

**TECHNICAL EXPLANATION OF
THE TECHNICAL CORRECTIONS ACT OF 2016**

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of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of tax technical corrections contained in the Technical Corrections Act of 2016, as introduced on April 11, 2016, in the House of Representatives as H.R. 4891 and in the Senate as S. 2775.

¹ This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of the Technical Corrections Act of 2016* (JCX-16-16), April 11, 2016. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

Description of Technical Corrections

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

Amendments relating to the Protecting Americans from Tax Hikes (“PATH”) Act of 2015 (Division Q of the Consolidated Appropriations Act, 2016)

Transit parity (Act sec. 105).—Under Code section 132(f)(2) as in effect before the changes made by the Act, the monthly limit on the fringe benefit exclusion for employer-provided parking was \$175, and the monthly limit on employer-provided benefits for mass transit and van pooling combined was \$100. These monthly limits were indexed under Code section 132(f)(6) using a base year determined by when the particular monthly limit became effective – a base year of 1998 for parking and 2001 for transit/vanpooling. Parity between the exclusions was provided on a temporary basis from 2009 through 2014. The Act created permanent parity in the exclusions by changing the monthly transit/vanpooling limit in Code section 132(f)(2) to \$175. However, the Act failed to include a conforming change to repeal the base year rule in Code section 132(f)(6) for transit/vanpooling. The provision repeals the transit/vanpooling base year rule.

Research credit: not reinstate alternative incremental credit (Act sec. 121).—The alternative incremental credit expired in 2008. The provision clarifies that the alternative incremental credit is not reinstated by the Act, and makes conforming changes.

Bonus depreciation (Act sec. 143).—The provision clarifies that, among the criteria in the Act defining certain property having a longer production period that is treated as qualified property, the requirement that the property be acquired pursuant to a written contract before 2020 requires that the contract be a written binding contract. This corrects an unintended error which changed prior law.

The provision clarifies that, under the Act’s phase-down with respect to the special rules for certain plants bearing fruits and nuts, the phase-down percentages apply to specified plants that are planted or grafted in 2018 (40 percent) and 2019 (30 percent), not grafted to a plant that has already been planted before 2018 or 2019, respectively.

The Act extends and modifies the additional first-year depreciation deduction for five years, generally through 2019 (through 2020 for certain longer-lived and transportation property (“LLTP”)). The 50-percent allowance is phased down for property placed in service in taxable years beginning after 2017 (after 2018 for LLTP). The provision clarifies that for LLTP placed in service in 2018, 50 percent applies to the entire adjusted basis, and that for LLTP placed in service in 2019, 40 percent applies to the entire adjusted basis.

The provision clarifies that if, for a taxable year, a taxpayer makes both an election under Code section 168(k)(7) not to claim bonus depreciation for all property in a particular class of property and an election under Code section 168(k)(4) to claim AMT credits in lieu of bonus depreciation, Code section 168(k)(4) does not apply to property in the particular class. This corrects an unintended error which changed prior law.

Failure to furnish correct payee statements (Act sec. 202).—The provision clarifies Code section 6722(c)(3)(A), relating to failure to furnish correct payee statements, to refer to payee statements that are furnished (rather than filed). A corresponding change in the effective date stated in the Act refers to statements that are furnished (rather than provided).

Requirements for the issuance of ITINs (Act sec. 203).—The provision clarifies that community-based Certified Acceptance Agents are among the entities that are available to individuals living abroad who wish to obtain ITINs for purposes of meeting their U.S. tax filing obligations.

The provision clarifies that the expiration of ITINs that have not been used for three consecutive taxable years is to occur on the date following the due date of the tax return for such third consecutive taxable year. For ITINs issued prior to January 1, 2013, the ITIN will expire on the applicable date, or if earlier, the day following the due date of the tax return for the third consecutive taxable year such ITIN was not used on a return. In the event that such an ITIN has not been used for three (or more) consecutive taxable years on the tax return due date for the 2015 taxable year, such ITIN shall expire on the day following that date.

The provision clarifies that the effective date of section 203 of the Act, which provides that section 203 is effective for ITIN applications made after the date of enactment, does not prevent the provision relating to outstanding ITINs from taking effect.

Retroactive claims of credits (Act secs. 204, 205, and 206).—The provision conforms a reference in Code section 24(e)(2) to the taxpayer identification number (not to the identifying number). The provisions remove special effective date rules in each of these Act sections that have no practical effect.

Effective date for treatment of credits for certain penalties (Act sec. 209).—The Act inadvertently failed to state the effective date for the rule providing a reasonable cause exception for erroneous claims for refund or credit. The provision states that the effective date is for claims filed after the date of enactment of the Act.

Making American Opportunity Tax Credit permanent (Act secs. 102, 206, 207, 208, and 211).—The provision reflects the permanent extension of the American Opportunity Tax Credit by eliminating deadwood and consolidating the provisions of Code section 25A.

Restriction on tax-free spinoffs involving REITs (Act sec. 311).—The provision clarifies that, for purposes of Code section 355(h)(2)(B), control of a partnership means ownership of at least 80 percent of the profits interests and at least 80 percent of the capital interests (not that control is limited to exactly 80 percent ownership).

Exception from FIRPTA for certain stock of REITs (Act sec. 322).—The provision restates provisions of Code section 897(k) as amended, makes clerical conforming changes, and strikes a modification to a repealed provision.

Further, under Code section 897(k) as amended, the provision addresses the definition of a qualified collective investment vehicle that is eligible for benefits of a comprehensive income tax treaty with the United States that includes an exchange of information program, by clarifying

that the definition can be met only if the dividends article in the treaty imposes conditions on the benefits allowable in the case of dividends paid by a real estate investment trust.

The provision clarifies the effective date for the determination of domestic control by stating that the rule applies with respect to each testing period ending on or after the date of enactment (not that the rule takes effect on the date of enactment).

Amendments relating to Division P of the Consolidated Appropriations Act, 2016

Treatment of transportation costs of independent refiners (Act sec. 305).—The provision clarifies that Code section 199(c)(3)(C) applies for purposes of calculating qualified production activities income under Code section 199(c) and for purposes of calculating oil related qualified production activities income under Code section 199(d)(9).

Amendments relating to the Fixing America’s Surface Transportation Act (2015)

Revocation or denial of passport in case of certain unpaid taxes (Act sec. 32101).—The Act provides for judicial review of the Secretary’s certification that an individual has a seriously delinquent tax debt, either in a U.S. district court or in the Tax Court. The provision clarifies that the party against whom a Tax Court petition is filed is the Commissioner of the Internal Revenue Service. The provision also provides a tie-breaker rule clarifying that the court first acquiring jurisdiction over the action has sole jurisdiction.

Amendments relating to the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

Consistent value for transfer and income tax purposes (Act sec. 2004).—The Act generally requires that an heir who inherits property from a decedent claim a basis no greater than the final value of the property for estate tax purposes (new Code section 1014(f)). New Code section 6662(b)(8) imposes a penalty in the case of an inconsistent estate basis. There is an ‘inconsistent estate basis’ if the basis of property claimed on a return exceeds the basis as determined under the consistency requirement set forth in new Code section 1014(f). The penalty could be viewed as applying when an heir claims a basis higher than the final estate tax value by reason of making basis adjustments relating to post-acquisition events (e.g., improvements to the property). This result is not intended. The provision modifies the definition of ‘inconsistent estate basis’ to avoid this unintended result.

Mass Transit Account (“MTA”) financing (Act sec. 2008).—The Act changes the taxation of liquefied natural gas (LNG) and liquefied petroleum gas (LPG) from a per-gallon basis to an energy-equivalent basis. That is, the Act provides that the tax is based on the LNG energy equivalent to a gallon of diesel (DGE) (24.3 cents per DGE, which is 6.06 pounds of LNG), and on the LPG energy equivalent to a gallon of gasoline (GGE) (18.3 cents per GGE, which is 5.75 pounds of LPG). Code section 9503(e)(2) allocates 1.86 cents per gallon of LNG and 2.13 cents per gallon of LPG to the Mass Transit Account of the Highway Trust Fund, but the Act does not specifically conform the per-gallon basis to an energy-equivalent basis for purposes of the allocation. The provision conforms the per-gallon basis in Code section 9503(e)(2) to the energy-equivalent basis, using DGE for LNG and GGE for LPG, to reflect the energy-equivalent basis used for the taxes imposed on LNG and LPG.

Amendments relating to the Stephen Beck, Jr., ABLE Act of 2014

Inflation adjustment for certain civil penalties under the Internal Revenue Code of 1986 (Act sec. 208).—The Act provides an annual inflation adjustment for fixed-dollar civil tax penalties in the case of: (i) Code section 6651(a), failure to file a tax return; (ii) Code section 6652(c), failure to file or disclose information returns by exempt organizations and certain trusts, (iii) Code section 6695, preparation of tax returns for other persons, (iv) Code section 6698, failure to file a partnership return, (v) Code section 6699, failure to file an S corporation return, (vi) Code section 6721, failure to file correct information returns, and (vii) Code section 6722, failure to furnish correct payee statements. The provision clarifies that the effective date of the annual inflation adjustments added to these civil penalties generally is for returns required to be filed, and statements required to be furnished, after December 31, 2014, and in the case of the annual inflation adjustment for penalties relating to preparation of tax returns for other persons, is for returns or claims for refund filed after December 31, 2014.

Amendments relating to the American Taxpayer Relief Act of 2012

Reference in definition of a deficiency to American Opportunity Tax Credit.—The provision conforms a reference in section 6211(b)(4)(A), relating to the definition of a deficiency, to a provision of the American Opportunity Tax Credit that was renumbered by the Act.

Amendments relating to the United States–Korea Free Trade Agreement Implementation Act (2011)

Increase in penalty on paid preparers who fail to comply with earned income tax credit due diligence requirements (Act sec. 501).—The provision clarifies that the effective date of the Code section 6695(g) penalty increase is for documents prepared (not returns required to be filed) after December 31, 2011.

Clerical corrections and deadwood-related provisions

The provisions make clerical corrections and corrections relating to deadwood provisions.