COMPARISON OF CERTAIN PROVISIONS OF H.R. 4520 AS PASSED BY THE HOUSE OF REPRESENTATIVES AND AS AMENDED BY THE SENATE:

PROVISIONS RELATING TO THE REPEAL OF THE EXCLUSION FOR EXTRATERRITORIAL INCOME, DOMESTIC PRODUCTION, AND THE CORPORATE INCOME TAX RATES APPLICABLE TO SMALL CORPORATIONS

Prepared by the Staff of the
JOINT COMMITTEE ON TAXATION

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INTRODUCTION

On June 17, 2004, the House of Representatives passed H.R. 4520, the "American Jobs Creations Act of 2004." On July 15, 2004, the Senate amended H.R. 4520 by substituting the text and title of S. 1637, the "Jumpstart Our Business Strength (JOBS) Act,"[1] and an additional non-tax amendment.

The House bill and the Senate amendment each repeal the extraterritorial income exclusion provisions of present law, provide provisions to reduce the effective income tax imposed on income earned from certain domestic production activities, and make numerous other changes to the Internal Revenue Code. This document,[2] prepared by the staff of the Joint Committee on Taxation, compares those provisions relating to the repeal of the extraterritorial income exclusion, domestic production, and the provisions relating to the corporate income tax rates applicable to small corporations.

In this publication set,[3] (JCX-61-04 to JCX-66-04), the staff of the Joint Committee on Taxation compares provisions of H.R. 4520 as passed by the House of Representatives and as amended by the Senate relating to the repeal of the extraterritorial income

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[1] The Senate originally passed S. 1637 on May 11, 2004.

[2] This document may be cited as follows: Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Provisions Relating to the Repeal of the Exclusion for Extraterritorial Income, Domestic Production, and the Corporate Income Tax Rates Applicable to Small Corporations* (JCX-61-04), September 29, 2004.

[3] Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Provisions Relating to the Repeal of the Exclusion for Extraterritorial Income, Domestic Production, and the Corporate Income Tax Rates Applicable to Small Corporations* (JCX-61-04), September 29, 2004; Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Job Creation Tax Incentives for Manufacturing, Small Business, and Farming* (JCX-62-04), September 29, 2004; Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Provisions Relating to International Tax Reform and Simplification for United States Businesses* (JCX-63-04), September 29, 2004; Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Revenue Provisions* (JCX-64-04), September 29, 2004; Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Alcohol Fuels and Fuel Fraud*

exclusions, domestic production, corporate income tax rates applicable to small corporations, tax incentives for manufacturers, small businesses and farming, international tax reform and simplification for United States businesses, alcohol fuels and fuel fraud, expiring provisions, and certain revenue raising provisions.

Provisions (JCX-65-04), September 29, 2004; and Joint Committee on Taxation, *Comparison of Certain Provisions of H.R. 4520 as Passed by the House of Representatives and as Amended by the Senate: Expiring Provisions* (JCX-66-04), September 29, 2004.

Provision	Present Law	House Bill	Senate Amendment
I. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME (sec. 101 of the House bill and sec. 101 of the Senate amendment)	The ETI regime provides an exclusion from gross income with respect to extraterritorial income, which is a taxpayer's gross income attributable to foreign trading gross receipts. Generally, the ETI regime is available to individuals, domestic corporations, certain foreign corporations, and pass-through entities such as S corporations and partnerships. Foreign trading gross receipts are eligible for the exclusion to the extent that they are qualifying foreign trade income. Qualifying foreign trade income is the amount of gross income that, if excluded, would result in a reduction of taxable income by the greatest of: (1) 1.2 percent of the foreign trading gross receipts derived by the taxpayer from the transaction; (2) 15 percent of the foreign trade income derived by the taxpayer from the transaction; or (3) 30 percent of the foreign sale and leasing income derived by the taxpayer from the transaction.	Repeals the ETI regime. However, the ETI regime remains in effect for transactions in the ordinary course of a trade or business if such transactions are pursuant to a binding contract (including a purchase option, renewal option, or replacement option that is included in such contract) between the taxpayer and an unrelated person and such contract is in effect on January 14, 2002, and at all times thereafter. For transactions prior to 2005, taxpayers retain 100 percent of their ETI benefits. For transactions after 2004, provides taxpayers with 80 percent of their otherwise-applicable ETI benefits with respect to transactions during 2005, and 60 percent of their otherwise-applicable ETI benefits with respect to transactions during 2006. However, such ETI benefits for 2005 and 2006 do not include benefits from binding contracts for which the ETI regime remains in effect.	Same as the House bill. However, the ETI regime remains in effect for transactions in the ordinary course of a trade or business if such transactions are pursuant to a binding contract between the taxpayer and an unrelated person and such contract is in effect on September 17, 2003, and at all times thereafter. Provides corporations and cooperatives that currently benefit from the ETI regime a transition benefit for taxable years ending after the date of enactment and beginning before January 1, 2007, if the corporation entered into one or more transactions in the taxable year beginning in 2002 for which FSC/ETI benefits were allowable. Generally, a corporation's transition benefit is equal to the applicable percentage (i.e., 80 percent in post-enactment 2004 and 2005 and 60 percent in 2006) of the average FSC/ETI benefit for the corporation's taxable years beginning in calendar years 2000, 2001, and 2002. A corporation must have entered into one or more transactions during its taxable year beginning in the 2002 calendar

Provision	Present Law	House Bill	Senate Amendment
	Foreign trading gross receipts are gross receipts derived from certain activities in connection with qualifying foreign trade property with respect to which certain economic processes take place outside of the United States. Specifically, the gross receipts must be: (1) from the sale, exchange, or other disposition of qualifying foreign trade property; (2) from the lease or rental of qualifying foreign trade property for use by the lessee outside the United States; (3) for services which are related and subsidiary to the sale, exchange, disposition, lease, or rental of qualifying foreign trade property (as described above); (4) for engineering or architectural services for construction projects located outside the United States; or (5) for the performance of certain managerial services for unrelated persons.	Effective date.–The provision is effective for transactions after December 31, 2004.	year with respect to which FSC/ETI benefits were allowable to receive this benefit. Generally, a corporation's FSC/ETI benefit is comprised of the amounts excludable from the gross income of the corporation under the ETI regime and the exempt foreign trade income of related FSCs from property acquired by the FSCs from the corporation. However, this aggregate amount does not include any amount attributable to a transaction involving a lease by the corporation unless the corporation manufactured or produced (in whole or in part) the leased property. However, the transition benefit is generally reduced for a taxable year by the specified percentage of exempted FSC income and excluded ETI of the corporation for the taxable year from transactions pursuant to a binding contract. Effective date.–The provision is effective for transactions after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
	A taxpayer may elect to treat gross receipts from a transaction as not foreign trading gross receipts. As a result of such an election, a taxpayer may use any related foreign tax credits in lieu of the exclusion. Qualifying foreign trade property generally is property manufactured, produced, grown, or extracted within or outside the United States that is held primarily for sale, lease, or rental in the ordinary course of a trade or business for direct use, consumption, or disposition outside the United States. No more than 50 percent of the fair market value of such property can be attributable to the sum of: (1) the fair market value of articles manufactured outside the United States, and (2) the direct costs of labor performed outside the United States. With respect to property that is manufactured outside the United States, certain rules are provided to ensure consistent U.S. tax treatment with respect to manufacturers.		

Provisions	Present Law	House Bill	Senate Amendment
II. DOMESTIC PRODUCTION PROVISIONS (sec. 102 of the House bill and secs. 102 and 103(a) of the Senate amendment)	Corporate regular taxable income is subject to tax under the following rate structure: <u>Taxable income</u> <u>Rate</u> $50,000 or less ....15 $50,001-$75,000 ....25 $75,001-$10 million ....34 Over $10 million ....35 An additional 5 percent tax (not in excess of $11,750) is imposed on taxable income over $100,000; an additional 3 percent tax (not in excess of $100,000) is imposed on taxable income over $15 million. There is no provision in the Code that permits taxpayers to claim a deduction from taxable income attributable to domestic production activities, other than generally allowable deductions of costs incurred to produce such income.	Provides a reduced corporate tax rate for the portion of taxable income attributable to: (1) domestic production of certain property, including tangible personal property, computer software, films and videotape (other than certain sexually explicit productions); and sound recordings; (2) domestic construction, engineering or architectural services with respect to projects located in the United States; (3) certain domestic storage, handling or other processing activities with respect to agricultural products; or (4) food products with respect to which the taxpayer performs domestic processing activities. The reduced maximum corporate tax rate under the provision is 32 percent (34 percent for taxable years beginning before 2007). Provides that a corporation may revoke a previous election to treat the cutting of timber as a sale or exchange.	Provides a deduction equal to a portion of taxable income attributable to: (1) domestic production of certain property, including tangible personal property, computer software, films and videotape, and sound recordings; (2) domestic engineering or architectural (but not construction) services with respect to projects located in the United States (phased in from 2004 to 2012); (3) certain domestic storage, handling, or other processing activities with respect to agricultural products; or (4) the use of films or videotape domestically produced by the taxpayer. The deduction is allowed for AMT purposes. Does not apply to: (1) consumable property used by the taxpayer in the provision of services; (2) oil or gas (other than primary products thereof); (3) utility services (including electricity and water); or (4) certain topical or transitory media products. Applies to individuals, corporations, cooperatives, and pass-through entities such as S corporations, partnerships, and

Provisions	Present Law	House Bill	Senate Amendment
			estates and trusts. However, the amount of the deduction is limited to 50 percent of the W-2 wages paid by the taxpayer during the taxable year. With regard to taxable income attributable to films and videotape, the deduction is determined separately (except for the wage limitation) for theatrical films, broadcast television, and home video. Applies to production activities in the United States or any possession of the United States. For taxable years beginning after 2008, the amount of the deduction is 9 percent. For taxable years beginning in 2004, 2005, 2006, 2007, and 2008, the amount of the deduction is 5, 5, 5, 6, and 7 percent, respectively. For taxable years beginning before 2013, the amount of the deduction is reduced by the ratio of domestic production activities to worldwide production activities of the taxpayer. For taxable years beginning in 2010, 2011, and 2012, the amount of the reduction is itself

Provisions	Present Law	House Bill	Senate Amendment
		Effective date.–Taxable years beginning after December 31, 2004.	reduced by 25, 50, and 75 percent, respectively. Effective date.–Taxable years ending after the date of enactment.

Provisions	Present Law	House Bill	Senate Amendment
III. RATE REDUCTION FOR SMALL CORPORATIONS (sec. 103 of the House bill)	Corporate regular taxable income is subject to tax under the following rate structure: <u>Taxable income</u> <u>Rate</u> $50,000 or less ....15 $50,001-$75,000 ....25 $75,001-$10 million ....34 Over $10 million ....35 An additional 5 percent tax (not in excess of $11,750) is imposed on taxable income over $100,000; an additional 3 percent tax (not in excess of $100,000) is imposed on taxable income over $15 million.	Corporate regular taxable income is subject to tax under the following rate structures: Year 2013 and thereafter: <u>Taxable income</u> <u>Rate</u> $50,000 or less ....15 $50,001-$75,000 ....25 $75,001-$20 million ....32 Over $20 million ....35 An additional 3 percent tax (not in excess of $610,250) is imposed on taxable income over $20 million. Years 2011 and 2012: <u>Taxable income</u> <u>Rate</u> $50,000 or less ....15 $50,001-$75,000 ....25 $75,001-$5 million ....32 $5 million-$10 million ....34 Over $10 million ....35 An additional 5 percent tax (not in excess of $110,250) is imposed on	No provision.

Provisions	Present Law	House Bill	Senate Amendment
		taxable income over $5 million; an additional 3 percent tax (not in excess of $100,000) is imposed on taxable income over $15 million. Years 2008, 2009, and 2010: Taxable income ... Rate $50,000 or less ....15 $50,001-$75,000 ....25 $75,001-$1 million ....32 $1 million-$10 million ....34 Over $10 million ....35 An additional 5 percent tax (not in excess of $30,250) is imposed on taxable income over $1 million; an additional 3 percent tax (not in excess of $100,000) is imposed on taxable income over $15 million. Years 2005, 2006, and 2007: Taxable income ... Rate $50,000 or less ....15 $50,001-$75,000 ....25 $75,001-$1 million 33	

Provisions	Present Law	House Bill	Senate Amendment
		$1 million-$10 million ....34 Over $10 million ....35 An additional 5 percent tax (not in excess of $21,000) is imposed on taxable income over $1 million; an additional 3 percent tax (not in excess of $100,000) is imposed on taxable income over $15 million. Effective date.–Taxable years beginning after 2004.	