60 percent of the taxpayer's qualified possession wages and allocable employee fringe benefit expenses, (2) 15 percent of depreciation allowances with respect to short-life qualified tangible property, plus 40 percent of depreciation allowances with respect to medium-life qualified tangible property, plus 65 percent of depreciation allowances with respect to long-life qualified tangible property, and (3) in certain cases, a portion of the taxpayer's possession income taxes. A taxpayer could elect, instead of the economic activity-based limit, a limit equal to the applicable percentage of the credit that otherwise would have been allowable with respect to possession business income, beginning in 1998, the applicable percentage was 40 percent.

To qualify for the possession tax credit for a taxable year, a domestic corporation was required to satisfy two conditions. First, the corporation was required to derive at least 80 percent of its gross income for the three-year period immediately preceding the close of the taxable year from sources within a possession. Second, the corporation was required to derive at least 75 percent of its gross income for that same period from the active conduct of a possession business. Sec. 936(a)(2). The section 936 credit generally expired for taxable years beginning after December 31, 2005.
sum of (1) 60 percent of the corporation’s qualified American Samoa wages and allocable employee fringe benefit expenses and (2) 15 percent of the corporation’s depreciation allowances with respect to short-life qualified American Samoa tangible property, plus 40 percent of the corporation’s depreciation allowances with respect to medium-life qualified American Samoa tangible property, plus 65 percent of the corporation’s depreciation allowances with respect to long-life qualified American Samoa tangible property.

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

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

In the case of a corporation that is an existing credit claimant with respect to American Samoa and that elected the application of section 936 for its last taxable year beginning before January 1, 2006, the credit applies to the first 15 taxable years of the corporation which begin after December 31, 2005, and before January 1, 2021. For any other corporation, the credit applies to the first nine taxable years of that corporation which begin after December 31, 2011, and before January 1, 2021.

**Explanation of Provision**

The provision extends the credit for one year to apply (a) in the case of a corporation that is an existing credit claimant with respect to American Samoa and that elected the application of section 936 for its last taxable year beginning before January 1, 2006, to the first 16 taxable years of the corporation which begin after December 31, 2005, and before January 1, 2022, and (b) in the case of any other corporation, to the first ten taxable years of the corporation which begin after December 31, 2011 and before January 1, 2022.

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

**Effective Date**

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

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1978 See sec. 936(c).
10. Second generation biofuel producer credit (sec. 140 of the Act and sec. 40 of the Code)

Present Law

Background for the provision and a description of the second generation biofuel producer credit that the provision modifies may be found above in the section describing section 122 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

Explanation of Provision

The provision extends the credit for an additional year, through December 31, 2021.

Effective Date

The provision applies to qualified second generation biofuel production after December 31, 2020.

11. Nonbusiness energy property (sec. 141 of the Act and sec. 25C of the Code)

Present Law

Background for the provision and a description of the nonbusiness energy property credit that the provision extends may be found above in the section describing section 123 of the Taxpayer Certainty and Disaster Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

Explanation of Provision

The provision extends the nonbusiness energy property credit for one year, through December 31, 2021.\textsuperscript{1981}

Effective Date

The provision is effective for property placed in service after December 31, 2020.

12. Qualified fuel cell motor vehicles (sec. 142 of the Act and sec. 30B of the Code)

Present Law

A credit is available through 2020 for vehicles propelled by chemically combining oxygen with hydrogen and creating electricity (“fuel cell vehicles”).\textsuperscript{1982} The base credit is $4,000 for vehicles weighing 8,500 pounds or less. Heavier vehicles can get up to a $40,000 credit, depending on their weight. An additional $1,000 to $4,000 credit is available to cars and light trucks to the extent their fuel economy exceeds the 2002 base fuel economy set forth in the Code.

\textsuperscript{1981} Note that section 148 of the Act eliminates the credit for biomass fueled stoves from the nonbusiness energy property credit and replaces it with a new residential energy efficient property credit under section 25D of the Code.

\textsuperscript{1982} Sec. 30B.
511

Explanation of Provision

The provision extends the credit for fuel cell vehicles for one year, through December 31, 2021.

Effective Date

The provision applies to property purchased after December 31, 2020.

13. Alternative fuel refueling property credit (sec. 143 of the Act and sec. 30C of the Code)

Present Law

Background for the provision and a description of the alternative fuel refueling property credit that the provision extends may be found above in the section describing section 125 of the Taxpayer Certainty and Disaster Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

Explanation of Provision

The provision extends for one year the 30-percent credit for alternative fuel refueling property, through December 31, 2021.

Effective Date

The provision applies to property placed in service after December 31, 2020.

14. Two-wheeled plug-in electric vehicle credit (sec. 144 of the Act and sec. 30D of the Code)

Present Law

In general, for vehicles acquired before 2021, a 10-percent credit is available for qualified two-wheeled plug-in electric vehicles (“qualified electric motorcycles”). Qualified electric motorcycles must have a battery capacity of at least 2.5 kilowatt-hours, be manufactured primarily for use on public streets, roads, and highways, and be capable of achieving speeds of at least 45 miles per hour. The maximum credit for any qualified electric motorcycle is $2,500.

Explanation of Provision

The provision extends the qualified electric motorcycles credit for one year, through December 31, 2021.

Effective Date

The provision applies to vehicles acquired after December 31, 2020.

1983 Sec. 30D(g). The credit lapsed and was not available for vehicles placed in service in calendar year 2014. Before 2014, the credit was also available for qualified vehicles having three wheels.
15. Production credit for Indian coal facilities (sec. 145 of the Act and sec. 45 of the Code)

**Present Law**

In general, a credit is available for each ton of Indian coal produced from a qualified Indian coal facility during the 15-year period beginning January 1, 2006, and ending December 31, 2020. Qualified Indian coal must be sold to an unrelated third party (either directly by the taxpayer or after sale or transfer to one or more related persons). The amount of the credit is $2.00 per ton (adjusted for inflation, $2.570 per ton for 2020). A qualified Indian coal facility is a facility that produces coal from reserves that on June 14, 2005, were owned by a Federally recognized tribe of Indians or were held in trust by the United States for a tribe or its members.

**Explanation of Provision**

The provision extends the credit for the production of Indian coal for one year, through December 31, 2021.

**Effective Date**

The extension of the credit applies to Indian coal produced after December 31, 2020.

16. Energy-efficient homes credit (sec. 146 of the Act and sec. 45L of the Code)

**Present Law**

Background for the provision and a description of the energy-efficient homes credit that the provision extends may be found above in the section describing section 129 of the Taxpayer Certainty and Disaster Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

**Explanation of Provision**

The provision extends the credit for one year, to homes that are acquired prior to January 1, 2022.

**Effective Date**

The provision applies to homes acquired after December 31, 2020.

17. Extension of excise tax credits relating to alternative fuels (sec. 147 of the Act and secs. 6426 and 6427 of the Code)

**Present Law**

Background for the provision and a description of the excise tax credits relating to alternative fuels that the provision modifies may be found above in the section describing section 133 of the Tax-

**Explanation of Provision**

The provision extends the alternative fuel credit and related payment provisions, and the alternative fuel mixture credit for an additional year, through December 31, 2021.

**Effective Date**

The provision applies to fuel sold or used after December 31, 2020.

18. Extension and modification of credit for residential energy efficient property (sec. 148 of the Act and secs. 25C and 25D of the Code)

**Present Law**

**In general**

A personal tax credit is available for the purchase of qualified solar electric property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs.\(^{1985}\) In general, the credit rate is equal to 30 percent of qualifying expenditures.

A 30-percent credit is also available for the purchase of qualified geothermal heat pump property, qualified small wind energy property, and qualified fuel cell power plants. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

The credit is nonrefundable. The credit with respect to all qualifying property may be claimed against the alternative minimum tax.

The credit for non-solar property expires for property placed in service after December 31, 2021. The credit rate 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.

**Qualified property**

Qualified solar electric property is property that uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer. Qualifying solar water heating property is property used to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, (2) has an electricity-only generation efficiency of greater than 30 percent, and (3) has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process. The qualified fuel cell power plant must be installed on or in con-

\(^{1985}\) Sec. 25D.
connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

Qualified small wind energy property is property that uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

Qualified geothermal heat pump property means any equipment which (1) uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool such dwelling unit, (2) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made, and (3) is installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

Additional rules

The depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit, and for piping and wiring to interconnect such property to the dwelling unit, are eligible expenditures.

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

Explanation of Provision

The provision extends for two years, through December 31, 2023, the residential energy efficient property credit. The provision also extends the rate phasedown rule. For property placed in service in calendar years 2021 and 2022, the credit rate is 26 percent. For property placed in service in calendar year 2023, the credit rate is 22 percent.

The provision also adds biomass fuel property expenditures as qualified expenditures for purposes of the residential energy efficient property credit. The term “qualified biomass fuel property expenditure” is defined as property which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent. The term “biomass fuel” means any plant-derived fuel available on a renewable or recurring basis. To avoid a double benefit, the provision eliminates the credit for energy efficient biomass-fueled stoves allowed for under section 25C, as a nonbusiness energy property credit.

Effective Date

The provision is generally effective for property placed in service after December 31, 2020. In the case of qualified biomass fuel property expenditures, the provision is effective for expenditures paid or incurred in taxable years beginning after December 31, 2020.

Present Law

Before January 1, 2021, coal extracted from mines is taxed at either $1.10 per ton if from an underground mine, or $0.55 per ton if from a surface mine.\textsuperscript{1986} The total amount of tax was not to exceed 4.4 percent of the price at which such ton of coal was sold by the producer.

After December 31, 2020, the “temporary increase termination date,” the tax rates are to decline to rates of $0.50 for underground mines, and $0.25 for surface mines. After the temporary increase termination date, the total amount of tax is not to exceed two percent of the price at which such ton of coal is sold by the producer.

Additional background for the provision and a description of the coal excise tax that the provision modifies may be found above in the section describing section 105 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.\textsuperscript{1987}

Explanation of Provision

The provision extends the increased rates for an additional year, through December 31, 2021.

Effective Date

The provision applies to sales after December 31, 2020.

TITLE II—OTHER PROVISIONS

1. Minimum low-income housing tax credit rate (sec. 201 of the Act and sec. 42 of the Code)

Present Law

Background for the provision and a description of the low-income housing tax credit that the provision modifies may be found above in the section describing section 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

Explanation of Provision

The provision provides that the applicable percentage is set at a minimum of 4 percent for Federally subsidized newly constructed housing, Federally subsidized substantial rehabilitation, and certain housing acquisition costs (the “four-percent floor”). The application of the four-percent floor on the credit implies that the present value of the credit amounts (as computed under section 42(b)(1)(B) and (C)) is always 30 percent or more of qualified basis.

The four-percent floor applies only to new or existing buildings that are placed into service after December 31, 2020.

\textsuperscript{1986} Sec. 4121.

\textsuperscript{1987} From January 1, 2019 to December 31, 2019, the tax rate temporarily dropped to 50 cents per ton or two percent of sales price for underground mined coal, and for surface mined coal, the tax was 25 cents per ton or two percent of sales price.
The provision is effective for buildings that receive an allocation of credit after December 31, 2020, and buildings of which any portion is financed with a tax-exempt obligation described in section 42(h)(4)(A) and issued after December 31, 2020.

2. Depreciation of certain residential rental property over 30-year period (sec. 202 of the Act and sec. 168 of the Code)

Present Law

In general

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization. The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer. 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 placed in service convention. For some assets, the recovery period for the asset is provided in section 168. In other cases, the recovery period of an asset is generally set forth in Revenue Procedure 87–56.

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 respect to the adjusted basis as of the beginning of that year yields a larger depreciation allow-

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

Details may not add to totals due to rounding.
Depreciation of an asset begins when the asset is deemed to be placed in service under the applicable convention. Under MACRS, nonresidential real property, residential rental property, and any railroad grading or tunnel bore generally are subject to the mid-month convention, which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month. All other property generally is subject to the half-year convention, which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year to reflect the assumption that assets are placed in service ratably throughout the year. However, if substantial property is placed in service during the last three months of a taxable year, a special rule requires use of the mid-quarter convention designed to prevent the recognition of disproportionately large amounts of first-year depreciation under the half-year convention.

### 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 bond-financed property, certain imported property covered by an Executive order, and certain property held by either a real property trade or business or a farming business electing out of the business interest limitation under section 163(j). In addition, an 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 and the applicable convention over recovery periods which generally are equal to the class life of the property, with certain exceptions. For example, nonresidential real property has a 40-year ADS recovery period, while residential rental property has a

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1994 Treas. Reg. sec. 1.167(a)–10(b).
1995 Sec. 168(d)(2) and (d)(4)(B).
1996 Sec. 168(d)(1) and (d)(4)(A).
1997 The mid-quarter convention treats all property placed in service (or disposed of) during any quarter as placed in service (or disposed of) on the mid-point of such quarter. Sec. 168(d)(3) and (d)(4)(C).
1998 Sec. 168(g)(1)(A).
1999 Sec. 168(g)(1)(B).
2000 Sec. 168(g)(1)(C).
2001 Sec. 168(g)(1)(D).
2002 Sec. 168(g)(1)(F) and (g)(8). An electing real property trade or business is defined in section 163(j)(7)(B) by cross reference to section 469(c)(7)(C) (i.e., any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business).
2003 Sec. 168(g)(1)(G). An electing farming business is defined in section 163(j)(7)(B) by cross reference to section 469(c)(7)(C) (i.e., any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business).
2004 Sec. 168(g)(1)(H). An electing real property trade or business is defined in section 163(j)(7)(B) by cross reference to section 469(c)(7)(C) (i.e., any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business).
2005 Sec. 168(g)(1)(I). An electing farming business is defined in section 163(j)(7)(B) by cross reference to section 469(c)(7)(C) (i.e., any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business).
2006 Sec. 168(g)(1)(J). An electing farming business is defined in section 163(j)(7)(B) by cross reference to section 469(c)(7)(C) (i.e., any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business).
40-year ADS recovery period if placed in service before January 1, 2018, and a 30-year ADS recovery period if placed in service after December 31, 2017.2007

**Change in use**

As previously noted, certain property held by an electing real property trade or business or electing farming business under section 163(j) is required to be depreciated using ADS. In the case of such property that was placed in service by the electing business in taxable years beginning before the election year under section 163(j), the required change from MACRS to ADS is treated as a change in the use of the property, not a change in method of accounting under section 446(e).2008 As a result, depreciation for such property beginning in the election year and subsequent taxable years is determined under the rules of Treas. Reg. sec. 1.168(i)–4(d). Under these rules, if a change in the use of MACRS property results in a longer recovery period than the recovery period used before the change in use, the depreciation allowances beginning with the year of change are determined as though the MACRS property had been originally placed in service by the taxpayer with the longer recovery period.2009 Further, the taxpayer does not retroactively change the depreciation claimed for the property. Rather, the taxpayer generally computes depreciation in the year of change and any subsequent taxable year based on its adjusted depreciable basis in the property2010 as of the beginning of each taxable year in the longer recovery period (taking into account the applicable convention), determined from the original placed in service date.2011

For example, assume a calendar year electing real property trade or business uses residential rental property in its trade or business that it placed in service in January 1993 and depreciates using the mid-month convention and straight-line method over 27.5 years. Such taxpayer elects out of section 163(j) for 2020. The taxpayer is required to change to use a 40-year ADS recovery period for such residential rental property starting in 2020. Pursuant to Treas. Reg. sec. 1.168(i)–4(d)(4), the taxpayer’s allowable depreciation deduction for 2020 and subsequent taxable years is determined as though the residential rental property had been placed in service in January 1993 as property subject to an ADS recovery period of 40 years. The depreciation in 2020 is determined based on the property’s adjusted depreciable basis as of January 1, 2020, using the straight-line method over the number of years remaining as of the beginning of the taxable year (taking into account the mid-

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2007 Sec. 168(g)(3).
2008 See secs. 163(j)(11) and 168(i)(5); Treas. Reg. sec. 1.168(i)–4; and sec. 4.02(2)(b) of Rev. Proc. 2019–08, 2019–03 I.R.B. 347.
Explanation of Provision

The provision requires a real property trade or business electing out of the interest limitation under section 163(j) to use a 30-year ADS recovery period to depreciate any of its residential rental property that was (i) placed in service before January 1, 2018, and (ii) not subject to ADS (regardless of whether the use of ADS was required or elected)\textsuperscript{2012} prior to January 1, 2018.\textsuperscript{2013} For example, assuming the same facts as in the example above, the electing real property trade or business is required to change to use a 30-year ADS recovery period for its residential rental property in 2020. Pursuant to Treas. Reg. sec. 1.168(i)–4(d)(4), the taxpayer will determine its depreciation for the residential rental property in 2020 based on the adjusted depreciable basis of the property as of January 1, 2020, using the straight-line method over the number of years remaining as of the beginning of the taxable year (taking into account the mid-month convention) of the 30-year recovery period (i.e., approximately 3 years).

Effective Date

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

3. Modification of energy investment credit (sec. 203 of the Act and sec. 48 of the Code)

For an explanation of this provision, see the explanation for section 132 of the Act, above.

4. Extension of energy credit for offshore wind facilities (sec. 204 of the Act and sec. 48 of the Code)

For an explanation of this provision, see the explanation for section 131 of the Act, above.

\textsuperscript{2012}Specifically, such property for which section 168(g)(1)(A), (B), (C), (D), or (E) did not apply.

5. Minimum rate of interest for certain determinations related to life insurance contracts (sec. 205 of the Act and sec. 7702 of the Code)

Present Law

Section 7702 definition of a life insurance contract

A statutory definition of a life insurance contract was enacted in 1984 because of “a general concern with the proliferation of investment-oriented life insurance contracts.”

A life insurance contract is defined as any contract that is a life insurance contract under applicable State or foreign law, but only if the contract meets either of two alternatives: (1) a cash value accumulation test, or (2) a test consisting of a guideline premium requirement and a cash value corridor requirement. Whichever test is chosen, that test must be met for the entire life of the contract in order for the contract to be treated as life insurance for tax purposes. Because the cash value accumulation test must be met at all times by the terms of the contract, failure of a contract to meet this requirement means that the contract must meet, at all times, the guideline premium/cash value corridor test. Rather than being a requirement of the terms of the contract, the guideline premium/cash value corridor test is applied in practice and calls for specific corrective actions if a contract fails to meet it at any time. Although the guideline premium/cash value corridor test does not have to be met by the terms of the contract, the test limitations can be built into a contract to make compliance with the test automatic and to avoid inadvertent violation. In the case of a variable life insurance contract, the determination of whether the contract meets the cash value accumulation test, or meets the guideline premium/cash value corridor test is applied in practice and calls for specific corrective actions if a contract fails to meet it at any time. If a contract does not meet either of the two alternative tests under the definition of a life insurance contract, the income on the contract for any taxable year of the policyholder is treated as ordinary income received or accrued by the policyholder during that year. For this purpose, the income on the contract for a taxable year is the amount by which the sum of the increase in the net surrender value of the contract and the cost of life insurance protection exceeds premiums paid less policyholder dividends paid under the contract during the taxable year.

Minimum interest rates

Computational rules under both the cash value accumulation test and the guideline premium/cash value corridor test require the use of a minimum interest rate. The minimum interest rate applies to determine either the maximum permitted accumulation of cash

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value in the contract, or a guideline premium that serves as an upper bound on the amount that can be invested in the contract. Under the cash value accumulation test, the minimum interest rate is the greater of an annual effective rate of four percent, or the rate or rates guaranteed on issuance of the contract. Under the guideline premium piece of the guideline premium/cash value corridor test, the minimum interest rate is the greater of an annual effective rate of six percent, or the rate or rates guaranteed on issuance of the contract.

The rate guaranteed on issuance of the contract refers to the floor rate, that is, the rate below which the interest credited to the cash surrender value of the contract cannot fall. In the absence of a higher interest rate in a life insurance contract guaranteed by the issuer through contractual declaration or by operation of a formula or index, the rate or rates guaranteed in the contract mean the interest rate or rates reflected in the contract’s nonforfeiture value (which is the minimum amount that a policyholder receives in the event of nonpayment of premiums) assuming the use of the method in the Standard Nonforfeiture Law. The method for determining that rate is described in the NAIC’s Valuation Manual, which is amended as needed. In 2020, the minimum nonforfeiture interest rate described in the NAIC’s Valuation Manual is four percent for most life insurance contracts, though that minimum interest rate has since been amended.

The issuing company may guarantee a higher interest rate in a life insurance contract from time to time, either by contractual declaration or by operation of a formula or index. The National Association of Insurance Commissioners (“NAIC”) publishes model laws and regulations for various types of life insurance contracts. The NAIC publishes a standard nonforfeiture law for life insurance contracts governing the minimum nonforfeiture amount the policyholder receives in the event of nonpayment of premiums or the minimum cash surrender value of the contract. See NAIC Model Regulation 808, Standard Nonforfeiture Law for Life Insurance, section 2 and section 5c.I.2. (published January 2014). Standard nonforfeiture laws are adopted and implemented by States in connection with State regulation of insurance business.


On July 25, 2020, the NAIC published a proposed amendment to the applicable Valuation Manual to remove the four percent floor from the Standard Nonforfeiture Law for life insurance contracts. The description of the amendment to the Valuation Manual states, “Upon any possible tax code (IRC, S. 7702) modifications to remove the hardcoded interest rate floor starting in 1/1/2021, the life standard nonforfeiture rate is being updated to ensure the minimum funding under state requirements does not exceed the maximum funding under federal requirements for life insurance contracts issued starting in 1/1/2021.” Under the proposed amendment, the Valuation Manual is amended to strike the rate of four percent and to provide, “the nonforfeiture interest rate shall not be less than the applicable interest rate used prescribed to meet the definition of life insurance in the Cash Value Accumulation Test under Section 7702 (Life Insurance... Continued
For comparison, to illustrate recent governmentally determined rates, the table below shows the midterm monthly applicable federal rate\textsuperscript{2026} of interest for the month of July in each of the years 2010–2020.

**MID-TERM APPLICABLE FEDERAL RATE (AFR) FOR JULY, ANNUAL COMPOUNDING**

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>0.45%</td>
</tr>
<tr>
<td>2019</td>
<td>2.08%</td>
</tr>
<tr>
<td>2018</td>
<td>2.87%</td>
</tr>
<tr>
<td>2017</td>
<td>1.89%</td>
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<tr>
<td>2016</td>
<td>1.43%</td>
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<td>2015</td>
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<td>0.92%</td>
</tr>
<tr>
<td>2011</td>
<td>2.00%</td>
</tr>
<tr>
<td>2010</td>
<td>2.35%</td>
</tr>
</tbody>
</table>


**Explanation of Provision**

The provision changes the calculation of minimum interest rates under both the cash value accumulation test and the guideline premium/cash value corridor test of section 7702 for purposes of determining if a contract meets the Federal tax statutory definition of a life insurance contract. Instead of the prior-law minimum rates of four percent (or six percent), the minimum interest rate under section 7702 is the least of three rates, unless a higher rate is guaranteed on issuance of the contract. Absent a higher rate guaranteed on issuance by the issuing company for a contract, the minimum interest rate is unlikely to increase following a period of low market interest rates unless the rate (of the three) that is prescribed by the NAIC increases.

The provision modifies the minimum interest rate under the cash value accumulation test by eliminating the four percent rate and substituting the rate that is the lesser of four percent or the insurance interest rate. The insurance interest rate, in turn, is defined as the lesser of two other rates; (1) the average of the midterm applicable Federal rates ("AFR") for the most recent 60-month period ending two years before the most recent adjustment year,\textsuperscript{2027} or (2) the rate prescribed in the NAIC’s Standard Valuation model law as

\textsuperscript{2026}The applicable federal rates are determined by the Treasury Department under section 1274(d). The midterm applicable federal rate is a component of the minimum interest rates for section 7702 as determined under the provision of the Act described below.

\textsuperscript{2027}Sec. 7702(f)(11)(C), defining the section 7702 applicable federal interest rate. Because this rate is an average of the annually compounded midterm AFRs over a relatively long period, 60 months, volatility over the period is muted. Because it is a lagging rate in that it is measured over the 60-month period that ends two years before the first year following any adjustment in the insurance interest rate, it does not reflect any current interest rate at the time the contract is issued (that is, neither the current mid-term AFR nor any market rate in the year of contract issuance). Because of this lag, it is unlikely in a period of level or rising interest rates that increases in this rate will cause an increase in the minimum interest rate under section 7702.
the U.S. valuation interest rate for life insurance contracts with guaranteed durations of more than 20 years for the calendar year ending before the most recent adjustment year.\textsuperscript{2028}

An adjustment year means the next calendar year after the year a change in that U.S. valuation interest rate becomes effective.

Notwithstanding these rules of the provision, a transition rule provides that the minimum interest rate for this purpose is two percent, for calendar years beginning with 2021 and ending with the year before the first subsequent adjustment year. Specifically, the insurance interest rate is two percent starting with calendar year 2021, until the calendar year following the year in which a change becomes effective in the NAIC-prescribed U.S. valuation interest rate for life insurance with guaranteed durations of more than 20 years.

The provision defines the minimum interest rate under the guideline premium/cash value corridor test as the rate that is two percentage points higher than the rate determined under the cash value accumulation test. This parallels the prior-law two-percentage-point difference between the rates, which were four and six percent, respectively. Thus, under the transition rule, the minimum interest rate for purposes of the guideline premium/cash value corridor test is four percent, that is, two percentage points higher than the two-percent rate under the transition rule for purposes of the cash value accumulation test.

**Effective Date**

The provision is effective for contracts issued after December 31, 2020.

6. Clarification and technical improvements to CARES Act employee retention credit (sec. 206 of the Act and sec. 2301 of the CARES Act)

**Present Law**

Background for the provision and a description of the employee retention credit that the provision modifies may be found above in section describing section 2301 of the CARES Act (Pub. L. No. 116–136) in Part Six of this document.

**Explanation of Provision**

The provision modifies the employee retention credit that was included in the CARES Act in the following ways.

First, the provision clarifies that, in the case of an organization which is described in section 501(c) of the Code, any reference to gross receipts in the CARES Act employee retention credit (as modified by the Act) shall be treated as a reference to gross receipts within the meaning of section 6033 of the Code.

The provision also clarifies that health plan expenses paid to provide and maintain a group health plan\textsuperscript{2029} are treated as wages that are potentially eligible for the credit, assuming other require-
ments are met. The amount of such expenses per employee and per period shall be the amount properly allocable to such employee and such period under rules prescribed by the Secretary. Except as otherwise provided by the Secretary, an allocation of such expenses is proper if made on the basis of being pro rata among periods of coverage.

The provision alters the interaction of the credit and the Paycheck Protection Program. The provision removes the rule in section 2301(j) of the CARES Act that provided that an employer that received a Paycheck Protection Program ("PPP") loan was ineligible for the credit, as well as the instruction to the Secretary in section 2301(l)(3) of the CARES Act to provide for recapture of the credit in the event it was allowed to a taxpayer who received a PPP loan. As a result, taxpayers receiving a PPP loan may be eligible for the credit. Section 1106 of the CARES Act is amended to provide that the definition of payroll costs that may give rise to loan forgiveness described in section 1106(b) of the CARES Act shall not include qualified wages taken into account in determining the credit. The provision then provides that an employer may elect not to take into account any amount of the employer’s qualified wages for purposes of calculating the credit. However, such an election does not prevent payroll costs paid during the covered period from being treated as qualified wages of the eligible employer to the extent that a PPP loan is not forgiven by reason of a decision by the lender under section 1106(g) of the CARES Act to deny forgiveness.

Finally, the provision requires the Secretary to issue such forms, instructions, regulations, and guidance as are necessary to prevent the avoidance of the purposes of the limitations on the credit, including through the leaseback of employees.

**Effective Date**

In general, the amendments made by the provision are effective as if included in the provisions of the CARES Act to which they relate.

The effective date of the provision includes a special rule permitting any employer who has filed a return of tax with respect to applicable employment taxes before the date of enactment of the Act to elect to treat any applicable amount as an amount paid in the calendar quarter which includes the date of enactment of the Act (i.e., the 4th quarter of calendar year 2020). An applicable amount is any amount of either group health plan expenses treated as wages by subsection (b) of the provision or wages permitted to be treated as qualified wages as a result of subsection (c)(2) of the provision (addressing coordination between the Paycheck Protection Program and the credit), provided such amount was paid in a calendar quarter beginning after December 31, 2019, and before...
October 1, 2020, and was not taken into account by the taxpayer in calculating the credit for such calendar quarter.

7. Extension and modification of employee retention and re-hiring credit (sec. 207 of the Act and sec. 2301 of the CARES Act)

**Present Law**

Background for the provision and a description of the employee retention credit that the provision modifies may be found above in section describing section 2301 of the CARES Act (Pub. L. No. 116–136) in Part Six of this document. Additionally, the provision makes changes to the law as modified by the preceding provision of the Act, described above.

**Explanation of Provision**

The provision extends and modifies the employee retention credit that was included in the CARES Act in the following ways.

The provision extends the credit to apply to wages paid before July 1, 2021, extending by two calendar quarters the end-date provided by section 2301(m) of the CARES Act.

The provision makes several changes to limitations on the credit.

First, the provision increases the percentage of qualified wages used to calculate the credit from 50 percent of such wages to 70 percent of such wages.

Second, the provision increases the amount of qualified wages per employee that may be taken into account in calculating the credit from $10,000 for all calendar quarters to $10,000 per calendar quarter.

Third, the provision permits an employer to qualify as an eligible employer under the reduced gross receipts test with respect to a calendar quarter for which the gross receipts of the employer are less than 80 percent of the gross receipts of the same employer for the same calendar quarter in 2019. For employers not in existence at the beginning of the relevant calendar quarter in 2019, this rule is applied by reference to the same calendar quarter in 2020 rather than 2019. Additionally, the provision permits employers to elect to compare the gross receipts of the immediately preceding calendar quarter to the gross receipts for the corresponding calendar quarter in 2019, rather than using the quarter for which the credit is claimed. For employers not in existence in 2019, the election permits the employer to compare the gross receipts of the immediately preceding calendar quarter to the corresponding calendar quarter in 2020.

Fourth, with regard to the definition of qualified wages, the provision increases the average number of full-time and full-time-equivalent employees the eligible employer may have had during 2019 to claim credit for any wages paid to an employee—rather than merely wages with respect to which the employee is not providing services—from 100 or fewer to 500 or fewer.

Finally, the provision eliminates the rule that qualified wages paid to an employee by an eligible employer that had more than 500 full-time employees in 2019 cannot exceed the amount such employee would have been paid for working an equivalent duration
during the 30 days immediately preceding the period in which the eligible employer met either the governmental order test or the reduced gross receipts test.

The provision modifies the rule prohibiting certain government employers from claiming the credit. First, the provision excludes from the rule any organization described in section 501(c)(1) of the Code and exempt from tax under section 501(a) of the Code. Second, the provision excludes from the rule any entity that is a college or university and any entity the principal purpose or function of which is providing medical or hospital care. As a result, such organizations and entities are not prevented from claiming the credit by reason of the general prohibition against certain government employers claiming the credit. With respect to any organization or entity meeting either exception, wages as defined in section 3121(a) of the Code shall be determined for purposes of the credit without regard to paragraphs (5) and (6) (relating to certain services performed in the employ of the United States or an instrumentality of the United States), (7) (relating to certain services performed in the employ of a State, any political subdivision thereof, or any instrumentality of one or more of the foregoing which is wholly owned thereby), (10) (relating to certain services performed in connection with a school, college, or university), and (13) (relating to certain services performed as a student nurse) of section 3121(b).

The provision revises and expands upon the denial of double benefit rules that were included in section 2301(h) of the CARES Act to provide that any wages taken into account in determining the credit shall not be taken into account as wages for purposes of sections 41 (providing a credit for increasing research activities), 45A (the Indian employment credit), 45P (providing an employer wage credit for employees who are active duty members of the uniformed services), 45S (providing an employer credit for paid family and medical leave), 51 (the work opportunity credit), and 1396 (the empowerment zone employment credit).

Under rules to be provided by the Secretary, the provision permits small employers (i.e., those for whom the average number of full-time and full-time-equivalent employees during 2019 was not greater than 500) to elect to receive an advance payment of the credit for any quarter in an amount not to exceed 70 percent of the average quarterly wages paid by the employer in calendar year 2019. An employer who employs seasonal workers\(^\text{2035}\) may elect a limitation equal to 70 percent of the wages for the calendar quarter in 2019 that corresponds to the calendar quarter to which the election relates, rather than 70 percent of average quarterly wages for 2019. For employers not in existence in 2019, the limitations under both the general rule and the election are calculated using 2020 numbers rather than 2020 numbers. The amount of the credit which would be allowed but for receipt of such an advance payment is reduced by the amount of the advance payment.\(^\text{2036}\) If the advance payments to a taxpayer for a calendar quarter exceed the credit allowed but for receipt of the advance payment, the tax im-

\(^{2035}\)As defined in section 45R(d)(5)(B) of the Code.

\(^{2036}\)Any failure to so reduce the credit is treated as arising out of a mathematical or clerical error and any excess tax due as a result is assessed according to section 6213(b) of the Code.
posed by chapters 21 (FICA) or 22 (RRTA) of the Code (whichever is applicable) are increased by the amount of the excess.

The provision modifies the grant of authority in section 2301(l) of the CARES Act to require that any forms, instructions, regulations, or guidance issued with respect to application of the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504 of the Code) require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits. Such forms, etc., shall require the third party payor to accurate report the credit based on the information provided by the customer.

The provision requires the Secretary to conduct a public awareness campaign, in coordination with the Administrator of the Small Business Administration, to provide information regarding the availability of the credit. As part of the outreach, the Secretary is required to provide notice about the credit to all employers who reported 500 or fewer employees on their most recently filed employment tax return, and, within 30 days of the date of enactment of the Act, provide educational materials about the credit to all employers.

Finally, under the provision an election not to take into account any amount of the employer's qualified wages for purposes of calculating the credit does not prevent payroll costs paid during the covered period from being treated as qualified wages of the eligible employer to the extent that a Paycheck Protection Program second draw loan described in 15 U.S.C. section 636(a)(37) is not forgiven by reason of the application of paragraph (37)(J) of such section.

Effective Date

The amendments made by the provision are effective for calendar quarters beginning after December 31, 2020.

8. Minimum age for distributions during working retirement
   (sec. 208 of the Act and sec. 401(a) of the Code)

Present Law

In general

For purposes of the qualification requirements under the Code, a pension plan is defined as a plan established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or attainment of normal retirement age. However, a pension plan does not fail to be a qualified retirement plan solely because the plan provides that a distribution may be made to an employee who has attained age 59½ and who is not separated from employment at the time of the distribution.\(^{2037}\)\(^{2038}\)

\(^{2037}\)Treas. Reg. sec. 1.401–1(b)(1)(i).

\(^{2038}\)Sec. 401(a)(36); Treas. Reg. sec. 1.401–1(b)(i). The Bipartisan American Miners Act (Division M of Pub. L. No. 116–94) lowered the age at which a pension plan may provide in-service distributions from age 62 to age 59½. See the description of section 104 of the Bipartisan American Miners Act in Part Three of this document.
Pension plans include both defined benefit plans and money purchase pension plans.

**Multiemployer plans**

A multiemployer plan is a plan to which more than one unrelated employer contributes, that is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor. Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives, referred to as the plan sponsor. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, and the level of plan benefits is established by the plan sponsor.

**Explanation of Provision**

Under the provision, the age at which a pension plan may provide in-service distributions is lowered from age 59 1/2 to age 55 in the case of a multiemployer plan that primarily covers employees in the building and construction industry, with respect to individuals who were participants in the plan on or before April 30, 2013, if the following requirements are satisfied: (i) the plan’s trust was in existence before January 1, 1970; (ii) before December 31, 2011, at a time when the plan provided that distributions may be made to an employee who has attained age 55 and who is not separated from employment at the time of such distribution, the plan received at least one written determination from the IRS that the plan’s trust is a qualified trust.

**Effective Date**

The provision is effective for distributions made before, on, or after the date of enactment of the Act (December 27, 2020).


**Present Law**

**Vesting standards**

To ensure that employees with substantial periods of service with an employer do not lose plan benefits upon separation from employment, under a qualified plan (1) a participant’s benefits must be fully vested upon attainment of normal retirement age under the plan; (2) a participant must be fully vested at all times in the benefit derived from employee contributions; and (3) employer-provided benefits must vest at least as rapidly as under one of three alternative minimum vesting schedules. Under these schedules, an employee’s right to benefits derived from employer

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2039 As defined in section 414(j).
2040 Sec. 414(f) and sec. 2(37) of ERISA.
2041 As defined in section 4203(b)(1)(B)(i) of ERISA.
2042 Within the meaning of section 401(a).
2043 A qualified plan is a retirement plan that satisfies the requirements of section 401(a).
2044 Sec. 411(a).
While "affected employee" is not defined in the Code or Treasury guidance, the court in Borda v. Hardy, 138 F. 3d 1062, 1067 (6th Cir. 1998), for example, indicated that an employee who had separated from service and was one who stood to be "affected" by the termination of the plan should be treated as an "affected employee." Sec. 411(d)(3). Treas. Reg. sec. 1.411(d)–2(b). Treas. Reg. sec. 1.411(d)–2(b)(3). Rev. Rul. 2007–43, 2007–2 C.B. 45.

Whether a partial termination of a qualified plan has occurred (and the time of its occurrence) is determined by the Commissioner of the Internal Revenue Service ("IRS") on the basis of all the facts and circumstances in a particular case. According to Treasury regulations, such facts and circumstances include: the exclusion, by reason of a plan amendment or severance by the employer, of a group of employees who have previously been covered by the plan; and plan amendments which adversely affect the rights of employees to vest in benefits under the plan. To the extent a termination, or partial termination, occurs, these rules only apply to the part of the plan that is terminated.

Under guidance, the IRS has ruled that if the turnover rate is at least 20 percent, there is a presumption that a partial termination of the plan has occurred, but noted that whether a partial termination of a qualified plan occurs on account of participant turnover (and the time of such event) depends on all the facts and circumstances, including whether the turnover rate for an applicable period is routine for the employer.

Under the provision, a plan is not treated as having a partial termination during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021 is at least 80 percent of the number of active participants covered by the plan on March 13, 2020.

The provision is effective on the date of enactment.

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2040 While "affected employee" is not defined in the Code or Treasury guidance, the court in Borda v. Hardy, 138 F. 3d 1062, 1067 (6th Cir. 1998), for example, indicated that an employee who had separated from service and was one who stood to be "affected" by the termination of the plan should be treated as an "affected employee."

2046 Sec. 411(d)(3).

2047 Treas. Reg. sec. 1.411(d)–2(b).

2048 Treas. Reg. sec. 1.411(d)–2(b)(3).


2050 In that ruling, the IRS determined there was a partial termination because the severances from employment occurred as a result of the shutdown of one of the employer's business locations and not as a result of routine turnover. IRS has also indicated that a partial termination can occur (among other circumstances) in connection with a significant corporate event such as a closing of a plant or division, or as a result of general employee turnover due to adverse economic conditions or other reasons that are not within the employer's control. See Internal Revenue Service, Retirement Plan FAQs regarding Partial Plan Termination, Sept. 4, 2020, available at https://www.irs.gov/retirement-plans/retirement-plan-faqs-regarding-partial-plan-termination.
10. Temporary allowance of full deduction for business meals (sec. 210 of the Act and sec. 274 of the Code)

Present Law

Under section 274, no deduction is permitted with respect to entertainment, amusement, or recreation. In addition, a deduction for any expense for food or beverages is generally limited to 50 percent of the amount otherwise deductible. In general, no deduction is allowed for the expense of any food or beverage unless such expense is not lavish or extravagant, and the taxpayer (or an employee of the taxpayer) is present at the meal. Thus, for example, a taxpayer may generally deduct 50 percent of the food or beverage expenses associated with operating its trade or business (e.g., meals consumed by employees on work travel that are properly substantiated and a business meal with a client that is not lavish or extravagant). When a meal is served during an activity that constitutes entertainment, a 50 percent deduction for meals served at the event may be allowable if the cost of the food or beverages is separately stated on the invoice. For example, food or beverages consumed during a theatre or sporting event are subject to the 50-percent deduction limitation to the extent the meal is delimited from the cost of the entertainment.

The expenses of an employer associated with providing food or beverages to employees through an eating facility that meet the requirements for de minimis fringe benefits and for the convenience of the employer are similarly subject to the 50 percent deduction limitation. However, such amounts incurred or paid after December 31, 2025 are not deductible.

There are exceptions to the general rule limiting deductions for food or beverage expenses to 50 percent of the otherwise deductible amount. One such exception applies to food or beverage expenses reported by the taxpayer as compensation and as wages to an employee. Another exception applies to the extent that the food or beverage expenses are includible in the gross income of a recipient who is not an employee (e.g., a nonemployee director) as compensation for services rendered or as a prize or award. The exceptions apply only to the extent that amounts are properly reported by the employer as compensation and wages or otherwise includible in income. In no event may the amount of the deduction exceed the amount of the taxpayer’s actual cost, even if a greater amount (i.e., fair market value) is includible in income.

Other exceptions to the 50-percent deduction limitation include the following: food or beverage expenses paid or incurred by the taxpayer’s employees under section 276(e)(1).
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 taxpayer accounts for the expenses to such person; expenses for food or beverage expenses at recreational, social, or similar activities primarily for the benefit of employees other than certain owners and highly compensated employees; expenses for food or beverages made available by the taxpayer to the general public; and food or beverages which are sold by the taxpayer in a *bona fide* transaction for an adequate and full consideration in money or money's worth. Other exceptions to the 50-percent deduction limitation include exceptions for food or beverage expenses includible in an employee’s income under section 82 (in connection with moving from one residence to another residence attributable to employment), and expenses for food or beverages provided to crew members of certain commercial vessels and certain oil or gas platform or drilling rig workers.

**Explanation of Provision**

The provision provides an exception to the 50 percent deduction limitation for any food or beverage expense if such expense is for food or beverages provided by a restaurant and paid or incurred after December 31, 2020 and before January 1, 2023. Thus, for example, amounts paid or incurred during 2021 and 2022 (1) for employee travel meals, (2) for business meals with a client, to the extent the meal is not extravagant or lavish, (3) for meals consumed during certain business activities, such as professional development conferences, or (4) by an employer associated with providing food or beverages to employees through an eating facility that meet the requirements for de minimis fringe benefits and for the convenience of the employer, are not subject to the 50 percent deduction limitation if such food or beverages are provided by a restaurant. The provision does not change the tax treatment of entertainment expenses, which remain nondeductible. However, amounts paid or incurred during 2021 and 2022 for food or beverages provided by a restaurant in connection with entertainment may not be subject to the 50-percent deduction limitation if such costs are separately stated on an invoice.

**Effective Date**

The provision is effective for amounts paid or incurred after December 31, 2020.
11. Temporary special rule for determination of earned income (sec. 211 of the Act and secs. 24 and 32 of the Code)

Present Law

Eligible taxpayers may claim an earned income tax credit ("EITC") and a child tax credit. In general, the EITC is a refundable income tax credit for low-income workers. The amount of the credit depends on the earned income of the taxpayer and whether the taxpayer has one, more than one, or no qualifying children. Earned income generally includes wages, salaries, tips, and other employee compensation, plus net earnings from self-employment.

Taxpayers with incomes below certain threshold amounts are eligible for a $2,000 child tax credit for each qualifying child. In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable income tax credit (the "additional child tax credit"). Generally, the amount of the additional child tax credit equals 15 percent of the taxpayer's earned income in excess of $2,500. The maximum amount of the refundable credit for each qualifying child is $1,400 for taxable years beginning in 2020.

Congress has at times enacted provisions that allow individuals to use their earned income from the prior, rather than current, taxable year in determining the amount of the earned income tax credit or additional child tax credit.

Explanation of Provision

The provision permits a taxpayer to elect to calculate the taxpayer's EITC and additional child tax credit for taxable years beginning in 2020 using 2019 rather than 2020 earned income if the taxpayer's earned income in 2020 is less than in 2019.

For purposes of the provision, in the case of a joint return, the earned income which is attributable to the taxpayer for 2019 is the sum of the earned income which is attributable to each spouse for 2019.

For administrative purposes, the incorrect use on a return of earned income pursuant to an election under this provision is treated as a mathematical or clerical error. An election under the provision is disregarded for purposes of calculating gross income in the election year.

Effective Date

The provision is effective on the date of enactment (December 27, 2020).

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2066 Sec. 32.
2067 Sec. 24.
12. Certain charitable contributions deductible by non-itemizers (sec. 212 of the Act and secs. 170, 6662, and 6751 of the Code)

Present Law

Adjusted gross income and taxable income of an individual

Adjusted gross income

Under the Code, gross income means “income from whatever source derived” except for certain items specifically exempt or excluded by statute. An individual’s AGI is determined by subtracting certain “above-the-line” deductions from gross income. These deductions include trade or business expenses, losses from the sale or exchange of property, contributions to a qualified retirement plan by a self-employed individual, contributions to certain IRAs, certain moving expenses for members of the Armed Forces, and certain education-related expenses.

Taxable income

To determine taxable income, an individual reduces AGI by the applicable standard deduction or his or her itemized deductions, and by the deduction for qualified business income. A taxpayer may reduce AGI by the amount of the applicable standard deduction to arrive at taxable income. The basic standard deduction varies depending on a taxpayer's filing status. For 2021, the amount of the standard deduction is $12,550 for a single individual and for a married individual filing separately, $18,800 for a head of household, and $25,100 for married taxpayers filing jointly and for a surviving spouse. An additional standard deduction is allowed with respect to any individual who is elderly (i.e., above age 64) and/or blind. The amounts of the basic standard deduction and the additional standard deductions are indexed annually for inflation.

In lieu of taking the applicable standard deduction, an individual may elect to itemize deductions. The deductions that may be itemized include personal State and local income, property, and sales taxes (up to $10,000 annually ($5,000 for married taxpayers filing separately)), home mortgage interest (on mortgages up to certain specified dollar amounts), charitable contributions, certain investment interest, medical expenses (in excess of 7.5 percent of AGI), and casualty and theft losses attributable to Federally declared disasters (in excess of 10 percent of AGI and in excess of $100 per loss).

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2070 Sec. 61.
2071 Sec. 62. In addition, alimony payments are generally deductible by the payor spouse for divorce and separation instruments executed before January 1, 2019.
2072 Sec. 63(a) and (b).
2073 Secs. 63(b)(3), (d)(3), and 199A.
2074 For 2021, the additional amount is $1,350 for married taxpayers (for each spouse meeting the applicable criterion) and surviving spouses. The additional amount for single individuals and heads of households is $1,700. If an individual is both elderly and blind, the individual is entitled to two additional standard deductions, for a total additional amount (for 2021) of $2,700 or $3,400, as applicable.
Itemized deduction for charitable contributions

An income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the recipient organization.\footnote{Sec. 170.} For individuals, the deduction for charitable contributions is available only to a taxpayer who elects to itemize deductions.

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base. The applicable percentage of the contribution base varies depending on the type of recipient organization and property contributed. The contribution base is defined as the taxpayer's adjusted gross income computed without regard to any net operating loss carryback.\footnote{Sec. 62(a)(22).}

Charitable contributions that exceed the applicable percentage limit generally may be carried forward for up to five years.\footnote{Sec. 170(b)(1)(H).} In general, contributions carried over from a prior year are taken into account after contributions for the current year that are subject to the same percentage limit.

Temporary above-the-line deduction for certain charitable contributions

Under the CARES Act (Pub. L. No. 116–136), described in Part Six of this document, an eligible individual may claim an above-the-line deduction in an amount not to exceed $300 for qualified charitable contributions made during a taxable year that begins in 2020.\footnote{Sec. 62(f)(1).} The above-the-line deduction is not available for contributions made during a taxable year that begins after 2020. An eligible individual is an individual who does not elect to itemize deductions.\footnote{Sec. 62(a)(22).} Thus, a taxpayer taking the standard deduction, who absent the temporary rule would not be able to deduct any charitable contributions, may claim an above-the-line deduction for qualified charitable contributions.

A qualified charitable contribution is a cash contribution for which a deduction is allowable under section 170 (determined without regard to the percentage limitations under section 170(b)) that is paid to a charitable organization described in section 170(b)(1)(A), other than contributions to (i) a supporting organization described in section 170(b)(1)(A), other than contributions to (i) a supporting organization—
A tax shelter is defined for this purpose as a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement if a significant purpose of such partnership, other entity, plan, or arrangement is the avoidance or evasion of Federal income tax. Sec. 6662(d)(2)(C).

Sec. 6664(c).


Accuracy-related penalty (sec. 6662)

An accuracy-related penalty under section 6662 applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. If the correct income tax liability exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 (or, in the case of corporations, by the lesser of (a) 10 percent of the correct tax (or $10,000 if greater) or (b) $10 million), then a substantial understatement exists and a penalty may be imposed equal to 20 percent of the underpayment of tax attributable to the understatement. Except in the case of tax shelters, the amount of any understatement is reduced by any portion attributable to an item if (1) the treatment of the item is supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment. The Secretary may prescribe a list of positions that the Secretary believes do not meet the requirements for substantial authority under this provision.

The section 6662 penalty generally is abated (even with respect to tax shelters) in cases in which the taxpayer can demonstrate that there was “reasonable cause” for the underpayment and that the taxpayer acted in good faith. The relevant regulations provide that reasonable cause exists where the taxpayer “reasonably relies in good faith on [a professional] tax advisor’s analysis of the pertinent facts and authorities [that] . . . unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged” by the IRS.

With certain exceptions, section 6662 does not apply to any portion of an underpayment that is attributable to a reportable trans-

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2080 Sec. 62(f)(2).
2081 Sec. 6662.
2082 A tax shelter is defined for this purpose as a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement if a significant purpose of such partnership, other entity, plan, or arrangement is the avoidance or evasion of Federal income tax. Sec. 6662(d)(2)(C).
2083 Sec. 6664(c).
action understatement on which a penalty is imposed under section 6662A.  

The 20-percent penalty is increased to 40 percent when there is a gross valuation misstatement involving a substantial valuation overstatement, a substantial overstatement of pension liabilities, a substantial estate or gift tax valuation understatement, or when a transaction lacking economic substance is not properly disclosed.

**Mandatory supervisory approval to assert penalty**

Assessment of an addition to tax or penalty under the Code is barred in the absence of prior supervisory approval. Such approval requires that the initial determination of the penalty or addition to tax be approved in writing by the immediate supervisor of the person asserting the penalty. The Code authorizes the Secretary to designate a higher level official to provide the supervisory approval. Certain penalties are exempt from the requirement for supervisory approval, including those penalties “automatically calculated through electronic means.”

Because the IRS bears the burden of producing evidence to support assessment of a penalty in any court proceeding, the Commissioner must produce evidence of compliance with the supervisory approval requirement, even if the IRS does not bear the burden of proof.

**Explanation of Provision**

Under the provision, an individual who does not itemize deductions may claim a deduction in an amount not to exceed $300 ($600 in the case of a joint return) for certain charitable contributions made during a taxable year that begins in 2021. The deduction is not available for contributions made during a taxable year that begins after 2021.

Contributions taken into account for this purpose include only contributions made in cash during the taxable year to a charitable organization described in section 170(b)(1)(A), other than contributions to (i) a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time.

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2083 Sec. 6662(b) (flush language).
2084 Secs. 6662(h) and 6662(i).
2085 Sec. 6751(b), generally. Other penalties exempt from the pre-approval requirement are penalties under sections 6651 (failure to file or pay taxes), 6654 (failure to pay estimated individual taxes) and 6655 (failure to pay estimated corporate taxes).
2086 Graev v. Commissioner, 149 T.C. 485 (2017). Cf. Chai v. Commissioner, 851 F.3d 190 (2d Cir. 2017) (held that the Commissioner bears both the burden of production and burden of proof with respect to the penalty).
2087 New sec. 170(p). Unlike the temporary above-the-line charitable deduction under the CARES Act for certain contributions made during a taxable year that begins in 2020, the new deduction is not subtracted from gross income in determining the individual's AGI and thus is not an above-the-line deduction. Instead, as with the standard deduction and an individuals itemized deductions, qualifying charitable contributions made by a non-itemizer in a taxable year that begins in 2021 are subtracted from AGI in determining an individual's taxable income.
period. A qualifying charitable contribution does not include an amount that is treated as a contribution in the taxable year by reason of being carried forward from a prior contribution year under section 170(b)(1)(G) or (d)(1).

The provision increases the penalty under section 6662 for an underpayment of tax resulting from an overstatement of the temporary nonitemizer charitable deduction for contributions made during a taxable year that begins in 2021. The penalty is increased from 20 percent of the underpayment to 50 percent of the underpayment. In addition, the provision exempts the section 6662 penalty relating to an overstatement of the temporary nonitemizer charitable deduction from the requirement for supervisory approval under section 6751(b).

Effective Date

The provision is effective for taxable years beginning after December 31, 2020.

13. Modification of limitations on charitable contributions (sec. 213 of the Act and sec. 170 of the Code)

Present Law

In general

An income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the recipient organization.2090

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

Percentage limitations

Contributions by individuals

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base. The contribution base is defined as the taxpayer's AGI computed without regard to any net operating loss carryback. The applicable percentage of the contribution base varies depending on the type of recipient organization and property contributed.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (e.g., public charities, private foundations other than private non-operating foundations, and certain

2090 Sec. 170.
governmental units) may not exceed 50 percent of the taxpayer’s contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer’s contribution base.

For contributions taken into account for taxable years beginning after December 31, 2017, and before January 1, 2026, section 170(b)(1)(G) increases the percentage limit for contributions by an individual taxpayer of cash to an organization described in section 170(b)(1)(A) to 60 percent. The 60-percent limit does not apply to noncash contributions. The 60-percent limit is intended to be applied after, and reduced by, the amount of noncash contributions to organizations described in section 170(b)(1)(A).

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer’s contribution base. An individual may elect, however, to bring contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private nonoperating foundations) are deductible up to 20 percent of the taxpayer’s contribution base.

Contributions by corporations

For corporations, in any taxable year, charitable contributions are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation’s taxable income computed with certain modifications.

For purposes of determining whether a corporation’s aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

Carryforwards of excess contributions

Charitable contributions that exceed the applicable percentage limitation may be carried forward for up to five years. The amount that may be carried forward from a taxable year (“contribution year”) to a succeeding taxable year may not exceed the applicable percentage of the contribution base for the succeeding taxable year less the sum of contributions made in the succeeding taxable year plus contributions made in taxable years prior to the contribution year and treated as paid in the succeeding taxable year under this rule.

Contributions of food inventory

A taxpayer’s deduction for charitable contributions of inventory generally is limited to the taxpayer’s basis (typically, cost) in the inventory, or, if less, the fair market value of the inventory. For certain contributions of inventory, however, a C corporation may claim an enhanced deduction equal to the lesser of (1) basis plus...
one-half of the item’s appreciation (i.e., basis plus one-half of fair market value in excess of basis) or (2) two times basis.2092

Any taxpayer engaged in a trade or business, whether or not a C corporation, is eligible to claim the enhanced deduction for donations of food inventory.2093 The enhanced deduction for food inventory is available only for food that qualifies as “apparently wholesome food.” Apparently wholesome food is defined as food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 15 percent of the taxpayer’s net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non-C corporation trades or businesses) from which contributions of apparently wholesome food are made. For C corporations, these contributions are made subject to a limitation of 15 percent of taxable income (as modified). The general 10-percent limitation for a C corporation does not apply to these contributions, but the 10-percent limitation applicable to other contributions is reduced by the amount of these contributions. Qualifying food inventory contributions in excess of these 15-percent limitations may be carried forward and treated as qualifying food inventory contributions in each of the five succeeding taxable years in order of time.

**Temporary modifications to charitable contribution limitations**

*In general*

Congress has at times liberalized the charitable contribution limitations for contributions made in response to certain natural disasters.2094

**CARES Act**

Section 2205 of the CARES Act (Pub. L. No. 116–136), described in Part Six of this document, temporarily increases the charitable contribution limitations. In the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer’s contribution base (AGI computed without regard to any net operating loss carryback) exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years as contributions described in section 170(b)(1)(G), subject to the limitations of section 170(b)(1)(G)(ii).

In the case of a corporation, the deduction for qualified contributions is allowed up to 25 percent of the corporation’s taxable in-
come. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations of section 170(d)(2).

In applying subsections (b) and (d) of section 170 to determine the deduction for other contributions, qualified contributions are not taken into account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Qualified contributions are cash contributions paid during calendar year 2020 to a charitable organization described in section 170(b)(1)(A), other than contributions (i) to a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. A taxpayer must elect to have contributions treated as qualified contributions.

For charitable contributions of food inventory that are made during 2020 and which qualify for the enhanced deduction, the 15-percent limitations described above are increased to 25 percent.

**Explanation of Provision**

The provision generally extends the temporary modifications of the charitable contribution limits under the CARES Act to contributions made during 2021. This is accomplished by (1) amending the definition of a qualified contribution to include a contribution paid during 2021 and (2) amending the temporary increase in the limit for contributions of food inventory to include contributions made during 2021.

**Effective Date**

The provision is effective for contributions made after December 31, 2020.


**Present Law**

**Flexible spending arrangements**

A flexible spending arrangement ("FSA") generally is defined as a benefit program which provides employees with coverage under which specific incurred expenses may be reimbursed (subject to reimbursement maximums and other conditions) and the maximum amount of reimbursement reasonably available is less than 500 percent of the value of such coverage. A flexible spending arrangement under a cafeteria plan (as defined below) allows an em-

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2095 Sec. 106(c)(2) and Prop. Treas. Reg. sec. 1.125-5(a).
ployee to make salary reduction contributions for use in receiving reimbursements for certain incurred expenses. The arrangement can also include non-elective employer contributions (known as employer flex-credits) that the employer makes available for every employee eligible to participate in the employer’s cafeteria plan, to be used only for certain tax-excludable benefits (but not as cash or a taxable benefit). Types of expenses that may be reimbursed under a flexible spending arrangement in a cafeteria plan include medical expenses (under a “health FSA”) and dependent care expenses (under a “dependent care FSA”).

Cafeteria plans

A cafeteria plan is a separate written plan of an employer under which all participants are employees, and participants are permitted to choose among at least one permitted taxable benefit (for example, current cash compensation) and at least one qualified benefit. Qualified benefits are generally employer-provided benefits that are not includible in gross income by reason of an express provision of the Code. Examples include employer-provided health coverage (including a health FSA), group term life insurance coverage not in excess of $50,000, and benefits under a dependent care assistance program (including a dependent care FSA). In order to be excludable from gross income, any qualified benefit elected under a cafeteria plan must independently satisfy any requirements under the Code section that provides the exclusion. If an employee receives a qualified benefit based on his or her election between the qualified benefit and a taxable benefit under a cafeteria plan, the qualified benefit generally is not includible in gross income. However, if a plan offering an employee an election between taxable benefits (including cash) and nontaxable qualified benefits does not meet the requirements for being a cafeteria plan, the election between taxable and nontaxable benefits results in gross income to the employee, regardless of the benefit elected and when the election is made.

Cafeteria plans generally may not provide for the deferral of compensation. Elections under a cafeteria plan generally must be made prior to the first day of the plan year and must be irrevocable, except under certain circumstances permitted under Treasury regulations, such as if the participant experiences a change in status. In addition, a cafeteria plan may be amended during a plan year, but the amendment must only be effective prospectively.

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2098 Sec. 125(d).
2099 Benefits under a health FSA are excludable from gross income under sections 105(b) and 106, and benefits under a dependent care FSA are excludable from gross income under section 129.
2100 Sec. 125(a).
2101 Sec. 125; Prop. Treas. Reg. sec. 1.125–1(b).
2102 Sec. 125(d)(2).
Health FSAs

In order for coverage and reimbursements under a health FSA to qualify for tax-favored treatment, the health FSA must qualify as an accident and health plan.2105 Under the Code, the value of employer-provided health coverage under an accident or health plan is generally excludable from gross income,2106 as are reimbursements under the plan for medical care expenses for employees, their spouses, and their dependents.2107 A health FSA may only reimburse medical expenses as defined in section 213(d).

A benefit provided under a cafeteria plan through employer contributions to a health FSA is not treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect salary reduction contributions in excess of $2,500, adjusted for inflation, for any taxable year.2108 For taxable year 2021, the limit is $2,750.

Dependent care FSAs

Amounts paid or incurred by an employer for dependent care assistance provided to an employee are excludable from the employee’s income if the amounts are furnished pursuant to a dependent care assistance program.2109 A dependent care assistance program is a separate written plan of an employer for the exclusive benefit of the employees that provides dependent care assistance and meets certain other requirements under the Code, including requirements relating to non-discriminatory benefits, limits on principal shareholders, and information to be provided to eligible employees.2110 A dependent care FSA is a type of dependent care assistance program.2111

Dependent care assistance means the payment or provision of services that would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment) if paid for by the employee.2112 Such employment-related expenses include expenses for the care of a qualifying individual. Qualifying individual is defined as (i) a dependent of the taxpayer2113 who has not attained age 13 or (ii) a dependent2114 or spouse of the taxpayer who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of the taxable year.2115

The amount that may be excluded from an employee’s gross income under a dependent care assistance program, including a de-

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2106 Sec. 106. Health coverage provided to active members of the uniformed services, military retirees, and their dependents are excludable from gross income under section 134. That section provides an exclusion for "qualified military benefits," defined as benefits received by reason of status or service as a member of the uniformed services and which were excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice then in effect.
2107 Sec. 105(b).
2108 Sec. 125(i).
2109 Sec. 125(a)(1).
2110 Sec. 129(a)(1).
2112 Sec. 129(c)(1).
2113 As defined in sec. 152(a)(1).
2114 As defined in sec. 152(a)(1), determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B).
2115 Sec. 21(b)(1).
dependent care FSA, is limited to $5,000 ($2,500 in the case of a separate return by a married individual).\[^{2116}\] In addition, a plan may permit an individual who has ceased participation in a dependent care FSA (due to, for example, termination of employment) to apply unused amounts remaining in the dependent care FSA to expenses incurred through the last day of that plan year.\[^{2117}\]

**"Use-or-lose" rule**

Health FSAs and dependent care FSAs are subject to the general requirements for cafeteria plans, including the requirement that the plan generally may not provide for the deferral of compensation.\[^{2118}\] Thus, amounts remaining in a health FSA or dependent care FSA at the end of a plan year generally must be forfeited by the employee (referred to as the "use-or-lose" rule).\[^{2119}\] However, a cafeteria plan may allow a grace period not to exceed two and one-half months immediately following the end of the plan year during which unused amounts may be paid or reimbursed to participants for qualified expenses incurred during the grace period.\[^{2120}\] Alternatively, a cafeteria plan may permit up to $550 of unused amounts remaining in a health FSA at the end of a plan year to be paid or reimbursed to plan participants for qualifying medical expenses during the following plan year.\[^{2121}\] Such a carryover is not permitted in a dependent care FSA. A cafeteria plan may only permit a carryover of amounts in a health FSA if the plan does not also allow a grace period with respect to the health FSA.

**Special rules relating to COVID–19**

Under IRS guidance, special rules apply to a health FSA or dependent care FSA for 2020, due to the public health emergency posed by the outbreak of COVID–19.\[^{2122}\] A cafeteria plan may permit participants to apply unused amounts remaining in a health FSA or dependent care FSA as of the end of a grace period ending in 2020 or a plan year ending in 2020 to pay or reimburse expenses incurred under the FSA through December 31, 2020. In addition, a plan may permit mid-year elections during calendar year 2020 with respect to health and dependent care FSAs (without requiring the employee to meet the criteria set forth in the Treasury regulations, such as a change in status).

**Explanation of Provision**

Under the provision, for plan years ending in 2020 or 2021, a plan that includes a health FSA or dependent care FSA does not fail to be treated as a cafeteria plan merely because the plan permits participants to carry over (under rules similar to the rules applicable to health FSAs) any unused benefits or contributions remaining in the FSA from such plan year to the following plan year.

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\[^{2116}\] Sec. 129(a)(2).
\[^{2117}\] Prop. Treas. Reg. sec. 1.125–6. This rule does not apply to Health FSAs.
\[^{2118}\] Sec. 125(d)(2).
\[^{2119}\] Sec. 125(d)(2) and Prop. Treas. Reg. sec. 1.125–5(c).
Thus, for example, a cafeteria plan may permit a participant in a dependent care FSA to be paid or reimbursed for dependent care expenses incurred during the plan year ending in 2021 by applying unused amounts remaining in that participant’s dependent care FSA at the end of the plan year ending in 2020.

In addition, for plan years ending in 2020 or 2021, a cafeteria plan may extend the grace period applicable to a health FSA or dependent care FSA (with respect to unused benefits or contributions remaining in the FSA) to 12 months after the end of the plan year. Under the provision, a cafeteria plan that includes a health FSA may allow an employee who ceases participation in the plan during calendar year 2020 or 2021 (for example, due to termination of employment) to continue to receive reimbursements from unused benefits or contributions through the end of the plan year in which such participation ceased (including any grace period, taking into account the modification to the grace period under this provision). Rules similar to the rules applicable to dependent care FSAs apply.

The provision also modifies the definition of qualifying individual as it applies to a dependent care FSA in certain circumstances so that the term includes dependents who have not yet reached age 14 (rather than age 13). To qualify for this treatment, an employee must be enrolled in a dependent care FSA for the last plan year with respect to which the end of the regular enrollment period for the plan year was on or before January 31, 2020. In addition, the employee must either have a dependent who attains age 13 during such plan year, or, in the case of an employee who has an unused balance remaining in the FSA at the end of the plan year, must have a dependent who attains age 13 during the subsequent plan year. In the former case, the amended definition of qualifying individual (substituting age 14 for age 13) applies for that plan year (i.e., the last plan year with respect to which the end of the regular enrollment period for the plan year was on or before January 31, 2020). In the latter case, the amended definition applies during the subsequent plan year, and applies only to so much of the amounts paid for dependent care assistance with respect to the dependent who attains age 13 during that subsequent plan year as does not exceed the unused balance.

Under the provision, for plan years ending in 2021, a cafeteria plan may permit an employee to modify prospectively the amount (but not in excess of any applicable dollar limitation) of the employee’s contributions to a health FSA or dependent care FSA (without regard to any change in status).

A cafeteria plan does not fail to qualify as such merely because it is amended in accordance with the provision, so long as the amendment is adopted no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective, and the plan is operated in accordance with the amendment during the period beginning on the amendment’s effective date and ending on the date the amendment is adopted.

**Effective Date**

The provision is effective as of the date of enactment of the Act (December 27, 2020).
TITLE III—DISASTER TAX RELIEF

1. Definitions (sec. 301 of the Act and secs. 24, 32, 38, 42, 72, 165, and 170 of the Code)

Present Law

The provisions below provide temporary tax relief to those areas affected by certain major disasters declared in 2020 and some portion of 2021. The provisions use the terms “qualified disaster area,” “qualified disaster zone,” “qualified disaster,” and “incident period.”

As used in the bill, “qualified disaster area” refers to an area with respect to which a major disaster has been declared by the President during the period beginning on January 1, 2020, and ending on the date which is 60 days after the date of enactment of the Act (December 27, 2020), under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the “Stafford Act”), if the incident period of the disaster with respect to which such declaration is made begins on or after December 28, 2019 and on or before the date of enactment of the Act. However, a qualified disaster area does not include any area with respect to which a major disaster has been declared only by reason of COVID–19.

A “qualified disaster zone” refers to that portion of the applicable “qualified disaster area,” as described above, which has been determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act by reason of the applicable qualified disaster.

A “qualified disaster” means, with respect to the applicable qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area.

“Incident period” means, with respect to the applicable qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred, except that such period shall not be treated as ending after the date which is 30 days after the date of enactment of the Act.

2. Special disaster-related rules for use of retirement funds (sec. 302 of the Act and sec. 72 of the Code)

Present Law

Distributions from tax-favored retirement plans

A distribution from a tax-qualified plan described in section 401(a) (a “qualified retirement plan”), a tax-sheltered annuity plan (a “section 403(b) plan”), an eligible deferred compensation plan of a State or local government employer (a “governmental section 457(b) plan”), or an individual retirement arrangement (an “IRA”) generally is included in income for the year distributed. 2123 These

2123 Secs. 401(a), 403(a), 403(b), 457(b) and 408. Under section 3405, distributions from these plans are generally subject to income tax withholding unless the recipient elects otherwise. In addition, certain distributions from a qualified retirement plan, a section 403(b) plan, or a governmental section 457(b) plan are subject to mandatory income tax withholding at a 28-percent rate unless the distribution is rolled over.
In addition, unless an exception applies, a distribution from a qualified retirement plan, a section 403(b) plan, or an IRA received before age 59½ is subject to a 10-percent additional tax (referred to as the “early withdrawal tax”) on the amount includible in income.

In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual.

The terms of a qualified retirement plan, section 403(b) plan, or governmental section 457(b) plan generally determine when distributions are permitted. However, in some cases, restrictions may apply to distributions before an employee’s termination of employment, referred to as “in-service” distributions. Despite such restrictions, an in-service distribution may be permitted under certain types of plans in the case of financial hardship or an unforeseeable emergency.

### Loans from tax-favored retirement plans

Employer-sponsored retirement plans are permitted, but not required, to provide loans to participants. Unless the loan satisfies certain requirements in both form and operation, the amount of a retirement plan loan is a deemed distribution from the retirement plan. Among the requirements that the loan must satisfy are that (1) the loan amount must not exceed the lesser of 50 percent of the participant’s account balance or $50,000 (generally taking into account outstanding balances of previous loans), and (2) the loan’s terms must provide for a repayment period of not more than five years (except for a loan specifically to purchase a home) and for level amortization of loan payments to be made not less frequently than quarterly. 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 withdrawal tax, if applicable. A deemed distribution is not eligible for rollover to another eligible retirement plan. The rules generally do not limit the number of loans an employee may obtain from a plan except to the extent that any additional loan would cause the aggregate loan balance to exceed limitations.

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2124 Sec. 402(c)(8)(B). Eligible retirement plans also include annuity plans described in section 403(a).

2125 Sec. 72(t). The 10-percent early withdrawal tax does not apply to distributions from a governmental section 457(b) plan.

2126 Rev. Proc 2020–46, 2020–45 I.R.B. 995, provides for a self-certification procedure (subject to verification on audit) that may be used by a taxpayer claiming eligibility for a waiver of the 60-day requirement with respect to a rollover into a plan or IRA in certain specified circumstances.

2127 Sec. 72(p).
Tax-favored retirement plan compliance

Tax-favored retirement plans are generally required to be operated in accordance with the terms of the plan document, and amendments to reflect changes to the plan generally must be adopted within a limited period.

Disaster relief

Congress has at times liberalized the plan distribution and loan provisions for individuals affected by certain natural disasters. The provision also allows a taxpayer to include income attributable to a qualified disaster distribution ratably over three years and to recontribute the amount of the distribution to an eligible retirement plan within three years.

A “qualified disaster distribution” is any distribution from a qualified retirement plan, section 403(b) plan, governmental section 457(b) plan, or an IRA, made on or after the first day of the incident period of a qualified disaster and before the date which is 180 days after the date of enactment, to an individual whose principal place of abode at any time during the incident period is located in the qualified disaster area and who has sustained an economic loss by reason of such disaster.

A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified disaster distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer’s controlled group or affiliated service group does not exceed $100,000 for each qualified disaster. The total amount of distributions to an individual from all eligible retirement plans that may be treated as qualified disaster distributions with respect to each qualified disaster is $100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $100,000, taking into account distributions from plans of other employers or IRAs, or because an individual may have been affected by more than one qualified disaster.

Explanation of Provision

Distributions and recontributions

The provision allows an exception to the 10-percent early withdrawal tax for a “qualified disaster distribution” from a qualified retirement plan, a section 403(b) plan, or an IRA. The provision also allows a taxpayer to include income attributable to a qualified disaster distribution ratably over three years and to recontribute the amount of the distribution to an eligible retirement plan within three years.


2130 This exception also applies to an annuity plan described in section 403(a). The 10-percent early withdrawal tax generally does not apply to section 457 plans. Sec. 72(t)(1).

2131 A qualified disaster distribution is subject to income tax withholding unless the recipient elects otherwise. Mandatory 20-percent withholding does not apply.
Any amount required to be included in income as a result of a qualified disaster distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply.

Any portion of a qualified disaster distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed in one or more contributions to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income.

For example, if an individual receives a qualified disaster distribution in 2020, that amount is included in income, generally ratably over the year of the distribution and the following two years and is not subject to the 10-percent early withdrawal tax. If, in 2022, the amount of the qualified disaster distribution is recontributed to an eligible retirement plan, the individual may file amended returns to claim a refund of the tax attributable to the amounts previously included in income. In addition, if, under the ratable inclusion provision, a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includible in income.

Recontributions of withdrawals for purchase of a home

Any individual who received a qualified distribution during the period beginning on the date which is 180 days before the first day of the incident period of the qualified disaster and ending on the date which is 30 days after the last day of such incident period, which was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not so used on account of the qualified disaster, may, during the “applicable period,” make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made. The “applicable period” is, in the case of a principal residence in a qualified disaster area with respect to any qualified disaster, the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the date of enactment.

Loans

The provision modifies the rules applicable to loans, providing that for a qualified individual, in order for the loan not to be treated as a distribution, the permitted maximum loan amount from a qualified employer plan during the 180-day period beginning on the date of enactment is the lesser of the present value of the non-forfeitable accrued benefit of the employee under the plan or $100,000. For this purpose, qualified individual has the same

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2132 Defined as a distribution described in sections 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(i)(V), 403(b)(11)(B), or 72(t)(2)(F).
2133 As defined in section 402(c)(8)(B).
2134 Under sections 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.
2135 For this purpose, qualified employer plan is defined in section 72(p)(4).
2136 See sec. 72(p)(2)(A).
meaning as persons eligible to receive qualified disaster distributions.

In the case of a qualified individual (with respect to any qualified disaster) with an outstanding loan from a qualified employer plan (on or after the first day of the incident period of such qualified disaster), the provision delays by one year the due date for any repayment with respect to such loan (or, if later, until the date which is 180 days after the date of enactment), if the due date for any repayment otherwise would fall during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period. Under the provision, any subsequent repayments are appropriately adjusted to reflect the delay in the earlier repayment due date and any interest accruing during that delay. The repayment delay is disregarded for purposes of the requirement that a loan be repaid within five years.

**Plan amendments**

A plan amendment made under the provision (or a regulation interpreting the provision) may be retroactively effective if, in addition to the requirements described below, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2022 (or in the case of a governmental plan, January 1, 2024), or a later date prescribed by the Secretary. The provision treats the plan as being operated in accordance with plan terms during the period beginning with the date the provision or regulation takes effect (or the date specified by the plan if the amendment is not required by the provision or regulation) and ending on the last permissible date for the amendment to be made (or, if earlier, the date the amendment is adopted). For an amendment to be treated as retroactively effective, it must apply retroactively for that period, and the plan must be operated in accordance with the amendment during that period.

**Effective Date**

The provision is effective on the date of enactment.

3. **Employee retention credit for employers affected by qualified disasters (sec. 303 of the Act and sec. 38 of the Code)**

**Present Law**

*Employee retention credits*

Congress has at times enacted employee retention credits against employer income tax in response to specific natural disasters.2137 There is not a generally applicable employer income tax credit for wages paid in connection with natural disasters.

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Payroll tax credits

In general

There are a limited number of credits that may be taken against certain payroll taxes, rather than the income tax. Under section 3111(e) (the credit for employment of qualified veterans) a qualified tax-exempt organization is allowed a credit against the Old-Age, Survivors, and Disability Insurance ("OASDI") tax imposed on the employer for each calendar quarter in an amount equal to a percentage of wages paid to a qualified veteran.\footnote{See also section 51. The term "qualified tax-exempt organization" means an employer that is an organization described in section 501(c) and exempt from taxation under section 501(a).} Under section 3111(f) (the credit for research expenditures of qualified small businesses), a qualified small business that has made an election under section 41(h) is allowed a credit against the OASDI tax imposed on the employer for each calendar quarter in an amount equal to a percentage of qualified research expenses.\footnote{See also section 41.}

In addition, Congress enacted three temporary refundable payroll tax credits in response to COVID–19: Under section 7001 of the Families First Coronavirus Response Act\footnote{Pub. L. No. 116–127.} ("FFCRA") (the payroll tax credit for required paid sick leave), an employer is generally allowed a credit against the OASDI tax or Railroad Retirement Tax Act ("RRTA") tax imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages paid by the employer with respect to that calendar quarter. Under section 7003 of FFCRA (the payroll tax credit for required paid family leave), an employer is generally allowed a credit against the OASDI tax or RRTA tax imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified family leave wages paid by the employer with respect to that calendar quarter. Under section 2301 of the CARES Act (the employee retention credit for employers subject to closure due to COVID–19)\footnote{Pub. L. No. 116–136.} an applicable employer is generally allowed a credit against the OASDI tax or RRTA tax imposed on the employer for each calendar quarter in an amount equal to a percentage of the qualified wages with respect to each employee of such employer for such calendar quarter.

Ordering of credits

Section 7001 of the FFCRA, section 7003 of the FFCRA, and section 2301 of the CARES Act contain rules for the ordering of the credits prior to refundability:

The credit allowed under section 7001 of the FFCRA may not exceed the OASDI tax or RRTA tax imposed on the employer for that calendar quarter on the wages paid with respect to all the employer's employees, reduced by any credits allowed under section 3111(e) or section 3111(f). However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.
The credit allowed under section 7003 of the FFCRA may not exceed the OASDI tax or RRTA tax imposed on the employer for that calendar quarter on the wages paid with respect to all the employer’s employees, reduced by any credits allowed under section 3111(e), section 3111(f), or section 7001 of the FFCRA. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

The credit allowed under section 2301 of the CARES Act may not exceed the OASDI tax or RRTA tax imposed on the employer for that calendar quarter on the wages paid with respect to all the employer’s employees, reduced by any credits allowed under section 3111(e), section 3111(f), section 7001 of the FFCRA, or section 7003 of the FFCRA. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

Explanation of Provision

In general

The provision provides a credit against income tax equal to 40 percent of the qualified wages (up to a maximum of $6,000 in qualified wages per employee) paid by an eligible employer to an eligible employee.

An eligible employer is any employer that (1) conducted an active trade or business in a qualified disaster zone at any time during the incident period of the applicable qualified disaster and (2) with respect to which the trade or business described in (1), as a result of damage sustained by reason of the applicable qualified disaster, is inoperable on any day during the period beginning on the first day of the applicable incident period of the applicable qualified disaster and ending on the date of enactment of this bill.

An eligible employee is, with respect to an eligible employer, an employee whose principal place of employment, determined immediately before the applicable qualified disaster, with such eligible employer was in the applicable qualified disaster zone. An employee may not be treated as an eligible employee for any period with respect to an employer if such employer is allowed a credit under section 51, the work opportunity credit, with respect to the employee for the period.

Qualified wages are wages paid or incurred by an eligible employer with respect to an eligible employee during the period (1) beginning on the date on which the trade or business first became inoperable at the principal place of employment of the employee immediately before the applicable qualified disaster and (2) ending on the earlier of (i) the date on which the trade or business resumes significant operations at such principal place of employment or (ii) the date which is 150 days after the last day of the applicable incident period. Qualified wages include wages paid without regard to whether the employee performs services, performs services...

\*2142 For this purpose, “wages” is defined in section 51(c)(1), without regard to section 3306(b)(2)(B).
at a different place of employment than the principal place of employment, or performs services at the principal place of employment before significant operations resume. Wages do not include wages taken into account under the employee retention credit under section 2301 of the CARES ACT.

Any wages taken into account in determining the credit shall not be taken into account as wages for purposes of sections 41 (providing a credit for increasing research activities), 45A (the Indian employment credit), 45P (providing an employer wage credit for employees who are active duty members of the uniformed services), 45S (providing an employer credit for paid family and medical leave), 51 (the work opportunity credit), and 1396 (the empowerment zone employment credit).

The credit is treated as a current year business credit under section 38(b) and therefore is subject to the income tax liability limitations of section 38(c). Rules similar to sections 51(i)(1), 52, and 280C(a) apply.\footnote{Section 51(i)(2) provides a rule that employers may not claim the work opportunity credit for wages paid to rehired employees. Section 52 provides, for purposes of the work opportunity credit, rules to treat a controlled group of corporations, or trades or businesses under common control, as a single employer, as well as special rules for tax-exempt organizations, estates and trusts, and certain other entities. Section 280C denies a deduction for the portion of wages paid or incurred for the taxable year for which certain wage-based credits are earned.}

Payroll tax credit

In general

The provision allows a qualified tax-exempt organization to claim a credit against OASDI tax imposed on the organization under section 3111(a) equal to 40 percent of the qualified wages paid to an eligible employee. The amount of qualified wages with respect to any employee which may be taken into account in calculating the credit for all calendar quarters may not exceed $6,000.

The credit allowed may not exceed the applicable employment taxes imposed on the eligible employer for that calendar quarter on the wages paid with respect to all of the employer’s employees, reduced by any credits allowed under section 3111(e) or section 3111(f). Any excess is carried forward to the next calendar quarter.

The term “qualified tax-exempt organization” means an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code if such organization would be an eligible employer if the activities of such organization were an active trade or business. Additionally, the credit is not available to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of those entities. However, the provision excludes from this rule (1) any organization described in section 501(c)(1) of the Code and exempt from tax under section 501(a) of the Code, and (2) any entity that is a college or university or any entity the principal purpose or function of which is providing medical or hospital care. As a result, such organizations and entities are not prevented from claiming the credit by reason of the general prohibition against certain government employers claiming the credit.
For purposes of this provision, the terms “eligible employee” and “qualified wages” shall be applied with respect to any qualified tax-exempt organization by treating the activities of such organization as an active trade or business.\footnote{In addition, “qualified wages” and other terms used for the payroll tax credit which are also used in chapter 21 or 22 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.}

Employers in the U.S. territories may claim the credit by filing their quarterly Federal employment tax returns.

An employer may elect, at such time and in such manner as provided by the Secretary (or the Secretary’s delegate), to have the credit not apply to such employer for a calendar quarter.

Amounts are appropriated to the OASDI Trust Funds and the Social Security Equivalent Benefit Account established under the \footnote{Sec. 15A(a) of the RRTA (45 U.S.C. sec. 231n–1(a)).} equal to the reduction in revenues to the Treasury by reason of the credit. Such amounts are transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers that would have occurred to the OASDI Trust Funds or Social Security Equivalent Benefit Account had the credit not been enacted.

Administrative rules, penalties, and regulations

Any credit allowed under the provision is treated as a credit described in section 3511(d)(2) (relating to third party payors).

The provision directs the Secretary (or the Secretary’s delegate) to waive any penalty under section 6656 for failure to make a deposit of applicable employment taxes if the Secretary (or the Secretary’s delegate) determines that such failure was due to the reasonable anticipation of the credit allowed under the provision.

The Secretary (or the Secretary’s delegate) shall provide such regulations or other guidance as may be necessary to carry out the purposes of the credit, including regulations or other guidance: (1) to allow the advance payment of the credit based on such information as the Secretary (or the Secretary’s delegate) may require; (2) to provide for the reconciliation of such advance payment with the amount advanced at the time of filing the return of tax for the applicable calendar quarter or taxable year; (3) with respect to the application of the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors; and (4) to recapture the benefit of the credit in cases where there is a subsequent adjustment to the credit.

Ordering of credits

The provision applies before the temporary refundable payroll tax credits enacted in response to the coronavirus pandemic:

The credit allowed under section 7001 of the FFCRA may not exceed the OASDI tax or RRTA tax imposed on the employer for that calendar quarter on the wages paid with respect to all the employer’s employees, reduced by any credits allowed under section 3111(e), section 3111(f), or the provision. However, if for any cal-
endar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

The credit allowed under section 7003 of the FFCRA may not exceed the OASDI tax or RRTA tax imposed on the employer for that calendar quarter on the wages paid with respect to all the employer's employees, reduced by any credits allowed under section 3111(e), section 3111(f), the provision, or section 7001 of the FFCRA. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

The credit allowed under section 2301 of the CARES Act may not exceed the OASDI tax or RRTA tax imposed on the employer for that calendar quarter on the wages paid with respect to all the employer's employees, reduced by any credits allowed under section 3111(e), section 3111(f), the provision, section 7001 of the FFCRA, or section 7003 of the FFCRA. However, if for any calendar quarter the amount of the credit exceeds the OASDI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.

Coordination with the Payroll Protection Program

Section 7A(a)(12) of the Small Business Act is amended to provide that the definition of payroll costs that may give rise to loan forgiveness shall not include qualified wages taken into account in determining the credit under the provision.

However, under the provision an election not to take into account any amount of the employer's qualified wages for purposes of calculating the credit does not prevent payroll costs paid during the covered period from being treated as qualified wages of the eligible employer to the extent that a Paycheck Protection Program second draw loan described in 15 U.S.C. section 636(a)(37) is not forgiven by reason of the application of paragraph (37)(J) of such section.

Effective Date

The provision is effective on the date of enactment (December 27, 2020).

4. Special rules for qualified disaster relief contributions of corporations (sec. 304(a) of the Act and sec. 170 of the Code)

Present Law

In general

In general, an income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.2146

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a
qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer’s trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor’s basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

**Percentage limitations**

**Contributions by individuals**

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer’s contribution base. The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. The contribution base is defined as the taxpayer’s adjusted gross income computed without regard to any net operating loss carryback.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (e.g., public charities, private foundations other than private non-operating foundations, and certain governmental units) may not exceed 50 percent of the taxpayer’s contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer’s contribution base.

For contributions taken into account for taxable years beginning after December 31, 2017 and before January 1, 2026, section 170(b)(1)(G) increases the percentage limit for contributions by an individual taxpayer of cash to an organization described in section 170(b)(1)(A) to 60 percent. The 60-percent limit does not apply to noncash contributions. The 60-percent limit is intended to be applied after, and reduced by, the amount of noncash contributions to organizations described in section 170(b)(1)(A).

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer’s contribution base. An individual may elect, however, to bring all these contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private nonoperating foundations) are deductible up to 20 percent of the taxpayer’s contribution base.

**Contributions by corporations**

For corporations, in any taxable year, charitable contributions are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation’s taxable income computed without regard to net operating loss or capital loss carrybacks.
For purposes of determining whether a corporation’s aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

**Carryforward of excess contributions**

Charitable contributions that exceed the applicable percentage limitation may be carried forward for up to five years. The amount that may be carried forward from a taxable year (“contribution year”) to a succeeding taxable year may not exceed the applicable percentage of the contribution base for the succeeding taxable year less the sum of contributions made in the succeeding taxable year plus contributions made in taxable years prior to the contribution year and treated as paid in the succeeding taxable year under this provision.

**Temporary increase in percentage limitations under the CARES Act**

Section 2205 of the CARES Act (Pub. L. No. 116–136), described in Part Six of this document, temporarily increases the charitable contribution limitations. In the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer’s contribution base (AGI computed without regard to any net operating loss carryback) exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years as contributions described in section 170(b)(1)(G), subject to the limitations of section 170(b)(1)(G)(ii).

In the case of a corporation, the deduction for qualified contributions is allowed up to 25 percent of the corporation’s taxable income. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations of section 170(d)(2).

In applying subsections (b) and (d) of section 170 to determine the deduction for other contributions, qualified contributions are not taken into account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Qualified contributions are cash contributions paid during calendar year 2020 to a charitable organization described in section 170(b)(1)(A), other than contributions (i) to a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. A taxpayer must elect to have contributions treated as qualified contributions.

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2147 Sec. 170(d).
For charitable contributions of food inventory that are made during 2020 and which qualify for the enhanced deduction, the 15-percent limitations described above are increased to 25 percent.

Section 213 of this Act generally extends the temporary modifications of the charitable contribution limits under the CARES Act to contributions made during 2021.

**Explanation of Provision**

In the case of a qualified disaster relief contribution of a corporation, the provision generally increases the 25 percent limitation established by the CARES Act to 100 percent of a corporation’s taxable income. The 25 percent limitation under the CARES Act is first applied to qualified contributions (as defined in the CARES Act) other than qualified disaster relief contributions. The increased percentage limitation is next applied to qualified disaster relief contributions by substituting 100 percent for 25 percent. As a result, the deduction for qualified disaster relief contributions is allowed up to the amount by which the corporation’s taxable income (as computed under section 170(b)(2)) exceeds the deduction for other charitable contributions (including qualified contributions under the CARES Act other than qualified disaster relief contributions). Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations under section 170(d)(2).

A qualified disaster relief contribution is a qualified contribution within the meaning of section 2205 of the CARES Act that is paid during the period beginning on January 1, 2020, and ending on the date which is 60 days after the date of enactment, and which is made for relief efforts in one or more qualified disaster areas. A taxpayer must obtain from the recipient organization a contemporaneous written acknowledgment substantiating that the contribution was used (or is to be used) for this purpose. A taxpayer must elect to have the contribution treated as a qualified disaster relief contribution.

**Effective Date**

The provision is effective on the date of enactment (December 27, 2020).

5. Special rules for qualified disaster-related personal casualty losses (sec. 304(b) of the Act and sec. 165 of the Code)

**Present Law**

An individual taxpayer may claim an itemized deduction for a personal casualty loss only if the loss was attributable to a disaster declared by the President under section 401 of the Stafford Act. All other personal casualty losses are deductible only to the extent that those losses do not exceed the individual’s personal casualty

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\(^{2148}\) For example, the contribution must be paid in cash to a charitable organization described in section 170(b)(1)(A), other than contributions (i) to a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)).

\(^{2149}\) 165(h)(5).
gains. Personal casualty losses are deductible only if they exceed $100 per casualty. In addition, aggregate net losses (i.e., the excess of personal casualty losses over personal casualty gains) are deductible only to the extent they exceed 10 percent of the individual taxpayer’s adjusted gross income.

Congress has at times enacted more generous casualty loss provisions in response to specific natural disasters.2150

**Explanation of Provision**

Under the provision, if an individual has a personal casualty loss which arose in a qualified disaster area on or after the first day of the incident period of the applicable qualified disaster and which was attributable to that qualified disaster, the individual is allowed a deduction for the loss without regard to whether the individual's aggregate net losses exceed 10 percent of adjusted gross income. A casualty loss is deductible, however, only if it exceeds $500.2151

For a personal casualty loss to which the provision applies, an individual is allowed a deduction in addition to the standard deduction. The deduction is also allowed in determining alternative minimum tax.

**Effective Date**

The provision is effective on the date of enactment (December 27, 2020).

6. **Low-income housing tax credit (sec. 305 of the Act and sec. 42 of the Code)**

**Present Law**

Background for the provision and a description of the low-income housing tax credit that the provision modifies may be found above in the section describing section 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (Division Q of Pub. L. No. 116–94) in Part Three of this document.

**Explanation of Provision**

Under the provision, for calendar years 2021 and 2022, a State's housing credit ceiling is increased by the amount of housing credit allocated by the State housing credit agency for each year to buildings located in qualified disaster zones2152 in the State, subject to

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2150 See, e.g., Pub. L. No. 116–94, sec. 204(b), December 20, 2019 (certain disasters occurring in 2018 and 2019); sec. 20104(b) of Pub. L. No. 115–123 (certain California wildfires); Sec. 504(b) of Pub. L. No. 115–63 (Hurricanes Harvey, Irma, and Maria); and former sec. 1400S(b) (Hurricanes Katrina, Rita, and Wilma).

2151 The $100 per casualty rule still applies with respect to other deductible personal casualty losses.

2152 A qualified disaster zone is a portion of any qualified disaster area which was determined by the President (during the period beginning on January 1, 2020 and ending on the date which is 60 days after the date of enactment) to warrant individual or individual and public assistance from the Federal government under the Stafford Act by reason of a major disaster with respect to such area. A qualified disaster area is an area with respect to which a major disaster was declared by the President during the period beginning on January 1, 2020 and ending on the date which is 60 days after the date of enactment) under the Stafford Act if the incident period of such disaster begins on or after December 28, 2019, and on or before the date of the enactment. Qualified disaster areas do not include areas for which a major disaster has been declared only by reason of COVID–19.
certain limitations. For 2021, the amount of the State ceiling increase cannot exceed the applicable dollar limitation. The applicable dollar limitation is equal to the lesser of (1) the product of $3.50 multiplied by the population which resided in qualified disaster zones in the State in 2020, and (2) 65 percent of the State ceiling for 2020. For 2022, the amount of the State ceiling increase cannot exceed the applicable dollar limitation reduced by the amount of the State ceiling increase for 2021. Therefore, a State may increase its State ceilings for 2021 and 2022 in total by no more than the amount of the applicable dollar limitation.

The provision also provides that housing credit that is allocated by a State housing credit agency for calendar year 2021 or 2022 to a building located in a qualified disaster zone in the State may receive an extension to have the building placed in service by the end of the third calendar year following the calendar year in which the allocation was made. The State housing credit agency must designate the housing credit to receive the extension. The amount of designated housing credit for a given year cannot exceed the amount of the State ceiling increase for that year, as provided under the provision.

The provision also specifies that credit allocations are treated as made first from these additional amounts for purposes of determining the unused State housing credit ceiling to be carried forward in a calendar year.

**Effective Date**

The provision is effective on the date of enactment (December 27, 2020).

7. **Treatment of certain possessions (sec. 306 of the Act)**

**Present Law**

Citizens of the United States are generally subject to Federal income tax on their U.S. and foreign income regardless of whether they live in a U.S. State, the District of Columbia, a foreign country, or a U.S. territory. Residents of the U.S. territories are generally subject to the Federal income tax system based on their status as U.S. citizens or residents in the territories, with certain special rules for determining residence and source of income specific to the territory.

The application of the Federal tax rules to the territories varies from one territory to another. Three territories, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code territories because the Code serves as the internal tax law of those territories (substituting the particular territory for the United States wherever the Code refers to the United States). A resident of one of those territories generally files a single tax return only with the territory of which the individual is a resident, and not with the United States.**2153 Income tax paid by a bona fide resident of a mirror Code territory generally is allocated between the U.S. government and the territory**

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2153 Sec. 932 and former sec. 935.
government under special rules administered by the U.S. Treasury Department and the revenue authority of the territory government. American Samoa and Puerto Rico, by contrast, are non-mirror Code territories. These two territories have their own internal tax laws, and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the territory of residence and the United States. In general, U.S.-source income and other income from outside the territory of residence is included on a U.S. income tax return, and income from sources within the territory of residence is reported on the territory income tax return.

**Explanation of Provision**

The provision requires the Secretary to make a payment to each mirror Code territory in an amount equal to the loss in revenue by reason of the temporary disaster-related tax relief allowable by reason of Title III of the Act to residents of such territory against its income tax. The Secretary must determine the amount of each payment based on information provided by the government of the respective territory.

The provision requires the Secretary to make a payment to each non-mirror Code territory in an amount estimated by the Secretary as the aggregate benefits (if any) of the temporary disaster-related tax relief that would have been provided to residents of that territory if a mirror code tax system had been in effect in the territory. Accordingly, the amount of each payment to a non-mirror Code territory is an estimate of the aggregate benefits that would be allowed to the territory’s residents if the temporary tax relief provided by Title III of the Act to U.S. residents were provided by the territory to its residents. The Secretary is not permitted to make a payment to a territory unless the territory has a plan that has been approved by the Secretary under which the territory will promptly distribute the payment to its residents.

**Effective Date**

The provision is effective on the date of enactment (December 27, 2020).

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ESTIMATED BUDGET EFFECTS OF TAX LEGISLATION ENACTED IN THE 116TH CONGRESS
### APPENDIX:
#### ESTIMATED BUDGET EFFECTS OF TAX LEGISLATION ENACTED IN THE 111TH CONGRESS

**Fiscal Years 2010 – 2030**

[Millions of Dollars]

|-----------|-----------|------|------|------|------|------|------|------|------|------|------|------|------|---------|
| **PART ONE: TAXPAYER FIRST ACT OF 2010**
<p>| (Public Law 111-23, signed into law by the President on July 22, 2010) | | | | | | | | | | | | | |
| 3. | Low-income reception for state fees in connection with efforts to incorporate | DOE | 1 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 |
| 5. | Internal Revenue Service asset requirements | DOE | 1 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 |
| 6. | Exclusion of interest realized in action to recover property seized by the Internal Revenue Service based on structuring transactions | DOE | 1 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 |
| 7. | Clarification of applicable relief from joint liability | DOE | 1 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 |
| 12. | Limitation on access of non-lien Internal Revenue Service employees to return information | DOE | 1 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 | -24 |
| <strong>E. Other Provisions</strong> | | | | | | | | | | | | | |
| 16. | Return preparation programs for applicable taxpayers | DOE | | | | | | | | | | | | |
| 17. | Provision of information regarding low-income taxpayer clinics | DOE | | | | | | | | | | | | |</p>
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<tr>
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**PART TWO: FOSTERING UNDERGRADUATE TALENT BY UNLOCKING RESOURCES FOR EDUCATION ("FUTURE") ACT—Secures Disclosure of Tax-Return Information in Carry Over the Higher Education Act of 1986 (Public Law 116-94), signed into law by the President on December 20, 2019.**

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B. Increase in 10 Percent Cap for Automatic Enrollment Safe Harbor After First Plan Year |plys 12/31/19 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
C. Rules Relating to Election of Safe Harbor 401(k) Plans | plys 12/31/19 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
D. Increase in Credit Limitation for Small Employer Plans | plys 12/31/19 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
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<td>E. Modification of Non-discrimination Rules to Protect Older, Longer Service Participants.</td>
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Title III - Other Benefits

A. Benefits for Volunteer Firefighters and Emergency Medical Responders (active 12/31/20) | tybl 12/31/19 | -20 | -6 | -6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
B. Expansion of Student Loan Benefits (in progress 12/31/18) | DOE | .......................... | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 |

Title IV - Revenue Provisions

B. Income in Penalty for Failure to File | DOE | .......................... | 20 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 | -1.0 |

Title V - Tax Relief for Certain Children


Title VI - Administrative Provisions


Division Q - Taxpayer Credit and Disaster Tax Relief Act of 2019

Title 1 - Extension of Certain Expiring Provisions

Subtitle A. Tax Relief and Support for Families and Individuals

1. Extension of exclusion from gross income of discharge of indebtedness on qualified principal residence (current 12/31/20) | DOE | .......................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
2. Extension of mortgage insurance premiums treated as qualified residence interest (current 12/31/20) | DOE | .......................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
3. Extension of medical expense deduction for expenses in excess of 7.5 percent of adjusted gross income (current 12/31/20) | DOE | .......................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
4. Extension of above-the-line deductions for qualified tuition and related expenses (current 12/31/20) | DOE | .......................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
5. Extension of Black Lung Disability Trust Fund - increase in amount of excise tax on coal (current 12/31/20) | DOE | .......................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |

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

1. Extension of Indian employment tax credit (current 12/31/20) | DOE | .......................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
2. Extension of railroad track maintenance credit (current 12/31/20) | DOE | .......................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
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<tr>
<td>5. Extension of 7-year recovery period for nonresidential real property (amend Dec 31, 2019)</td>
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</table>
| Subtitle C: Incentives for Energy Production, Efficiency, and Green Economy Jobs
<p>| 1. Beef cattle and beef feeders - extend production tax credit, increase tax credit, and extend production tax credit (amend Dec 31, 2019) | fta 12/31/17       | -166 | -166 | -166 | -166 | -166 | -166 | -166 | -166 | -166 | -166 | -166 | -166 | -166    |
| 2. Extension of second generation biofuel producer tax credit (amend Dec 31, 2019) | qgptf 12/31/17     | -7   | -7   | -7   | -7   | -7   | -7   | -7   | -7   | -7   | -7   | -7   | -7   | -7      |
| 4. Extension of alternative motor vehicle credit for qualified fuel cell motor vehicles (amend Dec 31, 2019) | ppsa 12/31/17      | -34  | -34  | -34  | -34  | -34  | -34  | -34  | -34  | -34  | -34  | -34  | -34  | -34     |</p>
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<td>a. Alternative fuel mixture credit claims filed before January 1, 2018 and subject to “no-inflation”</td>
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<td>b. All other claims relating to alternative fuel</td>
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<td>Subtitle D. Certain Provisions Expiring at the End of 2019</td>
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<td>1. Extension of non-marketable tax exception (extant 12/31/20).</td>
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<td>a. Extension of employer credit for paid family and medical leave (extant 12/31/20).</td>
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<td>b. Extension of work opportunity tax credit (extant 12/31/20).</td>
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<td>c. Extension of certain provisions related to beer, wine, and distilled spirits (extant 12/31/20).</td>
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<td>d. Extension of special rules regarding records, statements, and returns.</td>
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<td>1. Special disaster-related rules for use of remaining funds.</td>
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<td>2. Employee retention credit for employers affected by qualified disaster.</td>
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<td>3. Temporary suspension of limitations on charitable contributions.</td>
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<td>4. Special rules for qualified disaster-related personal casualty losses.</td>
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<td>5. Special rules for the determining earned income</td>
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<td>7. Modification of the tax base for the excise tax on investment income of private foundations.</td>
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<tr>
<td>Additional low-income housing credit allocation for qualified 2017 and 2018 California disaster areas</td>
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<td>Treatment of certain pneumoconiosis</td>
<td>Doe</td>
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<td><strong>Title II - Other Provisions</strong></td>
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<td>1. Modification of income for purposes of determining social security</td>
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<tr>
<td>2. Repeal of excise tax on unrelated business taxable income for</td>
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<td>certain fringe benefits expenses</td>
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**TOTAL OF PART THREE**

|                                                      |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
|------------------------------------------------------|-----------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| **PART FOUR: VA BEACH STRONG ACT - Special Rules for** |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Contributions of Relief of the Families of the       |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Members Who Died in Action in Virginia Beach,        |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Virginia on May 31, 2019 (Public Law 116-96), signed  |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| into law by the President on December 20, 2019)      |           |       |       |       |       |       |       |       |       |       |       |       |       |       |

**PART FIVE: THE FAMILIES FIRST CORONAVIRUS**

**RESPONSE ACT (P.L. 116-127), signed into law by the President**

on March 18, 2020)

| Divisions G - Tax Credits for Paid Sick and Paid Family Leave              |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| A. Payroll Credit for Required Paid Sick Leave (car)                      | Doe       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| (12/31/20)                                                               |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| B. Credit for Sick Leave for Certain Self-Employed Individuals (car)      | Doe       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| (12/31/20)                                                               |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| C. Credit for Required Paid Sick Leave (car)                            | Doe       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| (12/31/20)                                                               |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| D. Credit for Family Leave for Certain Self-Employed Individuals (car)    | Doe       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| (12/31/20)                                                               |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
| E. Special Rule Related to Tax on Employees (car)                        | Doe       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| (12/31/20)                                                               |           |       |       |       |       |       |       |       |       |       |       |       |       |       |

**TOTAL OF PART FIVE**

|                                                      |           |       |       |       |       |       |       |       |       |       |       |       |       |       |
|------------------------------------------------------|-----------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
# PART SIX: CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (“CARES”) ACT (Public Law 116-136, signed into law by the President on March 27, 2020)

Division A - Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization

<table>
<thead>
<tr>
<th>Title II - Assistance for American Workers, Families, and Businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B. Selective and Other Individual Provisions</strong></td>
</tr>
<tr>
<td>1. 2020 rescue rebate for individuals: $1,200 for single/$2,400 for married filing jointly and $500 per qualifying child; phase-out rate of 5% for AGI over $75,000 for single/$150,000 for head of household/$180,000 for married filing jointly (amount 12/31/20).</td>
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<td>2. Special rules for use of retirement funds.</td>
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<td>3. Temporary waiver of required minimum distribution rules for certain retirement plans and accounts for calendar year 2020.</td>
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<td>6. Exclusion for certain employer payments of student loans (amount 12/31/20).</td>
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**C. Business Provisions**

1. Employee retention credit for employers subject to closure due to COVID-19 (amount 12/31/20). |
|  | 12/31/20 | -- | -40,115 | -5,487 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -54,572 |

2. Delay of payments of employers of SAGA-covered employees, plus employers SAGA-covered employees of state or local government. |

3. Modification of tax rules for insurance companies and certain employers. |

4. Modifications for net operating losses ("NOI") - current taxable income limitation for net operating loss from 80 percent of taxable income, and allow 3-year carry-back (amount 12/31/20). |
|  | 12/31/17 & [45] | -- | -80,073 | -8,673 | 3,133 | 6,053 | 9,006 | 12,980 | 12,675 | 8,761 | 6,214 | 2,045 | 3,477 | -25,569 |

5. Modification of credit for prior year minimum tax liability for corporations. |
|  | 12/31/17 & [45] | -- | -74,339 | -64,046 | 1,773 | 393 | 386 | 202 | 104 | 48 | 25 | 15 | 7 | -128,028 |

6. Modifications of limitations on business losses - increase adjusted taxable income limitation under section 163(j) from 20 percent to 50 percent (amount 12/31/20). |

7. Technical amendments regarding qualified improvement property. |

8. Temporary exclusion from gross tax for alcohol used to produce hand sanitizer (amount 12/31/20). |
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<td>Title III - Supporting America's Health Care System in the Fight</td>
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<td>Against the Coronavirus</td>
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<td>B. Education Provisions</td>
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<td>1. Technical and other amendments relating to the FUTURE Act</td>
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<td>1. Advance refunding of mandated leave credits</td>
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<td>2. Expansion of DOE authority to process certain deadlines</td>
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<td>4. Application of cooperative and small employer health</td>
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<td>persons plan rules to certain defined benefit plans</td>
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<td>whose primary purpose is providing services to mothers and children [62][71]</td>
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<td>D. Financing Provisions</td>
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<td>deductible health plan rules [46]</td>
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<td>2. Inclusion of certain over-the-counter medical products as</td>
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<td>Title IV - Economic Stabilization and Assistance to Severely</td>
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<td>A. Coronavirus Economic Stabilization Act of 2020</td>
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PART SEVEN: CONTINUING APPROPRIATIONS ACT, 2021
AND OTHER EXTENSIONS ACT (Public Law 116-159, signed into law by the President on October 1, 2020)

Division B - Surface Transportation Program Extension

Title II - Trust Funds

A. Expansion of Expenditure and Contract Liquidation Authority for the Highway Trust Fund, the Sport Fish Restoration and Boating Trust Fund, and the Land and Underground Storage Tank Trust Fund (2021-2022)

B. Further Additional Transfers to the Highway Trust Fund and Additional Transfers to the Airport and Airway Trust Fund (2021-2022)

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<td>Highway Trust Fund, the Sport Fish Restoration and Boating Trust Fund,</td>
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<td>and the Land and Underground Storage Tank Trust Fund (insert 9/30/21)</td>
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<td>B. Further Additional Transfers to the Highway Trust Fund and</td>
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<td>2. Amendments to recovery rebates under the CARES Act</td>
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<td>3. Extension of certain deferred payroll taxes (section 331, 720)</td>
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<td>4. Clarify that the educator expense tax deduction includes expenses for personal protective equipment and other supplies related to the prevention of the spread of COVID-19</td>
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<td>5. Clarification of tax treatment of forgiven or canceled loans, stabilization tax treatment of certain loan forgiveness and other financial assistance, and authority to waive certain information reporting requirements</td>
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<td>6. Emergency financial aid grants not includable in gross income and do not reduce educational tax credits</td>
<td>[75]</td>
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<td>7. Application of special rules to non-payback pension plans</td>
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<td>10. Guardians to identify tax increments not eligible for collection pursuant to qualified on collection contracts</td>
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<td>11. Modification of certain protections for taxpayers retain information (higher education disclosure)</td>
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<td>[53]</td>
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### Notes

**Effective Definitions:**
- **SS**: amount paid or accrued after first discharge of indebtedness after tax
- **CA**: contributions made after date of enactment
- **DC**: distributions made after date of enactment
- **P**: property placed in service after fiscal year ending in 2023
- **MS**: property stated after
- **Y**: years ending after the tax year in which the return is filed
- **PP**: property purchased after
- **Q**: qualified emergency, federal aid grants made after
- **R**: qualified supported generating facility

**Data Source:**
- **DOE**: Department of Energy
- **OE**: Office of Energy Efficiency and Renewable Energy
- **EIA**: Energy Information Administration

**Columns:**
- **2019**: year
- **2020**: year
- **2021**: year
- **2022**: year
- **2023**: year
- **2024**: year
- **2025**: year
- **2026**: year
- **2027**: year
- **2028**: year
- **2029**: year
- **2030**: year
- **2031-39**: year range

**Notes to Table:**

1. Generally effective on date of enactment, except that access to rate filers applies to consumers serving after the date that is one year after date of enactment.
2. Lessee of less than $50,000.
3. Effective for sunshiners issued after the year which is 45 days after date of enactment.
4. Effective for sunshiners issued after the date which is 45 days after date of enactment.
5. Effective for sunshiners issued after the date which is 45 days after date of enactment.

**Expense Limits:**
- **D**: Do not exceed
- **E**: For expenses paid after
- **S**: Subject to the following limits:

**Other Notes:**
- **SSpencer**: on DSK126QN23PROD with HEARING
Footnotes for the Appendix continued:

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<td>Credit for health insurance costs of eligible individuals (health coverage tax credits) [-7]</td>
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<td>Special rule for determining earned income [-7]</td>
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<td>Application of cooperative and small employer charitable employees whose primary exception purpose is providing services to nonprofit religious organizations and children [-7]</td>
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<td>Credit for health insurance costs of eligible individuals (health coverage tax credits) [-7]</td>
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<td>Clarifications and technical improvements to CARES Act employee retention credit [-7]</td>
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<td>Extensions and modifications of employee retention and hiring tax credits [-7]</td>
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<td>Temporary special rule for determination of earned income (SEIC and CTC benchmarks) [-7]</td>
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<td>Exclusion of tax credits of PSBAs [-7]:</td>
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[Footnotes for the Appendix continue on the following page]
Footnotes for the Appendix continued:

[21] Estimates exclude the following budget effects:

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<td>-37</td>
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<td>-3</td>
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<td>-47</td>
<td>-3</td>
</tr>
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</tr>
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<td>2030</td>
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<td>-57</td>
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</tbody>
</table>


[23] Estimates include the following budget effects:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Revenue Effect</th>
<th>On-budget effects</th>
<th>Off-budget effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>-25</td>
<td>-23</td>
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</tr>
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<td>-25</td>
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</tr>
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</tr>
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<td>-32</td>
<td>-29</td>
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</tr>
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<td>2023</td>
<td>-34</td>
<td>-31</td>
<td>-2</td>
</tr>
<tr>
<td>2024</td>
<td>-36</td>
<td>-33</td>
<td>-2</td>
</tr>
<tr>
<td>2025</td>
<td>-38</td>
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<td>-2</td>
</tr>
<tr>
<td>2026</td>
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<td>-37</td>
<td>-2</td>
</tr>
<tr>
<td>2027</td>
<td>-42</td>
<td>-40</td>
<td>-2</td>
</tr>
<tr>
<td>2028</td>
<td>-44</td>
<td>-42</td>
<td>-2</td>
</tr>
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<td>2029</td>
<td>-46</td>
<td>-45</td>
<td>-2</td>
</tr>
<tr>
<td>2030</td>
<td>-48</td>
<td>-47</td>
<td>-2</td>
</tr>
</tbody>
</table>


[25] Estimates include the following budget effects:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Revenue Effect</th>
<th>On-budget effects</th>
<th>Off-budget effects</th>
</tr>
</thead>
<tbody>
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<td>2020</td>
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<tr>
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<td>-13</td>
<td>-1</td>
</tr>
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<td>2022</td>
<td>-16</td>
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</tr>
<tr>
<td>2023</td>
<td>-18</td>
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</tr>
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<td>-20</td>
<td>-19</td>
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</tr>
<tr>
<td>2025</td>
<td>-22</td>
<td>-21</td>
<td>-1</td>
</tr>
<tr>
<td>2026</td>
<td>-24</td>
<td>-23</td>
<td>-1</td>
</tr>
<tr>
<td>2027</td>
<td>-26</td>
<td>-25</td>
<td>-1</td>
</tr>
<tr>
<td>2028</td>
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<td>-29</td>
<td>-1</td>
</tr>
<tr>
<td>2030</td>
<td>-32</td>
<td>-31</td>
<td>-1</td>
</tr>
</tbody>
</table>

[26] Effective for distributions required to be made after December 31, 2019, for employees and IRA owners who attain age 70 1/2 after December 31, 2019.

[27] Estimates provided by the Joint Committee on Taxation and the Congressional Budget Office.

[28] Estimates reflect known tax code provisions that are not mandated by law or policy.

[29] Estimates reflect known tax code provisions that are not mandated by law or policy.

[30] Estimates reflect known tax code provisions that are not mandated by law or policy.


[32] Effective for returns, statements and notifications required to be filed, and withholding notices required to be provided, after December 31, 2019.

[33] Estimates reflect known tax code provisions that are not mandated by law or policy.

[34] Estimates reflect known tax code provisions that are not mandated by law or policy.

[35] Estimates reflect known tax code provisions that are not mandated by law or policy.

[36] Estimates reflect known tax code provisions that are not mandated by law or policy.

[37] Estimates reflect known tax code provisions that are not mandated by law or policy.

[38] Estimates reflect known tax code provisions that are not mandated by law or policy.

[39] Estimates reflect known tax code provisions that are not mandated by law or policy.

[40] Footnotes for the Appendix continue on the following page.
Footnotes for the Appendix continued:

<table>
<thead>
<tr>
<th>Year</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
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<th>2031</th>
<th>2032</th>
<th>2033</th>
<th>2034</th>
<th>2035</th>
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</thead>
<tbody>
<tr>
<td>Off-budget effects</td>
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<td>-1</td>
<td>-1</td>
<td>-1</td>
<td>-1</td>
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<td>-1</td>
<td>-1</td>
<td>-1</td>
<td>-1</td>
<td>-1</td>
</tr>
</tbody>
</table>

(41) Estimate includes the following budget effects:

(42) Effective as if included in the provisions of Public Law 114-97.

(43) Effective as if included in the provisions of Public Law 114-97.

(44) The amendments made by the provisions are effective as if included in the FUTURE Act (Public Law 114-97).

(45) Estimate includes the following budget effects:

(46) Estimate includes the following budget effects:

(47) Estimate includes the following budget effects:

(48) The compensation period is the period beginning after the date of enactment and before January 1, 2021.

(49) Effective as if included in section 2201 of CARES Act (Public Law 116-191).

(50) In the case of ongoing paycheck protection program loans, effective for taxable years ending after the date of enactment of the CARES Act (Public Law 116-191). In the case of subsequent paycheck protection program loans, effective on date of enactment of the Coronavirus Aid, Relief, and Economic Security Act of 2020.

(51) Effective as if included in the provisions of section 2201 of CARES Act (Public Law 116-191).

(52) Effective as if included in section 2201 of the CARES Act (Public Law 116-191).

(53) Effective as if included in section 102 of Division F, Title 1, Continuing Education at Affiliated Foreign Institutions and Modification of Certain Promotions for Taxpayer Return Internships.

(54) Effective as if included in section 102 of Division F, Title 1, Continuing Education at Affiliated Foreign Institutions and Modification of Certain Promotions for Taxpayer Return Internships.

(55) Effective as if included in the amendment to section 102 of the FUTURE Act (Public Law 116-91).

(56) The amendments made by the section shall take effect as if included in the provisions of the Family First Coronavirus Response Act to which they refer.

(57) The amendments relating to health savings accounts and high-deductible health plans apply for plan years beginning on or after January 1, 2022.

(58) Estimate excludes the following budget effects:

(59) Effective for taxable years of foreign corporations beginning after December 31, 2020, and for taxable years of U.S. shareholders with or without such taxable years of such foreign corporations.

(60) Effective per calendar year beginning in 2021 through 2023 as $1 billion.

(61) Estimate includes the following budget effects:

[Footnotes for the appendix continue on the following page]
Footnotes for the Appendix continued:

(19) Estimate includes the following budget effects:

<table>
<thead>
<tr>
<th>Year</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenue Effect</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Off-budget effects</td>
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<td>—</td>
</tr>
</tbody>
</table>

(20) Effective for periods after December 31, 2020, under rules similar to the rules of section 480(e) of the Internal Revenue Code of 1986.

(21) Effective for periods after December 31, 2019, under rules similar to the rules of section 480(e) of the Internal Revenue Code of 1986.

(22) Effective as included in the provisions of the CARES Act to which they relate.

(23) Effective as included in the provisions of the CARES Act to which they relate.

(24) Effective as included in the provisions of the CARES Act to which they relate.


(26) Estimate includes the following budget effects:

<table>
<thead>
<tr>
<th>Year</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenue Effect</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<td>Off-budget effects</td>
<td>—</td>
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<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(27) Effective for qualified disaster, effective for wages paid or incurred from the date the trade or business became insolvent through the earlier of the date such trade or business resumed significant operations or 180 days after the last day of the incident period of the qualified disaster.

(28) Decrease in assets of less than $500,000.