FEDERAL TAX PROVISIONS EXPIRED IN 2017 AND 2018 AND EXPIRING IN 2019

Scheduled for a Public Hearing
Before the
SUBCOMMITTEE ON SELECT REVENUE MEASURES
of the
HOUSE COMMITTEE ON WAYS AND MEANS
on March 12, 2019

Prepared by the Staff
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INTRODUCTION

The Subcommittee on Select Revenue Measures of the House Committee on Ways and Means has scheduled a public hearing on March 12, 2019. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides an overview of Federal tax provisions that expired in 2017 and 2018 and are expiring in 2019.[2] This document describes the expired and expiring provisions in light of the December 2017 enactment of an Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (the "2017 Tax Act").[3] All the provisions discussed herein that expired in 2017 were scheduled to expire in 2016 and were extended through 2017 by the enactment in February 2018 of the Bipartisan Budget Act of 2018 (the "Bipartisan Budget Act").[4]

The 2017 Tax Act repealed provisions of law that included two now-expired provisions. A provision treating Puerto Rico as part of the United States for purposes of the domestic production activities deduction under section 199[5] expired in 2017. Similarly, a maximum 23.8-percent tax rate for qualified timber gain of corporations under section 1201 expired in 2017. (The 2017 Tax Act generally reduced the top marginal corporate income tax rate from 35 percent to 21 percent.) For taxable years beginning after December 31, 2017, the 2017 Tax Act repealed sections 199 and 1201 in their entirety. For that reason, those two provisions are not included in this document.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Federal Tax Provisions Expired in 2017 and 2018 and Expiring in 2019* (JCX-8-19), March 8, 2019. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

[2] Certain provisions terminate according to a taxpayer's taxable year and not according to a calendar year. Thus, the expiration dates of such provisions may differ with respect to fiscal-year taxpayers.

[3] Pub. L. No. 115-97.

[4] Pub. L. No. 115-123.

[5] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

A. Temporary Tax Policy and Uncertainty

If all future outcomes were certain, individuals would make choices that are different from those they make in the real world where they must reckon with uncertainty. For example, in such a world, insurance contracts would be neither offered nor purchased. Uncertainty generally reduces individual welfare and imposes costs. As a general matter, the greater the uncertainty, the greater the economic cost.

Because public policy affects economic choices that individuals make, uncertainty in the minds of individuals regarding the course of future public policy diminishes their well-being and may impose economic costs. Concern about the effect of economic policy uncertainty on outcomes has grown in recent years, perhaps in response to the perception that policy uncertainty has grown. Consistent with that perception, a number of uncertainty indices show that, over the last fifty years, policy uncertainty in the United States has increased.[6] Broadly, economic policy uncertainty is thought to influence the behavior of individuals and businesses and may effect investment rates, employment growth, and stock price volatility in certain sectors.

Some empirical research shows that uncertainty in tax policy may have similarly negative effects, inefficiently reducing economic activity, depressing profits for businesses, and reducing individual well-being.[7] While those effects seem intuitive, and are consistent with a basic understanding of markets and prices, a closer examination of the underlying economic principles shows that policy uncertainty may also, in certain cases, improve the efficiency of the tax system by altering prices in specific markets in specific ways.[8]

In a market economy with limited resources, prices play a crucial role in the efficient distribution of those limited resources. Prices act as signals for shortages and surpluses of resources, which help businesses and individuals make appropriate decisions about which goods to produce and consume and in what quantities. Taxes alter these signals, inducing different production and consumption decisions relative to the undistorted market economy. Sometimes

[6] Scott R. Baker, Nicholas Bloom, and Steven J. Davis, "Measuring Economic Policy Uncertainty," *Quarterly Journal of Economics*, vol. 131, 2016, pp. 1593-1636. Baker, Bloom, and Davis create an index of economic policy uncertainty by measuring the frequency of articles in 10 major U.S. newspapers that contain the following trio of terms: "economic" or "economy;" "uncertain" or "uncertainty;" and one or more of "Congress," "deficit," "Federal Reserve," "legislation," "regulation," or "White House." Their index is highly correlated with stock market volatility and the frequency with which the Federal Reserve System's "Beige Books" mention "policy uncertainty." They find a correlation between changes in their index and both firm-level economic performance and macroeconomic performance.

[7] International Monetary Fund and Organization for Economic Cooperation and Development, "Tax Certainty: IMF/OECD Report for the G20 Finance Ministers," 2018; Jonathan Skinner, "The Welfare Cost of Uncertain Tax Policy," *Journal of Public Economics*, vol. 37, 1988, pp. 129-145; James Alm, "Uncertain Tax Policies, Individual Behavior, and Welfare," *American Economic Review*, vol. 78, 1988, pp. 237-245.

[8] James R. Hines, Jr. and Michael Keen, "Certain Effects of Uncertain Taxes," *NBER Working Paper*, no. W25388, December 2018; Joseph Stiglitz, "Utilitarianism and Horizontal Equity: The Case for Temporary Taxation," *Journal of Public Economics*, vol. 18, 1982, pp. 1-33.

these distortions are desired effects of policy and other times they are by-products of achieving other policy goals, but in most cases they reduce the efficiency of markets.

Because businesses and individuals (and associated economic activities) have varying levels of responsiveness to prices, tax policy uncertainty may have efficiency-enhancing effects by differentiating those who are more responsive to distortionary taxation from those who are less so and imposing a relatively higher rate of tax on those who are less responsive. This type of policy design lowers the overall behavioral response of businesses and individuals to taxes in the economy, and therefore reduces distortions in economic activity caused by taxation.

Policymakers may design temporary policy notwithstanding that it may create policy uncertainty, in cases where they want to experiment with new ideas (for example, through pilot programs), make the policies more appealing to voters, form winning political coalitions, or extend benefits to help protect new technologies in infant industries until they become sufficiently established to survive without subsidies.

Another important question is what constitutes uncertainty in this setting.[9] Both timing and expectations affect the extent to which any particular policy is truly uncertain. Changes to tax policy may occur before or after irreversible decisions are made, and they may be expected or unexpected. Over the past several decades, the Congress has enacted a number of Code provisions with a sunset date after which the provision would no longer apply. For example, since 2014, the staff of the Joint Committee on Taxation has reported that, each year, an average of 52 provisions would expire within the current year or by the subsequent year.[10] The possibility that any one provision may expire may create uncertainty among many taxpayers. However, some temporary tax policies are routinely extended, and are therefore often expected to be extended. A statutorily temporary policy that is expected to be extended may have economic effects that are similar to a permanent policy, rather than an uncertain one.[11]

[9] A current Congress cannot bind a future Congress, so that any provision is subject to change in the future.

[10] Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2017-2027* (JCX-2-19), January 2019; Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2016-2027* (JCX-1-18), January 2018; Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2016-2026* (JCX-1-17), April 2017; Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2016-2025* (JCX-1-16), January 2016; Joint Committee on Taxation, *List of Expiring Federal Tax Provisions 2014-2025* (JCX-1-15), January 2015. These documents can be found on the Joint Committee on Taxation website at www.jct.gov.

[11] Andrew C. Chang, 2018. "Nothing is Certain Except Death and Taxes: The Lack of Policy Uncertainty from Expiring 'Temporary' Taxes," *Finance and Economics Discussion Series 2018-041*. Washington: Board of Governors of the Federal Reserve System. Available at https://doi.org/10.17016/FEDS.2018.041.

B. Energy

Congress has enacted many tax provisions related to energy production (including oil and gas and renewables) and conservation. Generally, policymakers offer two broad rationales for intervention in the energy market and for using tax policy to help effectuate these policy goals.

One policy rationale is to promote domestic energy independence. Some have argued that decreasing the dependence of the United States on foreign-source energy is desirable for geopolitical and national defense reasons. The oil embargo of the 1970s imposed economic costs on the U.S. economy. Mitigating the potential of similar energy supply disruptions in the future has motivated various policies both to increase domestic energy production from multiple sources, including fossil fuels and alternative energy, and to promote conservation in energy consumption. Some have argued that using tax policy to achieve these objectives has the advantage of using the market economy, with taxpayers responding to the economic incentives created by the tax policy, instead of programs requiring applications to and grants from the Federal government.

A second rationale for government intervention in certain markets (including many aspects of energy markets) is the presence of "externalities" in the consumption or production of certain goods. Externalities exist when, in the consumption or production of a good, there is a difference between the cost (or benefit) to an individual and the cost (or benefit) to society as a whole. These externalities lead to "market failures" wherein the mismatch between individual and social costs (or benefits) result in the purely market-based outcome providing either too little or too much of certain economic activity, relative to what is socially optimal. Thus, tax preferences that encourage more or less consumption or production, as appropriate, can help to achieve increases in economic efficiency by moving consumption or production toward the socially-optimal level.

The externality that is generally the subject of concern for energy markets is pollution. Pollution is considered a negative externality because the producers of pollution generally do not bear the full costs of pollution to society, thus resulting in the production of a larger amount of pollution than is socially optimal. Economists generally agree that the most efficient means of addressing pollution is a direct tax on pollution-causing activities, rather than through the indirect approach of targeted tax credits for certain technologies. A direct tax on pollution-causing activity is technology neutral, meaning that it does not favor any particular technology that individuals may choose to use, or any particular behavioral modification that individuals may choose to make, in their pollution-reducing responses to the tax.

Rather than taking this direct approach, many energy-related Federal tax incentives provide targeted tax credits for investment in, or expenditures on, certain assets that reduce, directly or indirectly, the consumption of conventional fuels and the attendant negative externalities. Likewise, if promoting energy independence is a policy rationale, a collection of disparate tax benefits in favor of specific approaches to conservation and specific sources of increased supply achieves the goal at a greater cost to the fisc because of the economic inefficiency created by the distortion of the markets for energy-conserving goods and services and energy production.

Ideally, the design of these tax benefits would be coordinated to try to mimic the more economically-efficient outcome that a broad-based tax would provide. Some criticize the current system of incentives as a set of disparate provisions that lack not only this coordination but also well-defined objectives, and further argue that the temporary nature of the incentives and uncertainty regarding renewal or extension reduces their efficacy by disrupting long-term planning.

1. Credit for certain nonbusiness energy property (sec. 25C)

- For property placed in service before January 1, 2018, the provision allows a credit of 10 percent of the expenditures on energy-efficient improvements to the building envelope (windows, doors, skylights, and roofs) of principal residences, and credits of fixed dollar amounts ranging from $50 to $300 for energy-efficient property including furnaces, boilers, biomass stoves, heat pumps, water heaters, central air conditioners, and circulating fans. It is subject to a lifetime cap of $500.
- The provision was first enacted in the Energy Policy Act of 2005[12] for property placed in service after December 31, 2005, and before January 1, 2008.
- The provision was substantially modified in the American Recovery and Reinvestment Tax Act of 2009,[13] with the principal change being an increase in the credit amounts to 30 percent of expenditures on all qualifying property, up to a $1,500 aggregate credit over two years for 2009 and 2010. This modification was not included in the most recent extension of the provision.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

2. Alternative motor vehicle credit for qualified fuel cell motor vehicles (sec. 30B(b))

- For purchases made before January 1, 2018, a credit is available for vehicles propelled by chemically combining oxygen with hydrogen and creating electricity. The base credit is $4,000 for vehicles weighing 8,500 pounds or less. For heavier vehicles, a credit of up to $40,000 may be allowed. An additional $1,000 to $4,000 credit is available for purchases of cars and light trucks to the extent their fuel economy exceeds the 2002 base fuel economy set forth in the Code.
- The provision was enacted as part of the Energy Policy Act of 2005[14] through December 31, 2014.
- The original provision included incentives for hybrid electric vehicles, lean burn diesel vehicles, and other incentives. These elements of the provision have all expired, generally in 2009, 2010, and 2011.

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[12] Pub. L. No. 109-58.

[13] Pub. L. No. 111-5.

[14] Pub. L. No. 109-58.

- The provision has been extended twice, most recently by the Bipartisan Budget Act.

3. Credit for alternative fuel vehicle refueling property (sec. 30C)

- For property placed in service before January 1, 2018, a 30-percent credit is available for property that dispenses alternative fuels, including ethanol, biodiesel, natural gas, hydrogen, and electricity. The credit may not exceed $30,000 per location for business property and $1,000 for property installed at a principal residence.
- The provision was enacted as part of the Energy Policy Act of 2005[15] effective for property placed in service after December 31, 2005, in tax years ending after such date, and before January 1, 2010 (January 1, 2015 for hydrogen refueling property).
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

4. Credit for two-wheeled plug-in electric vehicles (sec. 30D)

- A 10-percent credit (up to $2,500) is available for purchases of vehicles otherwise qualifying as plug-in electric-drive vehicles but which have only two wheels and which are acquired before January 1, 2018. Such two-wheeled vehicles must have a battery capacity of at least 2.5 kilowatt-hours.
- The provision was enacted (and originally codified under section 30) as part of the American Recovery and Reinvestment Tax Act of 2009[16] through December 31, 2011.
- The credit lapsed for calendar year 2014, but was prospectively extended from January 1, 2015, through December 31, 2016, by the Protecting Americans from Tax Hikes Act of 2015.[17]
- The provision was most recently extended by the Bipartisan Budget Act.

5. Second generation biofuel credit (formerly known as the "cellulosic biofuel producer credit") (sec. 40(b)(6))

- The provision provides for a $1.01-per-gallon income tax credit (nonrefundable) for qualified second generation biofuel sold at retail into the fuel tank of a buyer's vehicle, or second generation biofuel mixed with gasoline or a special fuel and sold or used as a fuel (not limited to transportation fuel). The provision expires for fuel produced after December 31, 2017.

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[15] Pub. L. No. 109-58.

[16] Pub. L. No. 111-5.

[17] Pub. L. No. 114-113.

- The provision was enacted as part of the Heartland, Habitat, Harvest, and Horticulture Act of 2008[18] for qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013.
- The Health Care and Education Reconciliation Act of 2010[19] amended the cellulosic biofuel production credit to exclude fuels exceeding certain water and/or sediment content (such as black liquor). In addition, the Creating Small Business Jobs Act of 2010[20] amended the provision to exclude certain fuels exceeding certain acidity levels (such as crude tall oil). The American Tax Relief Act of 2012[21] renamed the credit the "second generation biofuel producer credit" and added algae, cyanobacteria, and lemna as qualifying feedstocks.
- The provision has been extended four times, most recently by the Bipartisan Budget Act.

6. Incentives for biodiesel and renewable diesel (secs. 40A, 6426(c), and 6427(e))

The incentives for biodiesel and renewable diesel consist of four components:

1. Income tax credits for biodiesel fuel, biodiesel used to produce a qualified mixture, and small agri-biodiesel producers (sec. 40A).
2. Income tax credits for renewable diesel fuel and renewable diesel used to produce a qualified mixture (sec. 40A).
3. Excise tax credits and outlay payments for biodiesel fuel mixtures (secs. 6426(c)(6) and 6427(e)(6)(B)).
4. Excise tax credits and outlay payments for renewable diesel fuel mixtures (secs. 6426(c)(6) and 6427(e)(6)(B)).

Biodiesel

- The biodiesel fuels credit is the sum of three credits: (1) the biodiesel mixture credit ($1.00 per gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture), (2) the biodiesel credit ($1.00 per gallon of biodiesel that is not in a mixture with diesel fuel), and (3) the small agri-biodiesel producer credit (10 cents per gallon for up to 15 million gallons of agri-biodiesel produced by small producers).

[18] Pub. L. No. 110-246.

[19] Pub. L. No. 111-152.

[20] Pub. L. No. 111-240.

[21] Pub. L. No. 112-240.

The credits may be taken as income tax credits and the biodiesel mixture credit may be taken as an excise tax payment or credit.

- The biodiesel provision was enacted in the American Jobs Creation Act[22] and originally expired on December 31, 2006.
- The provision was subsequently modified and extended by the Energy Tax Incentives Act of 2005[23] which added small agri-biodiesel producer income tax credit and extended the incentives through December 31, 2008. The provision was amended by the Energy Improvement and Extension Act of 2008,[24] which equalized credit for biodiesel and agri-biodiesel at $1.00, clarified that fuel produced outside the United States for use outside the United States was ineligible for the credit, and extended the incentives through December 31, 2009.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

<u>Renewable diesel</u>

- Renewable diesel is treated the same as biodiesel for purposes of the Code, except there is no small producer credit.
- The renewable diesel provision was added by the Energy Tax Incentives Act of 2005[25] and was limited to fuel made using a thermal depolymerization process and was originally to expire December 31, 2008.
- The Energy Improvement and Extension Act of 2008[26] removed the requirement that renewable diesel be made using a thermal depolymerization process, gave the Secretary authority to approve fuel standards equivalent to the requirements of American Society of Testing Materials ("ASTM") D975 or D396 for purposes of renewable diesel, provided that military jet fuel and ASTM aviation turbine fuel qualified as renewable diesel, provided that renewable diesel could not be coprocessed with a feedstock that is not biomass as defined in section 45K(c)(3) (*e.g.*, crude oil), and extended the incentive through December 31, 2009.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

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[22] Pub. L. No. 108-357.

[23] Pub. L. No. 109-58.

[24] Pub. L. No. 110-343.

[25] Pub. L. No. 109-58.

[26] Pub. L. No. 110-343.

7. Credit for electricity produced from certain renewable resources (secs. 45 and 48(a)(5))

- A production tax credit is available for electricity produced from certain renewable resources during the 10-year period beginning after the related renewable power facility has been placed in service. The credit rate is adjusted annually for inflation and for 2017 is 2.4 cents per kilowatt hour for power produced at wind, closed-loop biomass and geothermal facilities and 1.2 cents per kilowatt hour for power produced at open-loop biomass, small irrigation power, municipal solid waste, marine/hydrokinetic, and certain hydropower facilities. The credit for nonwind facilities expires for facilities the construction of which begins after December 31, 2017. The credit for wind facilities expires for facilities the construction of which begins after December 31, 2019. The credit for wind facilities is subject to a phasedown whereby the total 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.
- Taxpayers may elect to claim a 30-percent investment tax credit in lieu of a production tax credit with respect to property placed in service at a qualified facility. Property used in wind facilities for which this election has been made are subject to the phasedown described above.
- The provision was enacted as part of the Energy Policy Act of 1992[27] at which time only electricity produced at qualified wind and closed-loop biomass facilities were credit-eligible. The credit originally expired for facilities placed in service after June 30, 1999.
- The credit has been extended and modified many times. Major modifications (listed below) occurred in 1999, 2004, 2005, and 2008. The Ticket to Work and Work Incentives Improvement Act of 1999[28] extended the credit and added poultry waste facilities placed in service after 1999 as qualified renewable power facilities. The American Jobs Creation Act of 2004[29] extended the credit and added open-loop biomass (which subsumed poultry waste), solar power, small irrigation power, and municipal solid waste as qualified renewable power resources. Facilities producing power using these resources were only eligible for five years of credit. In addition, the credit rate for power from such facilities was half the rate for electricity produced at qualified wind and closed-loop biomass facilities. The Energy Policy Act of 2005[30] extended the credit (except for solar power facilities), increased the credit period to 10 years for all qualified facilities, and added qualified hydropower

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[27] Pub. L. No. 102-386.

[28] Pub. L. No. 107-170.

[29] Pub. L. No. 108-357.

[30] Pub. L. No. 109-58.

facilities to the list of credit-eligible facilities. The Energy Improvement and Extension Act of 2008[31] extended the credit and added marine and hydrokinetic renewable energy as a qualified resource. The American Recovery and Reinvestment Tax Act of 2009[32] added the election to claim a 30-percent investment credit in lieu of a production credit, for facilities placed in service after December 31, 2008. The Consolidated Appropriations Act, 2016,[33] extended the credit for two years, through 2016, for nonwind facilities and for five years, through 2020 but subject to the phasedown, for wind facilities.

- The nonwind portions of the provision were most recently extended by the Bipartisan Budget Act.

8. Credit for production of Indian coal (sec. 45(e)(10))

- A $2-per-ton credit (adjusted for inflation; $2.423 per ton for 2017) is available through December 31, 2017, for coal produced from reserves that on June 14, 2005, were owned by (or held in trust by the United States on behalf of) an Indian tribe.
- The provision was enacted as part of the Energy Policy Act of 2005[34] through December 31, 2012.
- The provision has been extended four times, most recently by the Bipartisan Budget Act.

9. Credit for construction of new energy efficient homes (sec. 45L)

- A credit of $1,000 or $2,000 per home (depending on efficiency standard met) is provided to the contractor or manufacturer for each certified energy efficient new home acquired from the contractor or manufacturer before January 1, 2018.
- The provision was first enacted in the Energy Policy Act of 2005[35] for new homes constructed in 2006 and 2007.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

10. Special depreciation allowance for second generation biofuel plant property (sec. 168(l))

- The provision allows an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified second generation biofuel plant property

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[31] Pub. L. No. 110-343.

[32] Pub. L. No. 111-5.

[33] Pub. L. No. 114-113.

[34] Pub. L. No. 109-58.

[35] Pub. L. No. 109-58.

that is used in the United States solely to produce second generation biofuel and if (1) the original use of the property commences with the taxpayer on or after December 20, 2006, (2) the property is to be acquired by purchase by the taxpayer after the date of enactment, but only if no written binding contract for the acquisition was in effect on or before such date, (3) the property is placed in service before January 1, 2018, and (4) no portion of the property is financed with the proceeds of a tax-exempt bond obligation. For this purpose, second generation biofuel means any liquid fuel which is derived from qualified feedstocks and meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. "Qualified feedstocks" means any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and any cultivated algae, cyanobacteria, or lemna.

- The provision was enacted in the Tax Relief and Health Care Act of 2006[36] for cellulosic biomass ethanol plant property placed in service after December 20, 2006, and before January 1, 2013.
- The provision has been extended four times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017.[37] Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes qualified second generation biofuel plant property.

11. Energy efficient commercial buildings deduction (sec. 179D)

- A deduction of up to $1.80 per square foot of the building is allowed for the cost of energy efficient commercial building property relating to the (1) building envelope, (2) lighting, or (3) HVAC systems for buildings that meet specific energy standards, for property placed in service before January 1, 2018. If the entire building does not meet the specific energy standards, a partial deduction of up to $0.60 per square foot may be allowed for qualifying expenditures in each of the building subsystems listed above. If qualified property is installed on or in government-owned property the deduction may be allocated to the person primarily responsible for designing the property in lieu of the owner.
- The provision was first enacted in the Energy Policy Act of 2005[38] for property placed in service after December 31, 2005, and before January 1, 2008.

[36] Pub. L. No. 109-432.

[37] In general, the 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. See sec. 168(k).

[38] Pub. L. No. 109-58.

- The provision has been extended five times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides section 179 expensing for certain qualified real property (*i.e.*, roofs, HVAC, fire protection and alarm systems, and security systems).

12. Special rule for sales or dispositions to implement Federal Energy Regulatory Commission ("FERC") or State electric restructuring policy (sec. 451(k))

- The provision allows a taxpayer that is a qualified electric utility to elect to recognize gain from a qualifying electric transmission transaction ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property within the applicable period. The provision does not apply to transactions occurring after December 31, 2017.
- The provision was enacted (originally as section 451(i)) as part of the American Jobs Creation Act of 2004[39] and was effective for transactions occurring between October 23, 2004 and December 31, 2007.
- The provision has been extended seven times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act redesignated this provision as section 451(k) as a result of other amendments made to section 451.

13. Black Lung Disability Trust Fund: increase in amount of excise tax on coal (sec. 4121)

- For sales before January 1, 2019, there was a temporary increase in the tax rates on coal: \$1.10 per ton of underground-mined coal or \$0.55 per ton of surface-mined coal, not to exceed 4.4 percent of the sales price. For sales after December 31, 2018, those tax rates revert to the rates established in 1977: \$0.50 per ton of underground-mined coal or \$0.25 per ton of surface-mined coal, not to exceed two percent of the sales price.
- The Black Lung Benefits Revenue Act of 1977[40] first imposed the excise tax on coal. The tax was effective for sales after March 31, 1978.
- The Black Lung Benefits Revenue Act of 1981[41] temporarily doubled the excise tax rates to \$1.00 per ton for coal from underground mines and \$0.50 per ton for coal from surface mines, not to exceed four percent of the sales price. The doubled rates were effective January 1, 1982, and were scheduled to revert to the previous rates on

[39] Pub. L. No. 108-357.

[40] Pub. L. No. 95-227.

[41] Pub. L. No. 97-119.

January 1, 1996. The Consolidated Omnibus Budget Reconciliation Act of 1985[42] temporarily increased the rates to $1.10 for underground-mined coal and $0.55 for surface-mined coal, not to exceed 4.4 percent of the sales price. The Omnibus Budget Reconciliation Act of 1987[43] extended those rates through 2013. The increased excise tax rates on coal were again extended through 2018 as part of the Emergency Economic Stabilization Act of 2008.[44]

14. Oil Spill Liability Trust Fund financing rate (sec. 4611)

- Before December 31, 2018, the Oil Spill Liability Trust Fund financing rate (the "oil spill tax") was nine cents per barrel and generally applied to crude oil received at a U.S. refinery and to petroleum products entered into the United States for consumption, use, or warehousing.
- The oil spill tax was enacted at five cents per barrel by the Omnibus Budget Reconciliation Act of 1989.[45] The tax applied from January 1, 1990, through December 31, 1994.
- The oil spill tax was temporarily reinstated at five cents per barrel by the Energy Policy Act of 2005.[46] The tax took effect on April 1, 2006, and was scheduled to expire after December 31, 2014. The Emergency Economic Stabilization Act of 2008[47] extended the tax through December 31, 2017, and increased the rate generally to eight cents per barrel and, for calendar year 2017 only, to nine cents per barrel.
- The oil spill tax was most recently extended by the Bipartisan Budget Act.

15. Incentives for alternative fuel and alternative fuel mixtures (secs. 6426(d) and (e), and 6427(e))

- The provision provides for a 50-cents-per gallon excise tax credit or payment for certain alternative fuel used as fuel in a motor vehicle, motor boat, or airplane, and a 50-cents-per gallon credit for alternative fuel mixed with a traditional fuel (gasoline, diesel, or kerosene) for use as a fuel (not limited to transportation applications). The credits expire for fuel sold or used after December 31, 2017.

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[42] Pub. L. No. 99-272.

[43] Pub. L. No. 100-203.

[44] Pub. L. No. 110-343.

[45] Pub. L. No. 101-239.

[46] Pub. L. No. 109-58.

[47] Pub. L. No. 110-343.

- The provision was enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005[48] and expired on September 30, 2009 (September 30, 2014, in the case of hydrogen fuel). The provision was subsequently modified in the Tax Technical Corrections Act of 2007.[49] The original provision provided a credit for fuel that was a "liquid hydrocarbon derived from biomass." The credit was intended to cover fish oil, which contains oxygen, and is not exclusively composed of hydrogen and carbon. The modification changed "liquid hydrocarbon" to "liquid fuel."
- The provision was modified in the Energy Improvement and Extension Act of 2008[50] which extended the non-hydrogen incentives through December 31, 2009, clarified that fuel produced outside the United States for use outside the United States was ineligible for the credit, added compressed or liquefied biomass gas to the list of alternative fuels, allowed credit for aviation use, and added a carbon capture requirement for liquid fuel derived from coal through the Fischer-Tropsch process (coal to liquids). The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010[51] excluded from credit eligibility any fuel derived from the production of paper or pulp (including lignin, wood residues, or spent pulping liquor).[52]
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

[48] Pub. L. No. 109-59.

[49] Pub. L. No. 110-172.

[50] Pub. L. No. 110-343.

[51] Pub. L. No. 111-312.

[52] In addition, mixtures of butane and gasoline are not alternative fuel mixtures and do not qualify for the alternative fuel mixture credit under section 6426(e). Rev. Rul. 2018-2, 2018-2 I.R.B. 277.

C. Cost Recovery

Economic output may be understood as the product of labor supply and average labor productivity. Capital investment affects economic output by influencing average labor productivity. A primary way tax policy can promote capital investment is by lowering the user cost of capital, which is the opportunity cost that a firm (user) incurs as a consequence of owning a capital asset.[53] Lower statutory income tax rates and greater tax depreciation deductions both tend to lower the user cost of capital.

While taxes may affect economic output directly as discussed above, taxes may also affect output levels indirectly by influencing how efficiently resources, such as capital, are allocated in the economy. As economic resources are allocated more efficiently (*i.e.*, are increasingly directed to their most productive use), average labor productivity increases. Taxes generally lead to economy-wide distortions that reduce economic efficiency, but in some cases taxes can correct for market failures and thereby increase economic efficiency. The effect of taxes on economic efficiency depends on both the nature of the tax and the economic activity being taxed.

To the extent extensions of expired cost-recovery provisions reduce differences in marginal tax rates across different types of investment, they may promote a more efficient allocation of resources by eliminating preferential treatment of certain activities over others and by reducing the scope of distortionary behavioral responses to taxation. If the provisions do not correct market failures, however, they may create or exacerbate preferential treatment of certain activities over others, causing an inefficient allocation of resources. A less efficient allocation of resources leaves society with a lower level of output of goods and services than it would enjoy in the absence of the distortions caused by the tax system.

The 2017 Tax Act generally reduced the top marginal corporate income tax rate from 35 percent to 21 percent[54] and generally reduced marginal individual income tax rates. A reduction in marginal income tax rates generally reduces the value to taxpayers of an exclusion or deduction from gross income, and reduces by the same amount the revenue cost to the government of providing such exclusion or deduction.

The extension of expired cost recovery provisions would interact with the cost recovery provisions of the 2017 Tax Act. To the extent expired provisions relate to property that is eligible for the special allowance for depreciation (commonly referred to as "bonus depreciation"), the revenue cost of extension is diminished during the period in which such property would otherwise be eligible for bonus depreciation, as is any economic effect on the level of investment in such property.

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[53] For a more detailed discussion of the user cost of capital, see Joint Committee on Taxation, *Economic Growth and Tax Policy* (JCX-19-17), May 16, 2017, pp. 9-21.

[54] For corporations with taxable income between $100,000 and $335,000, the marginal tax rate under prior law was 39 percent. For corporations with taxable income between $15 million and $18,333,333, the marginal tax rate under prior law was 38 percent. For corporations with taxable income less than $50,000, which is less than one percent of corporations, the marginal tax rate increased from 15 percent to 21 percent.

1. Three-year depreciation for race horses two years old or younger (sec. 168(e)(3)(A)(i))

- The provision assigns a recovery period of three years for any race horse placed in service prior to January 1, 2018, that is two years old or younger at the time it is placed in service. Subsequently, the three-year recovery period for race horses will only apply to those which are more than two years old when placed in service by the purchaser after December 31, 2017, and a seven-year recovery period will apply to those which are two years old or younger when placed in service after such date.
- The provision was enacted in the Heartland, Habitat, Harvest, and Horticulture Act of 2008[55] for property placed in service after December 31, 2008, and before January 1, 2014.
- The provision has been extended three times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017.[56] Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes race horses, regardless of age when placed in service.

2. Seven-year recovery period for motorsports entertainment complexes (sec. 168(e)(3)(C)(ii) and (i)(15))

- The provision assigns a seven-year recovery period for any motorsports entertainment complex placed in service prior to January 1, 2018. A motorsports entertainment complex is 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. The term 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). Such ancillary and support facilities must be owned by the taxpayer who owns the complex and be provided for the benefit of patrons of the complex. A motorsports entertainment complex does not include any transportation equipment,

[55] Pub. L. No. 110-246.

[56] In general, the 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. See sec. 168(k).

administrative services assets, warehouses, administrative buildings, hotels, or motels.

- The provision was enacted in the American Jobs Creation Act of 2004[57] for property placed in service after October 22, 2004, and before January 1, 2008.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017.[58] Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes motorsports entertainment complexes placed in service before 2018. After 2017, a racing track facility will have to determine the proper recovery period on an asset-by-asset basis as racing track assets are placed in service (*e.g.*, a 39-year recovery period generally would apply to the stadium and a 15-year recovery period would apply to any land improvements). Racing track facility assets with a recovery period of 20 years or less will generally be eligible for bonus depreciation if placed in service before January 1, 2027.

3. Accelerated depreciation for business property on an Indian reservation (sec. 168(j))

- The provision provides the following accelerated recovery periods for certain property used in connection with the conduct of a trade or business within an Indian reservation and placed in service before January 1, 2018:

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[59]

[57] Pub. L. No. 108-357.

[58] In general, the 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. See sec. 168(k).

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

- "Qualified Indian reservation property" eligible for accelerated depreciation includes property described in the table above which is: (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; (2) not used or located outside the reservation on a regular basis; (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer; and (4) is not property placed in service for purposes of conducting gaming activities. Certain "qualified infrastructure property" may be eligible for the accelerated depreciation even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (*e.g.*, roads, power lines, water systems, railroad spurs, and communications facilities). The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. A taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis.
- The provision was enacted in the Omnibus Budget Reconciliation Act of 1993[60] for property placed in service after December 31, 1993 and before January 1, 2004.
- The provision was modified by the Taxpayer Relief Act of 1997[61] which clarified the definition of "Indian reservation" and made such language generally effective as if included in the Omnibus Budget Reconciliation Act of 1993.
- The provision was modified by the Protecting Americans from Tax Hikes Act of 2015,[62] which provided that a taxpayer may annually make an irrevocable election out of section 168(j) on a class-by-class basis for qualified Indian reservation property placed in service in taxable years beginning after December 31, 2015.
- The Tax Technical Corrections Act of 2018[63] clarified that if a taxpayer elects out of the otherwise applicable accelerated recovery periods for qualified Indian reservation property, no alternative minimum tax adjustment applies.
- The provision has been extended nine times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017.[64] Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes qualified Indian reservation property

[60] Pub. L. No. 103-66.

[61] Pub. L. No. 105-34.

[62] Pub. L. No. 114-113.

[63] Pub. L. No. 115-141.

[64] In general, the 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. See sec. 168(k).

other than nonresidential real property, residential rental property, water utility property, or railroad grading and tunnel bores.

4. Election to expense advanced mine safety equipment (sec. 179E)

- The provision allows a taxpayer to elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense in the taxable year in which the equipment is placed in service. Qualified advanced mine safety equipment property means any advanced mine safety equipment property for use in any underground mine located in the United States the original use of which commences with the taxpayer and which is placed in service before January 1, 2018. Advanced mine safety equipment property means any of the following: (1) emergency communication technology or devices used to allow a miner to maintain constant communication with an individual who is not in the mine; (2) electronic identification and location devices that allow individuals not in the mine to track at all times the movements and location of miners working in or at the mine; (3) emergency oxygen-generating, self-rescue devices that provide oxygen for at least 90 minutes; (4) pre-positioned supplies of oxygen providing each miner on a shift the ability to survive for at least 48 hours; and (5) comprehensive atmospheric monitoring systems that monitor the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and that can detect smoke in the case of a fire in a mine.
- The provision was enacted by the Tax Relief and Health Care Act of 2006[65] for costs paid or incurred after December 20, 2006, and property placed in service before December 31, 2008.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act provides 100-percent bonus depreciation (subject to a phasedown) for qualified property acquired and placed in service after September 27, 2017.[66] Qualified property includes MACRS property with an applicable recovery period of 20 years or less, and therefore generally includes mine safety equipment.

5. Expensing of certain qualified film and television and live theatrical productions (sec. 181)

- The provision allows taxpayers to elect to deduct up to $15 million of the aggregate production costs ($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) of any qualified film, television, or live theatrical production commencing prior to January 1, 2018, in the year the costs are paid or incurred by the taxpayer, in

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[65] Pub. L. No. 109-432.

[66] In general, the 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. See sec. 168(k).

lieu of capitalizing the costs and recovering them through depreciation allowances once the production is placed in service. 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.

- The provision was enacted in the American Jobs Creation Act of 2004[67] for qualified film and television productions commencing after October 22, 2004, and before January 1, 2009.
- The Gulf Opportunity Zone Act of 2005[68] clarified that the $15 million production cost limitation and the 75 percent qualified compensation requirement are determined for television series on an episode-by-episode basis (not an aggregate basis), and added rules for recapture as ordinary income of the deduction under section 181 in a manner similar to the recapture rules applicable to expensing under section 179.
- The Tax Extenders and Alternative Minimum Tax Relief Act of 2008[69] modified the dollar limitation such that the first $15 million ($20 million for productions in low income communities or distressed area or isolated area of distress) of an otherwise qualified film or television production may be treated as an expense in cases where the aggregate cost of the production exceeds the dollar limitation. This modification applies to qualified film and television productions commencing after December 31, 2007.
- The Protecting Americans from Tax Hikes Act of 2015[70] expanded eligible productions to include qualified live theatrical productions commencing after December 31, 2015. A qualified live theatrical production means any 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 taxable 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 if at least 75 percent of the total compensation expended on the production was for services performed in the United States by actors, production personnel, directors, and producers. In addition, qualified live theatrical productions include any live staged production which is produced or presented by a taxable entity no more than 10 weeks annually in any venue which has an audience capacity of not more than 6,500.

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[67] Pub. L. No. 108-357.

[68] Pub. L. No. 109-135.

[69] Pub. L. No. 110-343.

[70] Pub. L. No. 114-113.

- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act expands qualified property eligible for 100-percent bonus depreciation (subject to a phasedown) to include qualified film, television, and live theatrical productions acquired and placed in service after September 27, 2017, for which a deduction otherwise would have been allowable under section 181 without regard to the dollar limitation or termination of such section.[71] A qualified production is considered placed in service at the time of initial release, broadcast, or live staged performance (*i.e.*, at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience).

[71] In general, the 100-percent allowance is phased down by 20 percent per calendar year for qualified property placed in service after December 31, 2022. See sec. 168(k).

D. Excise Taxes on Beer, Wine, and Distilled Spirits

1. Special rule for the production period for beer, wine, and distilled spirits (sec. 263A(f)(4))

- For interest costs paid or accrued before January 1, 2020, the provision excludes the aging periods for beer,[72] wine,[73] and distilled spirits[74] from the production period used for purposes of the interest capitalization rules. Under the provision, producers of beer, wine, and distilled spirits are able to deduct interest (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.
- The provision was enacted in the 2017 Tax Act for interest costs paid or accrued after December 31, 2017, and before January 1, 2020.
- The provision has not previously been extended.

2. Provisions modifying the rates of taxation of beer and certain other rules (secs. 5051 and 5414)

- Section 5051 imposes an excise tax on beer. Liability for the excise tax on beer arises when the beer is brewed or imported but is not determined and payable until the beer is removed from the brewery or customs custody for consumption or sale. In the case of brewers who produce fewer than two million barrels of beer during a calendar year, the first 60,000 barrels domestically produced is taxed at a lower rate.
- The 2017 Tax Act temporarily reduces the excise tax rate on beer per barrel from $18 per barrel to $16 per barrel on the first six million barrels brewed or imported and then $18 per barrel on barrels brewed or imported in excess of that amount. In the case of brewers who satisfy the two-million-barrel limitation, the 2017 Tax Act temporarily further reduces the excise tax rate on the first 60,000 barrels domestically produced from $7 per barrel to $3.50 per barrel. The reduced excise tax rates on beer are in effect for beer removed after December 31, 2017, and before January 1, 2020.
- Section 5414 allows beer to be removed from one brewery to another brewery belonging to the same brewer without payment of tax. The 2017 Tax Act temporarily relaxes these shared ownership requirements and allows beer to be transferred from one brewery to an unrelated brewery without payment of tax, provided that the transferee brewery accepts responsibility for the ultimate payment of tax. This provision is in effect for any calendar quarters beginning after December 31, 2017, and before January 1, 2020.
- The provisions have not previously been extended.

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[72] As defined in section 5052(a).

[73] As defined in section 5041(a).

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

3. Provisions modifying the rates of taxation of wine and certain other rules (sec. 5041)

- Section 5041 imposes an excise tax on wine. Liability for the excise tax on wine arises when the wine is produced or imported but is not determined and payable until the wine is removed from the bonded wine cellar or winery or customs custody for consumption or sale. Excise taxes on wine are imposed on the wine according to the wine's alcohol content and carbonation levels. Wine producers who produce not more than 250,000 wine gallons of wine during the calendar year are allowed a 90-cents-per-gallon credit against the wine excise tax on the first 100,000 gallons of non-sparkling wine domestically produced and removed during a calendar year.[75]
- The 2017 Tax Act temporarily modifies the credit against wine excise tax to a credit, available to all wine producers, domestic or foreign, of $1.00 per wine gallon for the first 30,000 wine gallons, 90 cents per wine gallon on the next 100,000 wine gallons, and 53.5 cents per wine gallon on the next 620,000 wine gallons.[76]
- The 2017 Tax Act also temporarily allows the credit against wine excise tax to be applied to the tax liability on sparkling wine.
- The 2017 Tax Act also temporarily increases the allowed alcohol by volume for the lowest tier of the excise tax on wine from 14 percent of alcohol by volume to 16 percent of alcohol by volume.
- The 2017 Tax Act also temporarily designates mead and certain sparkling, low-alcohol-by-volume wines to be taxed at the lowest rate of excise tax on wine.
- The 2017 Tax Act changes apply for wine removed after December 31, 2017, and before January 1, 2020.
- The provision has not previously been extended.

4. Provisions modifying the rates of taxation of distilled spirits and certain other rules (secs. 5001 and 5212)

- Section 5001 imposes an excise tax on distilled spirits. Liability for the excise tax on distilled spirits arises when the distilled spirits are produced or imported but is not determined and payable until bottled distilled spirits are removed from the bonded premises of the distilled spirits plant or from customs custody for consumption or sale.
- The 2017 Tax Act temporarily reduces the excise tax on distilled spirits from $13.50 per proof gallon to $2.70 per proof gallon on the first 100,000 proof gallons of

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[75] Producers of hard cider who produce not more than 250,000 wine gallons of hard cider during the calendar year are allowed a 5.6-cents-per-gallon credit against the wine excise tax on the first 100,000 gallons of hard cider domestically produced and removed during a calendar year.

[76] The 2017 Tax Act temporarily modifies the credit against wine excise tax for hard cider to a credit, available to all hard cider producers and importers, of 6.2 cents per wine gallon for the first 30,000 wine gallons, 5.6 cents per wine gallon on the next 100,000 wine gallons, and (for all hard cider producers) 3.3 cents per wine gallon on the next 620,000 wine gallons.

distilled spirits produced, $13.34 for all proof gallons in excess of that amount but below 22,130,000 proof gallons, and $13.50 thereafter. The reduced excise tax on distilled spirits applies to distilled spirits, produced domestically or abroad, removed after December 31, 2017, and before January 1, 2020.

- Section 5212 allows distillers to transfer bulk distilled spirits between bonded premises without payment of tax. The 2017 Tax Act temporarily allows distillers to transfer distilled spirits in bond in containers other than bulk containers without payment of tax, for distilled spirits transferred in bond after December 31, 2017, and before January 1, 2020.
- The provisions have not previously been extended.

5. Simplification of rules regarding records, statements, and returns (sec. 5555)

- The provision imposes a requirement that persons liable for the excise tax on beer, wine, and distilled spirits keep certain records, render statements, and make returns as prescribed by regulation. The Bipartisan Budget Act temporarily modifies this provision by allowing brewers to employ a unified system for any records, statements, and returns required to be kept, rendered, or made under the section, for calendar quarters beginning after February 9, 2018 (the date of enactment), and before January 1, 2020.
- The provision has not previously been extended.

E. Miscellaneous

1. Credit for health insurance costs of eligible individuals (sec. 35)

- The provision (commonly referred to as the health coverage tax credit or "HCTC") allows certain individual taxpayers a refundable credit equal to 72.5 percent of the premiums paid by the individual for coverage of the individual and qualifying family members under qualified health insurance. Advance monthly payments paid directly to the health plan administrator are available.[77] The HCTC is only allowed for amounts paid for eligible coverage months. An eligible coverage month is any month if (1) the month begins before January 1, 2020, and (2) as of the first day of the month, (i) the individual is an eligible individual, (ii) is covered by qualified health insurance, the premium for which is paid by the individual, (iii) does not have other specified coverage, and (iv) is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements.
- An eligible individual is an individual who is (1) an eligible Trade Adjustment Assistance ("TAA") recipient, (2) an eligible alternative TAA recipient, or (3) an eligible Pension Benefit Guaranty Corporation pension recipient, all as defined in the provision.
- The provision was enacted a part of the Trade Act of 2002[78] effective for taxable years beginning after December 31, 2001 and for eligible coverage months beginning after November 4, 2002.[79] As initially enacted, the HCTC was equal to 65 percent of the premiums paid.
- The provision has been modified several times, most significantly by the American Recovery and Reinvestment Act,[80] which temporarily increased the HCTC to 80 percent of the premiums paid and made certain other changes to the eligibility criteria.[81] The Trade Adjustment Assistance Extension Act of 2011[82] lowered the HCTC to the current amount of 72.5 percent of the premiums paid. That Act also made the provision temporary by terminating the HCTC for eligible coverage months beginning after December 31, 2013.

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[77] Sec. 7527.

[78] Pub. L. No. 107-210.

[79] This date is 90 days after the date of enactment of the Trade Act of 2002 on August 6, 2002.

[80] Pub. L. No. 111-5.

[81] This temporary increased rate was extended once by the Omnibus Trade Act of 2010, Pub. L. No. 111-344.

[82] Pub. L. No. 112-40.

- The provision has been extended once by the Trade Adjustment Assistance Reauthorization Act of 2015,[83] which extended the HCTC to eligible coverage months beginning before January 1, 2020.

2. Indian employment tax credit (sec. 45A)

- The provision allows a credit to employers against income tax liability for the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees. The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs incurred 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. The provision expired for taxable years beginning after December 31, 2017.
- The provision was enacted in the Omnibus Reconciliation Act of 1993[84] and did not apply to taxable years beginning after December 31, 2003.
- The provision has been extended nine times, most recently by the Bipartisan Budget Act.

3. New markets tax credit (sec. 45D)

- The provision allows a credit in the aggregate amount of 39 percent of qualified investments in order to attract private capital to promote economic and community development in low-income communities. The credit is allowed over seven years, five percent in each of the first three years and six percent in each of the next four years.
- In general, the credit is allowed to a taxpayer who makes a "qualified equity investment" in a "qualified community development entity" ("CDE") which further invests in a "qualified active low-income community business." The credit is recaptured if the entity fails to continue to be a CDE or the interest is redeemed within seven years.
- The provision was enacted in the Community Renewal Tax Relief Act of 2000.[85] The credit applied to investments made after December 31, 2000, and $15 billion of credits was allocated through 2007.

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[83] Pub. L. No. 114-27.

[84] Pub. L. No. 103-66.

[85] Pub. L. No. 106-554.

- In 2005, an additional $1 billion of credits was allocated for qualified areas affected by Hurricane Katrina over a period of three years in the Gulf Opportunity Zone Act of 2005.[86] In 2006 and again in 2008, another $3.5 billion was allocated in the Tax Relief and Health Care Act of 2006,[87] and in the Tax Extenders and Alternative Minimum Tax Relief.[88] In 2009, an additional $3 billion of credits was allocated to be split equally between the 2008 (retroactively) and 2009 allocations in the American Recovery and Reinvestment Act of 2009.[89]
- The provision was extended four times since 2009, most recently by the Protecting Americans from Tax Hikes Act of 2015.[90] That law provided for an allocation limit of $3.5 billion in each of 2015, 2016, 2017, 2018, and 2019, and extended for five years, through 2024, the carryover period for unused new markets tax credits.

4. Credit for certain expenditures for maintaining railroad tracks (sec. 45G)

- 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. Qualified railroad track maintenance expenditures are gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad (determined without regard to any consideration for such expenditure given by the Class II or Class III railroad which made the assignment of such track). The credit is limited to the product of $3,500 times the number of miles of railroad track (1) owned or leased by an eligible taxpayer as of the close of its taxable year, and (2) assigned to the eligible taxpayer by a Class II or Class III railroad that owns or leases such track at the close of the taxable year. An eligible taxpayer is any Class II or Class III railroad, and any person (including a Class I railroad) that transports property using the rail facilities of a Class II or Class III railroad or that furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such railroad under the provision.
- The provision was enacted in the American Jobs Creation Act of 2004[91] for qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

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[86] Pub. L. No. 109-135.

[87] Pub. L. No. 109-432.

[88] Pub. L. No. 110-343.

[89] Pub. L. No. 111-5.

[90] Pub. L. No. 114-113.

[91] Pub. L. No. 108-357.

- The Gulf Opportunity Zone Act of 2005[92] clarified that (1) Class II and Class III railroads that operate track under a lease are not required to obtain assignment from the track owner in order to utilize or assign the credit; (2) a Class I railroad is not treated as a Class II or Class III railroad for purposes of the credit (and is not eligible to claim the credit with respect to track it owns) by reason of performing track maintenance services (on the same or different track) for a Class II or Class III railroad; (3) a track mile may be assigned only once per tax year, effective as of the close of the tax year; (4) any track mile assigned may not also be taken into account by the assignor taxpayer for the tax year; and (5) an assigned track mile is taken into account by the assignee in the tax year which includes the effective date of the assignment.
- The Tax Relief and Healthcare Act of 2006[93] modified the definition of qualified railroad track expenditures, so that the term means gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad (determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track), effective for expenditures paid or incurred in taxable years beginning after December 31, 2004, and before January 1, 2008.
- The Tax Extenders and Alternative Minimum Tax Relief Act of 2008[94] permitted the railroad track maintenance credit to reduce a taxpayer's tax liability below its tentative minimum tax, effective for credits determined under section 45G in taxable years beginning after December 31, 2007, and to carrybacks of such credits.
- The Protecting Americans from Tax Hikes Act of 2015[95] modified the definition of qualified railroad track maintenance expenditures to include gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad (determined without regard to any consideration for such expenditure given by the Class II or Class III railroad which made the assignment of such track), effective for expenditures paid or incurred in taxable years beginning after December 31, 2015.
- The Bipartisan Budget Act provided a safe harbor rule that allows assignments, including related expenditures paid or incurred, for taxable years ending after January 1, 2017, and before January 1, 2018, to be treated as effective as of the close of that taxable year if made pursuant to a written agreement entered into no later than May 10, 2018.

[92] Pub. L. No. 109-135.

[93] Pub. L. No. 109-432.

[94] Pub. L. No. 110-343.

[95] Pub. L. No. 114-113.

- The provision has been extended six times, most recently by the Bipartisan Budget Act.

5. Mine rescue team training credit (sec. 45N)

- The mine rescue training credit is a general business credit available with respect to each qualified mine rescue team employee employed by the taxpayer 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 each qualified mine rescue team employee (including the wages of the employee while attending the program), or (2) $10,000. The provision expired for taxable years beginning after December 31, 2017.
- The provision was enacted in the Tax Relief and Health Care Act of 2006[96] and was effective for tax years beginning after December 31, 2005, and before January 1, 2009.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

6. Employer credit for paid family and medical leave (sec. 45S)

- For taxable years beginning before January 1, 2020, the employer credit for paid family and medical leave permits eligible employers to claim an elective general business credit based on eligible wages paid to qualifying employees with respect to family and medical leave, as defined for this purpose. The credit is equal to 12.5 percent of eligible wages if the rate of payment is 50 percent of such wages, and is increased by 0.25 percentage points (but not above 25 percent) for each percentage point that 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 is 12 weeks per taxable year. Among other requirements, to claim the credit, employers must have a written policy in place that provides at least two weeks of paid family and medical leave to all qualifying employees at a rate of payment that is at least 50 percent of wages normally paid to the employee. A qualifying employee generally means an employee who has been employed by the employer for at least one year and did not earn compensation above a certain threshold in the preceding year (for the 2018 taxable year, this threshold was $72,000).
- The provision was enacted as part of the 2017 Tax Act,[97] effective for wages paid in taxable years beginning after December 31, 2017.

[96] Pub. L. No. 109-432.

[97] Pub. L. No. 115-97.

7. Work opportunity tax credit (sec. 51)

- The work opportunity tax credit ("WOTC") provides an elective general business credit to employers hiring individuals who are members of one or more of ten targeted groups. Generally, the maximum credit per employee is $2,400 (40 percent of the first $6,000 of qualified first-year wages), but special rules apply for certain targeted groups. To claim the credit, an employer must have the employee certified as eligible by the appropriate state workforce agency. Amounts paid or incurred to individuals who begin work for an employer after December 31, 2019 are not qualified first-year wages.
- The provision was enacted in the Small Business Job Protection Act of 1996[98] for wages paid or incurred to a qualified individual who began work for an employer before October 1, 1997. The credit was enacted to replace the targeted jobs tax credit.
- The provision was been modified multiple times since enactment to add, subtract, or refine the targeted groups, to change the maximum credit levels, and to make other modifications. In particular, WOTC has been used to target specific populations following certain national events, including New York Liberty Zone business employees following the September 11, 2001, terrorist attacks[99] and Hurricane Katrina employees following the 2005 hurricane.[100] Beginning in 2007, the welfare-to-work tax credit was repealed and the credit's eligible population was incorporated into the WOTC population.[101]
- The provision has been extended twelve times,[102] most recently by the Protecting Americans from Tax Hikes Act of 2015.[103]

8. Discharge of indebtedness on principal residence excluded from gross income of individuals (sec. 108(a)(1)(E))

- A maximum exclusion from gross income of $2,000,000 is provided for any discharge of indebtedness income by reason of a discharge (in whole or in part) of qualified principal residence indebtedness. In general, the discharged indebtedness

[98] Pub. L. No. 104-188.

[99] Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147. The special rules regarding New York Liberty Zone business employees were described in former section 1400L.

[100] Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73.

[101] Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432.

[102] One of the 12 extensions applied solely to qualified veterans, not to all targeted groups. Pub. L. No. 112-56.

[103] Pub. L. No. 114-113.

eligible for the exclusion must be indebtedness incurred in the acquisition, construction, or substantial improvement of the principal residence of the individual and secured by the residence. The provision does not apply to discharges after December 31, 2017, or to discharges subject to an arrangement that is entered into and evidenced in writing after such date.

- The provision was enacted in the Mortgage Forgiveness Debt Relief Act of 2007[104] and effective for discharges of indebtedness occurring on or after January 1, 2007, and before January 1, 2010.
- The provision has been extended five times, most recently by the Bipartisan Budget Act.

9. Premiums for mortgage insurance deductible as interest that is qualified residence interest (sec. 163(h)(3)(E))

- Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a principal residence or second home of the taxpayer is treated as if it were deductible qualified residence interest. The deduction is phased out for taxpayers with adjusted gross income over $100,000 ($50,000 if married filing separately). The provision does not apply to amounts paid or accrued after December 31, 2017, or properly allocable to any period after such date.
- The provision was enacted in the Tax Relief and Health Care Act of 2006[105] with respect to mortgage contracts issued after December 31, 2006, effective for amounts paid or accrued after December 31, 2006, and before January 1, 2008, that are properly allocable to such period.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.
- The 2017 Tax Act modified the deduction for home mortgage interest such that a taxpayer may claim a deduction for interest paid on up to $750,000 of acquisition indebtedness, for indebtedness incurred after December 15, 2017. For indebtedness incurred on or before December 15, 2017, the deduction may be claimed with respect to interest paid on up to $1,000,000 in acquisition indebtedness.

10. Medical expense deduction: 7.5 percent adjusted gross income ("AGI") floor (sec. 213)

- For taxable years ending before January 1, 2019, individuals may claim an itemized deduction for unreimbursed medical expenses paid during the taxable year to the extent that the expenses exceed 7.5 percent of AGI for purposes of regular tax and the alternative minimum tax ("AMT"). For taxable years ending after December 31,

[104] Pub. L. No. 110-142.

[105] Pub. L. No. 109-432.

2018, the deduction is available to the extent such expenses exceed 10 percent of AGI.

- An itemized deduction for unreimbursed medical expenses above a specified floor has been allowed since 1942. The Patient Protection and Affordable Care Act[106] created a temporary specified floor of 7.5 percent of AGI for regular tax purposes if the taxpayer or taxpayer's spouse attained the age of 65 before the close of the taxable year for taxable years beginning after December 31, 2012, and beginning before January 1, 2017. For all other taxpayers and for AMT purposes, the floor was 10 percent of AGI.
- The 2017 Tax Act reduced the floor to 7.5 percent of AGI for all taxpayers for taxable years beginning after December 31, 2016, and ending before January 1, 2019, for regular tax and AMT purposes.
- The 7.5-percent floor applicable if a taxpayer or taxpayer's spouse has attained the age of 65 has been extended one time in the 2017 Tax Act.

11. Above-the-line deduction for qualified tuition and related expenses (sec. 222)

- An individual is allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. The maximum deduction is $4,000 for taxpayers with adjusted gross income of $65,000 or less ($130,000 for joint filers) and $2,000 for taxpayers with adjusted gross income above $65,000 ($130,000 for joint filers) but less than or equal to $80,000 ($160,000 for joint filers). No deduction is allowed for taxpayers with adjusted gross income above $80,000 ($160,000 for joint filers). The provision expired for taxable years beginning after December 31, 2017.
- Because both the American Opportunity credit (in the case of tuition for the first four years of post-secondary education) and the Lifetime Learning credit (in the case of tuition paid for all post-secondary education) are permanent features of the Code, and generally offer taxpayers a larger tax benefit than the tuition deduction, many taxpayers use those provisions rather than the deduction for tuition.[107]
- The provision was enacted in Economic Growth and Tax Relief Reconciliation Act of 2001[108] for payments made in taxable years beginning after December 31, 2001, and before January 1, 2006.

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[106] Pub. L. No. 111-148.

[107] For example, if extended through December 31, 2018, a taxpayer claiming the deduction for tuition and fees would be in a tax bracket no higher than 22 percent. This translates to a maximum tax benefit of $880, on $4,000 of tuition payments. Taxpayers eligible to claim the American Opportunity credit (*i.e.*, those paying tuition for the first four years of postsecondary education) would receive a tax credit worth $2,500 for the same tuition payment. Taxpayers eligible to receive the Lifetime Learning credit (for tuition payments beyond the first four years of postsecondary education), however, would be eligible for only an $800 credit. Nonetheless, if tuition payments exceed $4,000, the value of the Lifetime Learning credit can exceed the deduction for tuition and fees.

[108] Pub. L. No. 107-16.

- The provision has been extended seven times, most recently by the Bipartisan Budget Act.

12. Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules (sec. 954(c)(6)(C))

- Certain payments of dividends, interest, rents, and royalties that would otherwise be included in foreign personal holding company income (and thus subpart F income) may be excepted if the payments are received from a related controlled foreign corporation and are properly attributable and allocable to income of the payor that is neither subpart F income nor treated as effectively connected to a U.S. trade or business. The provision expires for taxable years of foreign corporations beginning after December 31, 2019, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.
- The provision was enacted in the Tax Increase Prevention and Reconciliation Act of 2005,[109] for taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2009, and to the taxable years of United States shareholders with or within which such taxable years of the foreign corporations end.
- The provision has been extended five times, most recently in the Protecting Americans from Tax Hikes Act of 2015.[110]

13. Empowerment zone tax incentives (secs. 1391(d)(1)(A)(i) and (h)(2), 1394, 1396, 1397A, and 1397B)

- The empowerment zone tax incentives are intended to encourage economic growth and investment in distressed communities by providing Federal tax incentives to businesses located within the designated geographic areas. There are 40 areas designated as empowerment zones. The tax incentives available within the designated empowerment zones[111] include tax-exempt bond financing,[112] a Federal income tax credit for employers who hire qualifying employees,[113] accelerated depreciation deductions on qualifying equipment under section 179,[114] and deferral of

[109] Pub. L. No. 109-222.

[110] Pub. L. No. 114-113.

[111] Sec. 1391(d)(1)(A)(i) and (h)(2).

[112] Sec. 1394.

[113] Sec. 1396.

[114] Sec. 1397A.

capital gains tax on sale of qualified assets sold and replaced.[115] The tax incentives generally expire after December 31, 2017.

- The empowerment zone tax incentives were enacted in the Omnibus Budget Reconciliation Act of 1993[116] which authorized the designation of nine empowerment zones ("Round I empowerment zones") to be designated by the Secretaries of the Department of Housing and Urban Development and the Department of Agriculture. These designations were to be made after 1993 and before 1996 and terminated upon the earliest of (i) the close of the tenth calendar year beginning on or after such date of designation, (ii) the termination date designated by the State and local governments as provided for in their nomination, or (iii) the date the appropriate Secretary revoked the designation.

- The Taxpayer Relief Act of 1997[117] authorized the designation of two additional Round I urban empowerment zones, and 20 additional empowerment zones ("Round II empowerment zones"). These designations were to be made after the date of the enactment and before January 1, 1999. The Community Renewal Tax Relief Act of 2000 ("Renewal Act")[118] authorized a total of 10 new empowerment zones ("Round III empowerment zones"). These designations were to be made after the date of the enactment and before January 1, 2002. The designations were generally to remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009. In addition, the Renewal Act conformed the tax incentives that are available to businesses in the Round I, Round II, and Round III empowerment zones, added some additional tax incentives (deferral of capital gains tax on sale of qualified assets sold and replaced under section 1397B and partial exclusion of capital gains tax on certain sales of qualified small business stock), raised the expensing limitation on qualifying equipment under section 1397, and generally extended all of the empowerment zone incentives through December 31, 2009.

- The empowerment zone tax benefits were extended five times, most recently by the Bipartisan Budget Act. 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.

[115] Sec. 1397B.

[116] Pub. L. No. 103-66.

[117] Pub. L. No. 105-34.

[118] Pub. L. No. 106-554.

14. Specified health insurance policy fee (sec. 4375)

- For policy years ending before September 30, 2019, the provision imposes a fee on each specified health insurance policy equal to the product of $2 multiplied by the average number of lives covered under the policy. For fiscal years beginning after September 30, 2014, the dollar amount is adjusted for increases in health care spending. The fee is paid by the issuer of the policy, and helps fund the Patient-Centered Outcomes Research Trust Fund established under section 9511.
- The provision was enacted in the Patient Protection and Affordable Care Act,[119] and applies to each specified health insurance policy for each policy year ending after September 30, 2012, for policy years ending before September 30, 2019.
- The provision has not previously been extended.

15. Self-insured health plan fee (sec. 4376)

- For plan years ending before September 30, 2019, the provision imposes a fee on any applicable self-insured health plan equal to the product of $2 multiplied by the average number of lives covered under the plan. For fiscal years beginning after September 30, 2014, the dollar amount is adjusted for increases in health care spending. The fee is paid by the plan sponsor, and helps fund the Patient-Centered Outcomes Research Trust Fund established under section 9511.
- The provision was enacted in the Patient Protection and Affordable Care Act,[120] and applies to any applicable self-insured health plan for each plan year ending after September 30, 2012, for plan years ending before September 30, 2019.
- The provision has not previously been extended.

16. American Samoa economic development credit (sec. 119 of Pub. L. No. 109-432, as amended by sec. 40312 of Pub. L. No. 115-123)

- The American Samoa economic development credit is a credit against U.S. corporate income tax in an amount equal to the sum of certain percentages of a domestic corporation's employee wages, employee fringe benefit expenses, and tangible property depreciation allowances for the taxable year in respect of the active conduct of a trade or business in American Samoa. The credit is available only to a domestic corporation that, among other requirements, claimed the now-expired section 936 possessions tax credit with respect to American Samoa for its last taxable year beginning before January 1, 2006. The credit expired for taxable years beginning after December 31, 2017.

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[119] Pub. L. No. 111-148.

[120] Pub. L. No. 111-148.

- The provision was enacted in the Tax Relief and Health Care Act of 2006[121] and originally applied to the first two taxable years of a corporation that began after December 31, 2005, and before January 1, 2008.[122]
- The American Taxpayer Relief Act of 2012[123] modified the provision by requiring corporations to have qualified production activities income in American Samoa in order to claim the credit.
- The provision has been extended six times, most recently by the Bipartisan Budget Act.

[121] Pub. L. No. 109-432.

[122] The enactment of the American Samoa economic development credit coincided with the pending expiration of the section 936 possessions tax credit. The section 936 possessions tax credit generally expired for taxable years beginning after December 31, 2005.

[123] Pub. L. No. 112-240.