

**DESCRIPTION OF H.R. 3301,
THE “TAXPAYER CERTAINTY AND
DISASTER TAX RELIEF ACT OF 2019”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on June 20, 2019

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



June 18, 2019
JCX-30-19

CONTENTS

| | <u>Page</u> |
|-----------------------------------------------------------------------------------------------------|-------------|
| INTRODUCTION | 1 |
| TITLE I – EXTENSION OF CERTAIN EXPIRING PROVISIONS | 2 |
| A. Tax Relief and Support for Families and Individuals | 2 |
| 1. Exclusion from gross income of discharge of qualified principal residences indebtedness | 2 |
| 2. Treatment of mortgage insurance premiums as qualified residence interest | 4 |
| 3. Reduction in medical expense deduction floor | 5 |
| 4. Deduction of qualified tuition and related expenses | 6 |
| 5. Black lung disability trust fund excise tax | 7 |
| B. Incentives for Employment, Economic Growth, and Community Development | 8 |
| 1. Indian employment tax credit | 8 |
| 2. Railroad track maintenance credit | 9 |
| 3. Mine rescue team training credit | 13 |
| 4. Seven-year recovery period for motorsports entertainment complexes | 14 |
| 5. Accelerated depreciation for business property on Indian reservations | 17 |
| 6. Expensing rules for certain productions | 19 |
| 7. Empowerment zone tax incentives | 21 |
| 8. American Samoa economic development credit | 28 |
| C. Incentives for Energy Production, Efficiency, and Green Economy Jobs | 31 |
| 1. Biodiesel and renewable diesel | 31 |
| 2. Second generation biofuel producer credit | 33 |
| 3. Nonbusiness energy property | 34 |
| 4. Qualified fuel cell motor vehicles | 36 |
| 5. Alternative fuel refueling property credit | 37 |
| 6. Extension of credit for electric motorcycles | 38 |
| 7. Credit for electricity produced from certain renewable resources | 38 |
| 8. Production credit for Indian coal facilities | 40 |
| 9. Energy-efficient homes credit | 40 |
| 10. Special allowance for second generation biofuel plant property | 41 |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------|----|
| 11. Energy-efficient commercial buildings deduction..... | 44 |
| 12. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities | 46 |
| 13. Extension and clarification of excise tax credits relating to alternative fuels..... | 48 |
| 14. Oil spill liability trust fund rate..... | 50 |
| D. Certain Provisions Expiring at the End of 2019 | 51 |
| 1. New markets tax credit | 51 |
| 2. Employer credit for paid family and medical leave..... | 53 |
| 3. Work opportunity credit..... | 55 |
| 4. Certain provisions related to beer, wine, and distilled spirits | 61 |
| 5. Look-through rule for related controlled foreign corporations..... | 69 |
| 6. Credit for health insurance costs of eligible individuals..... | 70 |
| TITLE II – ESTATE AND GIFT TAX | 74 |
| 1. Reduction of unified credit against estate tax | 74 |
| TITLE III – DISASTER TAX RELIEF..... | 76 |
| 1. Special disaster-related rules for use of retirement funds..... | 76 |
| 2. Disaster related employment relief | 80 |
| 3. Temporary suspension of limitation on charitable contributions | 81 |
| 4. Special rules for qualified disaster-related personal casualty losses | 84 |
| 5. Special rule for determining earned income | 84 |
| 6. Automatic extension of filing deadlines in case of certain taxpayers affected by federally declared disasters | 86 |
| 7. Modification of the tax rate for the excise tax on investment income of private foundations..... | 89 |
| 8. Additional low-income housing tax credit allocations for qualified 2017 and 2018 California disaster areas | 90 |
| 9. Treatment of certain possessions | 92 |

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3301, the “Taxpayer Certainty and Disaster Tax Relief Act of 2019.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3301, the “Taxpayer Certainty and Disaster Tax Relief Act of 2019”* (JCX-30-19), June 18, 2019. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein “Code”), unless otherwise stated.

TITLE I – EXTENSION OF CERTAIN EXPIRING PROVISIONS

A. Tax Relief and Support for Families and Individuals

1. Exclusion from gross income of discharge of qualified principal residence indebtedness

Present Law

In general

Gross income includes income that is realized by a debtor from the discharge of indebtedness,² subject to certain exceptions for debtors in Title 11 bankruptcy cases, insolvent debtors, certain student loans, certain farm indebtedness, and certain real property business indebtedness.³ In cases involving discharges of indebtedness that are excluded from gross income under the exceptions to the general rule, taxpayers generally reduce certain tax attributes, 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.⁴

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

Qualified principal residence indebtedness

An exclusion from gross income is provided for any discharge of indebtedness income by reason of a discharge (in whole or in part) of qualified principal residence indebtedness. Qualified principal residence indebtedness means acquisition indebtedness (within the meaning of section 163(h)(3)(B), except that the dollar limitation is \$2 million) with respect to the taxpayer's principal residence.⁵ Acquisition indebtedness with respect to a principal residence generally means indebtedness which is incurred in the acquisition, construction, or substantial improvement of the principal residence of the individual and is secured by the residence. It also

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

³ Secs. 61(a)(11) and 108.

⁴ Sec. 1017.

⁵ Sec. 108(h)(2).

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.

Description of Proposal

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

Effective Date

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

2. Treatment of mortgage insurance premiums as qualified residence interest

Present Law

In general

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

Acquisition indebtedness

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

Qualified mortgage insurance

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

⁶ Sec. 163(h).

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

Description of Proposal

The proposal extends the deduction for qualified mortgage insurance premiums for three years (with respect to contracts entered into after December 31, 2006). Thus, the proposal 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 proposal applies to amounts paid or accrued after December 31, 2017.

3. Reduction in medical expense deduction floor

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”).⁸ For taxable years ending after December 31, 2018, the 7.5-percent threshold is increased to 10 percent.

Description of Proposal

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

Effective Date

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

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

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

4. Deduction of qualified tuition and related expenses

Present Law

An individual is allowed a deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year.⁹ The deduction is allowed in computing adjusted gross income. The term qualified tuition and related expenses is defined in the same manner as for the American Opportunity and Lifetime Learning credits, and includes tuition and fees required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction for a personal exemption,¹⁰ at an eligible institution of higher education for courses of instruction of such individual at such institution.¹¹ The expenses must be in connection with enrollment at an institution of higher education during the taxable year, or with an academic period beginning during the taxable year or during the first three months of the next taxable year. The deduction is not available for tuition and related expenses paid for elementary or secondary education.

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

The amount of qualified tuition and related expenses must be reduced by certain scholarships, educational assistance allowances, and other amounts paid for the benefit of such individual,¹² 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.¹³ Additionally, such expenses must be reduced by the earnings portion (but not the return of principal) of distributions from a qualified tuition program if an exclusion under section 529 is claimed with respect to expenses eligible for the qualified tuition deduction. No deduction is allowed for any expense for which a deduction is otherwise allowed or with respect to an

⁹ Sec. 222.

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

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

¹² Secs. 222(d)(1) and 25A(g)(2).

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

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.

Description of Proposal

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

Effective Date

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

5. Black lung disability trust fund excise tax

Present Law

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

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

Description of Proposal

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

¹⁴ Sec. 4121.

B. Incentives for Employment, Economic Growth, and Community Development

1. Indian employment tax credit

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.¹⁵ The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to \$20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.¹⁶

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 1974¹⁷ or section 4(10) of the Indian Child Welfare Act of 1978.¹⁸ For purposes of the preceding sentence, section 3(d) is applied by treating "former Indian reservations in Oklahoma" as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).

An employee is not treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during the taxable year exceeds an amount determined at an annual rate of \$30,000 (which after adjustment for inflation is \$45,000 for 2017).¹⁹ 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.²⁰ Similarly, an employee will not be treated as a qualified employee where the employee has more

¹⁵ Sec. 45A.

¹⁶ Sec. 280C(a).

¹⁷ Pub. L. No. 93-262.

¹⁸ Pub. L. No. 95-608.

¹⁹ See Instructions for Form 8845, Indian Employment Credit (2017).

²⁰ Sec. 51(i)(1).

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.

Description of Proposal

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

Effective Date

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

2. Railroad track maintenance credit

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").²¹ 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.²² The credit may reduce a taxpayer's tax liability below its tentative minimum tax.²³

Limitation

The railroad track maintenance credit is limited to the product of \$3,500 times the number of miles of railroad track²⁴ (1) owned or leased by an eligible taxpayer as of the close of

²¹ 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).

²² Sec. 45G(e)(2) and Treas. Reg. sec. 1.45G-1(f). See also Notice 2013-20, 2013-15 I.R.B. 902, April 8, 2013; and Field Attorney Advice 20151601F, December 19, 2014.

²³ Sec. 38(c)(4).

²⁴ 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).

its taxable year,²⁵ 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.²⁶ Amounts that exceed the limitation are not carried over to another taxable year.²⁷

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.²⁸ 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.²⁹ 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, 2018.³⁰

²⁵ 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).

²⁶ Sec. 45G(b)(1).

²⁷ Treas. Reg. sec. 1.45G-1(c)(2)(iii).

²⁸ Sec. 45G(b)(2). See also Treas. Reg. sec. 1.45G-1(d).

²⁹ 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).

³⁰ Bipartisan Budget Act of 2018, Pub. L. No. 115-123, Division D, Title I, Subtitle B, sec. 40302(b)(2), February 9, 2018.

Eligible taxpayer

An eligible taxpayer means any Class II or Class III railroad, and any person (including a Class I railroad³¹) who transports property using the rail facilities³² of a Class II or Class III railroad or who furnishes railroad-related property³³ or services³⁴ 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.³⁵

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).³⁶

Qualified railroad track maintenance expenditures

Qualified railroad track maintenance expenditures are defined as gross expenditures (whether or not otherwise chargeable to capital account³⁷) for maintaining railroad track

³¹ The Surface Transportation Board currently classifies a Class I railroad as a carrier with annual operating revenue of \$447,621,226 or more. The seven Class I railroads are BNSF Railway Company, Kansas City Southern Railway Company, Union Pacific Railway Company, Soo Line Railroad Company (Canadian Pacific's U.S. operations), CSX Transportation Inc., Norfolk Southern Railway Company, and Grand Trunk Corporation (Canadian National's U.S. operations). See the Surface Transportation Board FAQs - Economic and Industry Information, available at <https://www.stb.gov/stb/faqs.html>.

³² 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).

³³ 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.

³⁴ 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.

³⁵ Sec. 45G(c).

³⁶ Sec. 45G(e)(1) and Treas. Reg. sec. 1.45G-1(b)(1). The Surface Transportation Board currently classifies a Class II railroad as a carrier with annual operating revenue of less than \$447,621,226 but in excess of \$35,809,698, and a Class III railroad as a carrier with annual operating revenue of \$35,809,698 or less. See the Surface Transportation Board FAQs - Economic and Industry Information, available at <https://www.stb.gov/stb/faqs.html>.

³⁷ 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

(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.³⁸ 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.³⁹ 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.⁴⁰

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.⁴¹ 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.⁴² 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.⁴³

Description of Proposal

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

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.

³⁸ Sec. 45G(d); Treas. Reg. sec. 1.45G-1(b)(5).

³⁹ Treas. Reg. sec. 1.45G-1(c)(3)(ii).

⁴⁰ Treas. Reg. sec. 1.45G-1(c)(3).

⁴¹ Sec. 45G(e)(3). See also sec. 1016(a)(29) and Treas. Reg. Sec. 1.45G-1(e).

⁴² Treas. Reg. sec. 1.45G-1(e)(2).

⁴³ *Ibid.*

Effective Date

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

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

3. Mine rescue team training credit

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) \$10,000.⁴⁴

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.⁴⁵

An eligible employer is any taxpayer which employs individuals as miners in underground mines in the United States.⁴⁶ The term "wages" has the meaning given to such term by section 3306(b)⁴⁷ (determined without regard to any dollar limitation contained in that section).⁴⁸

No deduction is allowed for the portion of the expenses otherwise deductible that is equal to the amount of the credit.⁴⁹ The credit does not apply to taxable years beginning after

⁴⁴ Sec. 45N(a).

⁴⁵ Sec. 45N(b).

⁴⁶ Sec. 45N(c).

⁴⁷ Section 3306(b) defines wages for purposes of Federal Unemployment Tax.

⁴⁸ Sec. 45N(d).

⁴⁹ Sec. 280C(e).

December 31, 2017.⁵⁰ Additionally, the credit is not allowable for purposes of computing the alternative minimum tax.⁵¹

Description of Proposal

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

Effective Date

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

4. Seven-year recovery period for motorsports entertainment complexes

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.⁵² The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.⁵³ 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.⁵⁴

The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance.⁵⁵ The “type of property” of an asset is used to determine the “class life” of the asset, which in turn dictates the applicable recovery period for the asset.

⁵⁰ Sec. 45N(e).

⁵¹ Sec. 38(c). Note that the corporate alternative minimum tax was repealed for taxable years beginning after December 31, 2017. See An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, sec. 12001, December 22, 2017.

⁵² 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.

⁵³ 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).

⁵⁴ Sec. 168.

⁵⁵ Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87-56, 1987-2 C.B. 674, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88-22, 1988-1 C.B. 785. In November 1988, Congress revoked the Secretary’s

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,⁵⁶ 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.⁵⁷ The straight line depreciation method is required for the aforementioned real property.⁵⁸ 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.⁵⁹ 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.⁶⁰

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.

⁵⁶ Under the declining balance method the depreciation rate is determined by dividing the appropriate percentage (here 150 or 200) by the appropriate recovery period. This leads to accelerated depreciation when the declining balance percentage is greater than 100. The table below illustrates depreciation for an asset with a cost of \$1,000 and a seven-year recovery period under the 200-percent declining balance method, the 150-percent declining balance method, and the straight line method.

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

*Details may not add to totals due to rounding.

⁵⁷ Sec. 168(c).

⁵⁸ Sec. 168(b)(3).

⁵⁹ Sec. 168(d)(2) and (d)(4)(B).

⁶⁰ 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.

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.⁶¹ 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. 87-56.⁶² Racetrack facilities are excluded from the definition of theme and amusement park facilities classified under asset class 80.0.⁶³

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, 2018.⁶⁴ 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.⁶⁵

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).⁶⁶ Such ancillary and

⁶¹ Sec. 168(b)(2)(A) and asset class 00.3 of Rev. Proc. 87-56. Under the 150-percent declining balance method, the depreciation rate is determined by dividing 150 percent by the appropriate recovery period, switching to the straight-line method for the first taxable year where using the straight-line method with respect to the adjusted basis as of the beginning of that year will yield a larger depreciation allowance. Sec. 168(b)(2) and (b)(1)(B).

⁶² This asset class includes assets used in the provision of rides, attractions, and amusements in activities defined as theme and amusement parks, and includes appurtenances associated with a ride, attraction, amusement or theme setting within the park such as ticket booths, facades, shop interiors, and props, special purpose structures, and buildings other than warehouses, administration buildings, hotels, and motels. It also includes all land improvements for or in support of park activities (*e.g.*, parking lots, sidewalks, waterways, bridges, fences, landscaping, *etc.*) and support functions (*e.g.*, food and beverage retailing, souvenir vending and other nonlodging accommodations) if owned by the park and provided exclusively for the benefit of park patrons. Theme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission. This asset class is a composite of all assets used in this industry except transportation equipment (general purpose trucks, cars, airplanes, *etc.*, which are included in asset classes with the prefix 00.2), assets used in the provision of administrative services (asset classes with the prefix 00.1), and warehouses, administration buildings, hotels and motels.

⁶³ See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress* (JCS-5-05), May 2005, p. 328.

⁶⁴ Sec. 168(e)(3)(C)(ii) and (i)(15)(D).

⁶⁵ Sec. 168(i)(15)(A).

⁶⁶ Sec. 168(i)(15)(B).

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.⁶⁷

Description of Proposal

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

5. Accelerated depreciation for business property on Indian reservations

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 ⁶⁸ |

“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

⁶⁷ Sec. 168(i)(15)(C).

⁶⁸ Section 168(j)(2) does not provide shorter recovery periods for water utility property, residential rental property, or railroad grading and tunnel bores.

person who is related to the taxpayer;⁶⁹ and (4) is not property placed in service for purposes of conducting or housing certain gaming activities.⁷⁰

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).⁷¹

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))⁷² or section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).⁷³ For purposes of the preceding sentence, section 3(d) is applied by treating “former Indian reservations in Oklahoma” as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).⁷⁴

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax.⁷⁵

The accelerated depreciation for qualified Indian reservation property is available with respect to property placed in service before January 1, 2018.⁷⁶ A taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis.⁷⁷

Description of Proposal

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

⁶⁹ For these purposes, the term “related persons” is defined in section 465(b)(3)(C).

⁷⁰ Sec. 168(j)(4)(A).

⁷¹ Sec. 168(j)(4)(C).

⁷² Pub. L. No. 93-262.

⁷³ Pub. L. No. 95-608.

⁷⁴ Sec. 168(j)(6).

⁷⁵ Sec. 168(j)(3). Note that the corporate alternative minimum tax was repealed for taxable years beginning after December 31, 2017. See An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, sec. 12001, December 22, 2017.

⁷⁶ Sec. 168(j)(9).

⁷⁷ Sec. 168(j)(8).

Effective Date

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

6. Expensing rules for certain productions

Present Law

Under section 181, a taxpayer may elect⁷⁸ 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, 2018,⁷⁹ 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.⁸⁰ 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.⁸¹

A section 181 election may only be made by an owner of the production.⁸² 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.⁸³ 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

⁷⁸ See Treas. Reg. sec. 1.181-2 for rules on making (and revoking) an election under section 181.

⁷⁹ 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.

⁸⁰ Sec. 181(a)(2)(A). See Treas. Reg. sec. 1.181-1 for rules on determining eligible production costs. Eligible production costs under section 181 include participations and residuals paid or incurred. Treas. Reg. sec. 1.181-1(a)(3)(i). The special rule in section 167(g)(7) that allows taxpayers using the income forecast method of depreciation to include participations and residuals that have not met the economic performance requirements in the adjusted basis of the property for the taxable year the property is placed in service does not apply for purposes of section 181. Treas. Reg. sec. 1.181-1(a)(8). Thus, under section 181, a taxpayer may only include participations and residuals actually paid or incurred in eligible production costs. Further, production costs do not include the cost of obtaining a production after its initial release or broadcast. See Treas. Reg. sec. 1.181-1(a)(3). For this purpose, “initial release or broadcast” means the first commercial exhibition or broadcast of a production to an audience. Treas. Reg. sec. 1.181-1(a)(7). Thus, *e.g.*, a taxpayer may not expense the purchase of an existing film library under section 181. See T.D. 9551, 76 Fed. Reg. 64816, October 19, 2011.

⁸¹ Sec. 181(a)(2)(B).

⁸² Treas. Reg. sec. 1.181-1(a).

⁸³ Treas. Reg. sec. 1.181-1(a)(2)(i).

incurred directly by an owner or indirectly on behalf of an owner.⁸⁴ 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.⁸⁵

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.⁸⁶ Solely for purposes of this rule, the term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)).⁸⁷

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.⁸⁸ Qualified productions do not include sexually explicit productions as referenced by section 2257 of title 18 of the U.S. Code.⁸⁹

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 3,000.⁹⁰ 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

⁸⁴ 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).

⁸⁵ See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 110th Congress* (JCS-1-09), March 2009, p. 448; and Treas. Reg. sec. 1.181-1(c)(2). A production is generally considered to be placed in service at the time of initial release, broadcast, or live staged performance (*i.e.*, at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience). See, *e.g.*, Rev. Rul. 79-285, 1979-2 C.B. 91; and Priv. Ltr. Rul. 9010011, March 9, 1990. See also, Treas. Reg. sec. 1.181-1(a)(7). However, a production generally may not be considered to be placed in service if it is only exhibited, broadcasted or performed for a limited test audience in advance of the commercial exhibition, broadcast, or performance to general audiences. See Priv. Ltr. Rul. 9010011 and Treas. Reg. sec. 1.181-1(a)(7).

⁸⁶ Sec. 181(d)(3)(A).

⁸⁷ 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).

⁸⁸ Sec. 181(d)(2)(B).

⁸⁹ Sec. 181(d)(2)(C).

⁹⁰ Sec. 181(e)(2)(A).

which has an audience capacity of not more than 6,500.⁹¹ In general, in the case of multiple live-staged productions, each such live-staged production is treated as a separate production. Similar to the exclusion for sexually explicit productions from the definition of qualified film or television productions, qualified live theatrical productions do not include stage performances that would be excluded by section 2257(h)(1) of title 18 of the U.S. Code, if such provision were extended to live stage performances.⁹²

For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.⁹³ 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.⁹⁴

Description of Proposal

The proposal 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.

Effective Date

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

7. Empowerment zone tax incentives

Present Law

The Omnibus Budget Reconciliation Act of 1993 (“OBRA 93”)⁹⁵ authorized the designation of nine empowerment zones (“Round I empowerment zones”) to provide tax incentives for businesses to locate within certain targeted areas⁹⁶ 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

⁹¹ Sec. 181(e)(2)(D).

⁹² Sec. 181(e)(2)(E).

⁹³ Sec. 1245(a)(2)(C). For a discussion of the recapture rules applicable to depreciation and amortization deductions, see Joint Committee on Taxation, *Background and Present Law Relating to Cost Recovery and Domestic Production Activities*, (JCX-19-12) February 27, 2012, pp. 45-46.

⁹⁴ See Treas. Reg. sec. 1.181-4.

⁹⁵ Pub. L. No. 103-66.

⁹⁶ 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.

large cities. OBRA 93 also authorized the designation of 95 enterprise communities,⁹⁷ which were located in smaller rural areas and cities.⁹⁸

The Taxpayer Relief Act of 1997⁹⁹ 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”)¹⁰⁰ authorized a total of 10 new empowerment zones (“Round III empowerment zones”), bringing the total number of authorized, and not relinquished, empowerment zones to 41.¹⁰¹ In addition, the 2000 Community Renewal Act conformed the tax incentives that are available to businesses in the Round I, Round II, and Round III empowerment zones, and extended the empowerment zone incentives through December 31, 2009. Subsequent legislation, most recently the Bipartisan Budget Act of 2018, extended the empowerment zone incentives through December 31, 2017.¹⁰²

⁹⁷ Sec. 1391(b)(1).

⁹⁸ 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).

⁹⁹ Pub. L. No. 105-34.

¹⁰⁰ Pub. L. No. 106-554. The 2000 Community Renewal Act also authorized the designation of 40 “renewal communities” within which special tax incentives were available. The tax incentives were generally available through December 31, 2009 when the renewal community designation expired. One of the tax incentives involving the exclusion of capital gain from the sale or exchange of a qualified community asset continued through 2014.

¹⁰¹ The urban part of the program is administered by HUD and the rural part of the program is administered by the USDA. The eight urban Round I empowerment zones are Atlanta, GA; Baltimore, MD; Chicago, IL; Cleveland, OH; Detroit, MI; Los Angeles, CA; New York, NY; and Philadelphia, PA/Camden, NJ. Atlanta relinquished its empowerment zone designation in Round III. The three rural Round I empowerment zones are Kentucky Highlands, KY; Mid-Delta, MI; and Rio Grande Valley, TX. The 15 urban Round II empowerment zones are Boston, MA; Cincinnati, OH; Columbia, SC; Columbus, OH; Cumberland County, NJ; El Paso, TX; Gary/Hammond/East Chicago, IN; Ironton, OH/Huntington, WV; Knoxville, TN; Miami/Dade County, FL; Minneapolis, MN; New Haven, CT; Norfolk/Portsmouth, VA; Santa Ana, CA; and St. Louis, Missouri/East St. Louis, IL. The five rural Round II empowerment zones are Desert Communities, CA; Griggs-Steele, ND; Oglala Sioux Tribe, SD; Southernmost Illinois Delta, IL; and Southwest Georgia United, GA. The eight urban Round III empowerment zones are Fresno, CA; Jacksonville, FL; Oklahoma City, OK; Pulaski County, AR; San Antonio, TX; Syracuse, NY; Tucson, AZ; and Yonkers, NY. The two rural Round III empowerment zones are Aroostook County, ME; and Futuro, TX.

¹⁰² 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.

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

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

Wage credit

A 20-percent wage credit is available to employers for the first \$15,000 of qualified wages paid to each employee (*i.e.*, a maximum credit of \$3,000 with respect to each qualified employee) who (1) is a resident of the empowerment zone, and (2) performs substantially all employment services within the empowerment zone in a trade or business of the employer.¹⁰³

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.¹⁰⁴

An employer’s deduction otherwise allowed for wages paid is reduced by the amount of wage credit claimed for that taxable year.¹⁰⁵ 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 51.¹⁰⁶ In addition, the \$15,000 cap is reduced by any wages taken into account in computing the work opportunity tax credit.¹⁰⁷ The wage credit may be used to offset up to 25 percent of the employer’s alternative minimum tax liability.¹⁰⁸

¹⁰³ 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.

¹⁰⁴ 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.

¹⁰⁵ Sec. 280C(a).

¹⁰⁶ Sec. 1396(c)(3)(A).

¹⁰⁷ Sec. 1396(c)(3)(B) .

¹⁰⁸ Sec. 38(c)(2). The corporate alternative minimum tax is repealed for taxable years beginning after December 31, 2017. However, the full amount of the minimum tax credit will be allowed in taxable years beginning before 2022.

Increased section 179 expensing limitation

An enterprise zone business¹⁰⁹ is allowed up to an additional \$35,000 of section 179 expensing for qualified zone property placed in service before January 1, 2018.¹¹⁰ For taxable years beginning in 2017, the total amount that may be expensed is \$545,000.¹¹¹ 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.¹¹² 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.¹¹³

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

¹⁰⁹ 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).

¹¹⁰ Sec. 1397A. Note that an Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 provides 100-percent bonus depreciation for qualified property acquired and placed in service after September 27, 2017, and before January 1, 2023. The 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes qualified zone property other than buildings.

¹¹¹ \$510,000 section 179(b)(1) limitation + \$35,000 increase for qualified zone property = \$545,000 maximum dollar limitation. See sec. 179(b)(1) and Section 3.25 of Rev. Proc. 2016-55, 2016-45 I.R.B. 707. For taxable years beginning after 2017, the relevant dollar amount under section 179(b)(1) is \$1,000,000 (indexed for inflation for taxable years beginning after 2018). See also Section 3.25 of Rev. Proc. 2018-18, 2018-10 I.R.B. 392.

¹¹² For taxable years beginning in 2017, the relevant dollar amount is \$2,030,000. Sec. 179(b)(2) and Section 3.25 of Rev. Proc. 2016-55, 2016-45 I.R.B. 707. For taxable years beginning after 2017, the relevant dollar amount under section 179(b)(2) is \$2,500,000 (indexed for inflation for taxable years beginning after 2018). See also Section 3.25 of Rev. Proc. 2018-18, 2018-10 I.R.B. 392.

¹¹³ Sec. 1397A(a)(2). For example, assume that during 2017 a calendar year taxpayer in an enterprise zone business purchased and placed in service \$4,500,000 of section 179 property that is qualified zone property. The \$510,000 section 179(b)(1) dollar amount for 2017 is increased to \$545,000 (by the lesser of \$35,000 or \$4,500,000). That amount is reduced by the excess section 179 property cost amount of \$220,000 ((50 percent x \$4,500,000) – \$2,030,000). The taxpayer’s expensing limitation is \$325,000 (\$545,000 – \$220,000). If the taxpayer had not been an enterprise zone business, its expensing limitation would be zero because the taxpayer would have been fully phased out.

of a qualified trade or business by the taxpayer in such zone.¹¹⁴ Special rules are provided in the case of property that is substantially renovated by the taxpayer.¹¹⁵

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.¹¹⁶

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.¹¹⁷

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

¹¹⁴ Sec. 1397D(a)(1). Note, however, that to be eligible for the increased section 179 expensing, the qualified zone property has to also meet the definition of section 179 property (*e.g.*, building property would only qualify if it constitutes qualified real property under section 179(f)).

¹¹⁵ Sec. 1397D(a)(2).

¹¹⁶ Sec. 1397C(b).

¹¹⁷ Sec. 1397C(c). For these purposes, the term “employee” includes the proprietor.

business prohibited in connection with the empowerment zone employment credit.¹¹⁸ 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.¹¹⁹ 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.¹²⁰ 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

¹¹⁸ 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).

¹¹⁹ Sec. 1394.

¹²⁰ Pub. L. No. 114-113, Div. Q, sec. 171 (2015) (effective for bonds issued after 2015).

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).¹²¹

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

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

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

Taxpayers can elect to defer recognition of gain on the sale of a qualified empowerment zone asset held for more than one year and replaced within 60 days by another qualified empowerment zone asset in the same zone.¹²² 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.

¹²¹ Sec. 1394(b)(3).

¹²² Sec. 1397B.

Description of Proposal

The proposal 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.

Effective Date

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

8. American Samoa economic development credit

Present Law

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

For taxable years beginning before January 1, 2011, as originally enacted, the credit was limited to domestic corporations that were existing credit claimants with respect to American Samoa who had elected the application of section 936 for its last taxable year beginning before January 1, 2006. The credit is based on the corporation's economic activity-based limitation with respect to American Samoa. An existing claimant is a domestic corporation that (1) was engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, and (2) elected the benefits of the possession tax credit¹²³ in an election in effect for its

¹²³ For taxable years beginning before January 1, 2006, certain domestic corporations with business operations in the U.S. possessions were eligible for the possession tax credit. Secs. 27(b) and 936. This credit offset the U.S. tax imposed on certain income related to operations in the U.S. possessions. Subject to certain limitations, the amount of the possession tax credit allowed to any domestic corporation equaled the portion of that corporation's U.S. tax that was attributable to the corporation's non-U.S. source taxable income from (1) the active conduct of a trade or business within a U.S. possession, (2) the sale or exchange of substantially all of the assets that were used in such a trade or business, or (3) certain possessions investment. No deduction or foreign tax credit was allowed for any possessions or foreign tax paid or accrued with respect to taxable income that was taken into account in computing the credit under section 936. Under the economic activity-based limit, the amount of the credit could not exceed an amount equal to the sum of (1) 60 percent of the taxpayer's qualified possession wages and allocable employee fringe benefit expenses, (2) 15 percent of depreciation allowances with respect to short-life qualified tangible property, plus 40 percent of depreciation allowances with respect to medium-life qualified tangible property, plus 65 percent of depreciation allowances with respect to long-life qualified tangible property, and (3) in certain cases, a portion of the taxpayer's possession income taxes. A taxpayer could elect, instead of the economic activity-based limit, a limit equal to the applicable percentage of the credit that otherwise would have been allowable with respect to possession business income, beginning in 1998, the applicable percentage was 40 percent.

taxable year that included October 13, 1995.¹²⁴ 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 section 936(c) rule denying a credit or deduction for any possessions or foreign tax paid with respect to taxable income taken into account in computing the credit under section 936 does not apply with respect to the credit allowed by the provision.

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

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

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.

¹²⁴ A corporation will qualify as an existing credit claimant if it acquired all the assets of a trade or business of a corporation that (1) actively conducted that trade or business in a possession on October 13, 1995, and (2) had elected the benefits of the possession tax credit in an election in effect for the taxable year that included October 13, 1995.

Description of Proposal

The proposal 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 2018,¹²⁵ or the repeal of section 199 in 2017.¹²⁶

Effective Date

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

¹²⁵ See, *The Consolidated Appropriations Act 2018*, Pub. L. No. 115-141, Division U, Title IV, at sec. 401(d)(1)(C) (the repeal of section 936) and sec. 401(d)(1)(D)(viii)(I) (definition of intangible property added to section 367(d)) (March 23, 2018).

¹²⁶ Pub. L. 115-97, section 13305(a).

C. Incentives for Energy Production, Efficiency, and Green Economy Jobs

1. Biodiesel and renewable diesel

Present Law

Biodiesel

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

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

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

Biodiesel mixture credit

The biodiesel mixture credit is \$1.00 for each gallon of biodiesel (including agri-biodiesel) used by the taxpayer in the production of a qualified biodiesel mixture. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) used as a fuel by the taxpayer producing such mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

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

Biodiesel credit (B-100)

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

Small agri-biodiesel producer credit

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

Biodiesel mixture excise tax credit

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

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

Payments with respect to biodiesel fuel mixtures

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

Description of Proposal

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

Effective Date

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

2. Second generation biofuel producer credit

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).¹²⁷ Special rules apply for fuel derived from algae.

¹²⁷ In addition, for fuels derived from algae, cyanobacterial or lemna, a special rule provides that qualified second generation biofuel includes fuel that is sold by the taxpayer to another person for refining by such other

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

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

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

Description of Proposal

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

Effective Date

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

3. Nonbusiness energy property

Present Law

A 10-percent credit is available for the purchase of qualified energy efficiency improvements to existing homes.¹²⁸ 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.

person into a fuel that meets the registration requirements for fuels and fuel additives under section 211 of the Clean Air Act.

¹²⁸ Sec. 25C.

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

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

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

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than two percent of the total annual energy use of the 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, 2009,¹²⁹ (3) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency as in effect on January 1, 2009,¹³⁰ (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,

¹²⁹ 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.

¹³⁰ 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.

including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

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

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

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

Description of Proposal

The proposal extends the nonbusiness energy property credit for three years, through December 31, 2020. The proposal 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 proposal is effective for property placed in service after December 31, 2017.

4. Qualified fuel cell motor vehicles

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.

Description of Proposal

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

Effective Date

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

5. Alternative fuel refueling property credit

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.¹³¹ 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.

Description of Proposal

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

Effective Date

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

¹³¹ Sec. 30C.

6. Extension of credit for electric motorcycles

Present Law

In general, for vehicles acquired before 2018, a 10-percent credit is available for qualifying plug-in electric motorcycles.¹³² Qualifying 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 hours. The maximum credit for any qualifying vehicle is \$2,500.

Description of Proposal

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

Effective Date

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

7. Credit for electricity produced from certain renewable resources

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”).¹³³ Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

| Summary of Credit for Electricity Produced from Certain Renewable Resources | | |
|------------------------------------------------------------------------------------|------------------------------------------------------------------|-------------------------|
| Eligible electricity production activity (sec. 45) | Credit amount for 2019 ¹ (cents per kilowatt-hour) | Expiration ² |
| Wind | 2.5 | December 31, 2019 |
| Closed-loop biomass | 2.5 | December 31, 2017 |

¹³² Sec. 30D(g). The credit lapsed and was not available for vehicles placed in service in calendar year 2014. Before 2014, the credit was also available for qualified vehicles having 3-wheels.

¹³³ 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 | | |
|----------------------------------------------------------------------------------------------|------------------------------------------------------------------|-------------------------|
| Eligible electricity production activity (sec. 45) | Credit amount for 2019 ¹ (cents per kilowatt-hour) | Expiration ² |
| Open-loop biomass (including agricultural livestock waste nutrient facilities) | 1.2 | December 31, 2017 |
| Geothermal | 2.5 | December 31, 2017 |
| Municipal solid waste (including landfill gas facilities and trash combustion facilities) | 1.2 | December 31, 2017 |
| Qualified hydropower | 1.2 | December 31, 2017 |
| Marine and hydrokinetic | 1.2 | December 31, 2017 |

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

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

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.

Description of Proposal

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

Effective Date

The proposal takes effect January 1, 2018.

8. Production credit for Indian coal facilities

Present Law

In general, a credit is available for each ton of Indian coal produced from a qualified facility for during the 12-year period beginning January 1, 2006, and ending December 31, 2017.¹³⁴ 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; \$2.387 per ton for 2016). 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.

Description of Proposal

The proposal 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.

9. Energy-efficient homes credit

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

¹³⁴ Sec. 45.

contractor is the person who constructed the home, or in the case of a manufactured home, the producer of such home.

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

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

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

Description of Proposal

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

Effective Date

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

10. Special allowance for second generation biofuel plant property

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.¹³⁵ The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.¹³⁶ Tangible property generally is depreciated under the modified accelerated cost recovery system (“MACRS”), which determines

¹³⁵ See sections 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.*, section 280A.

¹³⁶ See Treas. Reg. secs. 1.167(a)-10(b), 1.167(a)-3, 1.167(a)-14, and 1.197-2(f). See also Treas. Reg. sec. 1.167(a)-11(e)(1)(i).

depreciation for different types of property based on an assigned applicable depreciation method, recovery period,¹³⁷ and convention.¹³⁸

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.¹³⁹ In order to qualify, the property generally must be placed in service before January 1, 2018.¹⁴⁰

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes,¹⁴¹ but is not allowed in computed earnings and profits.¹⁴² 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.¹⁴³

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.¹⁴⁴ Qualified feedstock means any lignocellulosic or hemicellulosic matter that is available on a renewable or

¹³⁷ The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance. Exercising authority granted by Congress, the Secretary issued Rev. Proc. 87-56, 1987-2 C.B. 674, laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Rev. Proc. 88-22, 1988-1 C.B. 785. In November 1988, Congress revoked the Secretary’s authority to modify the class lives of depreciable property. Rev. Proc. 87-56, as modified, remains in effect except to the extent that the Congress has, since 1988, statutorily modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.

¹³⁸ Sec. 168.

¹³⁹ Sec. 168(l).

¹⁴⁰ Sec. 168(l)(2)(D).

¹⁴¹ Sec. 168(l)(5). Note that the corporate minimum tax was repealed for taxable years beginning after December 31, 2017. See an Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, sec. 2001, December 22, 2017.

¹⁴² Sec. 312(k)(3).

¹⁴³ Sec. 168(l)(1)(B).

¹⁴⁴ Secs. 168(l)(2)(A) and 40(b)(6)(E).

recurring basis,¹⁴⁵ and any cultivated algae, cyanobacteria, or lemna.¹⁴⁶ Second generation biofuel does not include any alcohol with a proof of less than 150 or certain unprocessed fuel.¹⁴⁷ 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 25.¹⁴⁸

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, 2018.¹⁴⁹ 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).¹⁵⁰ 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,¹⁵¹ (ii) any property required to be depreciated under the alternative depreciation system of section 168(g),¹⁵² (iii) any property any portion of which is financed with the proceeds of a tax-exempt obligation under section 103,¹⁵³ and (iv) any property with respect

¹⁴⁵ 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.

¹⁴⁶ Sec. 40(b)(6)(F).

¹⁴⁷ Sec. 40(b)(6)(E)(ii) and (iii).

¹⁴⁸ Sec. 40(b)(6)(E)(iii).

¹⁴⁹ Sec. 168(l)(2). Requirements relating to actions taken before 2007 are not described herein since they have little (if any) remaining effect.

¹⁵⁰ Sec. 168(l)(4) and (k)(2)(E).

¹⁵¹ Sec. 168(l)(3)(A).

¹⁵² Sec. 168(l)(3)(B).

¹⁵³ Sec. 168(l)(3)(C).

to which the taxpayer has elected 50-percent expensing under section 179C (relating to election to expense certain refineries).¹⁵⁴

A taxpayer may elect out of the additional first-year depreciation for any class of property for any taxable year.¹⁵⁵

In addition, recapture rules apply if the property ceases to be qualified second generation biofuel plant property.¹⁵⁶

Description of Proposal

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

11. Energy-efficient commercial buildings deduction

Present Law

In general

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

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe

¹⁵⁴ Sec. 168(l)(7).

¹⁵⁵ Sec. 168(l)(3)(D).

¹⁵⁶ Sec. 168(l)(6).

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.¹⁵⁷ Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

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

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

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

Partial allowance of deduction

(1) System-specific deductions

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

(2) Interim rules for lighting systems

In general, in the case of system-specific partial deductions, no deduction is allowed until the Secretary establishes system-specific targets.¹⁵⁸ However, in the case of lighting system

¹⁵⁷ See IRS Notice 2006-52, 2006-1 C.B. 1175, June 2, 2006; IRS Notice 2008-40, 2008-14 I.R.B. 725 March 11, 2008.

¹⁵⁸ 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

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.

Description of Proposal

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

Effective Date

The proposal 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

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.¹⁵⁹ The realized gain is subject to current income tax¹⁶⁰ unless the recognition of the gain is deferred or excluded from income under a special tax provision.¹⁶¹

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 period¹⁶² (the "reinvestment property").¹⁶³ If the amount realized exceeds

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.

¹⁵⁹ See sec. 1001.

¹⁶⁰ See secs. 61 and 451.

¹⁶¹ See, *e.g.*, secs. 453, 1031, and 1033.

¹⁶² 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.

¹⁶³ Sec. 451(k).

the amount used to purchase reinvestment property, any realized gain is recognized to the extent of such excess in the year of the qualifying electric transmission transaction.

A qualifying electric transmission transaction is the sale or other disposition of property used by a qualified electric utility to an independent transmission company prior to January 1, 2018.¹⁶⁴ 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 Act¹⁶⁵) with respect to the transmission facilities to which the election applies, and (2) an electric utility (as defined in the Federal Power Act¹⁶⁶).¹⁶⁷

In general, an independent transmission company is defined as: (1) an independent transmission provider¹⁶⁸ approved by the Federal Energy Regulatory Commission (“FERC”); (2) a person (i) who the FERC determines under section 203 of the Federal Power Act¹⁶⁹ (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).¹⁷⁰

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

¹⁶⁴ Sec. 451(k)(3).

¹⁶⁵ 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.

¹⁶⁶ 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.

¹⁶⁷ Sec. 451(k)(6).

¹⁶⁸ For example, a regional transmission organization, an independent system operator, or an independent transmission company.

¹⁶⁹ 16 U.S.C. sec. 824b.

¹⁷⁰ Sec. 451(k)(4).

or business consists of the activities described in (1).¹⁷¹ Exempt utility property does not include any property that is located outside of the United States.¹⁷²

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).¹⁷³

Description of Proposal

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

Effective Date

The proposal applies to dispositions after December 31, 2017.

13. Extension and clarification of excise tax credits relating to alternative fuels

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

¹⁷¹ Sec. 451(k)(5).

¹⁷² Sec. 451(k)(5)(C).

¹⁷³ Sec. 451(k)(7).

alternative fuel or gasoline gallon equivalents¹⁷⁴ 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.¹⁷⁵ 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 applicable 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.

Description of Proposal

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

The proposal 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 proposal 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.

¹⁷⁴ “Gasoline gallon equivalent” means, with respect to any nonliquid alternative fuel (for example, compressed natural gas), the amount of such fuel having a Btu (British thermal unit) content of 124,800 (higher heating value).

¹⁷⁵ It has been argued that for purposes of the alternative fuel mixture credit, butane is liquefied petroleum gas. The term “liquefied petroleum gas” is not defined for purposes of section 6426. Butane is a gasoline blendstock under section 48.4081-1(c)(3)(i) of the Treasury regulations and, therefore, is gasoline for purposes of section 4083. In Revenue Ruling 2018-2, the Internal Revenue Service determined that butane is not an alternative fuel but is a gasoline blendstock as defined in the regulations. As a result, a mixture of butane and gasoline is a mixture of two taxable fuels. The IRS held that it is not an alternative fuel mixture and does not qualify for the alternative fuel mixture credit.

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

14. Oil spill liability trust fund rate

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 at a U.S. refinery and to petroleum products entered into the United States for consumption, use, or warehousing.¹⁷⁶ The oil spill tax also applies to certain uses and the exportation of domestic crude oil.¹⁷⁷ 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.

Description of Proposal

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

Effective Date

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

¹⁷⁶ The term “crude oil” includes crude oil condensates and natural gasoline. The term “petroleum product” includes crude oil.

¹⁷⁷ The term “domestic crude oil” means any crude oil produced from a well located in the United States.

D. Certain Provisions Expiring at the End of 2019

1. New markets tax credit

Present Law

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity (“CDE”).¹⁷⁸ The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years.¹⁷⁹ The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year.¹⁸⁰ The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity (1) ceases to be a qualified CDE, (2) the proceeds of the investment cease to be used as required, or (3) the equity investment is redeemed.¹⁸¹

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE.¹⁸² A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired at its original issue directly (or through an underwriter) from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder.¹⁸³ Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments and the investment must be designated as a qualified equity investment by the CDE. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any

¹⁷⁸ Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554.

¹⁷⁹ Sec. 45D(a)(2).

¹⁸⁰ Sec. 45D(a)(3).

¹⁸¹ Sec. 45D(g).

¹⁸² Sec. 45D(c).

¹⁸³ Sec. 45D(b).

loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.¹⁸⁴

A “low-income community” is a population census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income.¹⁸⁵ For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary is authorized to designate “targeted populations” as low-income communities for purposes of the new markets tax credit.¹⁸⁶ For this purpose, a “targeted population” is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994¹⁸⁷ (the “Act”) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that “low-income” means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a non-metropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide non-metropolitan area median family income. A targeted population is not required to be within any census tract. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of the business is used in a low-income community; (3) a substantial portion of the services performed for the business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of the business is attributable to certain financial property or to certain collectibles.¹⁸⁸

¹⁸⁴ Sec. 45D(d).

¹⁸⁵ Sec. 45D(e).

¹⁸⁶ Sec. 45D(e)(2).

¹⁸⁷ Pub. L. No. 103-325.

¹⁸⁸ Sec. 45D(d)(2).

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

Description of Proposal

This proposal 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 proposal also extends for one year, through 2025, the carryover period for unused new markets tax credits.

Effective Date

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

2. Employer credit for paid family and medical leave

Present Law

For wages paid in taxable years beginning after December 31, 2017, and before January 1, 2020, “eligible employers” may claim a general business credit equal to 12.5 percent of the amount of eligible wages (based on the normal hourly wage rate) paid to “qualifying employees” during any period in which such employees are on “family and medical leave” if the rate of payment under the program is 50 percent of the wages normally paid to an employee for actual services performed for the employer.¹⁸⁹ The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. The maximum amount of family and medical leave that may be taken into account with respect to any qualifying employee for any taxable year is 12 weeks.

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

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

¹⁸⁹ 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.

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 1938,¹⁹⁰ 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.¹⁹¹ For 2019, this 60 percent amount is \$72,000.

“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.¹⁹² If an employer provides paid leave as vacation leave, personal leave, or other medical or sick leave¹⁹³ (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.

Description of Proposal

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

¹⁹⁰ Pub. L. No. 75-718 (June 25, 1938); 29 U.S.C. sec. 201, *et seq.*

¹⁹¹ Sec. 414(q)(1)(B) (\$120,000 for 2018).

¹⁹² 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.

¹⁹³ These terms mean these types of leave within the meaning of FMLA section 102(d)(2).

3. Work opportunity credit

Present Law

In general

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

Targeted groups eligible for the credit

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

(1) Families receiving TANF

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

(2) Qualified veteran

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

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

prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(3) Qualified ex-felon

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

(4) Designated community resident

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

(5) Vocational rehabilitation referral

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

(6) Qualified summer youth employee

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

(7) Qualified supplemental nutrition assistance program benefits recipient

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

(8) Qualified SSI recipient

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

(9) Long-term family assistance recipient

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

(10) Long-term unemployment recipient

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

Qualified wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer’s deduction for wages is reduced by the amount of the credit.¹⁹⁴

¹⁹⁴ Sec. 280C(a).

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

Calculation of the credit

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

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

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

Certification rules

Generally, an individual is not treated as a member of a targeted group unless: (1) on or before the day on which an individual begins work for an employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group; or (2) on or before the day an individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for certification. For these purposes, a pre-screening

notice is a document (in such form as the Secretary may prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

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

Minimum employment period

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

Qualified tax-exempt organizations employing qualified veterans

The credit is not available to qualified tax-exempt organizations other than those employing qualified veterans. If a qualified tax-exempt organization employs a qualified veteran (as described above) a tax credit against the FICA taxes of the organization is allowed on the wages of the qualified veteran which are paid for the veteran's services in furtherance of the activities related to the function or purpose constituting the basis of the organization's exemption under section 501.¹⁹⁵

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

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

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

Treatment of possessions

The "VOW to Hire Heroes Act of 2011" (the "VOW Act")¹⁹⁶ provided a reimbursement mechanism for the U.S. possessions (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin

¹⁹⁵ Sec. 3111(e).

¹⁹⁶ Pub. L. No. 112-56.

Islands). The Secretary of the Treasury is to pay 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.¹⁹⁷ Similarly, the Secretary of the Treasury is to pay to each non-mirror Code possession (American Samoa and the Commonwealth of Puerto Rico) the amount that the Secretary estimates as being equal to the loss to that possession that would have occurred as a result of the VOW Act changes if a mirror code tax system had been in effect in that possession. The Secretary will make this payment to a non-mirror Code possession only if that possession establishes to the satisfaction of the Secretary that the possession has implemented (or, at the discretion of the Secretary, will implement) an income tax benefit that is substantially equivalent to the qualified veterans credit allowed under the VOW Act modifications.

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

Other rules

The work opportunity tax credit is not allowed for wages paid to a relative or dependent of the taxpayer. No credit is allowed for wages paid to an individual who is a more than 50-percent owner of the entity. Similarly, wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

Expiration

The work opportunity tax credit is not available for individuals who begin work for an employer after December 31, 2019.

Description of Proposal

The proposal extends for one year the work opportunity tax credit making it available with respect to individuals who begin work for an employer on or before December 31, 2020.

¹⁹⁷ Prior to enactment of the VOW Act there were two categories of qualified veterans to whom wages paid by an employer were eligible for the credit. Employers who hired veterans who were eligible to receive assistance under a supplemental nutritional assistance program were entitled to a maximum credit of 40 percent of \$6,000 of qualified first-year wages paid to such individual. Employers who hired veterans who were entitled to compensation for a service-connected disability were entitled to a maximum wage credit of 40 percent of \$12,000 of qualified first-year wages paid to such individual. The VOW Act expanded the work opportunity credit with respect to qualified veterans resulting in the present-law treatment of qualified veterans described above.

Effective Date

The proposal generally applies to individuals who begin work for the employer after December 31, 2019.

4. Certain provisions related to beer, wine, and distilled spirits

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.¹⁹⁸ For real or personal property acquired by the taxpayer for resale, section 263A generally requires certain direct and indirect costs allocable to such property to be included in inventory.

In the case of interest expense, the uniform capitalization rules apply only to interest paid or incurred during the property’s production period¹⁹⁹ 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 \$1,000,000.²⁰⁰ The production period with respect to any property is the period beginning on the date on which production of the property begins,²⁰¹ and, except as described below, ending on the date on which the property is ready to be placed in service or held for sale.²⁰²

¹⁹⁸ Sec. 263A.

¹⁹⁹ See Treas. Reg. sec. 1.263A-12.

²⁰⁰ Sec. 263A(f).

²⁰¹ In the case of tangible personal property, the production period begins on the first date the taxpayer’s accumulated production expenditures, including planning and design expenditures, are at least five percent of the taxpayer’s total estimated accumulated production expenditures for the property unit. Treas. Reg. sec. 1.263A-12(c)(3). Thus, the production period may begin before physical production activity has commenced. See Treas. Reg. sec. 1.263A-12(c)(3). For example, in the case of the beer, wine, and distilled spirits industry, the production period may include time spent planning and designing ingredients, production space, or production personnel.

²⁰² Sec. 263A(f)(5)(B). The production period for a unit of property produced for sale ends on the date that the unit is ready to be held for sale and all production activities reasonably expected to be undertaken by, or for, the taxpayer or a related person are complete. Treas. Reg. sec. 1.263A-12(d)(1).

For interest costs paid or accrued after December 31, 2017, and before January 1, 2020, the aging period for beer,²⁰³ wine,²⁰⁴ or distilled spirits²⁰⁵ is excluded from the production period as determined for purposes of the UNICAP interest capitalization rules. Thus, producers of beer, wine, or distilled spirits (other than spirits unfit for beverage purposes) are able to deduct interest expenses (subject to any other applicable limitation) attributable to a shorter production period that does not include the aging period of the beer, wine, or distilled spirits. In the case of interest costs paid or accrued after December 31, 2019, the production period as determined for purposes of the UNICAP interest capitalization rules will include the aging period for beer, wine, or distilled spirits.

Description of Proposal

The proposal 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 proposal applies to interest costs paid or accrued after December 31, 2019 and before January 1, 2021.

Reduced rate of excise tax on beer and transfer of beer between bonded facilities

Present Law

In general

Federal excise taxes are imposed at different rates on distilled spirits, wine, and beer and are imposed on these products when produced or imported. Generally, these excise taxes are administered and enforced by the Alcohol and Tobacco Tax and Trade Bureau (“TTB”), except the taxes on imported bottled distilled spirits, wine, and beer are collected by the Customs and Border Protection Bureau (the “CBP”) of the Department of Homeland Security (under delegation by the Secretary of the Treasury).

Liability for the excise tax on beer arises when the alcohol is produced or imported but is not payable until the beer is removed from the brewery or customs custody for consumption or sale. Generally, beer may be transferred between commonly owned breweries without payment of tax; however, tax liability follows these products. Imported bulk beer may be released from customs custody without payment of tax and transferred in bond to a brewery, which becomes liable for the tax on such beer. Beer may be exported without payment of tax and may be

²⁰³ As defined in section 5052(a).

²⁰⁴ As defined in section 5041(a).

²⁰⁵ As defined in section 5002(a)(8), except such spirits that are unfit for use for beverage purposes.

withdrawn from a brewery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.²⁰⁶

Notwithstanding the current, temporary rates described below, the rate of tax on beer is \$18 per barrel (31 gallons).²⁰⁷ 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.²⁰⁸ Small brewers are defined as brewers producing fewer than two million barrels of beer during a calendar year. The lower rates for small producers reduce the effective per-gallon tax rate from approximately 58 cents per gallon to approximately 22.6 cents per gallon for this beer.

In the case of a controlled group, the two million barrel limitation for small brewers is applied to the controlled group, and the 60,000 barrels eligible for the reduced rate of tax, are apportioned among the brewers who are component members of such group. The term “controlled group” has the meaning assigned to it by section 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in section 1563(a).

Individuals may produce limited quantities of beer for personal or family use without payment of tax during each calendar year. The limit is 200 gallons per calendar year for households of two or more adults and 100 gallons per calendar year for single-adult households.

For calendar years 2018 and 2019, the rate of tax on beer is temporarily lowered to \$16 per barrel on the first six million barrels brewed by the brewer or imported by the importer. In general, in the case of a controlled group of brewers, the six million barrel limitation is applied and apportioned at the level of the controlled group. Beer brewed or imported in excess of the six million barrel limit continues to be taxed at \$18 per barrel. In the case of small brewers, such brewers are taxed at a rate of \$3.50 per barrel on the first 60,000 barrels domestically produced, and \$16 per barrel on any further barrels produced.

Transfer rules and removals without tax

Certain removals or transfers of beer are exempt from tax. Beer may be transferred without payment of the tax between bonded premises under certain conditions specified in the regulations.²⁰⁹ 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

²⁰⁶ Sec. 5053.

²⁰⁷ Sec. 5051.

²⁰⁸ Sec. 5051(a)(2).

²⁰⁹ Sec. 5414.

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.

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.

Description of Proposal

The proposal extends for one year the temporary rate schedule on beer.

The proposal extends for one year the temporary rules regarding shared ownership.

Effective Date

The proposal to extend the temporary rate schedule applies to beer removed after December 31, 2019 and before January 1, 2021.

The proposal to extend the temporary rules regarding shared ownership applies to calendar quarters beginning after December 31, 2019, and before January 1, 2021.

Effective Date

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 the wine, according to the wine's alcohol content and carbonation levels. Notwithstanding temporary changes to alcohol content allowances described below, the following table outlines the rates of tax on wine.

| Tax (and Code Section) | Tax Rates |
|---------------------------------------------------------------------------|-------------------------------------------------------|
| Wines (sec. 5041) | |
| “Still wines” ²¹⁰ not more than 14 percent alcohol | \$1.07 per wine gallon ²¹¹ |
| “Still wines” more than 14 percent, but not more than 21 percent, alcohol | \$1.57 per wine gallon |
| “Still wines” more than 21 percent, but not more than 24 percent, alcohol | \$3.15 per wine gallon |
| “Still wines” more than 24 percent alcohol | \$13.50 per proof gallon (taxed as distilled spirits) |
| Champagne and other sparkling wines | \$3.40 per wine gallon |
| Artificially carbonated wines | \$3.30 per wine gallon |

Liability for the excise taxes on wine arises when the wine is produced or imported but is not payable until the wine is removed from the bonded wine cellar or winery, or from customs control, for consumption or sale. Generally, bulk and bottled wine may be transferred between bonded premises; however, the tax liability on such wine becomes the responsibility of the transferee. Bulk natural wine may be released from customs custody without payment of tax and transferred in bond to a winery. Wine may be exported without payment of tax and may be withdrawn from a wine cellar or winery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.²¹²

Credits and exemptions for certain wine producers

Notwithstanding the current, temporary credits described below, domestic wine producers having aggregate annual production not exceeding 250,000 gallons (“small domestic producers”) receive a credit against the wine excise tax equal to 90 cents per gallon (the amount of a wine tax increase enacted in 1990) on the first 100,000 gallons of wine domestically produced and removed during a calendar year.²¹³ The credit is reduced (but not below zero) by one percent for each 1,000 gallons produced in excess of 150,000 gallons; the credit may not be applied to the tax liability on sparkling wines. In the case of a controlled group, the 250,000 gallon limitation for wineries is applied to the controlled group, and the 100,000 gallons eligible for the credit, are apportioned among the wineries who are component members of such group. The term “controlled group” has the meaning assigned to it by sec. 1563(a), except that the

²¹⁰ 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.

²¹¹ A wine gallon is a U.S. liquid gallon.

²¹² Sec. 5042.

²¹³ Sec. 5041(c).

phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” in each place it appears in sec 1563(a).

The credit against the wine excise tax for small domestic producers is temporarily modified for calendar year 2018 and 2019 in several ways. First, the 250,000 wine gallon domestic production limitation is removed (thus making the credit available for all wine producers and importers). Second, under the modifications, the credit may be applied to the tax liability on sparkling wine. Third, with respect to wine produced in, or imported into, the United States during a calendar year, the credit amount is modified to (1) \$1.00 per wine gallon for the first 30,000 wine gallons of wine, plus; (2) 90 cents per wine gallon on the next 100,000 wine gallons of wine, plus; (3) 53.5 cents per wine gallon on the next 620,000 wine gallons of wine.²¹⁴ 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,²¹⁵ 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,²¹⁶ 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.

Description of Proposal

The proposal extends for one year the temporary modifications to the credit against the wine excise tax.

The proposal extends for one year the temporary modification to the alcohol-by-volume levels for purposes of the excise tax.

²¹⁴ 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.

²¹⁵ The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.

²¹⁶ The Secretary is authorized to prescribe tolerances to this limitation as may be reasonably necessary in good commercial practice.

The proposal extends for one year the temporary rates on mead and certain sparkling, low alcohol-by-volume wines.

Effective Date

The proposals apply to wine removed after December 31, 2019 and before January 1, 2021.

Reduced rate of excise tax on certain distilled spirits and bulk distilled spirits

Present Law

Notwithstanding the current, temporary rates described below, distilled spirits are taxed at a rate of \$13.50 per proof gallon.²¹⁷ Liability for the excise tax on distilled spirits arises when the alcohol is produced or imported but is not determined and payable until bottled distilled spirits are removed from the bonded premises of the distilled spirits plant where they are produced, or customs custody. Generally, bulk distilled spirits may be transferred in bond between bonded premises; however, tax liability follows these products. Imported bulk distilled spirits may be released from customs custody without payment of tax and transferred in bond to a distillery. Distilled spirits be exported without payment of tax and may be withdrawn from a distillery without payment of tax or free of tax for certain authorized uses, including industrial uses and non-beverage uses.

For calendar years 2018 and 2019, there is a temporary tax rate schedule for distilled spirits based on annual quantity produced or imported. The rate of tax is lowered to \$2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits produced, \$13.34 for all proof gallons in excess of that amount but below 22,130,000 proof gallons, and \$13.50 for amounts thereafter. Rules prevent members of the same controlled group from receiving the lower rate on more than 100,000 proof gallons of distilled spirits. Additionally, importers of distilled spirits are eligible for the temporary lower rates subject to documentation of the annual total production of the producer.

Additionally, for calendar years 2018 and 2019, distillers may transfer spirits in bond in containers other than bulk containers without payment of tax.

Description of Proposal

The proposal extends for one year the temporary rate schedule on distilled spirits and the eligibility of that rate schedule for importers.

The proposal extends for one year the allowance for distillers to transfer spirits in bond in containers other than bulk containers without payment of tax.

²¹⁷ Secs. 5001, 5006, 5043, and 5054.

Effective Date

The proposal to extend the temporary rate schedule applies to distilled spirits removed after December 31, 2019 and before January 1, 2021.

The proposal 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 and before January 1, 2021.

Simplification of Rules Regarding Records, Statements, and Returns for Craft Beverage Modernization and Tax Reform

Present Law

The Code requires those liable for taxation on alcoholic beverages to keep such records, render such statements, make such returns, and comply with such rules and regulations as prescribed by the Secretary.²¹⁸ 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.

Description of Proposal

The proposal extends for one year the Secretary's permission of a unified system for any records, statements, and returns required to be kept, rendered, or made for any beer produced in a brewery for which tax is imposed, including any beer which has been removed for consumption on the premises of the brewery.

Effective Date

The proposal applies to calendar quarters beginning December 31, 2019 and before January 1, 2021.

²¹⁸ Sec. 5555(a).

5. Look-through rule for related controlled foreign corporations

Present Law

In general

The rules of subpart F²¹⁹ 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.²²⁰

Subpart F income includes foreign base company income.²²¹ 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.²²² 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.²²³ 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.²²⁴

The “CFC look-through” rule

Section 954(c)(6), colloquially referred to as the “CFC look-through” rule, provides that dividends, interest (including factoring income that is treated as equivalent to interest under section 954(c)(1)(E)), rents, and royalties received or accrued by one CFC from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to income of the payor that is neither subpart F income nor treated as ECI. For this purpose, a related CFC is a CFC that controls or is controlled by the other CFC, or a CFC that is

²¹⁹ Secs. 951-964.

²²⁰ Sec. 951(a).

²²¹ Secs. 952(a)(2) and 954.

²²² Sec. 954(c)(1).

²²³ Sec. 954(c)(3).

²²⁴ Sec. 952(b).

controlled by the same person or persons that control the other CFC. Ownership of more than 50 percent of the CFC's stock (by vote or value) constitutes control for these purposes.

The Secretary is authorized to prescribe regulations that are necessary or appropriate to carry out the look-through rule, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of such rule.

The look-through rule applies to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.²²⁵

Description of Proposal

The proposal extends for one year the application of the look-through rule, to taxable years of foreign corporations beginning before January 1, 2021, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Effective Date

The proposal 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

Present Law

Eligible coverage months

For months beginning before January 1, 2020, in the case of an eligible individual, a refundable tax credit is provided for 72.5 percent of the individual's premiums for qualified health insurance of the individual and qualifying family members for each eligible coverage month beginning in the taxable year.²²⁶ 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

²²⁵ See section 144 of the Protecting Americans from Tax Hikes Act of 2015 (Division Q of Pub. L. No. 114-113), H.R. 2029 (the "PATH Act of 2015"), which extended section 954(c)(6) for five years. Congress has previously extended the application of section 954(c)(6) several times, most recently in the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295; Pub. L. No. 107-147, sec. 614, 2002; Pub. L. No. 106-170, sec. 503, 1999; Pub. L. No. 105-277, 1998.

²²⁶ 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.

individual for qualified health insurance. Advance monthly payments paid directly to the health plan administrator are available.²²⁷

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if (1) the month begins before January 1, 2020, and (2) as of the first day of the month, the individual is an eligible individual, is covered by qualified health insurance, the premium for which is paid by the individual, does not have other specified coverage, and is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements.

Eligible individuals

An eligible individual is an individual who is (1) an eligible Trade Adjustment Assistance (“TAA”) recipient, (2) an eligible alternative TAA recipient or 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 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 a certain program under the Trade Act of 1974 and receives a related benefit for the month. Generally, an individual is an eligible PBGC pension recipient for any month if the individual (1) is age 55 or over as of the first day of the month and (2) receives a benefit for the month, any portion of which is paid by the PBGC. A person who may be claimed as a dependent on another person’s tax return is not an eligible individual. In addition, an otherwise eligible individual is not eligible for the credit for a month if, as of the first day of the month, the individual has certain specified coverage, such as certain employer-provided coverage or coverage under certain governmental health programs.

²²⁷ Sec. 7527. In order to coordinate eligibility for the premium assistance credit under section 36B with eligibility for the HCTC, an eligible individual must elect the HCTC no later than the due date, with any extension, for filing his or her income tax return for that year, and such election is irrevocable. The election applies for that coverage month and all subsequent eligible coverage months during the taxable year, and the taxpayer is not entitled to the premium assistance credit for any coverage month for which the individual elects the HCTC. In addition, if an eligible individual receives advance HCTC payment or advance premium assistance payment for months occurring during a taxable year and subsequently elects HCTC for any eligible months, the individual’s income tax liability is increased by the amount of the advance payment, but then offset by the amount of the HCTC allowed to the individual. If an individual receiving advance HCTC payment does not elect HCTC but instead claims the premium assistance credit for any coverage months, the increase in tax liability equal to the advance payment is offset by the amount of the allowable premium assistance credit, and any remaining tax liability attributable to the advance payment (and the advance premium assistance payment, if any) is limited in the same way as if the advance HCTC payment had instead been an advance premium assistance payment. Sec. 35(g)(11) and (12).

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) coverage under a COBRA continuation provision;²²⁸ (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 insurance²²⁹ (other than coverage purchased through an American Health Benefit Exchange);²³⁰ and (10) coverage under an employee benefit plan funded by a voluntary employee beneficiary association ("VEBA")²³¹ established pursuant to an order of a bankruptcy court (or by agreement with an authorized representative).²³²

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.²³³ Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals.

²²⁸ COBRA continuation provision is defined by section 9832(d)(1).

²²⁹ 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.

²³⁰ The premium assistance credit is provided for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange. See sec. 36B.

²³¹ See section 501(c)(9) for the definition of a VEBA.

²³² See 11 U.S.C. sec. 1114.

²³³ 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.

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 coverage²³⁴ of three months or longer, does not have other specified coverage, and is not imprisoned. However, State-based coverage that satisfies any or all of the consumer-protection requirements for State-based coverage with respect to all eligible individuals is also qualified health insurance for purposes of HCTC.²³⁵

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.

Description of Proposal

The proposal extends the availability of the HCTC credit for 12 months, by amending the definition of eligible coverage month to include months beginning before January 1, 2021, if the requirements for an eligible coverage month are otherwise met.

Effective Date

The proposal is effective for months beginning after December 31, 2019.

²³⁴ Creditable coverage is determined under section 9801(c).

²³⁵ See Q&A-10 of Notice 2005-50, 2005-2 C.B. 14.

TITLE II – ESTATE AND GIFT TAX

1. Reduction of unified credit against estate tax

Present Law

In general

A gift tax is imposed on certain lifetime transfers, and an estate tax is imposed on certain transfers at death. A generation-skipping transfer tax generally is imposed on transfers, either directly or in trust or similar arrangement, to a “skip person” (*i.e.*, a beneficiary in a generation more than one generation younger than that of the transferor). Transfers subject to the generation-skipping transfer tax include direct skips, taxable terminations, and taxable distributions.

Income tax rules determine the recipient’s tax basis in property acquired from a decedent or by gift. Gifts and bequests generally are excluded from the recipient’s gross income.²³⁶

Unified credit (exemption) and tax rates

Unified credit

A unified credit is available with respect to taxable transfers by gift and at death.²³⁷ The unified credit offsets tax, computed using the applicable estate and gift tax rates, on a specified amount of transfers, referred to as the applicable exclusion amount, or exemption amount. Exemption used during life to offset taxable gifts reduces the amount of exemption that remains at death to offset the value of a decedent’s estate. An election is available under which exemption that is not used by a decedent may be used by the decedent’s surviving spouse (exemption portability).

For decedents dying and gifts made before January 1, 2018, the basic exclusion amount that is used to determine the unified credit is \$5 million, indexed for inflation occurring after 2011. Public Law 115-97, however, temporarily increases the basic exclusion amount for estates of decedents dying and gifts made after December 31, 2017 and before January 1, 2026. This is accomplished by doubling the basic exclusion amount provided in section 2010(c)(3) of the Code from \$5 million to \$10 million. The \$10 million amount is indexed for inflation occurring after 2011. For 2019, the basic exclusion amount is \$11,400,000.²³⁸

²³⁶ Sec. 102.

²³⁷ Sec. 2010.

²³⁸ Rev. Proc. 2018-57, 2018-49 I.R.B. 827, p. 835 (December 3, 2018). As a conforming amendment to the increase in the basic exclusion amount, Public Law 115-97 also amends section 2001(g) (regarding computation of estate tax). This conforming amendment, which was enacted as a permanent provision, provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out the purposes of section 2001 with respect to differences between the basic exclusion amount in effect at the time of the decedent’s death and at

The temporary increase in the basic exclusion amount expires for decedents dying and gifts made after December 31, 2025. At that time, the basic exclusion amount returns to \$5 million, indexed for inflation occurring after 2011.

Common tax rate table

A common tax-rate table with a top marginal tax rate of 40 percent is used to compute gift tax and estate tax. The 40-percent rate applies to transfers in excess of \$1 million (to the extent not exempt). Because the 2019 exemption amount shields the first \$11.4 million in gifts and bequests from tax, transfers in excess of the exemption amount generally are subject to tax at the highest marginal rate (40 percent).

Generation-skipping transfer tax exemption and rate

The generation-skipping transfer tax is a separate tax that can apply in addition to either the gift tax or the estate tax. The tax rate and exemption amount for generation-skipping transfer tax purposes, however, are set by reference to the estate tax rules. Generation-skipping transfer tax is imposed using a flat rate equal to the highest estate tax rate (40 percent). Tax is imposed on cumulative generation-skipping transfers in excess of the generation-skipping transfer tax exemption amount in effect for the year of the transfer. The generation-skipping transfer tax exemption for a given year is equal to the estate tax exemption amount in effect for that year (\$11.4 million for 2019).

Description of Proposal

The proposal accelerates by three years the expiration of the increase in the estate and gift tax exemption. As a result, the basic exclusion amount returns to \$5 million (indexed for inflation occurring after 2011) for decedents dying and gifts made after December 31, 2022.

Effective Date

The proposal is effective for estates of decedents dying and gifts made after December 31, 2022.

the time of any gifts made by the decedent. The purpose of the regulatory authority is to address the computation of the estate tax where (1) a decedent dies in a year in which the basic exclusion amount is lower than the basic exclusion amount that was in effect when the decedent made taxable gifts during his or her life, and (2) such taxable gifts exceeded the basic exclusion amount in effect at the time of the decedent's death. Because the temporary increase in the basic exclusion amount under Public Law 115-97 does not apply for estates of decedents dying after December 31, 2025, it was expected that such guidance would prevent the estate tax computation under section 2001(g) from recapturing, or "clawing back," all or a portion of the benefit of the increased basic exclusion amount used to offset gift tax for certain decedents who make large taxable gifts between January 1, 2018, and December 31, 2025, and die after December 31, 2025. In November 2018, the IRS issued proposed regulations pursuant to this regulatory authority. See REG-106706-18, 26 C.F.R. Part 20 (November 23, 2018).

TITLE III – DISASTER TAX RELIEF

Definitions

The proposals below provide temporary tax relief to those areas affected by certain major disasters declared in 2018 and some portion of 2019. The proposals use the terms “qualified disaster area,” “qualified disaster zone,” “qualified disaster,” and “incident period.” As used in the bill, “qualified disaster area” refers to an area with respect to which a major disaster has been declared by the President during the period beginning on January 1, 2018, and ending on the date which is 60 days after the date of enactment of the bill, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the “Stafford Act”), if the incident period of the disaster with respect to which such declaration is made begins on or before the date of the enactment of the bill. However, the “California wildfire disaster area,” as defined in the Bipartisan Budget Act of 2018,²³⁹ is not a qualified disaster area. A “qualified disaster zone” refers to that portion of the applicable “qualified disaster area,” as described above, which has been determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act by reason of the applicable qualified disaster. A “qualified disaster” means, with respect to the applicable qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area. “Incident period” means, with respect to the applicable qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred, except that such period shall not be treated as beginning before January 1, 2018, or ending after the date which is 30 days after the date of enactment of this bill.

1. Special disaster-related rules for use of retirement funds

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.²⁴⁰ 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

²³⁹ Pub. L. No. 115-123, sec. 20102.

²⁴⁰ 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.

subject to a 10-percent additional tax (referred to as the “early withdrawal tax”) on the amount includible in income.²⁴¹

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

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

Loans from tax-favored retirement plans

Employer-sponsored retirement plans may provide loans to participants. Unless the loan satisfies certain requirements in both form and operation, the amount of a retirement plan loan is a deemed distribution from the retirement plan. Among the requirements that the loan must satisfy are that the loan amount must not exceed the lesser of 50 percent of the participant’s account balance or \$50,000 (generally taking into account outstanding balances of previous loans), and the loan’s terms must provide for a repayment period of not more than five years (except for a loan specifically to purchase a home) and for level amortization of loan payments to be made not less frequently than quarterly.²⁴² 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.

²⁴¹ Sec. 72(t). Under present law, the 10-percent early withdrawal tax does not apply to distributions from a governmental section 457(b) plan.

²⁴² Sec. 72(p).

Description of Proposal

Distributions and recontributions

Under the proposal, 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.²⁴³

A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified disaster distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer’s controlled group or affiliated service group does not exceed \$100,000 for each qualified disaster. The total amount of distributions to an individual from all eligible retirement plans that may be treated as qualified disaster distributions with respect to each qualified disaster is \$100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of \$100,000, taking into account distributions from plans of other employers or IRAs, or because an individual may have been affected by more than one qualified disaster.

Any amount required to be included in income as a result of a qualified disaster distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply.

Any portion of a qualified disaster distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income. For example, if an individual receives a qualified disaster distribution in 2019, that amount is included in income, generally ratably over the year of the distribution and the following two years, but is not subject to the 10-percent early withdrawal tax. If, in 2021, the amount of the qualified disaster distribution is recontributed to an eligible retirement plan, 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 proposal, a portion of the distribution has not yet been

²⁴³ A qualified disaster distribution is subject to income tax withholding unless the recipient elects otherwise. Mandatory 20-percent withholding does not apply.

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 distribution²⁴⁴ 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.²⁴⁵ The “applicable period” is, in the case of a principal residence in a qualified disaster area with respect to any qualified disaster, the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the date of enactment. A plan is not treated as violating any Code requirement merely because it repays such distributions as provided above, provided that the aggregate amount of such repayments from plans maintained by the employer and members of the employer’s controlled group or affiliated service group does not exceed \$100,000.

Loans

In the case of a “qualified individual” who obtained a loan from a qualified employer plan²⁴⁶ 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.²⁴⁷ 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

²⁴⁴ 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).

²⁴⁵ Under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.

²⁴⁶ As defined under section 72(p)(4).

²⁴⁷ See sec. 72(p)(2)(A).

qualified employer plan, if the due date for any repayment with respect to such a loan²⁴⁸ 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.²⁴⁹

Plan amendments

A plan amendment made pursuant to the proposal (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 proposal or regulation takes effect (or the date specified by the plan if the amendment is not required by the proposal or regulation) and ending on the last permissible date for the amendment (or, if earlier, the date the amendment is adopted). For an amendment to be retroactively effective, it must apply retroactively for that period, and the plan must be operated in accordance with the amendment during that period.

Effective Date

The proposal is effective on the date of enactment.

2. Disaster related employment relief

Present Law

Under present law, there is an employer credit for employers affected by Hurricane Katrina, Hurricane Rita, and Hurricane Wilma,²⁵⁰ for employers affected by Hurricane Harvey, Hurricane Irma, and Hurricane Maria,²⁵¹ and for employers affected by certain California wildfires for which a major disaster had been declared by the President between January 1, 2017, through January 18, 2018. There is not a generally applicable employer tax credit for wages paid in connection with other disaster areas.

²⁴⁸ See section 72(p)(2).

²⁴⁹ Under section 72(p)(2)(B) or (C).

²⁵⁰ Sec. 1400R. This provision was repealed by the Consolidated Appropriations Act, Pub L. No. 115-141, Sec. 401(d)(6)(A).

²⁵¹ Section 503 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. No. 115-63.

Description of Proposal

The proposal provides a credit of 40 percent of the qualified wages (up to a maximum of \$6,000 in qualified wages per employee) paid by an eligible employer to an eligible employee.

An eligible employer is any employer that (1) conducted an active trade or business in a qualified disaster zone at any time during the applicable incident period of the applicable qualified disaster with respect to such qualified disaster zone and (2) with respect to which the trade or business described in (1) is inoperable on any day during the period beginning on the first day of the applicable incident period of the applicable qualified disaster and ending on the date of the enactment of this bill, as a result of damage sustained by reason of the applicable qualified disaster.

An eligible employee is, with respect to an eligible employer, an employee whose principal place of employment, determined immediately before the applicable qualified disaster, with such eligible employer was in the applicable qualified disaster zone. An employee may not be treated as an eligible employee for any period with respect to an employer if such employer is allowed a credit under section 51, the work opportunity credit, with respect to the employee for the period.

Qualified wages are wages (as defined in section 51(c)(1) of the Code, but without regard to section 3306(b)(2)(B) of the Code) paid or incurred by an eligible employer with respect to an eligible employee during the period (1) beginning on the date on which the trade or business first became inoperable at the principal place of employment of the employee immediately before the applicable qualified disaster and (2) ending on the earlier of (i) the date on which such trade or business has resumed significant operations at such principal place of employment or (ii) the date which is 150 days after the last day of the applicable incident period. Qualified wages include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

The credit is treated as a current year business credit under section 38(b) and therefore is subject to the tax liability limitations of section 38(c). Rules similar to sections 51(i)(1), 52, and 280C(a) apply to the credit.

Effective Date

The proposal is effective on the date of enactment.

3. Temporary suspension of limitation on charitable contributions

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 (sec. 170).

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 (sec. 170(d)). 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.

Description of Proposal

Under the proposal, in the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer's contribution base exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years as contributions described in section 170(b)(1)(G)(ii) (generally relating to cash contributions to public charities).

In the case of a corporation, the deduction for qualified contributions is allowed up to the amount by which the corporation's taxable income (as computed under section 170(b)(2)) exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations of section 170(d)(2).

In applying subsections (b) and (d) of section 170 to determine the deduction for other contributions, qualified contributions are not taken into account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Qualified contributions are cash contributions paid during the period beginning on January 1, 2018, and ending on the date which 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 proposal, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. Qualified contributions must be made for relief efforts in one or more qualified disaster areas. Taxpayers must substantiate that the contribution is made for this purpose. A taxpayer must elect to have the contributions treated as qualified contributions.

Effective Date

The proposal is effective on the date of enactment.

4. Special rules for qualified disaster-related personal casualty losses

Present Law

An individual taxpayer may claim an itemized deduction for a personal casualty loss only if such loss was attributable to a disaster declared by the President under section 401 of the Stafford Act.²⁵² All other personal casualty losses are deductible only to the extent that such losses do not exceed the individual's personal casualty gains. Personal casualty losses are deductible only if they exceed \$100 per casualty. In addition, aggregate net losses are deductible only to the extent they exceed 10 percent of the individual taxpayer's adjusted gross income.

Description of Proposal

Under the proposal, in the case of a personal casualty loss which arose in a qualified disaster area on or after the first day of the incident period of the applicable qualified disaster and which were attributable to such qualified disaster, such losses are deductible without regard to whether aggregate net losses exceed 10 percent of a taxpayer's adjusted gross income. In order to be deductible, however, such losses must exceed \$500 per casualty. Finally, such losses may be claimed in addition to the standard deduction and may be claimed by taxpayers subject to the alternative minimum tax.

Effective Date

The proposal is effective on the date of enactment.

5. Special rule for determining earned income

Present Law

Present law provides eligible taxpayers with an earned income tax credit and a child credit. In general, the earned income tax credit is a refundable credit for low-income workers.²⁵³ The amount of the credit depends on the earned income of the taxpayer and whether the taxpayer has one, more than one, or no qualifying children. Earned income generally includes wages, salaries, tips, and other employee compensation, plus net earnings from self-employment.

Taxpayers with incomes below certain threshold amounts are eligible for a \$2,000 credit for each qualifying child.²⁵⁴ In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable credit (the "additional child tax credit"). Generally, the amount of the additional child tax credit equals 15 percent of the taxpayer's earned income in excess of \$2,500, capped at \$1,400 (indexed for inflation).

²⁵² 165(h)(5).

²⁵³ Sec. 32.

²⁵⁴ Sec. 24.

Description of Proposal

In general

The proposal permits qualified individuals to elect to calculate their earned income tax credit and additional child tax credit for an applicable taxable year using their earned income from the prior taxable year. Qualified individuals are permitted to make the election with respect to an applicable taxable year only if their earned income for such taxable year is less than their earned income for the preceding taxable year.

Qualified individuals are (1) individuals who, at any time during the incident period of a qualified disaster, had their principal place of abode in the applicable qualified disaster zone or (2) individuals who during any portion of such incident period were not in the applicable qualified disaster zone but whose principal place of abode was in the applicable qualified disaster area and were displaced from such principal place of abode by reason of the qualified disaster. An applicable taxable year is any taxable year which includes any portion of the incident period of a qualified disaster.

For purposes of the proposal, in the case of a joint return for a taxable year which includes an applicable taxable year, the proposal applies if either spouse is a qualified individual. In such cases, the earned income which is attributable to the taxpayer for the preceding taxable year is the sum of the earned income which is attributable to each spouse for such preceding taxable year.

Any election to use the prior year's earned income under the proposal applies with respect to both the earned income credit and additional child tax credit. For administrative purposes, the incorrect use on a return of earned income pursuant to an election under this proposal is treated as a mathematical or clerical error. An election under the proposal is disregarded for purposes of calculating gross income in the election year.

Hurricane Sandy

The proposal provides a similar rule for individuals affected by Hurricane Sandy. Such individuals can elect to calculate their earned income tax credit and additional child tax credit for the taxable year that includes the dates of Hurricane Sandy (October 29, 2012 through November 3, 2012, hereinafter "Hurricane Sandy period") using their earned income for the prior taxable year if it is greater than their earned income for the year that includes Hurricane Sandy.

Qualified individuals affected by Hurricane Sandy are those individuals whose principal place of abode during the Hurricane Sandy period, was located in (i) the portion of the area determined by the President to warrant individual or individual and public assistance under the Stafford Act by reason of Hurricane Sandy or (ii) in the area for which a major disaster was declared by the President under section 401 of the Stafford Act by reason of Hurricane Sandy and such individual was displaced from the individual's principal place of abode.

The proposal extends the statute of limitations for individuals affected by Hurricane Sandy to make any claims for credit or refund relating to a change in the earned income of such individuals.

Effective Date

The proposal is effective on the date of enactment.

6. Automatic extension of filing deadlines in case of certain taxpayers affected by Federally declared disasters

Present Law

General time limits for filing tax returns

Individuals generally must file their Federal income tax returns by April 15 of the year following the close of a taxable year.²⁵⁵ Present law also provides that the Secretary may grant reasonable extensions of time for filing such returns.²⁵⁶ Treasury regulations provide, upon application on the proper form, an automatic six-month extension (until October 15 for calendar-year individuals) for any individual timely filing that form and paying the amount of tax estimated to be due.²⁵⁷ In general, individuals must make quarterly estimated tax payments by April 15, June 15, September 15, and January 15 of the following taxable year. Wage withholding is considered to be a payment of estimated taxes.

Suspension of time periods

In general, the Secretary may specify a period of up to one year that may be disregarded for performing various acts under the Internal Revenue Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, for any taxpayer determined by the Secretary to be affected by a Federally declared disaster or a terroristic or military action with respect to any tax liability of the taxpayer.²⁵⁸ In addition, the period specified by the Secretary may be disregarded in determining the amount of any interest, penalty, additional amount, or addition to tax, and the amount of any credit or refund.

There are special rules provided for pensions and other employee benefit plans. The Secretary may prescribe a period of up to one year which may be disregarded in determining the date by which any action by a pension or other employee benefit plan, or by any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Federally declared disaster or a terroristic or military action would be required or permitted to be completed. A plan is not treated as operating in a manner inconsistent with its terms or in violation of its terms merely due to disregarding any such periods.

The suspension of time may apply to the following acts:

²⁵⁵ Sec. 6072.

²⁵⁶ Sec. 6081.

²⁵⁷ Treas. Reg. sec. 1.6081-4.

²⁵⁸ Sec. 7508A.

1. Filing any return of income, estate, gift, employment, or excise tax;
2. Payment of any income, estate, or gift, employment, or excise tax or any installment thereof or of any other liability to the United States in respect thereof;
3. Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;
4. Allowance of a credit or refund of any tax;
5. Filing a claim for credit or refund of any tax;
6. Bringing suit upon any such claim for credit or refund;
7. Assessment of any tax;
8. Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
9. Collection of the amount of any liability in respect of any tax;
10. Bringing suit by the United States in respect of any liability in respect of any tax; and
11. Any other act required or permitted under the internal revenue laws specified in regulations prescribed by the Secretary of the Treasury.²⁵⁹

Description of Proposal

The proposal provides to qualified taxpayers in the case of a Federally declared disaster a mandatory 60-day period that is disregarded in determining whether the acts listed above were performed in the time prescribed; the amount of interest, penalty, additional amount, or addition to tax; and the amount of credit or refund. The 60-day period begins on the earliest incident date specified in the declaration of the relevant disaster and ends on the date which is 60 days after the latest incident date so specified. A disaster area is the geographic area of a Federally declared disaster, which is any disaster subsequently determined by the President to warrant assistance by the Federal government under the Stafford Act.²⁶⁰

Qualified taxpayers are (1) any individual whose principal residence is located in a disaster area, (2) any taxpayer if the taxpayer's principal place of business (other than the

²⁵⁹ Sec. 7508(a)(1). Under Treasury regulations, an additional act was added to this list with respect to affected pension plans and affected taxpayers with respect to such plans: Making contributions to a qualified retirement plan (within the meaning of section 4974(c)) under section 219(f)(3), 404(a)(6), 404(h)(1)(B), or 404(m)(2); making distributions under section 408(d)(4); recharacterizing contributions under section 408A(d)(6); or making a rollover under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3). Treas. Reg. sec. 301.7508A-1(c)(1)(iii).

²⁶⁰ Sec. 165(i)(5).

business of performing services as an employee) is located in a disaster area, (3) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a disaster area, (4) any taxpayer whose records necessary to meet a deadline for the acts listed above are maintained in a disaster area, (5) any individual visiting a disaster area who was killed or injured as a result of the disaster, and (6) solely with respect to a joint return, any spouse of an individual who is a qualified taxpayer.

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary or other person with respect to such a plan,²⁶¹ the proposal provides that a rule similar to the mandatory 60-day period rule described above applies with respect to any of the following actions:

1. Making contributions to a section 401(a) qualified retirement plan, a section 403(a) annuity, a section 403(b) tax-sheltered annuity, or a section 408 individual retirement account or annuity (IRA);
2. Making distributions of contributions to an IRA prior to the due date for filing the individual's tax return for the year in which the contribution was made;
3. Recharacterizing IRA contributions by making a trustee-to-trustee transfer from a traditional IRA to a Roth IRA, or vice versa, before the due date (including extensions) for the individual's income tax return for that year;²⁶² or
4. Making a rollover.²⁶³

The mandatory 60-day period provided under the proposal is in addition to, or concurrent with as the case may be, any period of suspension provided by the Secretary.

Effective Date

The proposal applies to Federally declared disasters declared after the date of enactment.

²⁶¹ For this purpose, a definition similar to the definition of “qualified taxpayer” is intended to generally apply.

²⁶² In the case of a recharacterization, the contribution will be treated as having been made to the transferee IRA (and not the original, transferor IRA) as of the date of the original contribution. Pursuant to section 13611 of Pub. L. No. 115-97, this rule does not apply to a conversion contribution to a Roth IRA effective for taxable years beginning after December 31, 2017.

²⁶³ Such actions are those provided under Treas. Reg. sec. 301.7508A-1(c)(1)(iii), described above.

7. Modification of the tax rate for the excise tax on investment income of private foundations

Present Law

Excise tax on the net investment income of private foundations

Under section 4940(a), private foundations that are recognized as exempt from Federal income tax under section 501(a) (other than exempt operating foundations²⁶⁴) 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)²⁶⁵ 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.²⁶⁶ 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.²⁶⁷

²⁶⁴ 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).

²⁶⁵ Sec. 4942(g).

²⁶⁶ Sec. 4940(e).

²⁶⁷ Sec. 4942(d)(2).

Description of Proposal

The proposal 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 proposal, 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 proposal repeals the special reduced excise tax rate for private foundations that exceed their historical level of qualifying distributions.

Effective Date

The proposal is effective for taxable years beginning after the date of enactment.

8. Additional low-income housing tax credit allocations for qualified 2017 and 2018 California disaster areas

Present Law

In general

The low-income housing tax credit may be claimed over a 10-year period for the cost of building rental housing occupied by tenants having incomes below specified levels. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

The credit percentage for newly constructed or substantially rehabilitated housing that is not Federally subsidized is adjusted monthly by the IRS so that the 10 annual installments of the credit have a present value of 70 percent of the total qualified basis. The credit percentage for newly constructed or substantially rehabilitated housing that is Federally subsidized and for existing housing that is substantially rehabilitated is calculated to have a present value of 30 percent of qualified basis. These are referred to as the 70-percent credit and 30-percent credit, respectively.

Credit ceiling

Credits are first allocated from the Federal government to each State according to population, then allocated by each State to developers according to State determined Qualified Allocation Plans (“QAPs”). QAPs must set forth selection criterion to be used to determine housing priorities; give preference to projects serving the lowest income tenants for the longest periods of time, and which are located in qualified census tracts that contribute to a concerted

community revitalization plan; and provide a procedure for monitoring noncompliance and notifying the IRS of any noncompliance.²⁶⁸

In addition to other requirements, a low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. The total amount of housing credits available for allocation by each State is limited by a ceiling. For determining the current-year State dollar amount of the ceiling in any calendar year, the greater of (i) \$1.75 multiplied by the State population, or (ii) \$2,000,000 is taken into account, indexed for inflation. For 2019, the indexed amount is \$2.76 per resident with a minimum annual cap of \$3,166,875 for certain States with small populations.²⁶⁹ These limits do not apply in the case of projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit.

Carryover allocation rule

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. In general, the allocation must be made not later than the close of the calendar year in which the building is placed in service. One exception to this rule is a carryover allocation. In the case of a carryover allocation, an allocation may be made to a building that has not yet been placed in service, provided that: (1) more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation) is incurred as of the later of six months after the allocation is made or the end of the calendar year in which the allocation is made; and (2) the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation.

Description of Proposal

Under the proposal, in calendar year 2019, the State housing credit ceiling is increased for California. The California credit ceiling is increased by the amount of the aggregate housing credits allocated by the State housing credit agencies of California for 2019 to buildings located in qualified 2017 and 2018 California disaster areas,²⁷⁰ up to the average amount of the State's housing credit ceiling in 2017 and 2018.²⁷¹

²⁶⁸ Sec. 42(m).

²⁶⁹ These amounts include a temporary increase enacted in the Consolidated Appropriations Act of 2018, Pub. L. No. 115-141.

²⁷⁰ Qualified 2017 and 2018 California disaster areas are those which are determined by the President to warrant assistance from the Federal government under the Stafford Act by reason of a disaster which begins or ends in calendar year 2017 or 2018, as specified by the Federal Emergency Management Agency.

²⁷¹ This average amount is 50% of the sum of the State housing credit ceiling for California for calendar years 2017 and 2018.

The proposal also specifies that allocations are treated as made first from these additional amounts for purposes of determining the unused State housing credit ceiling to be carried over in a calendar year.

Effective Date

The proposal is effective upon enactment.

9. Treatment of certain possessions

Present Law

Citizens of the United States are generally subject to Federal income tax on their worldwide income, including those citizens in the U.S. possessions or territories. Residents of the U.S. possessions are generally subject to the Federal income tax system based on their status as U.S. citizens or residence in the possessions, with certain special rules for determining residence and source of income specific to the possession. Broadly, a bona fide individual resident of a possessions is exempt from U.S. tax on income derived from sources within that possessions but is subject U.S. tax on U.S.-source and non-possession-source income.²⁷²

The application of the Federal tax rules to the possessions varies from one possession to another. Three possessions, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code possessions because the Code serves as the internal tax law of those possessions (substituting the particular possessions for the United States wherever the Code refers to the United States). A resident of one of those possessions generally files a single tax return only with the possession of which the individual is a resident, and not with the United States. American Samoa and Puerto Rico, by contrast, are non-mirror Code possessions. These two possessions have their own internal tax laws, and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the possessions of residence and the United States.

Description of Proposal

The Secretary shall make a payment to the mirror Code possessions in an amount equal to the loss in revenue by reason of the temporary disaster-related tax relief allowable by reason of Title III of the bill to residents of such possessions against their income tax. This amount will be determined by the Secretary based on information provided by the governments of the respective possessions.

The Secretary shall make a payment to the non-mirror Code possessions in an amount estimated by the Secretary as the aggregate benefits (if any) of the temporary disaster-related tax relief that would have been provided to residents of such possessions if a mirror code tax system had been in effect in such possession. Accordingly, the amount of each payment to a non-mirror Code possession will be an estimate of the aggregate benefit that would be allowed to the possession's residents if the temporary tax relief provided by Title III of the bill to U.S. residents

²⁷² See secs. 932, 933, and 937.

were provided by the possession to its residents. This payment will not be made unless the possession has a plan that has been approved by the Secretary under which the possession will promptly distribute the payments to its residents.

Effective Date

The proposal is effective on the date of enactment.