DESCRIPTION OF THE CHAIRMAN'S MARK OF TAX TECHNICAL CORRECTIONS

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Prepared by the Staff
of the
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INTRODUCTION

The Senate Committee on Finance has scheduled a markup of the tax technical corrections. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's mark with respect to tax technical corrections.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of Tax Technical Corrections* (JCX-28-14), April 1, 2014. This document may also be found on our website at www.jct.gov.

I. DESCRIPTION OF TAX TECHNICAL CORRECTIONS

The proposal includes technical corrections to recently enacted tax legislation. Except as otherwise provided, the amendments made by the technical corrections contained in the proposal take effect as if included in the original legislation to which each amendment relates.

Amendments to the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96)

Repeal of certain shifts in the timing of corporate estimated tax payments (Act sec. 7001).−The provision corrects a reference to the repeal of certain shifts in the timing of estimated corporate taxes with respect to the Corporate Estimated Tax Shift Act of 2009 (Pub. L. No. 111-42).

Amendments to the American Taxpayer Relief Act of 2012 (Pub. L. No. 112-240)

Capital gain rate for certain high-income individuals (Act sec. 102).−The provision contains a conforming amendment to the computation of the foreign earned income exclusion.

Permanent alternative minimum tax relief for individuals (Act sec. 104).−The provision clarifies that the exemption amount for married individuals filing a separate return is one-half the exemption amount for married individuals filing a joint return, as adjusted for inflation. The provision also clarifies that the exemption amount for individuals filing a joint return, as adjusted for inflation, is rounded to the nearest $100.

Amendments to the Regulated Investment Company Modernization Act of 2010 (Pub. L. 111-325)

Capital loss carryovers (Act sec. 101).−The Act provided capital loss carryover treatment for a regulated investment company ("RIC") similar to the net capital loss carryovers applicable to individuals. The Act is effective for taxable years beginning after December 22, 2010. The Internal Revenue Service ruled that the Act is effective for purposes of the excise tax under section 4982 for calendar years after 2010.[2] Capital losses carryovers under the Act are used prior to capital losses carryovers under the provisions of prior law. As a result of the interaction of these rules, there are situations where capital loss carryovers may expire for purposes of the excise tax but not for purposes of determining taxable income.

The provision allows a RIC to elect to delay the new capital loss carryover provisions for purposes of section 4982 for one calendar year. The provision also provides that the capital loss carryovers of a RIC will not prevent the RIC from having sufficient earnings and profits to make the required distribution of its capital gain net income under section 4982 (as provided in section 852(c)(2)).

[2] Rev. Rul. 2012-29, 2012-42 I. R. B. 475.

Spillover dividends (Act sec. 304).−The Act provides that a spillover dividend must be declared before the later of the 15th day of the 9th month following the close of the taxable year or the extended due date for filing the return for the taxable year. The provision provides the declaration may be made on or before the relevant date.

Certain late year losses (Act sec. 308).−Under prior law, for purposes of determining the amount of a net capital gain dividend, the amount of net capital gain for a taxable year was determined without regard to any net capital loss or net long-term capital loss attributable to transactions after October 31 of the taxable year, and the post-October net capital loss or net long-term capital loss was treated as arising on the first day of the RIC's next taxable year. The Act provided a similar rule with respect to the post-October net short-term capital loss.

The provision provides that the post-October capital loss means the net capital loss for the portion of the taxable year after October 31, or if there is no such loss, the net post-October net long-term capital loss or the net post-October short-term net capital loss.

Under prior law, to the extent provided in regulations, a RIC could elect to push the post-October net foreign currency losses and the net reduction in the value of stock in a PFIC (passive foreign investment company) with respect to which an election is in effect under section 1296(k) forward to the next taxable year. Regulations had been issued allowing RICs to elect to defer all or part of any post-October net foreign currency losses for the portion of the taxable year after October 31 to the first day of the succeeding taxable year. The Act expanded this rule to provide that any late-year ordinary loss may be deferred.

The provision corrects the definition of late-year ordinary loss by defining the loss to be the sum of the post-October specified loss (if any) and the post-December ordinary loss (if any).

The provision does not apply to an election made before the date of enactment of this Act for a taxable year ending before that date where the election to defer losses was made in accordance with the provisions of present law as now in effect.

Deferral of certain gains and losses for excise tax purposes (Act sec. 402).−For purposes of the section 4982 excise tax, the Act applies the mark to market provisions of the Code and regulations thereunder as if the taxable year ended on October 31. Also the Act allows a taxable year RIC, except as provided in regulations, to elect to "push" any net ordinary loss (determined without regard to ordinary gains and losses which are automatically "pushed" to the next calendar year) attributable to the portion of the calendar year after the beginning of the taxable year which begins in the calendar year to the first day of the next calendar year.

The provision provides that any rule which determines income by reference to the value of an item on the last day of the taxable year is treated as a mark to market provision for which value will be determined on October 31 for purposes of the excise tax.

The provision allows a RIC to elect to push any portion of any net ordinary loss to the next calendar year in determining its ordinary income or net ordinary loss.

Amendments to the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. No. 111-312)

Indexing of amount of reduction of marriage penalty for earned income credit (Act sec. 103.−The earned income tax credit in section 32 of the Code is clarified to provide that the $5,000 amount by which the phase-out thresholds for married couples filing jointly are increased are indexed for inflation for all taxable years after 2009, not just taxable years beginning in 2010.

Nonrecognition of gain on rollover of empowerment zone investments (Act Sec. 753).-- Section 1397B is clarified to provide that the provision applies to qualified empowerment zone assets acquired after December 21, 2000 and before January 1, 2014. Under the provision, 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.

Amendments to the Creating Small Business Jobs Act of 2010 (Pub. L. No. 111-240)

Failure to furnish correct payee statements (Act sec. 2102).−The provision clarifies that the effective date for the amendments to both section 6721 and section 6722 apply with respect to both information returns required to be filed and payee statements required to be furnished on or after January 1, 2011.

Amendments to the American Recovery and Reinvestment Act of 2009, Division B (Pub. L. No. 111-5)

Refundable portion of child credit for certain taxable years (Act sec. 1003).−The child tax credit in section 24 of the Code is clarified regarding the determination of the refundable credit in any taxable years beginning after 2008 and before 2018. The provision provides that, to the extent that the child credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit equal to 15 percent of earned income in excess of $3,000 (not $10,000 indexed for inflation). The present-law alternative formula for families with three or more children is unchanged.

American Opportunity Tax Credit (Act sec. 1004).--The Act includes a reference to "tuition, fees, and course materials." The reference to course materials was intended to apply to the Hope credit, but not to the Lifetime learning credit. The provision corrects this reference to the inclusion of course materials so that it applies only to the Hope credit and not to the Lifetime learning credit.

Deduction for State sales tax and excise tax on the purchase of certain motor vehicles (Act sec. 1008).−The Act provides an itemized deduction and increased standard deduction for qualified motor vehicle taxes. The provision strikes Code section 164(b)(6)(E) (which refers to the last sentence of section 164(a)) as inoperative, because the taxes referred to in that last sentence do not include qualified motor vehicle taxes.

Coordination with renewable energy grants (Act sec. 1104).**--**The provision provides that grants in lieu of energy credits under section 1603 of the Act are not includible in alternative

minimum taxable income (including adjusted current earnings of a corporation). This treatment is consistent with the treatment of energy credits.

Credits for certain vehicles and refueling property (Act secs. 1141 and 1142, and secs. 1341 and 1342 of the Energy Tax Incentives Act of 2005 (Pub. L. No. 109-58)).−The provisions conform the rules relating to the amount of basis reduction, as well as the reduction of other credits and deductions, on account of the credits for certain vehicles and refueling property under sections 30, 30B, 30C, and 30D of the Code.

Qualifying advanced energy project credit (Act sec. 1302).--The provision restores missing words, clarifying that the amount subject to the limitation in Code section 48C(b)(3) is the amount which is treated as the qualified investment.

Regulated investment companies allowed to pass through tax credit bond credits (Act sec. 1541).−The provision clarifies that a regulated investment company electing to pass through credits on tax credit bonds, and its shareholders, are treated in a manner similar to that which would occur if the company distributed to its shareholders an amount of money equal to the amount of the credits passed through.

Special credit for certain government retirees (Act sec. 2202).−The provision clarifies the credit with respect to treatment of the U.S. possessions. The provision is intended to operate in a manner similar to the operation of the Making Work Pay Credit with respect to the U.S. possessions (see H.R. Rep. 111-16, February 12, 2009, at 516-517).

Amendments to the Emergency Economic Stabilization Act of 2008 (Pub. L. No 110-343)

Division B, the Energy Improvement and Extension Act of 2008

Credit for steel industry fuel (Act Div. B sec. 108).−The provision clarifies that coke and coke gas produced using fuel qualifying for a steel industry fuel credit is not eligible for the credit under present-law section 45K(g).

Temporary increase in coal excise tax; funding of Black Lung Disability Trust Fund (Act Div. B sec. 113).--The provision clarifies that the term "trust fund" means the Black Lung Disability Trust Fund.

Accelerated recovery period for depreciation of smart meters and smart grid systems (Act Div. B. sec. 306).--The provision clarifies that the accelerated recovery period for smart meters and smart grid systems does not apply to property with a class life less than 16 years.

Special depreciation allowance for certain reuse and recycling property (Act Div. B sec. 308).--Consistent with the intent of the Act, the provision clarifies that a taxpayer does not qualify for the special depreciation allowance under this provision if it elects out of bonus depreciation under Code section 168(k)(4), which permits a taxpayer to accelerate the recognition of AMT and research credits in lieu of claiming bonus depreciation. This conforms to the parallel rule in section 168(n)(2)(B)(i)(1) (excluding such property from the definition of qualified disaster assistance property) under the national disaster provisions.

Special rules in case of foreign oil and gas income (Act Div. B sec. 402).−The Act expands the FOGEI rules to apply to all foreign income from production and other activity related to the sale of oil and gas product (the sum of prior-law FORI and FOGEI). A transition rule in the Act unintentionally fails to properly apply pre-effective date law to pre-2009 credit carryforwards. The provision clarifies that pre-2009 credits carried forward to post-2008 years continue to be governed by prior law for purposes of determining the amount of carryforward credits eligible to be claimed in a post-2008 year.

Broker reporting of customer's basis in securities transactions (Act Div. B sec. 403).−The provision makes conforming changes necessitated by the deletion of the defined term "open-end fund," so that the provision refers to regulated investment companies rather than open-end funds.

The Act provides a definition of a dividend reinvestment plan ("DRP"), and also permits use of average cost basis for stock acquired after December 31, 2010 in connection with a DRP. The Act further provides that stock acquired before 2012 for which an average basis method is permissible is treated as a separate account from any such stock acquired after 2011, and provides an election for a regulated investment company to treat as a single account all stock held by a customer without regard to the date of acquisition of the stock. For stock for which an average basis method is permissible, the Act's basis reporting requirements apply to stock acquired after December 31, 2011. The provision conforms the effective date for the availability of an average basis method for DRP stock to the effective date for the basis reporting requirement for stock for which an average basis method is permissible by making the former rule applicable to DRP stock acquired after December 31, 2011 (rather than December 31, 2010). The provision makes a conforming change to the effective date provision applicable to required basis reporting related to DRP stock. Under this change, unless a broker elects otherwise, basis reporting for DRP stock remains mandatory, as under the Act, only for stock acquired on or after January 1, 2012.

The provision also clarifies that if an election is made to treat as a single account all stock acquired in connection with a DRP, the average basis method is permissible with respect to all such stock without regard to the date of acquisition of the stock.

Division C, Tax Extenders and Alternative Minimum Tax Relief Act of 2008

Qualified investment entities (Act Div. C sec. 208).−The Act generally extends the inclusion of a RIC within the definition of a "qualified investment entity" under the FIRPTA rules of section 897 through December 31, 2009. The Act imposes withholding tax on certain RIC distributions to foreign shareholders; however, distributions may have been made after the provision had expired on December 31, 2007, but before the extension was enacted. The provision clarifies that no withholding is required for distributions that were made on or before the date of enactment (October 4, 2008). The provision also clarifies that a RIC is not liable to a foreign shareholder to whom a distribution was made before October 4, 2008, for amounts that were withheld from such a distribution and paid over to the Secretary.

Extension of 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements; 15-year straight-line cost recovery for certain improvements to retail space (Act Div. C sec. 305).−The Act expands the application of the 15-year MACRS recovery period to restaurant property, for property placed in service after December 31, 2008, and to a new category of retail improvement property, also for property placed in service after December 31, 2008. Both of these rules provide that bonus depreciation generally is not available for such property. The provision clarifies, however, that assets that qualify as both qualified leasehold improvement property and either qualified restaurant property or qualified retail improvement property qualify for bonus depreciation, consistent with the legislative intent with respect to assets that overlap in this manner.

Amendments to the Heroes Earnings Assistance and Relief Tax Act of 2008 (Pub. L. No. 110-245)

Special period of limitation when uniformed services retired pay is reduced as result of award of disability compensation (Act sec. 106).--The provision clarifies that the date June 17, 2008 (date of enactment), applies for purposes of the portion of the transition rule specifying what date should be substituted for the date of the determination.

Disposition of unused health benefits in flexible spending accounts (Act sec. 114).−The Act provides that a plan does not fail to be treated as a cafeteria plan or health FSA merely because the plan provides for qualified reservist distributions. The provision clarifies that a plan does not fail to be treated as an accident or health plan under Code section 105 merely because it provides for qualified reservist distributions.

Amendments to the Economic Stimulus Act of 2008 (Pub. L. No. 110-185)

2008 recovery rebates for individuals (Act sec. 101).−The provision clarifies that summary assessment procedures can apply with respect to any taxpayer identification number under the provision (not just in the case of limited age errors).

Amendments to the Tax Technical Corrections Act of 2007 (Pub. L. No. 110-172)

Act section 4(c).--The provision reinstates a part of Code section 911, relating to the netting of disallowed deductions against excluded income, that was inadvertently deleted by the Act.

Amendments to the Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432)

WOTC and Indian employment credit (Act sec. 105).−Code section 45A(b)(1)(B) coordinates the Indian employment credit with WOTC. It provides that wages are not taken into account during the one-year period beginning on the date the individual begins work for the employer if wages are taken into account under WOTC. In 2006, a second year was added to WOTC for long-term family assistance recipients (section 51(e)). The provision clarifies that the two-year period is taken into account for purposes of section 45A(b)(1)(B) if any portion of wages are taken into account under subsection (e)(1)(A) of section 51.

Amendments to the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETY-LU) (Pub. L. No. 109-59)

Transfer to Highway Trust Fund of amounts equivalent to certain taxes and penalties (Act sec. 11161).−The taxes on aviation fuel and aviation gasoline, imposed on removal from a terminal directly into the fuel tank of an aircraft, are credited to the Airport and Airways Trust Fund (sec. 9502(b)(1)(D)). The provision makes a technical amendment to section 9503(b)(1)(D) to clarify that the Highway Trust Fund is not credited with these same amounts.

Amendments to the American Jobs Creation Act of 2004 (Pub. L. No. 108-357)

ETI and 199 circularity (Act sec. 101).−The provision incorporates an ordering rule for purposes of section 114 of the Code that requires the computation of the section 114 extraterritorial income ("ETI") exclusion without regard to the section 199 deduction. Under this ordering rule, a taxpayer must first compute the amount of the section 114 exclusion, determined without regard to the section 199 deduction, before the taxpayer computes its section 199 deduction. As under present law, any amount excluded from gross income pursuant to section 114 continues to be taken into account in determining qualified production activities income ("QPAI"). The provision is consistent with technical corrections previously made to provide ordering rules to avoid circular calculations resulting from the interaction between the computations under section 199 and sections 163(j), 170, and 613A.

Section 199 W-2 wages (Act sec. 102).−Section 199(b)(2)(A) provides that the amounts included as W-2 wages are only those amounts paid during the calendar year ending during the taxable year of a taxpayer. In some instances, this results in taxable years in which no W-2 wages are included *(e.g.*, short years that do not include December 31). Consequently, in such instances, the taxpayer may be precluded from claiming a section 199 deduction due to the W-2 wage limitation. Although section 199(b)(3) provides the Secretary with authority to address cases in which there may be a short taxable year as a result of a taxpayer's acquisition or disposition of a trade or business (or a major portion of a separate unit of a trade or business), it does not provide explicit authority to address other circumstances that result in a short taxable year (*e.g.*, change in accounting period).

The provision provides the Secretary the authority to issue guidance for short taxable years (outside of the context of an acquisition or disposition) permitting the allocation of W-2 wages to a short taxable year that does not include the end of a calendar year. For example, the Secretary may issue guidance that permits a taxpayer to allocate a portion of the annual W-2 wages to a short taxable year that does not include the end of the calendar year and the full amount of such W-2 wages to the subsequent 12-month taxable year that includes such calendar year end.

Clerical corrections

The proposal makes clerical and typographical corrections.