[JOINT COMMITTEE PRINT]

DESCRIPTION OF CERTAIN REVENUE PROVISIONS CONTAINED IN THE PRESIDENT'S FISCAL YEAR 2017 BUDGET PROPOSAL

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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JOINT COMMITTEE ON TAXATION

114TH CONGRESS, 2ND SESSION

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation ("Joint Committee staff"), provides a description and analysis of certain revenue proposals modifying the Internal Revenue Code of 1986 (the "Code") that are included in the President's fiscal year 2017 budget proposal, as submitted to the Congress on February 9, 2016.[2] Because many of the proposals in the fiscal year 2017 budget proposal are substantially similar or identical to those in the fiscal year 2016, 2015, 2014, and 2013 budget proposals, the Joint Committee staff has generally described only those proposals that did not appear in the fiscal year 2016 budget proposal or that are substantially modified from prior years' proposals.[3]

Accordingly, this document is divided into four sections. Part I contains a description and analysis of those proposals that are new proposals. Part II contains a description, and in some cases an analysis, of those proposals that have been substantially modified from prior years' proposals. Part III contains a description of those proposals that are modified from prior years' proposals as a result of legislation enacted in 2015. Part IV contains a table that directs readers to prior descriptions and analyses of all of the items in the fiscal year 2017 budget proposal, and refers to *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2017 Budget Proposal*, which is reprinted in the back of this volume. The table generally follows the order of the proposals as included in the Department of the Treasury's explanation of the President's budget revenue proposals.[4]

All references to "the Code" are to the Internal Revenue Code of 1986, as amended.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2017 Budget Proposal* (JCS-2-16), July 2016.

[2] See Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2017: Analytical Perspectives* (H. Doc. 114-86, Vol. III), February 9, 2016, pp. 153-223.

[3] The revenue provisions contained in the fiscal year 2013 budget proposal are described in their entirety in Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal* (JCS-2-12), June 2012. Those provisions that were new or substantially modified in the fiscal year 2014 budget proposal are described in Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2014 Budget Proposal* (JCS-4-13), December 2013. Those provisions that were new or substantially modified in the fiscal year 2015 budget proposal are described in Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2015 Budget Proposal* (JCS-2-14), December 2014. Those provisions that were new or substantially modified in the fiscal year 2016 budget proposal are described in Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2016 Budget Proposal* (JCS-2-15), September 2015.

[4] See Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, February 2016.

PART I ─ NEW PROPOSALS

A. Permit Unaffiliated Employers to Maintain a Single Multiple-Employer Defined Contribution Plan

Present Law

Qualified retirement plans

Types of tax-favored employer-sponsored retirement plans

The Code provides tax-favored treatment for various types of retirement plans maintained by employers.[5] The most common type of tax-favored employer-sponsored retirement plan is a qualified retirement plan,[6] which may be a defined contribution plan or a defined benefit plan. Under a defined contribution plan, separate individual accounts are maintained for participants, to which accumulated contributions, earnings and losses are allocated, and participants' benefits are based on the value of their accounts.[7] Under a defined benefit plan, benefits are determined under a plan formula and paid from general plan assets, rather than individual accounts.[8]

Certain tax-exempt employers and public schools may maintain tax-deferred annuity plans,[9] and State and local governmental employers may maintain eligible deferred compensation plans.[10] Employer-sponsored plans that are funded through direct contributions by the employer to an individual retirement arrangement ("IRA") established for each employee are simplified employee pension ("SEP") plans and SIMPLE IRA plans.[11] These other types of plans are often provided by an employer instead of a qualified defined contribution plan.

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[5] For a detailed discussion of present law relating to tax-favored retirement savings, including employer-sponsored plans and individual retirement arrangements, see Part I of *Joint Committee on Taxation, Present Law and Background Relating to Tax-Favored Retirement Saving and Certain Related Legislative Proposals* (JCX-3-16), January 26, 2016, available on the Joint Committee on Taxation website at www.jct.gov.

[6] Sec. 401(a). A qualified annuity plan under section 403(a) is similar to and subject to requirements similar to those applicable to qualified retirement plans.

[7] Sec. 414(i). Defined contribution plans generally provide for contributions by employers and may include a qualified cash or deferred arrangement under section 401(k) (commonly called a "section 401(k) plan"), under which employees may elect to contribute to the plan.

[8] Sec. 414(j).

[9] Sec. 403(b). Private and governmental employers that are exempt from tax under section 501(c)(3), including tax-exempt private schools, may maintain tax-deferred annuity plans.

[10] Sec. 457(b). The rules under section 457 for eligible deferred compensation plans of private, tax-exempt employers limit the amount that may be deferred on behalf of employees, even on an unfunded basis, rather than providing tax-favored status.

[11] Sec. 408(k) and 408(p). SIMPLE IRA plans are available only to certain small employers.

Qualified retirement plan requirements

Qualified retirement plans are subject to various requirements, some of which depend on whether the plan is a defined contribution plan or a defined benefit plan.[12] A qualified retirement plan must be a definite written program that is communicated to employees.[13] Qualified retirement plans assets must be held in trust and trust assets may be used only for the exclusive benefit of participants and beneficiaries, referred to as the "exclusive benefit" rule.[14]

Qualified retirement plans are subject also to requirements as to when an employee must be allowed to participate in a plan (generally if both age 21 and having completed a year of service with the employer), vesting of a participant's benefits under a plan (that is, the period of service after which a participant's benefits must be nonforfeitable), and a prohibition on discrimination in favor of highly compensated employees with respect to plan participation and benefits, referred to as the "nondiscrimination" requirements.[15] Limits apply to the contributions and benefits provided under a qualified retirement plan, and, if too large a portion of the total accumulated benefits under a plan are attributable to key employees, special minimum contribution or benefit and vesting rules apply, referred to as the "top-heavy" requirements.[16] If assets or liabilities of a plan are transferred to another plan (including a new plan created as a result of the transfer), each plan participant must, immediately after the transfer, be entitled to a benefit equal to or greater than the benefit to which the participant was entitled immediately before the transfer.[17]

Participants in qualified retirement plans generally consist of the employees of the employer sponsoring the plan. For this purpose, a self-employed individual is treated as an employee and the self-employed individual's trade or business is treated as the employer, regardless of whether there are any other employees of the trade or business.[18]

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[12] For example, under section 412, defined benefit plans are subject to minimum funding requirements that generally do not apply to defined contribution plans.

[13] Treas. Reg. sec. 1.401-1(a)(2).

[14] Sec. 401(a)(2).

[15] Secs. 401(a)(3), (a)(4) and (a)(7) and 410-411.

[16] Secs. 401(a)(10)(b) and (a)(16) and 415-416.

[17] Sec. 414(l)(1). Section 414(l)(2) provides additional rules relating to the spinoff of assets and liabilities of a defined benefit plan to another defined benefit plan.

[18] Sec. 401(c). A self-employed individual includes an individual performing services as an independent contractor, a sole proprietor, or a partner of a partnership. A plan covering a self-employed individual is sometimes referred to as a "Keogh" plan.

Employer credit for plan start-up costs

A nonrefundable income tax credit is available for qualified start-up costs of an eligible small employer that adopts a new qualified retirement plan, SIMPLE IRA plan, or SEP, provided that the plan covers at least one nonhighly compensated employee.[19] Qualified start-up costs are expenses connected with the establishment or administration of the plan or retirement-related education for employees with respect to the plan. The credit is the lesser of a flat dollar amount of $500 per year or 50 percent of the qualified start-up costs. The credit applies for up to three years beginning with the year the plan is first effective, or, at the election of the employer, the preceding year.

An eligible employer is an employer that qualifies as eligible employer for purposes of the SIMPLE IRA rules, which is generally an employer that had no more than 100 employees who received more than $5,000 in compensation from the employer for the preceding year. In addition, the employer must not have had a plan covering substantially the same employees as the new plan during the three years preceding the first year for which the credit would apply. Members of the same controlled group and affiliated service group are treated as a single employer for purposes of these requirements, and all eligible employer plans are treated as a single eligible employer plan.

IRS administrative programs relating to qualified retirement plans

Preapproved plans

The Internal Revenue Service ("IRS") office responsible for qualified retirement plan oversight, the Employee Plans Division of the Tax-Exempt & Government Entities Operating Division, has established an extensive program under which banks, insurance companies, and similar institutions ("service providers") can obtain advance IRS approval of standardized qualified retirement plan documents ("preapproved plans") that can be adopted by employers without each employer having to retain its own legal professionals to draft plan documents for the employer.[20] A service provider offering a preapproved plan document generally also offers plan-related services, such as holding and managing plan assets, plan record-keeping, participant notices and distributions, and annual reporting to the IRS, Department of Labor and, if applicable, the Pension Benefit Guaranty Corporation ("PBGC"). The preapproved plan program helps to make adopting and maintaining a qualified retirement plan more affordable for employers, especially smaller employers.

Group trusts

Under longstanding IRS guidance, the assets of qualified retirement plans maintained by different, unrelated employers can be pooled and held by a "group trust," thus enabling

[19] Sec. 45E.

[20] See Rev. Proc. 2015-36, 2015-27 I.R.B. 1234, for background on the preapproved plan program. Under the program, preapproved plans include master and prototype and volume submitter plans.

employers of various sizes to benefit from economies of scale for administrative and investment purposes.[21] In addition to qualified retirement plan assets, a group trust may also hold assets associated with other tax-favored retirement arrangements, including tax-deferred annuity plans, governmental eligible deferred compensation plans, and IRAs.

Employee Plans Compliance Resolution System

Because of the complexity of the requirements for qualified retirement plans, errors in plan documents, as well as plan operation and administration, commonly occur. Under a strict application of these requirements, such an error would cause a plan to lose its tax-favored status, which would fall most heavily on plan participants because of the resulting current income inclusion of vested amounts under the plan. As a practical matter, therefore, the IRS rarely disqualifies a plan. Instead, the IRS has established the Employee Plans Compliance Resolution System ("EPCRS"), a formal program under which employers and other plan sponsors can correct compliance failures and continue to provide their employees with retirement benefits on a tax-favored basis.[22]

EPCRS has three components, providing for self-correction, voluntary correction with IRS approval, and correction on audit. The Self-Correction Program ("SCP") generally permits a plan sponsor that has established compliance practices and procedures to correct certain insignificant failures at any time (including during an audit), and certain significant failures generally within a two-year period, without payment of any fee or sanction. The Voluntary Correction Program ("VCP") permits an employer, at any time before an audit, to pay a limited fee and receive IRS approval of a correction. For a failure that is discovered on audit and corrected, the Audit Closing Agreement Program ("Audit CAP") provides for a sanction that bears a reasonable relationship to the nature, extent, and severity of the failure and that takes into account the extent to which correction occurred before audit.

Single-employer and multiple-employer plans

Definitions

Qualified retirement plans, either defined contribution or defined benefit plans, are categorized as single-employer plans or multiple-employer plans. A single-employer plan is a plan maintained by one employer. For this purpose, businesses and organizations that are members of a controlled group of corporations, a group under common control, or an affiliated service group are treated as one employer (referred to as "aggregation").[23] A multiple-employer

[21] Rev. Rul. 81-100, 1981-1 C.B. 326, most recently modified by Rev. Rul. 2014-24, 2014-2 C.B. 529.

[22] Rev. Proc. 2013-12, 2013-04 I.R.B. 313, modified by Rev. Proc. 2015-27, 2015-16 I.R.B. 914, and Rev. Proc. 2015-28, 2015-16 I.R.B. 920.

[23] Secs. 414(b), (c), (m) and (o).

plan generally is a single plan maintained by two or more unrelated employers (that is, employers that are not treated as a single employer under the aggregation rules).[24]

Multiple-employer plans are commonly maintained by employers in the same industry and are used also by professional employer organizations ("PEOs") to provide qualified retirement plan benefits to employees working for PEO clients.[25] However, under the Code, multiple-employer plan treatment applies regardless of any relationship among participating employers.[26]

Application of Code requirements to multiple-employer plans

Some requirements are applied to a multiple-employer plan on a plan-wide basis.[27] For example, all employees covered by the plan are treated as employees of all employers participating in the plan for purposes of the exclusive benefit rule. Similarly, an employee's service with all participating employers is taken into account in applying the minimum participation and vesting requirements. In applying the limits on contributions and benefits, compensation, contributions and benefits attributable to all employers are taken into account.[28] Other requirements are applied separately, including the minimum coverage requirements, nondiscrimination requirements (both the general requirements and the special tests for section 401(k) plans) and the top-heavy rules.[29] However, the qualified status of the plan as a whole is determined with respect to all employers maintaining the plan, and the failure by one employer (or by the plan itself) to satisfy an applicable qualification requirement will result in disqualification of the plan with respect to all employers.[30]

Multiple-employer plans are eligible for EPCRS, and certain special procedures apply.[31] A VCP request with respect to a multiple-employer plan must be submitted to the IRS by the

[24] Sec. 413(c). Multiple-employer status does not apply if the plan is a multiemployer plan, defined under section 414(f) as a plan maintained pursuant to one or more collective bargaining agreements with two or more unrelated employers and to which the employers are required to contribute under the collective bargaining agreement(s). Multiemployer plans are also known as Taft-Hartley plans.

[25] Rev. Proc. 2003-86, 2003-2 C.B. 1211, and Rev. Proc. 2002-21, 2002-1 C.B. 911, address the application of the multiple-employer plan rules to qualified defined contribution plans maintained by PEOs.

[26] An arrangement under which a plan service provider, such as a financial institution, establishes a plan in which any employers (without regard to any affiliation or other relationship) may participate is sometimes referred to as an "open" multiple-employer plan or "open MEP."

[27] Sec. 413(c).

[28] Treas. Reg. sec. 1.415-1(e).

[29] Treas. Reg. secs. 1.413-2(a)(3)(ii)-(iii) and 1.416-1, G-2.

[30] Treas. Reg. secs. 1.413-2(a)(3)(iv) and 1.416-1, G-2.

[31] Section 10.12 of Rev. Proc. 2013-12.

plan administrator, rather than an employer maintaining the plan, and must be made with respect to the entire plan, rather than a portion of the plan affecting any particular employer. In addition, if a failure applies to fewer than all of the employers under the plan, the plan administrator may choose to have a VCP compliance fee or audit CAP sanction calculated separately for each employer based on the participants attributable to that employer, rather than having the compliance fee calculated based on the participants of the entire plan. For example, the plan administrator may choose this option when the failure is attributable to the failure of an employer to provide the plan administrator with full and complete information. However, no specific correction methods or procedures have been provided under EPCRS to address the special structures of multiple-employer plans.

ERISA

In general

Retirement plans of private employers, including qualified retirement plans, are generally subject to requirements under the Employee Retirement Income Security Act of 1974 ("ERISA").[32] Governmental plans and church plans are generally exempt from ERISA.[33] A plan covering only business owners (or business owners and their spouses) - that is, it covers no other employees - is exempt from ERISA.[34] Thus, a plan covering only self-employed individuals is exempt from ERISA. Tax-deferred annuity plans that provide solely for salary reduction contributions by employees may be exempt from ERISA.[35] IRAs are generally exempt from ERISA; however, ERISA applies to some aspects of SEPs and SIMPLE IRAs.

The provisions of Title I of ERISA are under the jurisdiction of the Secretary of Labor ("DOL").[36] Many of the requirements under Title I of ERISA parallel Code requirements for qualified retirement plans. Under ERISA, in carrying out provisions relating to the same subject matter, the Secretary of the Treasury ("Treasury") and DOL are required to consult with each other and develop rules, regulations, practices, and forms which, to the extent appropriate for efficient administration, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance by plan administrators, employers, and participants and beneficiaries.[37] In addition, interpretive jurisdiction over

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[32] ERISA applies to employee welfare benefit plans, such as health plans, of private employers, as well as to employer-sponsored retirement (or pension) plans. Employer-sponsored welfare and pension plans are both referred to under ERISA as employee benefit plans.

[33] ERISA sec. 4(b)(1) and (2).

[34] 29 C.F.R. sec. 2510.3-3(b)-(c).

[35] 29 C.F.R. sec. 2510.3-2(f).

[36] The provisions of Title I of ERISA are codified at 29 U.S.C 1001-734. Under Title IV of ERISA, defined benefit plans of private employers are generally covered by the PBGC pension insurance program.

[37] ERISA sec. 3004.

parallel Code and ERISA provisions relating to retirement plans is divided between Treasury and DOL by Executive Order, referred to as the Reorganization Plan No. 4 of 1978.[38]

Plan document, fiduciary, trust, and bonding requirements

ERISA requires a plan to be established and maintained pursuant to a written instrument (that is, a plan document) that contains certain terms.[39] The terms of the plan must provide for one or more named fiduciaries, discussed further below, that jointly or severally have authority to control and manage the operation and administration of the plan. Among other required plan terms are a procedure for the allocation of responsibilities for the operation and administration of the plan and a procedure for amending the plan and for identifying the persons who have authority to amend the plan. Among other permitted terms, a plan may provide also that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator) and that a person who is a named fiduciary with respect to the control or management of plan assets may appoint an investment manager or managers to manage plan assets.

In general, a person is a fiduciary with respect to a plan to the extent the person (1) exercises any discretionary authority or discretionary control respecting management of the plan or exercises any authority or control respecting management or disposition of plan assets, (2) renders investment advice for a fee or other compensation, direct or indirect, with respect to any plan moneys or other property, or has any authority or responsibility to do so, or (3) has any discretionary authority or discretionary responsibility in the administration of the plan.[40] Fiduciary also includes any named fiduciary, that is, a person who is named a fiduciary in the plan document or, pursuant to a procedure specified in the plan, identified as a fiduciary by an employer or employee organization with respect to the plan or by an employer and employee organization acting jointly.[41]

ERISA requires a fiduciary of a plan to discharge its duties with respect to the plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would

[38] 43 Fed. Reg. 47713 (October 17, 1978).

[39] ERISA sec. 402.

[40] ERISA sec. 3(21)(A). Under 29 C.F.R. section 2510.3-102, plan assets include amounts that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution to the plan or repayment of a plan loan, and an employer must transmit these amounts to the plan trustee as of the earliest date on which the contributions or repayments can reasonably be segregated from the employer's general assets. The regulations provide additional guidance on timeframes for applying this standard.

[41] ERISA sec. 402(a)(2).

use in the conduct of an enterprise of a like character and with like aims.[42] With respect to plan assets, ERISA requires a fiduciary to diversify the investments of the plan so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.[43]

A plan fiduciary that breaches any of the fiduciary responsibilities, obligations, or duties imposed by ERISA (including the prohibited transaction rules discussed below) is personally liable to make good to the plan any losses to the plan resulting from such breach and to restore to the plan any profits the fiduciary has made through the use of plan assets.[44] A plan fiduciary may be liable also for a breach of responsibility by another fiduciary (a "co-fiduciary") in certain circumstances, for example, if the fiduciary's failure to fulfill his own fiduciary duties enabled the co-fiduciary to commit the breach.[45] Certain fiduciary violations may result in the imposition of a civil penalty.[46]

ERISA requires plan assets to be held in trust by one or more trustees.[47] The trustee or trustees are either named in the trust instrument or in the plan document or appointed by a named fiduciary. On acceptance of being named or appointed, a trustee or trustees have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that (1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary that is not a trustee, in which case the trustees are subject to proper directions from the fiduciary that are made in accordance with plan terms and are not contrary to ERISA, or

[42] ERISA sec. 404(a)(1).

[43] In general, a plan fiduciary is responsible for the investment of plan assets. However, ERISA section 404(c) provides a special rule in the case of a defined contribution plan that permits participants to exercise control over the assets in their individual accounts, often referred to as "participant-directed investments." Under the special rule, if a participant exercises control over the assets in his or her account, the participant is not deemed to be a fiduciary by reason of such exercise and no person who is otherwise a fiduciary is liable for any loss, or by reason of any breach, that results from the participant's exercise of control. See 29 C.F.R. sec. 2550.404c-1 and -5 for implementation of the special rule. Defined contribution plans that provide for participant-directed investments commonly offer a set of investment options among which participants may choose. The selection of investment options to be offered under a plan is subject to ERISA fiduciary requirements.

[44] ERISA sec. 409. Under ERISA section 502(a)(2), an action for a breach of fiduciary responsibility may be brought by DOL, a plan participant or beneficiary, or another fiduciary.

[45] ERISA sec. 405.

[46] ERISA sec. 502(i) and (l).

[47] ERISA sec. 403. In *Barboza v. California Association of Professional Firefighters*, 799 F.3d 1257 (9th Cir. 2015), *cert. den.*, 136 S. Ct. 1171 (2016), the court rejected the argument that ERISA contemplates the formal execution of a trust instrument and appointment of trustees. The court held that ERISA requirements are satisfied if a person holds legal title to the assets of an employee benefit plan with the intent to deal with these assets solely for the benefit of the members of that plan. That person is the trustee and the resulting relationship between the trustee and the participants in the plan with respect to a plan's assets is a trust for purposes of ERISA. In addition, while the trustees must be identified in either the trust instrument or the plan instrument or appointed by a named fiduciary, no specific terminology or labels are required. The ERISA requirements are satisfied as long as the trust or plan instrument names a person that will hold property in trust for another.

(2) authority to manage, acquire, or dispose of plan assets is delegated to one or more investment managers.

Under ERISA, any plan fiduciary or person that handles plan assets is required to be bonded, generally for an amount not to exceed $500,000.[48] In some cases, the maximum bond amount is $1 million, rather than $500,000.

When an employer-sponsored retirement plan is terminated, it might not be possible to locate participants who previously terminated employment, referred to as "missing" participants. DOL regulations provide guidance with respect to the distribution of benefits of missing participants in the case of termination of a defined contribution plan.[49] In some cases an employer maintaining a retirement plan may go out of business, and existence, without terminating the plan, referred to as an "abandoned" plan. DOL regulations provide guidance also with respect to abandoned plans.[50]

Multiple-employer plan status under ERISA

Like the Code, ERISA contains rules for multiple-employer retirement plans.[51] However, a different concept of multiple-employer plan applies under ERISA.

Under ERISA, an employee benefit plan (whether a pension plan or a welfare plan) must be sponsored by an employer, by an employee organization, or by both.[52] The definition of employer is any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan, and includes a group or association of employers acting for an employer in such capacity.[53]

DOL interprets these definitional provisions of ERISA as permitting a multiple-employer plan to be established or maintained by a cognizable, bona fide group or association of employers, acting in the interests of its employer members to provide benefits to their employees.[54] This approach is based on the premise that the person or group that maintains the plan is tied to the employers and employees that participate in the plan by some common economic or representational interest or genuine organizational relationship unrelated to the

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48 ERISA sec. 412.

49 29 C.F.R. sec. 2550.404a-3. The PBGC maintains a program under ERISA section 4050 with respect to benefits of missing participants under a terminated defined benefit plan.

50 29 C.F.R. sec. 2578.1.

51 ERISA sec. 210(a).

52 ERISA sec. 3(1) and (2).

53 ERISA sec. 3(5).

54 See, for example, DOL Advisory Opinions 2012-04A, 2003-17A, 2001-04A, and 1994-07A, and other authorities cited therein.

provision of benefits. Based on the facts and circumstances, the employers that participate in the benefit program must, either directly or indirectly, exercise control over that program, both in form and in substance, in order to act as a bona fide employer group or association with respect to the program. However, an employer association does not exist where several unrelated employers merely execute participation agreements or similar documents as a means to fund benefits, in the absence of any genuine organizational relationship between the employers. In that case, each participating employer establishes and maintains a separate employee benefit plan for the benefit of its own employees, rather than a multiple-employer plan.[55]

DOL investigative, cease and desist, and seizure authority

In order to determine whether any person has violated or is about to violate ERISA, DOL has the power (1) to make an investigation and, in connection with an investigation, to require the submission of reports, books and records and the filing of data to support information in any required filings with DOL, and (2) to enter any place, inspect any books and records, and question any persons as DOL may deem necessary to enable it to determine the facts relative to an investigation if it has reasonable cause to believe there may exist an ERISA violation or if the entry is pursuant to an agreement with a plan.[56]

Under ERISA, a multiple employer welfare arrangement (or "MEWA") generally is an employee welfare benefit plan, or other arrangement, established or maintained for the purpose of offering or providing welfare benefits (such as medical or hospital benefits or disability benefits) to the employees of two or more unrelated employers or to beneficiaries of the employees.[57] DOL has the authority to issue a cease and desist (ex parte) order if it appears that the alleged conduct of a MEWA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.[58] DOL has the authority also to issue a summary seizure order if it appears that a MEWA is in a financially hazardous condition.

[55] DOL Interpretive Bulletin 2015-2, 29 C.F.R. sec. 2509.2015–02, describes a State-sponsored retirement plan in which employers in the State could participate. The interpretive bulletin notes that a State has a unique representational interest in the health and welfare of its citizens that connects it to the in-State employers that might choose to participate in the State-sponsored plan and to their employees, so that the State should be considered to act indirectly in the interest of the participating employers. Having this unique nexus distinguishes the State-sponsored plan from other business enterprises that underwrite benefits or provide administrative services to several unrelated employers. Thus, the State-based plan would be viewed as a multiple-employer plan for ERISA purposes.

[56] ERISA sec. 504.

[57] ERISA sec. 3(40).

[58] ERISA sec. 521. A person adversely affected by the issuance of a cease and desist order may request a hearing by DOL regarding the order. In the hearing, the burden of proof is on the party requesting the hearing to show cause why the cease and desist order should be set aside. Based on the evidence presented at the hearing, DOL may affirm, modify or set aside the cease and desist order.

Retirement plan reporting and employee notices

Under the Code, an employer maintaining a qualified retirement plan generally is required to file an annual return containing information required under regulations with respect to the qualification, financial condition, and operation of the plan.[59] ERISA requires the plan administrator of certain pension and welfare benefit plans to file annual reports disclosing certain information to DOL.[60] These filing requirements are met by filing a completed Form 5500, Annual Return/Report of Employee Benefit Plan. Forms 5500 are filed with DOL, and information from Forms 5500 is shared with the IRS.[61] Certain small plans, that is, plans covering fewer than 100 participants, are eligible for simplified reporting requirements, which are met by filing Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan. In the case of a multiple-employer plan, the annual report must include a list of participating employers and a good faith estimate of the percentage of total contributions made by the participating employers during the plan year.

ERISA requires that plan participants be provided with information about the plan, including a summary of benefits, rights and procedures under the plan (referred to as a summary plan description).[62] ERISA also requires that participants be provided with periodic benefit statements.[63]

Description of Proposal

In general

The proposal amends ERISA to allow unaffiliated employers to adopt a defined contribution plan that, if the requirements discussed below are met, will be treated as a single plan, that is, a multiple-employer plan, for purposes of ERISA, regardless of whether the employers share a common economic or representational interest or organizational relationship

[59] Sec. 6058. In addition, under section 6059, the plan administrator of a defined benefit plan subject to the minimum funding requirements is required to file an annual actuarial report. Under Code section 414(g) and ERISA section 3(16), plan administrator generally means the person specifically so designated by the terms of the plan document. In the absence of a designation, the plan administrator generally is (1) in the case of a plan maintained by a single employer, the employer, (2) in the case of a plan maintained by an employee organization, the employee organization, or (3) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties that maintain the plan. Under ERISA, the party described in (1), (2) or (3) is referred to as the "plan sponsor."

[60] ERISA secs. 103 and 104. Under ERISA section 4065, the plan administrator of certain defined benefit plans must provide information to the PBGC.

[61] Information is shared also with the PBGC, as applicable. Form 5500 filings are also publicly released in accordance with section 6104(b) and Treas. Reg. sec. 301.6104(b)-1 and ERISA secs. 104(a)(1) and 106(a).

[62] ERISA sec. 102.

[63] ERISA sec. 105.

unrelated to the provision of benefits.[64] In order for multiple-employer plan treatment under ERISA to apply, the entity marketing and administering the plan (the "plan provider"), the participating employers, and the plan must meet certain conditions.

The proposal also provides for the issuance of guidance under ERISA and the Code as to actions to be taken in the case of an ERISA or Code violation with respect to the portion of a plan attributable to the employees of a particular employer as a result of an action (or inaction) by that employer.

Plan provider, employer, and plan requirements

The plan provider must be a regulated financial institution and must agree in writing to be both a named fiduciary of the plan and the plan administrator, with the responsibility for all administrative duties. Administrative duties include duties necessary for maintaining the plan's qualified status under the Code, such as nondiscrimination testing. The provider must also register with DOL before offering the plan to employers, must meet applicable bonding requirements, and must provide required disclosures to all participating employers, including disclosures designed to facilitate each employer's performance of the employer's fiduciary duties as described below. Under the proposal, DOL is authorized to issue guidance relating to disclosure, capitalization, and bonding requirements for providers.

Unaffiliated employers eligible to participate in the plan are employers that have not maintained a qualified retirement plan within the previous three years.[65] Each participating employer must retain fiduciary responsibility for the prudent selection and monitoring of the plan provider, as well as any other person that is a plan fiduciary. The employer must also retain responsibility for the investment of plan assets attributable to the accounts of its employees unless investment management responsibility is delegated to the plan provider or another fiduciary. The participating employers are responsible for disclosing to the plan provider any information needed for compliance with ERISA and the qualified retirement plan rules under the Code, such as information needed to enroll employees. In addition, existing ERISA rules under which an employer is required to transmit employee contributions to a plan trustee within a specified timeframe, continue to apply.

The terms of the plan must include the requirements applicable to the plan provider and the participating employers. Plan terms must also provide that an employer will not be subject to unreasonable fees or restrictions if it terminates participation in the plan or transfers assets to another plan. Plan assets must be held in trust by an institution that complies with ERISA's trust requirements, including the requirements for IRA trustees, and plan terms must require the trustee to establish contribution collection and audit procedures.

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[64] As under present law, such a plan will also be treated as a multiple-employer plan for Code purposes.

[65] The proposal is silent as to whether an employer may participate if it maintained another type of tax-favored employer-sponsored plan during the previous three years, such as a SIMPLE IRA plan.

Regulatory authority

The proposal authorizes DOL to issue guidance to implement the ERISA amendments under the proposal (including requirements for plan providers as described above). Guidance may permit simplified annual reporting to DOL and, if appropriate, may establish procedures to assist in locating missing participants. The proposal confirms DOL's investigative authority and grants DOL summary seizure and cease and desist authority similar to existing DOL authority with respect to MEWAs.

The proposal also provides for the development of guidance by DOL, in consultation with Treasury, identifying circumstances in which a plan provider would be permitted, or required, to spin off the portion of a plan (assets and participant accounts) attributable to the employees of a particular employer to address violations by that employer. The assets generally would be spun off to a separate plan, under which the accounts for those employees would be maintained. In appropriate circumstances, assets could be distributed to IRAs for the employees, or another appropriate arrangement, or would be distributed in accordance with existing DOL rules for abandoned plans. The guidance is to provide that the spun-off plan (or persons responsible for that plan) is liable for any ERISA violations by the employer before the spin-off, not the multiple-employer plan or any other participating employer. Alternatively, the guidance may provide for the portion of the plan attributable to the employees of the employer to be retained in the multiple-employer plan under such arrangements as DOL and Treasury determine appropriate. Guidance is also to address disclosure failures or other failures by a plan provider or participating employer that demonstrate a lack of commitment to compliance.

The proposal also provides for the development of guidance by Treasury to clarify how the qualified retirement plan rules apply to a multiple-employer plan that is exempt from ERISA because it covers only business owners (and their spouses), including those associated with unaffiliated business entities. The proposal requires coordination and consistency with respect to Treasury guidance relating to Code amendments under the proposal and DOL guidance relating to ERISA amendments.

Effective date.−The proposal is effective for years beginning after December 31, 2016.

Analysis

Adequacy of retirement savings

Lawmakers and other policymakers often raise concerns about the adequacy of individual retirement saving to supplement Social Security benefits.[66] While some concerns focus on low

[66] In connection with the work last year of the bipartisan Finance Committee Tax Working Groups, the report issued by the Savings & Investment Working Group focuses on the area of private retirement savings and identifies three key goals for policy makers: (1) increasing access to tax-deferred retirement savings; (2) increasing participation and levels of savings; and (3) discouraging leakage while promoting lifetime income. The report discusses legislative proposals aimed at furthering those goals, including proposals relating to multiple employer plans. The report is available at http://www.finance.senate.gov/imo/media/doc/The%20Savings%20&%20Investment%20Bipartisan%20Tax%20Working%20Group%20Report.pdf. The proposals are described also in Part IV of JCX-3-16, *supra* note 5.

contribution rates among employees with access to a workplace retirement plan (that is, an employer-sponsored retirement plan), for many employees, lack of access to a workplace plan is a threshold impediment to retirement saving.[67] Employees without access to a workplace plan may open and make deductible contributions to a traditional IRA or, depending on income, open and contribute to a Roth IRA. However, for many employees, access to a workplace plan generally makes retirement savings easier from a practical perspective. Uncertainty about eligibility to contribute to an IRA and the process for opening an IRA may be impediments, especially for lower income employees. In some cases, overcoming human "inertia" may also be a factor. Thus, increasing access to workplace plans is likely to increase retirement saving.

In general, an employer's decision whether to establish or continue a retirement plan for employees is voluntary.[68] Economic theory generally assumes that an employer provides the compensation package needed to recruit and retain the workforce needed for the success of the employer's enterprise, whether for-profit, nonprofit, or governmental. Arguably, therefore, an employer chooses not to offer a retirement plan because it can obtain the employees it needs without offering a plan. That is, the needed employees are willing to work for the employer without the inclusion of a workplace plan in their compensation package; some may be indifferent to its inclusion and some may even prefer other forms of compensation.

Favorable tax treatment attempts to further retirement income policy by encouraging the establishment and continuance of employment-based plans. That is, favorable tax treatment may change the analysis of a retirement plan's value to an employer and its employees. For example, although IRAs are also eligible for favorable tax treatment, the rules for tax-favored employer-sponsored retirement plans permit higher contributions than are permitted to individually-established IRAs.

One concern with tax-favored retirement savings is whether tax-favored arrangements result in increased savings for retirement rather than simply shifting savings that would otherwise occur into tax-favored arrangements, particularly for higher-income taxpayers. Generally, the individuals otherwise not likely to save for retirement tend to be middle-income and lower-income taxpayers. However, for these taxpayers, the tax subsidy for retirement savings arrangements may provide less of an incentive than for higher-income individuals. The rules for tax-favored employer-sponsored retirement plans include requirements to address this concern. For example, nondiscrimination requirements are intended to ensure that an employer-sponsored plan provides coverage and benefits not just for highly paid employees, but also for rank-and-file employees who may be less likely to save for retirement on their own.

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[67] For data on access to and participation in workplace retirement plans, see Table 1 and Figures 3, 4 and 5 in Part III of JCX-3-16, *supra* note 5. For data on plan sponsorship by employer size, see Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States*, March 2015, Table 2, "Establishment characteristics," available at http://www.bls.gov/ncs/ebs/benefits/2015/ebbl0057.pdf.

[68] In some cases, a retirement plan may be maintained as a result of collective bargaining.

Proposal

Reducing plan costs

Favorable tax treatment has resulted in significant tax subsidies for employer-sponsored retirement plans.[69] Nonetheless, many employers do not offer a retirement plan to employees.

Among the various factors that may discourage an employer, particularly a small employer, from offering a retirement plan are the related administrative costs, both in connection with the initial adoption and establishment of the plan (such as obtaining a plan document that satisfies Code and ERISA requirements, creation of a trust to hold plan assets, setting up systems for contributions and record-keeping, and employee communications regarding the plan) and with the ongoing maintenance of the plan (such as monitoring of plan operation and compliance with legal requirements, accuracy of contributions and records, and Form 5500 filings). For the employer, plan-related expenses are compensation costs. However, employees may not view these expenses as compensation from which they benefit, particularly as they might not even be aware of the expenses.

Various existing options, such as preapproved plans and group trusts, as well as the small employer credit for start-up costs, are designed to lower administrative expenses and make plans more affordable for employers. Safe harbor plan designs, including SIMPLE IRAs, are also intended to make plans more affordable and thus encourage employers to adopt retirement plans. Nonetheless, further measures may encourage additional employers to adopt plans.

Advocates of the proposal believe that the economies of scale possible with multiple-employer plans result in lower costs than if each participating employer maintained its own single-employer plan. However, ERISA limits the ability of unrelated employers to participate in a multiple-employer plan. Advocates argue that expanding access to multiple-employer plans by unrelated employers will lower plan costs, particularly for small employers, and thereby encourage some employers that do not currently maintain a plan to adopt a plan.

Responsibility for Code and ERISA compliance

Existing multiple-employer plans have an identified party with responsibility for Code and ERISA compliance with respect to the plan, such as a board of trustees chosen by participating employers or a trade association of which participating employers are members, or, in the case of a plan offered by a PEO, the PEO. Some have raised the concern that, in the case of a plan covering employees of unaffiliated employers, no one person is responsible for compliance with respect to the plan as a whole, which could lead to violations of requirements

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[69] In Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2015-2019* (JCX-141R-15), December 7, 2015, p. 39, the total tax expenditure for fiscal years 2015-2019 is estimated to be almost $505 billion for defined contributions plans, about $315 billion for defined benefit plans, and over $61 billion for plans covering partners and sole proprietors. In addition, the total tax expenditure for fiscal years 2015-2019 is estimated to be almost $117 billion for traditional and Roth IRAs combined.

designed to protect employees' benefits, thus harming employees. The proposal attempts to address these concerns by requiring the plan provider to be a regulated financial institution that is both a named fiduciary of the plan and the plan administrator, while also retaining each employer's responsibility with respect to the participation of its employees in the plan. The proposal also authorizes DOL to set standards for plan providers and requires plan providers to register with DOL before offering the plan to employers, measures that may help to ensure proper operation of the plan.

Concern about the negative consequences of a Code or ERISA violation may also discourage some employers from establishing a retirement plan. The retirement plan rules are commonly viewed as quite complex, and even inadvertent violations may result in legal and financial liability for the employer, as well as potential dissatisfaction among employees. This concern may be greater with respect to a multiple-employer plan in that a violation with respect to employees of only one employer may have negative consequences for the plan as a whole, thus affecting the other participating employers and their employees. The requirements under the proposal for plan providers, as described above, are designed to reduce the likelihood of a violation and thus may alleviate these concerns. The proposal also provides for each employer to be responsible for compliance with respect to the participation of its employees in the plan. However, the proposal contemplates that, in the case of a violation with respect to the employees of a particular employer, remedial measures will address that violation without liability of the multiple-employer plan as a whole or other participating employers.[70]

Limits on eligibility of unaffiliated employers and type of plan

Under the proposal, unaffiliated employers may participate in a multiple-employer plan only if they have not maintained a qualified retirement plan in the three preceding years. That limitation may reflect a preference for unaffiliated employers to maintain their own single-employer plans and a belief that access to a multiple-employer plan is unnecessary for an employer already maintaining its own single-employer qualified retirement plan. However, in some cases, an employer currently maintaining its own single-employer plan may decide to terminate the plan because of complexity and cost. If the employer were permitted to participate in a multiple-employer plan, rather than being barred under the proposal, access to a multiple-employer plan could provide an alternative to plan termination.

Under present law, the design of SIMPLE IRA plans makes them subject to fewer requirements than qualified retirement plans, generally resulting in lower costs. For example, the SIMPLE IRA rules require specified contribution amounts for all employees and involve lower contribution limits than qualified retirement plans, removing the need for nondiscrimination requirements. Some view a SIMPLE IRA plan as a "starter" plan to give an employer experience with maintaining a plan, which, over time, may lead the employer to move to a qualified retirement plan. Access to a multiple-employer plan may facilitate that move, and the

[70] The proposal focuses on remedial measures to address ERISA violations. As evidenced by the existing EPCRS program, under present law, Treasury has the authority to provide correction measures for a Code violation involving only the portion of a multiple-employer plan covering the employees of a particular employer, without affecting the status of the plan as a whole or other employees and participating employers.

proposal does not bar an employer that currently maintains a SIMPLE IRA plan from participation in a multiple-employer plan.

The proposal applies only with respect to defined contribution plans. This is consistent with growth in the availability of defined contribution plans and a decline in defined benefit plan coverage of active employees.[71] Some may argue that the proposal should apply to defined benefit plans as well as defined contribution plans in order to encourage defined benefit plan coverage. However, defined benefit plans are more complex than defined contribution plans, generally resulting in greater administrative costs and possibly creating a greater potential for errors in operation or other noncompliance. In particular, issues relating to the funding of defined benefit plans (both compliance with the minimum funding requirements and underfunding of benefits, even if the minimum funding requirements are met) may create additional risk for employees and participating employers. Moreover, because a multiple-employer plan is a single plan, all of the plan assets have to be available to provide benefits to all plan participants, rather than assets being allocated to provide benefits of particular employees based on the contributions made by their employer. That structure may be unattractive to employers whose only relationship to one other is participation in the multiple-employer plan. Thus, including defined benefit plans in the proposal may not result in increased adoption of defined benefit plans.

<u>Plans covering only owners</u>

The proposal suggests that, because a retirement plan covering only business owners and spouses is exempt from ERISA, separate multiple-employer plans could be offered to businesses with employees, which would be subject to ERISA, and to businesses with no employees other than owners (and spouses), which would not be subject to ERISA. The proposal thus provides for Treasury guidance for a multiple-employer plan subject only to Code requirements.

[71] For data on these trends, see Figures 1 and 2 in Part III of JCX-3-16, *supra* note 5.

B. Improve the Excise Tax on High Cost Employer-Sponsored Health Coverage

Present Law

Exclusion for employer provided health coverage

In general

Present law provides a broad exclusion from gross income for employer-provided health benefits, including insurance premiums and other employer contributions to provide coverage, as well as the payment or reimbursement of medical expenses not covered by insurance and contributions to certain health-related accounts.[72] The exclusion applies with respect to health benefits provided to a current or former employee, including a retiree, and an employee's family members.[73] Health benefits provided by an employer to the surviving family members of a deceased employee are also eligible for the exclusion.

Employer-provided health benefits are also excluded from wages for purposes of taxes under the Federal Insurance Contributions Act ("FICA"), the Railroad Retirement Tax Act ("RRTA"), and the Federal Unemployment Tax Act ("FUTA").[74] To the extent that employer-provided health benefits are excluded from income, they are not subject to income tax withholding.[75]

Generally, no limit applies to the amount of employer-provided health benefits that may be excluded from gross income and wages.

Health FSAs and HRAs

A health flexible spending arrangement ("health FSA") is an arrangement under which medical care expenses of an employee (and family members, if applicable) that are not covered by insurance may be paid or reimbursed through a cafeteria plan.[76] A cafeteria plan is a plan under which employees may choose among cash (or certain other taxable benefits) and at least

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[72] Secs. 105(b) and 106.

[73] Family members include the employee's spouse, dependents and children up to age 26. Employers generally are not required to cover an employee's family members under a health plan, but commonly do.

[74] These taxes are governed by sections 3101-3128 (FICA), 3201-3241 (RRTA), and 3301-3311 (FUTA). Sections 3501-3510 provide additional rules. Exclusions for employer-provided health benefits are provided at sections 3121(a)(2), 3231(e)(1) and 3306(a)(2).

[75] The rules for income tax withholding are provided in sections 3401-3404 and 3501-3510. Under Rev. Rul. 56-632, 1956-2 C.B. 101, employer-provided health benefits that are excluded from gross income are not subject to income tax withholding.

[76] Although health insurance premiums may be paid on a pretax basis through a cafeteria plan, a health FSA may not be used to pay health insurance premiums.

one qualified benefit, such as employer-provided health benefits.[77] If an employee elects a qualified benefit that is otherwise excludible from income, it is excludible under the cafeteria plan rules, even though the employee had the option to receive cash or another taxable benefit. The amount of cash that an employee does not receive as a result of the election is referred to as a salary reduction contribution. The funds available to an employee through a health FSA generally consist of the employee's salary reduction contributions under a cafeteria plan and may also include funds provided by the employer (often called "flex credits").[78] Salary reduction contributions elected under a health FSA for a plan year are subject to an annual limit of $2,550 (for 2016).[79]

Health FSAs are subject to the general requirements for cafeteria plans, including a requirement that amounts remaining under a health FSA at the end of a plan year generally must be forfeited by the employee (referred to as the "use-it-or-lose-it rule").[80] A health FSA is permitted to allow a grace period not to exceed two and one-half months immediately following the end of the plan year during which unused amounts may be used.[81] Instead of allowing a grace period, a health FSA may allow a carryover of unused salary reduction amounts into the next plan year of up to $500.

Rather than offering a health FSA through a cafeteria plan, an employer may specify a dollar amount that is available for medical expense reimbursement. These arrangements are commonly called health reimbursement arrangements ("HRAs"). Some of the rules applicable to HRAs and health FSAs are similar (*e.g.*, the amounts in the arrangements can only be used to reimburse medical expenses and not for other purposes), but the rules are not identical. In particular, HRAs cannot include salary reduction contributions and the use-it-or-lose-it rule does not apply. Thus, an HRA may permit amounts remaining at the end of the year to be carried forward to be used to reimburse medical expenses in following years.[82]

<u>Health Savings Account ("HSA")</u>

An individual with a high deductible health plan generally may make tax-deductible contributions (subject to limits) to a health savings account ("HSA"), which is a tax-exempt trust or custodial account.[83] In addition, employer contributions to HSAs on behalf of employees are

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[77] Sec. 125. Amounts paid by an employee for health benefits, such as an employee's share of premiums for health insurance, are not considered employer-provided benefits eligible for the exclusion unless such amounts are paid pursuant to an election under a cafeteria plan.

[78] Prop. Treas. Reg. sec. 1-125-5(b).

[79] Sec. 125(i); Rev. Proc. 2015-53, 2015-44 I.R.B. 615.

[80] Sec. 125(d)(2) and Prop. Treas. Reg. sec. 1.125-5(c).

[81] Notice 2005-42, 2005-1 C.B. 1204, and Prop. Treas. Reg. sec. 1.125-1(e).

[82] Guidance with respect to HRAs, including the interaction of health FSAs and HRAs in the case of an individual covered under both, is provided in Notice 2002-45, 2002-2 C.B. 93.

[83] Sec. 223.

excluded from income and wages, including HSA contributions made with salary reduction contributions through a cafeteria plan. For 2016, the maximum aggregate annual contribution that can be made to an HSA is $3,350 in the case of self-only coverage and $6,750 in the case of family coverage. The annual contribution limits are increased by $1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as "catch-up contributions"). Similar rules apply to Archer MSAs.[84]

Exchange plans

The Affordable Care Act ("ACA")[85] provides for the establishment of Exchanges (also commonly called "Marketplaces"), through which individuals can purchase health insurance coverage. A health insurance plan offered through an Exchange established under the ACA (a "qualified health plan") must meet certain requirements, including offering certain specified benefits ("essential health benefits").[86] Health insurance plans are categorized as "bronze," "silver," "gold," or "platinum" level based on the percentage of the full actuarial value of the health benefits that the plan is designed to cover. For a silver level plan, the percentage is 70. For a gold level plan the percentage is 80. Actuarial value is based on essential health benefits provided to a standard population.

The ACA includes insurance market reforms for individual and group health plans that include setting of premiums without regard to health status (commonly referred to as "community rating" in the individual and small group insurance markets), guaranteed issue and renewability, and no preexisting condition exclusions.[87] For the individual and small group health insurance markets, under the community rating requirement, each State must establish one or more rating areas and then the premiums for any health plan (including any qualified health plan) offered in a rating area can only vary between individuals based on specified criteria that include individual or family coverage, age except that such rate cannot vary by more than three to one for adults, and tobacco use (but not by more than 1.5 to one).

High cost health coverage excise tax

In general

Effective for years beginning after December 31, 2019, an excise tax is imposed on the provider of applicable employer-sponsored health coverage (the "coverage provider") if the

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[84] Sec. 220.

[85] The Affordable Care Act, or the ACA, refers to the combination of the Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 111-148, and the Healthcare and Education Reconciliation Act of 2010 ("HCERA"), Pub. L. No. 111-152.

[86] Secs. 1301 and 1302 of PPACA.

[87] Section 1201 of PPACA added provisions relating to these requirements to the Public Health Service Act (42 U.S.C. 300gg and 300gg-1 to -4). Under Code section 9815, some of the PHSA requirements are also Code requirements for group health plans.

aggregate cost of the coverage for an employee (including a former employee, surviving spouse, or any other primary insured individual) exceeds a threshold amount (referred to as "high cost health coverage").[88] The tax is 40 percent of the amount by which aggregate cost exceeds the threshold amount (the "excess benefit"). The excise tax is determined on a monthly basis, by reference to the aggregate cost of applicable employer-sponsored coverage for the month and 1/12 of the annual threshold amount.

Threshold amounts

Although the excise tax is not effective until 2020, the annual threshold amount is initially provided for 2018 and is $10,200 for self-only coverage or $27,500 for other coverage (such as family coverage), multiplied by a one-time health cost adjustment percentage. The health cost adjustment percentage is 100 percent plus the excess, if any, of (1) the percentage by which the cost of "standard FEHBP coverage" (described below) for 2018 (determined according to specified criteria) exceeds the cost of standard FEHBP coverage for 2010, over (2) 55 percent. This threshold is then adjusted annually by an age and gender adjusted excess premium amount. The age and gender adjusted excess premium amount is the excess, if any, of (1) the premium cost of standard FEHBP coverage for the type of coverage provided to an individual if priced for the age and gender characteristics of all employees of the employer, over (2) the premium cost of standard FEHBP coverage if priced for the age and gender characteristics of the national workforce. The threshold amounts are increased by an additional threshold amount in the case of certain retirees and participants in a plan covering employees who engage in a high-risk profession or who repair or install electrical or telecommunications lines. The additional threshold amount for 2018 is $1,650 for self-only coverage or $3,450 for other coverage.

For years after 2018, the threshold amounts (after application of the health cost adjustment percentage) and the additional threshold amounts are indexed to the Consumer Price Index for Urban Consumers ("CPI-U") (CPI-U increased by one percentage point for 2019 only), rounded to the nearest $50. For these threshold calculations, standard FEHBP coverage means the per employee cost of Blue Cross/Blue Shield standard benefit coverage under the Federal Employees Health Benefit Program.

Applicable employer-sponsored coverage and determination of cost

Subject to certain exceptions, applicable employer-sponsored coverage is coverage under any group health plan offered to an employee by an employer that is excludible from the employee's gross income, or that would be excludible if it were employer-sponsored coverage.[89] Applicable employer-sponsored coverage includes both insured and self-insured health coverage,

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[88] Sec. 4980I. The effective date for section 4980I was changed from years after 2017 to years after 2019 by section 101 of Division P of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, enacted December 18, 2015, but the amount of the threshold amounts for 2020 and later years continue to be calculated using the 2018 threshold amounts, as adjusted, under section 4980I.

[89] Thus, applicable employer-sponsored coverage includes coverage for which an employee pays on an after-tax basis.

including coverage in the form of reimbursements under a health FSA and an HRA and employer contributions to an HSA or Archer MSA.[90] (As described above, salary reduction contributions under a cafeteria plan, including salary reduction contributions under a health FSA or to an HSA or Archer MSA, are treated as amounts provided by the employer for purposes of the exclusion for employer-provided health benefits.) Applicable employer-sponsored coverage includes coverage under any group health plan established and maintained primarily for its civilian employees by the Federal government or any Federal agency or instrumentality, or the government of any State or political subdivision thereof or any agency or instrumentality of a State or political subdivision. In the case of a self-employed individual, coverage is treated as applicable employer-sponsored coverage if the self-employed individual is allowed a deduction for all or any portion of the cost of coverage.[91]

For purposes of the excise tax, the cost of applicable employer-sponsored coverage is generally determined under rules similar to the rules for determining the applicable premium for purposes of COBRA continuation coverage,[92] except that any portion of the cost of coverage attributable to the excise tax is not taken into account. Cost is determined separately for self-only coverage and other coverage. Special valuation rules apply to certain retiree coverage, health FSAs, and contributions to HSAs and Archer MSAs. In the case of a health FSA, the cost of the coverage for an employee is the sum of (1) the employee's salary reduction contributions, plus (2) an amount attributable to expense reimbursements in excess of the employee's salary reduction contributions.

Calculation of excess benefit and imposition of excise tax

In determining the excess benefit with respect to an employee (*i.e.*, the amount by which the cost of applicable employer-sponsored coverage for the employee exceeds the threshold amount), the aggregate cost of all applicable employer-sponsored coverage of the employee is taken into account. The threshold amount for self-only coverage generally applies to an employee. The threshold amount for other coverage applies to an employee only if the coverage provides minimum essential coverage to the employee and at least one other beneficiary and the benefits provided do not vary based on whether the covered individual is the employee or other beneficiary. For purposes of the threshold amount, any coverage provided under a multiemployer plan is treated as coverage other than self-only coverage.

The excise tax is imposed on the coverage provider.[93] In the case of insured coverage (*i.e.*, coverage under a policy, certificate, or contract issued by an insurance company), the health

[90] Some types of coverage are not included in applicable employer-sponsored coverage, such as long-term care coverage, separate insurance coverage substantially all the benefits of which are for treatment of the mouth (including any organ or structure within the mouth) or of the eye, and certain excepted benefits.

[91] Section 162(l) allows a deduction to a self-employed individual for the cost of health insurance.

[92] Sec. 4980B(f)(4).

[93] The excise tax is allocated pro rata among the coverage providers, with each responsible for the excise tax on an amount equal to the total excess benefit multiplied by a fraction, the numerator of which is the cost of the

insurance issuer is liable for the excise tax. In the case of self-insured coverage, the person that administers the plan benefits ("plan administrator") is generally liable for the excise tax. The person that administers the plan benefits includes the plan sponsor if the plan sponsor administers benefits under the plan. In the case of employer contributions to an HSA or an Archer MSA, the employer is liable for the excise tax.

The employer is generally responsible for calculating the amount of excess benefit allocable to each coverage provider and notifying each coverage provider (and the IRS) of the coverage provider's allocable share. In the case of applicable employer-sponsored coverage under a multiemployer plan, the plan sponsor is responsible for the calculation and notification.[94]

Description of Proposal

The proposal increases the initial threshold for the high cost health coverage excise tax to the greater of the current law threshold or an alternative threshold for each State. The alternative threshold is the amount that is a weighted average of the premiums for the lowest cost silver self-only plans offered in the Exchange for each age and county in the State, multiplied by 8/7 to simulate the cost of an actuarially equivalent gold plan (called the "State gold plan average premium"). This amount is to be calculated and published for each State. The threshold for family coverage (that is, "other" coverage for purposes of the excise tax) is calculated by multiplying the single plan threshold by a ratio reflecting the current average relationship between single and family plan premiums. The threshold applicable to coverage provided by an employer is based on the State of residency of its employees enrolled in coverage as of the beginning of the prior plan year (or a weighted average, for employers with employees in multiple States). The age and gender, and occupation and retiree adjustments, provided under present law are added to the State gold plan threshold, in the same way that they are added to the present law threshold.

The proposal also provides that the cost of coverage under a health FSA for similarly situated participating employees is equal to the sum of (1) the average salary reduction amount elected by such employees for the year, and (2) the average employer contribution for such employees for the year. The employer contribution for an employee for a year is defined as the amount properly reimbursed under the FSA for the employee for the year in excess of the sum of (1) the employee's actual salary reduction for the year and (2) any amounts attributable to the employee's salary reductions for previous years that are carried over to the current year. The proposal authorizes the Secretary of the Treasury to issue guidance identifying similarly situated employees.

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applicable employer-sponsored coverage of that coverage provider and the denominator of which is the aggregate cost of all applicable employer-sponsored coverage of the employee.

[94] The employer or multiemployer plan sponsor may be liable for a penalty if the total excise tax due exceeds the tax on the excess benefit calculated and allocated among coverage providers by the employer or plan sponsor.

Finally, the proposal requires a study of the potential effects of the excise tax on firms with unusually sick employees. The study is to be conducted by the Government Accountability Office, in consultation with the Department of the Treasury and other experts.

Effective date.−The proposal is effective for tax years beginning after December 31, 2016. However, as under current law, no plans are subject to tax until 2020.

Analysis

State average gold plan premium as alternative threshold

Commentators point out that one of the anticipated results of the high cost health coverage excise tax is that it creates a tax incentive for employers to curb health care costs, or at least future increases in health care costs, that counterbalances the tax incentive that is created by the unlimited exclusion from income and payroll taxes for compensation in the form of generous health care benefits. This exclusion has been characterized as "skew[ing] compensation packages away from wages and toward excessively costly…health benefits."[95] They argue in support of retaining the excise tax on high cost health coverage that, as a result of the excise tax, employers are expected to be motivated to reduce their group health plan costs through a variety of measures that reduce the generosity of their plans, including increasing deductibles and copays and narrowing provider networks.

The alternative threshold under the proposal only applies to plans with a higher cost of coverage (which may reflect more generous benefits[96]) than the lower cost versions of qualified health plans meeting the requirements for gold plans offered in Exchanges. Certain adjustments to the present law threshold use the annual premium cost for Blue Cross/Blue Shield standard benefit coverage under the Federal Employees Health Benefit Program (referred to above as the standard FEHBP coverage) as a basis for fixing a standard level of benefits. They allow higher thresholds for employer plans that cover higher percentages of older employees or female employees but only to the extent that premium cost of standard FEHBP coverage priced for the age and gender characteristics of the employer's work force exceeds the premium cost of standard FEHBP coverage priced for the age and gender characteristics of the national workforce, thus allowing some threshold adjustment for an assumed higher cost covered group. This adjustment does not vary geographically, and thus it fails to allow for higher thresholds in higher cost regions of the country. The proposal is meant to provide both for a geographic cost adjustment, and for a more precise standard against which to measure the combination of benefit generosity under the plan and demographic composition of the plan population, as reflected in the plan's premium cost.

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[95] Jason Furman and Matthew Fielder, "The Cadillac Tax --A Crucial Tool for Delivery-System Reform," *New England Journal of Medicine,* February 3, 2016. See also N. Gregory Mankiw and Lawrence H. Summers, "Uniting Behind a Divisive Health Tax," *The New York Times*, October 25, 2015, available at http://scholar.harvard.edu/files/mankiw/files/uniting_behind.pdf?m=1445870177.

[96] For example, the higher cost gold plan coverage may provide a wider provider network.

Some argue that the high cost health coverage excise tax should be limited to group health plans with an actuarial value above a certain level rather than a dollar cost above a certain level. They argue that setting the threshold based on a specified actuarial value would limit the excise tax to plans with the most generous benefits. However, actuarial value is only one dimension of plan generosity. For example, actuarial value does not take into account the provider network available under the plan. In addition, a threshold based on actuarial value is very difficult for the IRS to administer. It may be possible to determine if a plan is at least a certain actuarial value but the valuation is not so precise that it is possible to determine the exact point at which the plan exceeds a particular actuarial value. Further, if the amount of the tax is determined based on the amount by which the actuarial value of the plan exceeds that threshold actuarial value, rather than by reference to a dollar threshold (such as the present law threshold), there would need to be a formula for the calculation of the excise tax but that calculation would be subject to the same tax administration issues.

Proponents of present law argue that the alternative threshold undermines the effect of using CPI-U to adjust the threshold for increases in cost of living rather than a methodology based on increases in the cost of medical care, which generally have exceeded CPI-U for more than 30 years. One of the reasons for using CPI-U is to provide an incentive for employers and insurers to curb the extent to which the cost of medical care increases faster than the cost of goods and services generally. They argue that, to the extent medical costs increase faster than goods and services generally, over time the State average gold plan premium will exceed the present law threshold (as adjusted for CPI-U) in more and more States.

Calculation of cost of health FSA coverage

As described above, the proposal also changes the calculation of the cost of coverage attributable to salary reductions contributions under a health FSA for purposes of the excise tax from the actual amount of salary reduction contributions elected by the individual for the year to the average salary reduction amount elected by similarly situated employees for the year. The proposal is intended to make the calculation more workable. It responds to comments from employers that using individual amounts for each employee makes the calculation highly variable, making it hard for employers to accurately predict and control their exposure to the tax. Some may respond that a similar rule should apply for salary reduction contributions to HSAs as well. Arguably this raises similar administration issues for employers. Others argue that an employer knows the amount of each employee's salary reduction election, and that amount can be easily added to the other relevant employer sponsored health coverage costs for purposes of the excise tax. In addition, the employer can limit potential for an employee's health coverage costs exceeding the threshold for the excise tax by limiting the amount of salary reduction permitted for each employee under the cafeteria plan.

The proposal also includes a rule for employer contributions in addition to salary reduction amounts under a health FSA. Under the proposal, the cost of additional employer contributions is the average contribution for similarly situated employees. The employer contribution for an employee for a year is defined as the amount properly reimbursed under the FSA for the employee for the year in the excess of the employee's salary reduction contributions (including any amounts attributable to salary reduction contributions carried forward from a prior year).

The present law statutory structure specifies that the premium cost attributable to these additional contributions is calculated using the same methodology as applies for calculating the cost of any other applicable employer sponsored coverage. This is the premium cost calculated under rules similar to the rules for determining the applicable premium for purposes of COBRA continuation coverage.[97] The approach described in the proposal is similar to an averaging approach for calculating the per-employee cost for HRA coverage that has been suggested by Treasury for use under present law.[98] For this purpose, coverage in the form of reimbursement for medical expenses in excess of the salary reduction contributions under a health FSA is not substantially different from coverage under an HRA. Thus using a similar rule for HRAs and health FSAs appears to be permitted under present law. Perhaps this proposal is intended to clarify the options available present law with respect to these additional amounts.[99]

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[97] Section 4980I(d)(2)(A) provides that the cost of applicable employer-sponsored coverage is determined under rules similar to the rules of section 4980B(f)(4), which provides special rules for self-insured plans but does not provide any special rules for health FSAs. Section 4980I(d)(2)(B) provides that the cost of coverage for health FSAs is the sum of the amount of an employee's salary reduction contributions and the cost of coverage determined under section 4980I(d)(2)(A) with respect to any reimbursement under the arrangement in excess of the employee's salary reduction contributions.

[98] Sec. IV.C.3. of Notice 2015-16, 2015-10 I.R.B. 732.

[99] Answer 22 in V. of Notice 2015-87, 2008-2 C.B. 930, provides an example which describes the maximum premium for COBRA continuation coverage for an employee with respect to a health FSA that includes additional employer contributions. Under the example, the maximum monthly premium equals 1/12 of the sum of employee's salary reduction contributions for the year and the maximum amount of additional employer contribution for the year. Treasury may be concerned that this example in Notice 2015-87 raises a question whether the averaging approach suggested in this proposal is allowed under present law for purposes of the high cost health coverage excise tax.

C. Provide Community College Partnership Tax Credit

Present Law

In general

A number of tax benefits may encourage employees to attain associates degrees, certificates, and other training at community and technical colleges. Among these are the business deduction for work-related education and the exclusion of employer-provided educational assistance.[100]

Other benefits may offer employers incentives to hire certain types of employees. For example, employers may be allowed a credit for hiring a new employee, if the new employee qualifies for the Work Opportunity Tax Credit ("WOTC"), is a resident of an empowerment zone, or is a member of an enrolled Indian tribe.

Business deduction for work-related education

The Code allows as a deduction ordinary and necessary expenses paid or incurred in carrying on a trade or business, including employee compensation and training costs.[101] A deduction for education expenses generally is allowed to an employee if the education or training (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, such as refresher courses, courses on current developments, and academic or vocational courses, or (2) meets the express requirements of the taxpayer's employer, or requirements of applicable law or regulations, imposed as a condition of continued employment, but that is not part of a program that will qualify an employee for a new trade or business.

Exclusion of employer-provided educational assistance

Employees who receive educational assistance benefits from their employers under a qualified educational assistance program may exclude up to $5,250 of those benefits from income each year.[102] Qualified educational assistance benefits include payments for tuition, fees, and similar expenses, books, supplies, and equipment, but do not include meals, lodging or transportation. These benefits generally apply to any form of instruction or training that improves or develops an employee's capabilities. However, they do not apply to courses involving sports, games or hobbies unless there is a reasonable relationship to the business of the employer, or the courses are a required component of a degree program.

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[100] Employees may also be eligible for the American Opportunity Tax Credit.

[101] Sec. 162.

[102] Sec. 127.

Work Opportunity Tax Credit

The Work Opportunity Tax Credit ("WOTC")[103] is available on an elective basis for employers hiring individuals from one or more of ten targeted groups.[104] The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages, subject to a cap, attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

Empowerment Zone credit

A 20-percent wage credit is available to employers for the first $15,000 of qualified wages paid to each employee who 1) is a resident of a designated empowerment zone, and 2) performs substantially all employment services within the empowerment zone in a trade or business of the employer.[105] In general, any taxable business carrying out activities in the empowerment zone may claim the wage credit.

Indian employment tax credit

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

Description of Proposal

This proposal provides eligible employers with a new business tax credit for hiring graduates from community and technical colleges. The proposal provides $500 million in tax credit authority for each of five years, 2017 to 2021, to be allocated annually to States on a per capita basis. Unused credits would be assigned to the national pool and re-allocated to States on a per capita basis the following year.

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[103] Sec. 51.

[104] The nine targeted groups are: families receiving benefits under the Temporary Assistance for Needy Families program; qualified veterans; qualified ex-felons; residents of a designated empowerment zone or enterprise community; vocational rehabilitation referrals; qualified summer youth employees; qualified Supplemental Nutrition Assistance Program benefits recipients; qualified supplemental security income recipients; long-term family assistance recipients; and qualified long-term unemployment recipients.

[105] Sec. 1396.

A designated State agency is charged with awarding credit authority to qualifying community and technical college consortia, and also with certifying employer participation and eligibility to claim the credit. The award criteria will be designed to encourage partnerships focused on education and training programs that enable low-income and disadvantaged students to acquire and retain better paying jobs.

State agencies are charged with requiring participating employers to make contributions to strengthen community college programs in the following areas: curricula development; skills assessment development; internships and applied learning opportunities; registered apprenticeship programs; provision of labs; donations of cash; equipment and personal services. Qualifying employers will receive a one-time $5,000 tax credit for each qualifying employee hired on a full-time, permanent basis. Each employee must be certified by the designated State agency to have earned a degree from a participating college program. The credit will be partially recaptured if the employee works for the employer for less than one year.

<u>Effective date</u>.−The proposal is effective for taxable years 2017 through 2021.

Analysis

By providing a financial incentive for employers to forge partnerships with qualifying community and technical colleges, to play a more active role in funding and directing educational options at community and technical colleges, and to hire graduates from these community and technical colleges, this proposal encourages employers to play a more active role in funding and directing educational options for students at these colleges. Employers may partner with community and technical colleges by defining in-demand skills, helping to develop curricula, providing equipment and instructors with expertise, and offering apprenticeships and other work-based learning opportunities.

Research shows that increased educational attainment and training, whether at a two-year institution or a four-year institution, through a vocational or academic program, or leading to a diploma or a certificate, result in improved labor market outcomes for the individual[106] and a host of benefits for the larger community, including lower crime, better community health, and more economic growth through increased labor productivity.[107] Programs that partner with employers may lead to even better results for the students.

However, in settings where the Federal government finances goods and services that are provided at the State and local levels, Federal funds may displace existing State and local spending rather than increasing total spending on these programs by the full amount of the

[106] Andrew M. Gill and Duane E. Leigh. "Do the Returns to Community College Differ between Academic and Vocational Programs?" *Journal of Human Resources*, vol. 38, no. 1, 2003, pp. 134-155.

Christopher Jepsen, Kenneth Troske, and Paul Coomes. "The Labor-Market Returns to Community College Degrees, Diplomas, and Certificates, *Journal of Labor Economics*, vol. 32, no. 1, 2014, pp. 95-121.

[107] Michael Grossman, "Education and Non-Market Outcomes," in Eric A. Hanushek and Finis Welch (eds.), *Handbook of Health Economics*, vol. 1A, 2006, pp. 577-633.

Federal grant. For example, some evidence shows this type of displacement of Federal funds in State programs that finance grants for highway construction and maintenance,[108] and other evidence points to similar effects in Federal finance of State and local K-12 education programs.[109] Community colleges differ in the mix of Federal, State, and local funding they each receive, but all are eligible to apply for Federal grants to States designated for the development of career and technical education programs. When existing programs at community and technical colleges are partially financed by Federal grants, some of the tax credit authority may merely replace current sources of funding, potentially resulting in a smaller overall increase in resources for these programs.

Furthermore, there is some evidence that many students regard privately funded, for-profit colleges to be substitutes for publicly funded two-year community and technical colleges.[110] To the extent that for-profit colleges fund partnerships with employers to focus on education and training programs that enable low-income and disadvantaged students to acquire and retain better paying jobs, it may be that increases in community college enrollments that are attributable to the incentives created by the tax credit authority described in the proposal may partially or wholly represent a shift to public programs of students enrolled in similar, existing programs at private, for-profit colleges, rather than an overall increase in total enrollments across both private and public institutions.

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[108] Brian Knight, "Endogenous Federal Grants and Crowd-out of State Government Spending: Theory and Evidence from the Federal Highway Aid Program," *The American Economic Review*, Vol. 92, No. 1, 2002, pp. 71-92.

[109] Nora Gordon, "Do Federal Grants Boost School Spending? Evidence from Title I," *Journal of Public Finance*, Vol. 99, 2004, pp. 1771-1792.

[110] Stephanie Cellini, "Crowded Colleges and College Crowd-Out: The Impact of Public Subsidies on the Two-Year College Market," *American Economic Journal: Economic Policy*, Vol. 1, No. 2, 2009, pp. 1-30.

D. Impose an Oil Fee

Present Law

Oil Spill Liability Trust Fund tax

The Oil Spill Liability Trust Fund is financed with revenues from an eight-cents-per-barrel[111] excise tax on crude oil received at a United States refinery and on imported petroleum products.[112] The tax rate is scheduled to increase to nine cents per barrel in calendar year 2017, after which it currently is scheduled to expire.[113] A back-up "use tax" is imposed on crude oil that is used in the United States before being received at a refinery.[114] Crude oil is defined to include oil condensates and natural gasoline. Under a special rule, natural gasoline produced from natural gas at a refinery is treated as received at the refinery at the time of its production and is subject to tax at that time.

The oil spill liability excise tax applies in all U.S. possessions as well as in the 50 States and the District of Columbia.[115] The term "United States" is defined for purposes of this tax to include foreign trade zones and the U.S. continental shelf.

Highway Trust Fund

Federal spending on highways is financed primarily through the Highway Trust Fund. The Highway Trust Fund was established in 1956 to coordinate the Federal role in highway construction and maintenance activities. The Highway Trust Fund is divided into two accounts: a Highway Account and a Mass Transit Account, each of which is the funding source for specific programs.[116] Highway Trust Fund expenditure purposes have been revised with the passage of each authorization Act enacted since the establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are approved Highway Trust Fund expenditure purposes under the Code. Expenditures from the Highway Trust Fund are authorized through September 30, 2020.

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[111] A barrel equals 42 gallons.

[112] Sec. 4611(a). Petroleum products include crude oil (sec. 4612(a)(3)).

[113] For Federal budget scorekeeping purposes, the oil spill excise tax is assumed to be permanent.

[114] Statutorily, the tax also applies to crude oil that is exported from the United States before being received at a refinery. See, sec. 4611(b)(1).

[115] Revenues from the tax imposed in Puerto Rico and the U.S. Virgin Islands are retained in the Federal Treasury.

[116] Sec. 9503.

Most Federal surface transportation programs funded by the Highway Trust Fund span four major areas of investment: highway infrastructure, transit infrastructure and operations, highway safety, and motor carrier safety.[117] The funds are distributed either by formula or on a discretionary basis through several individual grant programs.[118]

The Highway Trust Fund is supported by a tax imposed on motor fuels (generally gasoline (18.3 cents per gallon) and diesel fuels (24.3 cents per gallon)).[119] In addition, it is supported by a retail sales tax on heavy highway vehicles (trucks, trailers, and certain tractors), a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. Diesel fuel destined for a non-taxable use, such as home heating oil, is typically dyed red at the current point of taxation, the terminal rack.

Other fuel taxes

The Airport and Airway Trust Fund is supported by a tax on aviation fuel—4.3 cents per gallon for commercial aviation and 21.8 cents per gallon for non-commercial aviation (19.3 cents per gallon in the case of aviation gasoline)—and a 14.1-cent-per-gallon additional fuel surcharge for fuel used in certain fractional ownership program aircraft. The Inland Waterways Trust Fund is supported by a 29-cents-per-gallon tax on any liquid used as a fuel in a vessel in commercial waterway transportation. The motor fuels, aviation fuels and inland waterway fuels generally are all also subject to an additional 0.1 cent tax to fund the Leaking Underground Storage Tank Trust Fund.

Description of Proposal

The proposal imposes a fee (tax) on a per barrel equivalent of crude oil. The tax equals $10.25 per barrel (adjusted for inflation from 2016) and is to be phased in evenly over a five-year period. The tax is to be collected on domestically produced as well as imported petroleum products. Exported petroleum products would not be subject to the tax and home heating oil would be temporarily exempted. Fifteen percent of the revenue from the tax would be dedicated for relief for households with particularly heavy energy costs. The remaining revenue would be dedicated to a new trust fund, the Transportation Trust Fund, which is a renamed version of the Highway Trust Fund.[120] Beyond funding investments that are approved Highway Trust Fund

[117] Government Accountability Office, *Surface Transportation: Restructuring Federal Approach Needed for More Focused, Performance-Based and Sustainable Programs* (GAO-08-400), March 2008, p. 6.

[118] *Ibid*., pp. 6-7.

[119] Some diesel fuel is exempt for tax. Examples of non-taxable uses of diesel fuel include home heating oil, fuel for certain farm equipment, and fuel for private intercity buses serving the general public along scheduled routes.

[120] Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2017, Analytical Perspectives*, p. 142. The description of the Transportation Trust Fund is not included in Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, February 2016, pp. 190-191.

expenditures under present law, the Transportation Trust Fund would support additional highway safety and transit programs, as well as passenger rail programs and multimodal programs administered by the Department of Transportation. These additional expenditures supported by the Transportation Trust Fund would be focused on surface transportation infrastructure and are intended to reduce emissions from the transportation sector.[121]

Other fuel-related trust funds would be held harmless.

Effective date.−The tax is phased in beginning October 1, 2016, and would be fully phased in beginning October 1, 2021.

Analysis

Introduction

The proposal consists of two main components: (1) the creation of a Transportation Trust Fund designed to finance upgrades to the U.S. transportation system and promote investment in cleaner transportation technologies, and (2) a tax on petroleum products that is intended to fund the Transportation Trust Fund and serve the separate purpose of reducing carbon emissions and shifting the market away from certain energy sources. The following analysis focuses on the tax on petroleum products—its economic rationale, its design, and its potential economic effects. It concludes with a brief discussion of the link between the tax on petroleum products and the Transportation Trust Fund.

Economic rationale for a tax on petroleum products

Economics of a pollution tax

Although taxes reduce economic efficiency to the extent that they distort the consumption and investment decisions of individuals and firms, economists have generally recognized that taxes may promote social welfare when they are used to correct for "market failures," which exist whenever market forces result in an inefficient allocation of resources.[122] Market failures can arise for a number of reasons, but, for energy markets, a primary source of market failure is the pollution generated when fossil fuels are burned to produce energy. The combustion emits pollutants that may damage the environment, harm human health, and lower worker productivity, imposing a cost on society that is not borne by the individuals or firms producing or consuming the energy.[123] Because consumers and producers of energy derived from fossil fuels do not take

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[121] *Ibid.*, p. 141.

[122] Taxes are not the only tool available to policymakers to address market failures. Policymakers may also correct for market failures through regulation and direct spending programs, among other policy instruments.

[123] The external costs are referred to as "negative externalities" in the economics literature. Economists have studied a number of mechanisms through which pollution can reduce economic activity. A discussion of the impact of ozone pollution (which the combustion of fossil fuels contributes to) on worker productivity can be found in Joshua Graff Zivin and Matthew Neidell, "The Impact of Pollution on Worker Productivity," *American Economic Review*, vol. 102, no. 7, December 2012, pp. 3652-3673. Some studies have found that early childhood exposure to

into account the social cost of the resulting pollution when making their economic decisions, the price of energy derived from fossil fuels, relative to the price of energy derived from cleaner sources, is inefficiently low and may distort the demand for, and supply of, energy. In particular, there may be (1) excess consumption of energy derived from fossil fuels[124] and (2) underinvestment in the production of energy from sources that generate little or no pollution, such as the wind or the sun.

Economists generally agree that the most efficient means of addressing these economic distortions is through a direct tax on pollution rather than the indirect approach of targeted tax credits for certain energy-related technologies.[125] The imposition of a direct tax on pollution leads indirectly to the adoption of some of the technologies favored in the tax code, but only if these technologies were in fact the most efficient technologies. The establishment of the economically efficient prices on pollutants, through taxes, results in the socially optimal level of pollution. To achieve this result, the tax should equal the cost to society of the incremental pollution. One method of implementing such a tax is to measure emissions released when fossil fuels are being burned (*e.g.*, in a motor engine to power a car or at a power plant to produce energy) and charge a price for it. Measuring emissions and administering an emissions tax may be impractical in a number of circumstances, so a more practical option may be to charge a price on the volume of fossil fuel used (*e.g.*, a tax on motor fuel or the fossil fuels that a power plant uses), since there are scientific formulas that relate emissions to the quantity and type of fossil fuel burned. Since the amount of pollution that results from the combustion of fossil fuels varies by fuel type and how it is combusted, such a pollution tax is not expected to be uniform across fossil fuels (*e.g.*, a tax on natural gas should be lower than a tax on coal, which generates more pollution when burned). Although designing such a tax is not straightforward and requires an estimate of the cost of pollution, among other variables, economists generally agree that this approach is a simpler and more efficient way of addressing distortions in the energy market than employing an array of tax incentives to encourage particular types of economic behavior.[126]

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air pollution can lead to reduced earnings and labor force participation. See Adam Isen, Maya Rossin-Slate, and W. Reed Walker, "Every Breath You Take – Every Dollar You'll Make: The Long-Term Consequences of the Clean Air Act of 1970," *Journal of Political Economy* (forthcoming).

[124] Excess consumption of energy derived from fossil fuels can take a number of forms, including insufficient energy conservation behavior.

[125] An appropriately designed cap-and-trade system may achieve a similar economic result as imposing a tax on pollution. See Gilbert E. Metcalf, "Market-Based Policy Options to Control U.S. Greenhouse Gas Emissions," *Journal of Economic Perspectives*, vol. 23, no. 2, Spring 2009, pp. 5-27.

[126] Establishing the correct parameters for tax incentives (such as credit amounts) also requires an estimate of the social cost of pollution. For a discussion of issues related to the design of a pollution tax, see Thomas Barthold, "Issues in the Design of Environmental Excise Taxes," *Journal of Economic Perspectives*, vol. 8, no. 1, Winter 1994, pp. 133-151. For a discussion of issues related to estimating the social cost of pollution, and in particular carbon, see Michael Greenstone, Elizabeth Koptis, and Ann Wolverton, "Developing a Social Cost of Carbon for U.S. Regulatory Analysis: A Methodology and Interpretation," *Review of Environmental Economics and Policy*, vol. 7, no. 1, Winter 2013, pp. 23-46; and Gilbert E. Metcalf, "Designing a Carbon Tax to Reduce U.S. Greenhouse Gas Emissions," *Review of Environmental Economics and Policy*, vol. 3, no. 1, Winter 2009, pp. 63-83. The social cost is meant to reflect the impact of pollution on (among other things) agricultural productivity, human

The proposal's tax on petroleum products could be viewed as a tax on pollution generated from the combustion of certain petroleum products, such as gasoline. As a result, it has some of the properties that make a broader tax on pollution more efficient than the targeted, energy-related tax provisions found under current law, such as tax credits for the production of energy from renewable resources, investment tax credits for certain energy production and energy conservation property, and tax credits for alternative fuel vehicles.[127] Unlike these targeted tax provisions, a broader tax on pollution is technologically neutral—the tax does not favor any particular technology that individuals might choose to utilize, or favor any particular behavioral modification that individuals may choose to make, in their pollution reducing responses to the tax. Rather, individuals would choose the most cost effective and economically efficient means of altering their behavior in response to the tax. For example, the optimal behavioral response for some individuals to a broad based tax on fossil fuels may be to install greater amounts of home insulation, while for others the optimal response may be to turn down the thermostat or switch off unnecessary lighting. It would be difficult or impractical to design tax subsidies to directly incentivize turning down thermostats, switching off lights, or other similar forms of optimizing behavior. A tax on pollution encourages individuals and firms to make energy consumption and production decisions that are optimal for them, which may differ from the types of responses that are favored by the tax code.

<u>Design of the tax on petroleum products as a corrective tax</u>

Although the proposal's tax on petroleum products is, in principle, more efficiently designed than targeted tax subsidies, it has a number of limitations that make it both incomplete and potentially too broad. It is incomplete because petroleum products are associated with only a portion of the pollution—in particular carbon emissions—that Administration is concerned about.[128] Emissions of carbon dioxide make up approximately 80 percent of U.S. greenhouse gas emissions resulting from human activities.[129] Transportation fuels account for approximately 70 percent of U.S. petroleum product consumption, but the burning of transportation fuels accounted for approximately 26 percent of greenhouse gas emissions in the United States in 2014.[130] Electricity production, generated in large part from burning natural gas and coal,

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health, and property damages from increased flood risk. Estimates of the social cost of pollution and the effects of pollution are subject to considerable debate.

[127] A description of energy-related tax provisions can be found in Joint Committee on Taxation, *Present Law and Analysis of Energy-Related Tax Expenditures* (JCX-46-16), June 9, 2016.

[128] Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, February 2016, pp. 190-191.

[129] Environmental Protection Agency, "Overview of Greenhouse Gases," available at https://www3.epa.gov/climatechange/ghgemissions/gases/co2.html.

[130] The calculation of the 70-percent figure for transportation fuels is for 2015 and is described in more detail in the description of Table 1, below. For greenhouse gas emissions data, see U.S. Environmental Protection Agency, "Total U.S. Greenhouse Gas Emissions by Economic Sector in 2014," available at https://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf. For 2014, other economic sectors generating greenhouse gas emissions include: electricity (30 percent), industry (21 percent), commercial and residential (12

accounted for 30 percent of greenhouse gas emissions in 2014.[131] Therefore, while the tax on petroleum products may address overconsumption of transportation fuels, it is not effective at reducing the consumption of electricity generated from fossil fuels, which a more comprehensive tax on pollution would do (and which a number of current tax provisions are designed to do, such as the tax credit for residential energy-efficient property).

As a tax designed to reduce carbon emissions, the proposal's tax on petroleum products is potentially too broad because petroleum products include products that are not typically burned and that do not typically emit carbon dioxide when consumed. These products include asphalt and road oil, waxes, lubricants, and petroleum coke, which account for a non-negligible portion of oil refinery output.[132] It is unclear whether a tax on these products is appropriate if they do not generate pollution of concern to policymakers. The Administration may wish to consider exempting some petroleum products from the tax to the extent that their consumption does not generate carbon emissions. (Home heating oil, the burning of which emits carbon dioxide, is temporarily exempted from the tax on petroleum products.) If the Administration were to exempt certain petroleum products beyond home heating oil from the tax, but still raise the same amount of revenue as it would if these products were not exempt, then the tax would need to be higher than $10.25 per barrel.

As mentioned earlier, calculating the optimal tax on pollution requires an estimate of the social cost of pollution. It is unclear if the proposal's $10.25 oil tax is optimal when the objective is to reduce pollution: the Administration's description of the proposal does not indicate whether the oil tax reflects social cost of pollution generated from the various petroleum products subject to the tax.[133] Calculations of the optimal tax must also account for taxes that are already imposed on crude oil and products derived from crude oil, such as transportation motor fuels.

<u>Design and administration of a tax on petroleum products</u>

The proposal is designed as a tax to be collected on domestically produced and imported petroleum products, with the tax calculated per barrel equivalent of crude oil. Although the process of collecting the tax is not clearly specified in the proposal, it appears that the simplest

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percent), and agriculture (9 percent). The combustion of fossil fuels also generates pollutants besides greenhouse gas emissions (*i.e.*, particulate matter) that may be of concern to policymakers.

[131] *Ibid.*

[132] See Table 1, below. The production of these products may directly and indirectly generate carbon emissions.

[133] The optimal tax discussed here is the tax that would be optimal to correct for the external cost resulting from the combustion of petroleum products. Economists have also studied the tax that would be optimal if the objective is not only to correct for the external cost of pollution, but also reduce traffic congestion and accidents and raise tax revenue with the minimal level of economic distortions. See Ian W. H. Parry and Kenneth Small, "Does Britain or the United States Have the Right Gasoline Tax," *American Economic Review*, vol. 95, no. 4, September 2005, pp. 1276-1289.

approach is to assign responsibility for collecting the tax on domestically produced petroleum products to refineries, which convert crude oil into petroleum products. For imported petroleum products, the simplest point of collection may be at the port of entry.

An alternative approach to reducing carbon emissions from the burning of petroleum products is to impose a tax further "upstream," on crude oil itself.[134] The tax could be collected by oil producers upon the sale of crude oil to U.S. refineries, and may be simpler and more administrable than a "midstream" tax collected on petroleum products. Such a tax on crude oil shares a number of the features and limitations of a tax on petroleum products, although there are important differences. Like the proposal's tax on petroleum products, a crude oil tax can be viewed as a tax on the pollution generated from the combustion of petroleum products, and the incidence of the tax applies to all petroleum products, even those that do not emit pollutants when consumed. Unlike the proposal's tax on petroleum products, a tax on crude oil (of the type described here) impacts petroleum products that are exported, and U.S. policymakers may not be concerned with pollution that results from the consumption of these products overseas. In addition, a crude oil tax may be easier to administer, and introduce fewer opportunities for evasion, than the proposal's tax on petroleum products, which exempts exported petroleum products and home heating oil (temporarily) and therefore requires taxpayers to track the ultimate destination or end of petroleum products. A crude oil tax of the type described here applies to crude oil regardless of the ultimate destination or end use, which may make the tax simpler but also means that the tax achieves a different policy outcome than the proposal's tax on petroleum products.

Administering the temporary exemption for home heating oil under the proposal's tax on petroleum products may present challenges because home heating oil is the same as diesel fuel.[135] Since the tax appears to be imposed upstream before the end user, the proposal introduces complexity and compliance issues when determining the amount of diesel that is destined for home heating oil use when it leaves the refinery, unless such fuel is dyed at the refinery.[136] There are also practical questions as to whether the home heating oil will retain the appropriate dye concentration when it leaves the refinery, as it may be comingled in the pipeline with other fuels. An alternative to dyeing is to offer refunds of the new tax to end users. However, this option may introduce administrative costs for end users (and the IRS) to the extent that certain end users currently purchase home heating oil tax-free if it is properly dyed and therefore have no interaction with the IRS related to their purchase.

[134] A description of the Administration's proposed oil fee as a tax on oil, to be paid by oil companies, can be found in Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2017, Analytical Perspectives*, p. 142. The discussion of the oil fee in the present document follows the (more detailed) description of the oil fee as a tax on petroleum products in Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, February 2016, pp. 190-191. It is unclear how the Administration reconciles these two descriptions.

[135] The duration of the temporary exemption is not specified in the description of the proposal.

[136] Under present law, motor fuel taxes effectuate non-highway uses by dyeing exempt fuel, but the dyeing does not typically occur at the refinery. Dyeing is not mentioned in the proposal.

Potential economic effects of the tax on petroleum products

Background data on petroleum products

The potential economic effect of the tax on petroleum products depends on the pattern of petroleum product consumption in the United States. Table 2, below, details the average daily number of barrels of various petroleum products that were consumed in the United States in 2015. Approximately 70.2 percent of petroleum products consumed were transportation fuels: motor gasoline (45.3 percent), kerosene-type jet fuel (7.9 percent), and distillate fuel used in the transportation sector (15.0 percent). Distillate fuel includes diesel fuel used in automobiles, trucks, railroad locomotives, and other transportation vehicles as well as fuel oils used for home heating and electric power generation; distillate fuel used in non-transportation sectors accounted for 5.5 percent of petroleum product consumption. Other major petroleum products consumed in the United States in 2015 include liquefied petroleum gases (12.2 percent), residual fuel oil (1.3 percent), lubricants (0.7 percent), petroleum coke (1.8 percent), and asphalt and road oil (1.8 percent).

Table 1.–Consumption of Petroleum Products in the United States in 2015

Product	Barrels Consumed Per Day (Average in Thousands)	Percent of Total Consumption
Liquefied Petroleum Gases	2,374	12.2
Motor Gasoline*	9,160	47.2
Kerosene-Type Jet Fuel	1,539	7.9
Distillate Fuel Oil (Transportation)	2,912	15.0
Distillate Fuel Oil (Non-Transportation)	1,062	5.5
Residual Fuel Oil	259	1.3
Lubricants	136	0.7
Petroleum Coke	351	1.8

Product	Barrels Consumed Per Day (Average in Thousands)	Percent of Total Consumption
Asphalt and Road Oil	344	1.8
Other	1,257	6.7

Source: JCT staff calculations and U.S. Energy Information Administration, *Monthly Energy Review: May 2016*, pp. 65-67.

* Motor gasoline includes fuel ethanol (which is not a petroleum product) that is blended into motor gasoline. Fuel ethanol accounts for approximately 10 percent of the volume of motor gasoline consumed in the United States (see http://www.eia.gov/tools/faqs/faq.cfm?id=27&t=10).

Impact on gasoline prices and environmental emissions

The $10.25 per 42-gallon barrel tax on petroleum products (equivalent to 24.4 cents per gallon) is generally expected to affect the price and quantity of all petroleum products, but it is useful to narrow the analysis of the potential economic impact of the tax on the market for motor gasoline because: (1) motor gasoline accounts for a large portion of petroleum product consumption in the United States, and (2) a significantly larger volume of economic research has focused on the market for motor gasoline than on the market for other types of petroleum products.

Standard economic theory predicts that the impact of a tax on the price of a good depends on the sensitivity of consumer demand and producer supply to changes in prices, and more specifically, the price elasticity of demand relative to the price elasticity of supply. Elasticities are a quantitative measure of how sensitive economic agents are to changes in the economic environment.[137] The price elasticity of demand is defined as the percentage change in quantity demanded by consumers resulting from a percentage change in price. The price elasticity of supply is defined as the percentage change in quantity supplied by producers resulting from a percentage change in price. Together, the price elasticity of demand and the price elasticity of supply determine how market prices and quantities change in response to tax and how the incidence of a tax is distributed between consumers and producers.[138] In general terms, the incidence of a tax is borne most by the parties (*i.e.*, consumers or producers) least able or willing to respond to a change in the price of a good. For example, the more unresponsive (or "inelastic") demand is relative to supply, the greater is the burden of the tax on the consumer.

[137] More generally, elasticities measure the percentage change in one economic variable that results from a percentage change in another economic variable.

[138] A general treatment of the incidence of taxes imposed on goods and services can be found in E. Glen Weyl and Michael Fabinger, "Pass-Through as an Economic Tool: Principles of Incidence under Imperfect Competition," *Journal of Political Economy*, vol. 121, no. 3, June 2013, pp. 528-583.

Table 2, below, shows the average annual price per gallon (including taxes) of motor gasoline from 2006 to 2016. The average annual price of gasoline has fluctuated significantly during the time period, and has recently declined from $3.36 per gallon in 2014 to $2.12 per gallon in 2016 (a 37 percent decrease).

Table 2.–Retail Price of Motor Gasoline in the United States: 2006-2016

Year	Retail Price of Motor Gasoline Per Gallon (Including Taxes)
2006	$2.57
2007	$2.80
2008	$3.25
2009	$2.35
2010	$2.78
2011	$3.52
2012	$3.62
2013	$3.51
2014	$3.36
2015	$2.43
2016	$2.12

Source: JCT staff calculations based on U.S. Energy Information Administration, "Weekly Retail Gasoline and Diesel Prices," available at https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm. The prices reported are retail prices and include Federal and State excise taxes, environmental taxes, special taxes, and inspection fees but is exclusive of county and local taxes. The value for 2016 is computed as the average weekly price from January 4, 2016, to May 30, 2016.

To understand how the price of gasoline may change in response to the $10.25 oil tax, it is useful as a starting point to analyze three examples that reflect highly stylized characterizations of the market for gasoline: (1) a case where gasoline demand is completely unresponsive to changes in prices (*i.e.*, "perfectly inelastic") but gasoline supply is at least somewhat responsive, (2) a case where gasoline supply is completely unresponsive to changes in prices but gasoline demand is at least somewhat responsive, and (3) an intermediate case where gasoline supply and demand are equally responsive to changes in prices (*i.e.*, the price elasticities of supply and are non-zero and equal in magnitude). To simplify calculations and be concrete, assume that the market for gasoline is competitive, that the tax on gasoline is collected by retail gas stations,[139] and that the price of gasoline is $2.50 per gallon, which is approximately the average annual price of gasoline from 2006 to 2016 after subtracting Federal and State excise taxes.[140]

In the first case, consumers of gasoline demand the same amount of gasoline regardless of the price, while retail gas stations adjust the amount they supply as prices change. With the imposition of a $0.24 per gallon tax on petroleum products, economic theory predicts that the price of gasoline rises to $2.74 per barrel ($2.50 + $0.24).[141] The tax is passed through completely to consumers in the form of higher prices, and retail gas stations experience no change in profits (they still receive $2.50 per gallon of gasoline after remitting the $0.24 tax). The incidence of the tax is borne completely by consumers in this case.[142] Because gasoline consumption does not change in this example, the tax does not reduce environmental emissions.

In the second case, retail gas stations supply the same amount of gasoline regardless of the price, while consumers adjust the amount they demand as prices change. When a $0.24 per gallon tax is imposed on gasoline, the price of gasoline remains at $2.50 per gallon. The tax does not pass through in any way to consumers, and retail gas stations bear the full incidence of the tax in the form of lower profits. Retail gas stations receive $2.50 for each gallon of gasoline they sell, but after remitting the $0.24 tax, they receive $2.26 on an after-tax basis, reducing their profits. As in the first example, gasoline consumption is unchanged, so that the tax does not reduce environmental emissions.

In the third, and intermediate, case, retail gas stations and gasoline consumers are equally responsive to changes in prices. In more technical terms, the price elasticities of supply and demand are equal in magnitude. The elasticities could both be small in magnitude or large in magnitude, but the key is that they are equal, so that gasoline demand is as elastic as gasoline supply.[143] In this scenario, the incidence of the oil tax is shared equally by consumers and producers: each bears 50 percent of the $0.24 petroleum product tax, or $0.12. Economic theory predicts that the price of gasoline rises to $2.62 ($2.50 + $0.12). Retail gas station profits fall because their receipts from each gallon of gasoline fall from $2.50 to $2.38 (which equals the

[139] The incidence of the tax when it is collected from retail gas stations is the same as the incidence of the tax when it is collected from oil refineries but completely passed through to retail gas stations.

[140] The average price of gasoline was $2.94 per gallon from 2006 to 2016, and average Federal and State excise taxes on gasoline were $0.45 as of January 1, 2016. For information on Federal and State excise taxes on gasoline, see http://www.eia.gov/todayinenergy/detail.cfm?id=25872.

[141] The calculations in this document assume that the tax on motor gasoline is not reduced by the amount of ethanol it contains. In other words, even though motor gasoline includes non-petroleum products, the amount of tax on each gallon of motor gasoline is assumed to be 24.4 cents.

[142] Under certain market conditions, the price of a good can increase by more than the amount of tax imposed on it. See E. Glen Weyl and Michael Fabinger, "Pass-Through as an Economic Tool: Principles of Incidence under Imperfect Competition," *Journal of Political Economy*, vol. 121, no. 3, June 2013, pp. 528-583.

[143] For this example, assume that demand and supply elasticities are constant.

$2.62 producers charge for each gallon of gasoline minus the $0.24 tax), and because the quantity of gasoline sold on the market declines as consumers purchase less gasoline in response to the higher price they face. Because gasoline consumption falls in this example, the tax reduces environmental emissions.

The above examples apply whether one is discussing short-run responses to taxes or long-run responses to taxes, but the elasticities relevant for incidence analysis need to match the length of the time period being studied. In the market for gasoline, the short run generally refers to the length of the time period during which a consumer's transportation pattern and method of transportation (*e.g.*, the type of car they own) is fixed, and during which the number of oil refineries producing gasoline is fixed. The long run generally refers to length of the time period during which a consumer may purchase a different automobile or change residence, and during which refiners may enter or exit the refining industry as gasoline prices rise or fall. Short-run elasticities in the market for gasoline are generally smaller than long-run elasticities because it is more difficult for market participants to adjust their behavior in the short run than in the long run.

A significant amount of research has been conducted on the short-run price elasticity of gasoline demand, although less research has been conducted on the price elasticity of gasoline supply (short- or long-run) or the long-run price elasticity of gasoline demand. A large number of studies have estimated very low short-run price elasticities of demand.[144] More recent studies, addressing methodological limitations of earlier studies as well as relying on more disaggregated data, have estimated larger short-run price elasticities of gasoline demand, although these studies still find that demand for gasoline is fairly inelastic.[145]

Economic research has also focused directly on the pass-through of fuel excise taxes on gasoline prices. The research has generally found that a substantial portion of those taxes is passed on to consumers in the form of higher prices. One paper estimates that State gasoline and diesel fuel taxes are passed through completely and immediately to consumers, although the degree of pass-through for diesel fuel taxes declines during periods where U.S. oil refineries are operating near their maximum capacity (typically during the second and third quarters of the year).[146] The results of the paper suggest that gasoline consumption, in the short run, does not fall significantly in response to an increase in gasoline taxes, which implies that environmental emissions do not fall significantly in the short run. Another paper has found that consumers

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[144] See Carol Dahl and Thomas Sterner, "Analyzing Gasoline Demand Elasticities: A Survey," *Energy Economics*, vol. 13, no. 3, July 1991, pp. 203-210; and Jonathan E. Hughes, Christopher R. Knittel, and Daniel Sperling, "Evidence of a Shift in the Short-Run Price Elasticity of Gasoline Demand," *The Energy Journal*, vol. 29, no. 1, 2008, pp. 93-114.

[145] See John Coglianese, Lucas W. Davis, Lutz Kilian, and James H. Stock, "Anticipation, Tax Avoidance, and the Price Elasticity of Gasoline Demand," *Journal of Applied Econometrics* (forthcoming); and Laurence Levin, Matthew S. Lewis, and Frank A. Wolak, "High Frequency Evidence on the Demand for Gasoline," NBER Working Paper No. 22345, June 2016.

[146] Justin Marion and Erich Muehlegger, "Fuel Tax Incidence and Supply Conditions," *Journal of Public Economics*, vol. 95, nos. 9-10, October 2011, pp. 1202-1212.

respond more to changes in gasoline taxes than to equivalent changes in tax-exclusive gasoline prices.[147] This may suggest that changes in gasoline taxes are more salient and visible to consumers than general changes in gasoline prices (*e.g.*, gasoline price changes resulting from increases in crude oil prices).[148]

The empirical economics literature offers less guidance on the impact of an increase in gasoline taxes on gasoline prices in the long run. On the one hand, the pass-through to consumers of a gasoline tax falls as their responsiveness to gasoline prices increases, which is the case in the long run when compared to the short run. On the other hand, the long-run price elasticity of gasoline supply is larger than the short-run price elasticity. The effect of the gasoline tax on gasoline prices in the long run, relative to the short run, depends on the extent to which consumer responsiveness to gasoline price increases relative to the responsiveness of suppliers. The long-run impact of the gasoline tax on the economy more generally is examined below in the discussion of its macroeconomic impact.

With regards to environmental emissions, one paper has noted that the key determinant of total U.S. petroleum consumption is national income, rather than the price of oil.[149] The paper reports that, while oil prices have fluctuated considerably over the past 60 years, the relationship between petroleum consumption and income growth was stable. Therefore, while an increase in the price of gasoline (which would result from an increase in the price of oil) puts downward pressure on gasoline consumption, it may be the case that general increases in national income offset that effect, so that environmental emissions still rise. However, an increase in gasoline prices may itself have a negative impact on national income (and therefore environmental emissions).

Macroeconomic impact of a tax on petroleum products

Economic research on petroleum product taxes has tended to focus on microeconomic variables related to the market for those products (*e.g.*, prices, quantities sold, etc.), rather than on macroeconomic variables such as gross domestic product ("GDP"), inflation, and unemployment. Substantially more research has been conducted on the macroeconomic impact of oil price fluctuations, and to the extent that the primary channel through which oil price fluctuations impact the economy is through their impact of petroleum product prices, this literature may shed light on the macroeconomic impact of taxes on petroleum products.

Since World War II, U.S. recessions have often coincided with sharp increases in oil prices, leading some to suspect that increases in oil prices can have a significant impact on

[147] Shanjun Li, Joshua Linn, and Erich Muehlegger, "Gasoline Taxes and Consumer Behavior," *American Economic Journal: Economic Policy*, vol. 6, no. 4, November 2014, pp. 302-342.

[148] Alternatively, taxes may be perceived as a permanent component of gasoline prices, while some fluctuations in gasoline prices are perceived as transitory.

[149] James D. Hamilton, "Causes and Consequences of the Oil Shock of 2007-08," *Brookings Papers on Economic Activity*, Spring 2009, pp. 215-261.

economic growth.[150] While economists have generally found that oil price increases can reduce economic growth, there are competing views concerning the nature of the relationship between oil prices and economic growth, as well as the cause of oil price increases themselves. Some economists have argued that oil supply disruptions, such as those resulting from the 1973-74 oil embargo instituted by the Organization of Arab Petroleum Exporting Countries ("OAPEC") or the Persian Gulf War, were the primary cause of sharp increases in oil prices, and have estimated a strong negative effect of oil supply disruptions and oil price increases on U.S. economic growth.[151] Other economists analyzing the same episodes in which oil prices increased significantly have found that those increases were driven by strong global demand for oil, and that disruptions in oil supply played a small or insignificant role.[152] In addition, these economists have found that, if a particular increase in oil prices is driven by global economic growth, then the negative impact of the price increase on the U.S. economic growth (*e.g.*, higher production and transportation costs) may be partially offset by increased global demand for U.S. goods and services. In other words, high oil prices may actually be accompanied by economic growth (even if they are not the cause of that growth). The macroeconomic impact of petroleum product taxes may depend on which view is correct. The type of price increase that is caused by a tax on petroleum products more closely resembles the type of price increase resulting from a reduction in the global supply of oil, to the extent that the price increase is not accompanied by increased demand for U.S. goods and services (*i.e.*, the price increase is being driven by the tax, not by global demand for oil). If there is a weak relationship between reductions in oil supply and economic growth, then the petroleum product tax may not have a noticeable effect on the U.S. economy. However, if there is a strong negative relationship between reductions in oil supply and economic growth, then the tax on petroleum products would have a more noticeable effect on the U.S. economy.

The macroeconomic impact of petroleum product taxes on the economy also depends on whether the link between oil prices and U.S. economic growth has remained stable over time or is diminishing. Some economic research suggests that the impact of fluctuations in oil prices on U.S. GDP and inflation has declined since the 1970s, potentially due to increased wage flexibility in labor markets (which dampens the effect of oil prices on GDP and inflation), increased credibility and effectiveness of monetary policy, and decreases in the share of oil in consumption and production.[153]

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[150] See James D. Hamilton, "Historical Oil Shocks," in Randell E. Parker and Robert Shaples (eds.), *Routledge Handbook of Major Events in Economic History*, Routledge Taylor and Francis Group, 2013, pp. 239-265. The author notes that 10 out of 11 U.S. recessions since World War II were preceded by a significant increase in oil prices.

[151] James D. Hamilton, "Causes and Consequences of the Oil Shock of 2007-08," *Brookings Papers on Economic Activity*, Spring 2009, pp. 215-261.

[152] See Christiane Baumeister and Lutz Kilian, "Forty Years of Oil Price Fluctuations: Why the Price of Oil May Still Surprise Us," *Journal of Economic Perspectives*, vol. 30, no. 1, Winter 2016, pp. 139-160.

[153] Olivier Blanchard and Jordi Gali, "The Macroeconomic Effects of Oil Shocks: Why Are the 2000s So Different from the 1970s?," in Jordi Gali and Mark Gertler (eds.), *International Dimensions of Monetaray Policy*, University of Chicago Press, 2010, pp. 373-421.

In explaining this decline, some economists have also pointed to changes in the U.S. automobile industry and its role in the economy. Although there is disagreement concerning the relationship between oil supply changes and economic growth, there is considerably more agreement that the key channel through which oil price fluctuations affect the economy is through their impact on spending by consumers and firms on non-energy goods and services, and in particular, through their impact on the automobile industry.[154] Economic research suggests that oil price increases can cause a dramatic shift in vehicle demand across vehicle class sizes, as consumers opt to purchase smaller, more fuel-efficient vehicles than larger, less fuel-efficient vehicles.[155] This shift in vehicle demand can reduce U.S. GDP by disrupting the allocation of resources in automobile production. In the short run, it may be difficult for factories or employees to switch from producing larger vehicles to smaller vehicles, which may result in reduced utilization of factory capacity and unemployment of workers producing larger vehicles. The negative effect of the shift in vehicle demand on GDP may also depend on whether smaller vehicles are produced domestically or imported. Some economists have argued that the oil price increases of the 1970s had a particularly strong, negative impact on the U.S. automobile industry because production of small vehicles in the United States was limited, so that consumers interested in small vehicles purchased imported vehicles. To the extent that domestic production of small, energy-efficient cars has grown, and to the extent that the fuel economy of vehicles has improved, the U.S. automobile industry may have become less vulnerable to oil price increases. In addition, the impact of oil price increases on employment may have declined as the share of the U.S. labor force employed in the U.S. automobile industry has decreased.[156] The claim that the U.S. automobile industry has become less vulnerable to oil price increases is challenged by some economists who have offered evidence suggesting that the relationship between oil prices and the demand for and supply of automobiles—as well as the broader relationship between oil prices and economic output—have not weakened since the 1970s.[157] One reason may be that, while improvements in fuel economy, by themselves, make consumers of automobiles less

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[154] See Valerie A. Ramey and Daniel J. Vine, "Oil, Automobiles, and the U.S. Economy: How Much Have Things Really Changed?," in Daron Acemoglu and Michael Woodford (eds.), *NBER Macroeconomics Annual 2010*, vol. 25, 2011, University of Chicago Press, p. 347; Lutz Kilian, "The Economic Effects of Energy Price Shocks," *Journal of Economic Literature*, vol. 46, no. 4, December 2008, pp. 880-881; and James D. Hamilton, "Causes and Consequences of the Oil Shock of 2007-08," *Brookings Papers on Economic Activity*, Spring 2009, pp. 248-251.

[155] Valerie A. Ramey and Daniel J. Vine, "Oil, Automobiles, and the U.S. Economy: How Much Have Things Really Changed?," in Daron Acemoglu and Michael Woodford (eds.), *NBER Macroeconomics Annual 2010*, vol. 25, 2011, University of Chicago Press, pp. 333-368.

[156] Lutz Kilian, "The Economic Effects of Energy Price Shocks," *Journal of Economic Literature*, vol. 46, no. 4, December 2008, pp. 894-895.

[157] Valerie A. Ramey and Daniel J. Vine, "Oil, Automobiles, and the U.S. Economy: How Much Have Things Really Changed?," in Daron Acemoglu and Michael Woodford (eds.), *NBER Macroeconomics Annual 2010*, vol. 25, 2011, University of Chicago Press, pp. 333-368. The authors note that the relationship between oil prices and inflation has weakened over time, possibly due to changes in the conduct of monetary policy.

sensitive to fluctuations in gas prices, increases in average vehicle miles traveled per household over time can have an offsetting effect.[158]

Infrastructure spending and the tax on petroleum products

One policy concern with the Highway Trust Fund is that outlays exceed revenues—with the shortfall projected to grow over time—and transfers from the General Fund have been required to address the shortfall since 2008 because the Highway Trust Fund cannot run negative balances. Revenue collected from taxes on motor fuels account for approximately 90 percent of all tax revenue that goes into the Highway Trust Fund, but motor fuel tax rates have not increased since 1993. Some policymakers have suggested raising motor fuel tax rates to address the imbalance between outlays and revenues in the Highway Trust Fund.[159] One method would be to adjust the motor fuel tax rates for inflation.[160] Had those rates been adjusted for inflation since 1993, the excise tax on gasoline in 2016 would be 31.2 cents per gallon (instead of the present 18.4 cents per gallon). Similarly, the excise tax on diesel fuel would be 41.4 cents per gallon (instead of the present 24.4 cents per gallon).

The proposal's tax on petroleum products addresses the Highway Trust Fund shortfall in two ways. First, the tax serves as a new revenue source for Federal spending on highways (which is done through the new Transportation Trust Fund). Second, the tax is indexed for inflation, so that any future increases in Federal outlays for highway spending are matched, at least in part, by increases in the tax rate on petroleum products. As the tax on petroleum products imposes an inflation-adjusted 24.4-cents-per-gallon tax on gasoline and diesel fuel (among other petroleum products), it achieves a result similar to proposals that would increase motor fuel tax rates and index them for inflation.

However, the Transportation Trust Fund departs from the user-fee principle that is arguably the policy rationale for funding Federal highway spending through the Highway Trust Fund taxes on motor fuels, heavy highway vehicles, heavy vehicle tires, and heavy vehicle use.[161] To the extent that an individual's use of highways is directly related to how much fuel they consume, and to the extent that heavier vehicles cause greater wear on highways than lighter

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[158] *Ibid*. The authors estimate that the average household drove approximately 1,500 miles per month in 1970, but drove almost 2,200 miles per month during the 2000-2007 period.

[159] For a discussion of other methods to address the Highway Trust Fund shortfall, see Joint Committee on Taxation, *Long-Term Financing of the Highway Trust Fund* (JCX-92-15), June 15, 2015.

[160] *Ibid*., pp. 12-13.

[161] The Highway Trust Fund does not follow the user-fee principle perfectly. For example, the Highway Trust Fund includes a Highway Account and a smaller Mass Transit Account, which funds investments in certain non-highway projects. Financing investment on non-highway projects through the Highway Trust Fund represents a departure from the user-fee principle described here. In addition, it may be the case that drivers' use of highways is more accurately captured by the number of miles they travel, rather than the amount of fuel that is consumed when they drive. For a description of alternative ways of charging individuals for their use of highways—such as through a vehicle-miles traveled tax—see Congressional Budget Office, *Alternative Approaches to Funding Highways*, March 2011.

vehicles (thereby necessitating more highway maintenance), individuals who use the highway system more frequently pay more into the Highway Trust Fund. Since the Transportation Trust Fund would finance investments in high-speed rails, multimodal transit systems, and the development of transportation programs designed to reduce carbon emissions from the transportation sector (among other investments), it is unclear whether individuals who pay more into the Transportation Trust Fund—which relies heavily on revenue collected from taxes on motor fuels—actually benefit more from the additional non-highway projects financed by the Transportation Trust Fund.[162] In other words, by funding additional non-highway projects through taxes that are, at least in part, associated with highway use, the Transportation Trust Fund departs from the user-fee principle. To the extent that this claim is true, it is unclear whether the additional non-highway programs should be financed through the General Fund as part of the regular appropriations process, rather than through the Transportation Trust Fund. It may be the case that the Transportation Trust Fund provides a more stable source of financing for surface transportation projects than what would be achieved as part of the regular appropriations process, and that such stability is important given the inherently long-term nature of many of these projects and the need to ensure that financing exists to complete them once the projects are initiated.

[162] A description of projects to be financed by the Transportation Trust Fund can be found in Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2017*, pp. 15-19.

E. Improve Disclosure for Child Support Enforcement

Present Law

Returns and return information are confidential and cannot be disclosed unless authorized by the Code. Section 6103(l)(6)(A) authorizes the IRS to disclose to Federal, State or local child support enforcement agencies, upon written request, certain items of information from any return of an individual with respect to whom child support obligations are sought to be established or enforced or from any return of an individual with respect to whom support obligations are owing. Under section 6103(l)(6)(B), the child support enforcement agency may redisclose the address and social security number of the person owing child support, as well as any refund offset amount collected from that person to an agency under a contract with the child support enforcement agency for carrying out the purposes for which the disclosure was made (*i.e.*, establishing or collecting child support obligations from, and locating individuals owing such obligations).

Section 6103(l)(8) allows the Social Security Administration to disclose certain tax return information (primarily wage and self-employment data) to Federal, State, or local child support enforcement agencies under essentially the same conditions of section 6103(l)(6). Under section 6103(l)(10) limited information relating to a refund offset for past-due support may be disclosed to officers and employees of a State child support enforcement agency for the purposes of establishing necessary agency records, locating any person with respect to whom the reduction is sought, or in the defense of any litigation or administrative procedure ensuing from a reduction.

Description of Proposal

The proposal would (1) consolidate the child support enforcement rules into a single provision; (2) define key terms for purposes of this proposal, such as "child support enforcement agency" and "agent"; (3) permit disclosure to tribal child support enforcement agencies and other critical entities; and (4) update and streamline the items of return information that may be disclosed to each party depending on the purpose and need for the disclosure. The proposal clarifies the use of return information for child support purposes and the safeguarding responsibilities of agency and agency recipients.

Effective date.−The proposal is effective on the date of enactment.

Analysis

In section 6103, the use of tax data for non-tax purposes is narrowly tailored to allow the disclosure of only that tax information necessary to achieve a specific purpose and access is allowed to those persons whose official duties require access to such information. The rules governing child support enforcement disclosures are contained in four different provisions of section 6103: (1) disclosure to child support enforcement agencies by the IRS;[163] (2) redisclosure of a limited amount of information to agents of the child support enforcement agency by the

[163] Sec. 6103(l)(6)(A).

child support enforcement agency;[164] (3) disclosure to State agencies seeking a refund offset of past-due support;[165] and (4) disclosures by the Social Security Administration to child support enforcement agencies.[166] The information that can be disclosed to the child support enforcement agency under each provision is slightly different, although the principal purposes for such disclosures are generally the same, the establishing and collecting child support obligations from, and locating individuals owing, such obligation.

Expanding the group of child support enforcement recipients, including tribal entities

Part D of Title IV of the Social Security Act governs the nationwide child support enforcement and collection program (Title IV-D). As noted, most of the disclosure provisions of the Code are limited to disclosures to the child support enforcement agency. The IRS interprets "agency" for purposes of these provisions as a traditional Federal, State, or local government agency. The Department of Health and Human Services ("HHS") has a more expansive view of what constitutes a child support enforcement agency, allowing States to operate through local Friend of the Court offices, Clerks of the Court, District Attorneys and even the use of private attorneys in rural areas. As a result of the differing views of what constitutes a "child support enforcement agency," there have been disagreements as to who can receive the confidential tax information and dissemination of such confidential information beyond the traditional State or local agency. Defining what is a "child support enforcement agency" may alleviate some of the interagency disagreements over the scope of the authority to share information beyond what is viewed as the traditional child support enforcement agency.

Indian tribes are treated as States as provided by section 7871 of the Code. Section 7871 is silent on the matter of an Indian tribal government carrying out child support enforcement agency functions. Title IV-D provides for Indian tribes to operate Title IV-D programs in accordance with HHS regulations. However, Indian tribes are not States for purposes of the child support enforcement disclosure provisions. The lack of direct access to the information as a child support enforcement agency may hamper the effectiveness of an Indian tribe's ability to carry out a Title IV-D program. HHS contends that Indian tribes or tribal organizations operating under a cooperative agreement with a State to provide IV-D services should be entitled to receive confidential tax information.

HHS argues that a broad array of entities should be treated as "child support enforcement agencies." Some may argue that expanding the scope of entities treated as child support enforcement agencies may have a negative tax compliance effect. As more entities seek to use the tax information to locate and collect past due child support, the debtors may become more reluctant to file the tax returns that provide such location information.

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[164] Sec. 6103(l)(6)(B).

[165] Sec. 6103(l)(10).

[166] Sec. 6103(l)(8).

Further, the expansion of recipient entities may pose additional risks to taxpayer confidentiality. Expanding disclosure beyond traditional Federal, State and local agencies means that the confidential information gets more widely disseminated, and with that dissemination, the possibility for misuse and lapses in safeguarding the confidential information (resulting in unauthorized disclosure) increases. Given that the enforcement process between custodial and non-custodial individuals could be an emotional one, the possibility of increased breaches of confidentiality could raise issues of individual safety and security if information about income, location and marital status are disclosed improperly.

In addition, as the pool of entities and individuals who participate in the child support enforcement process expands, some may not have the sophistication, financial capacity, or resources to obtain the necessary tools to secure the information they receive. As a result, some agencies may not be able to satisfy the high safeguard standards for the receipt of return information. Further, the IRS may not have the resources to verify the safeguard precautions implemented for each recipient entity if the proposal's broad dissemination of confidential tax information to various child support enforcement participants is adopted. The proposal does not specifically identify how the safeguarding responsibilities will be changed. These potential resource failures could increase the likelihood of unauthorized disclosures.

Defining key terms and routine uses

The Code restricts the use of the information disclosed "only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating individuals owning such obligations." For example, HHS and Treasury disagree on what this restriction means. For example, HHS emphasizes that Title IV-D authorizes the disclosure of location information to courts, prosecutors and certain other "authorized persons" in activities that are integral to "establishing and collecting child support obligations." However, the General Explanation of the Tax Reform Act of 1976 provides "Congress did not intend that the child support enforcement agency be authorized to disclose Federal return information to third parties or in litigation relating to establishing or collecting child support obligations." Accordingly, using this interpretation as a guide, Treasury asserts that the return information disclosed can be used as a lead (for example, to locate individuals or funds) but must be independently verified before being used in litigation.

The continuing disagreement between HHS and Treasury as to whether the disclosure rules should be read consistent with Title IV-D (making the HHS view controlling) or whether the child support disclosure provisions should be read narrowly consistent with the rest of section 6103, imposes a lack of clarity as to the scope of permissible disclosures, and re-disclosures, for child support enforcement. Because of the disagreement on both the points of what is a child support enforcement agency for purposes of section 6103, and how the return information that is disclosed can be used, it is not clear the extent of which return information can be redisclosed to others or used outside the agency in enforcement proceedings. Bringing clarity to the statutory interpretations through clear definitions, and a comprehensive review of the items of return information needed, the parties who need access, and for what purpose, should improve the effectiveness of the child support enforcement program.

PART II ─ SUBSTANTIVELY MODIFIED PROPOSALS

A. Impose a 19-Percent Minimum Tax on Foreign Income

Description of Modification

The President's fiscal year 2017 budget proposal makes two modifications to last year's proposal to impose a 19-percent per-country minimum tax on foreign income, with an allowance for corporate equity.

The first modification is minor and does not reflect a change in policy. In specifying how taxpayers are to calculate their per-country foreign effective tax rate for purposes of determining their minimum tax liability, this year's proposal indicates that Treasury regulations would determine the time period in which foreign earnings and the associated foreign taxes are assigned to a country, and that it is expected that the determination would be based on the 60-month period that ends on the date on which the domestic corporation's current taxable year ends, or in the case of controlled foreign corporation ("CFC") earnings, that ends on the date on which the CFC's current taxable year ends. Last year's proposal did not leave the determination of the time period to Treasury regulations and directly stated that the relevant time period for determining the foreign effective tax rate for foreign earnings and the associated foreign taxes assigned to a country is the 60-month period that ends on the date on which the domestic corporation's current taxable year ends, or in the case of CFC earnings, that ends on the date on which the CFC's current taxable year ends.

The second modification also does not reflect a change in policy between the President's budgets for fiscal years 2016 and 2017. The President's fiscal year 2016 budget contained a proposal, separate from the minimum tax proposal, to make permanent the look-through exception to subpart F for payments between related CFCs (the "CFC look-through rule").[167] The President's fiscal year 2017 budget consolidates these two proposals by including the permanence of the CFC look-through rule as a component of the minimum tax proposal.

[167] For a description and analysis of the President's fiscal year 2016 budget proposal to make the CFC look-through rule permanent, see Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2016 Budget Proposal* (JCS-2-15), September 2015, pp. 16-19. The CFC look-through rule was expired at the time of the publication of the President's fiscal year 2016 budget proposal. On December 18, 2016, subsequent to the publication, Congress and the Administration enacted the "Consolidated Appropriations Act, 2016" (Pub. L. No. 114-113), which contained the "Protecting Americans From Tax Hikes Act of 2015" ("PATH Act"). The CFC look-through rule was extended for five years as part of the PATH Act, to taxable years of foreign corporations beginning before January 1, 2020, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end. The provision applies to taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end. A description of the extension can be found in Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in 2015* (JCS-1-16), March 2016, pp. 171-172.

B. Modify the Carbon Dioxide Investment and Sequestration Tax Credit

Description of Modification

The President's fiscal year 2017 budget proposal modifies last year's proposal that would establish two new carbon dioxide sequestration credits: (1) an investment credit, and (2) a CO_2 capture credit. Under the modified investment credit, projects that treat the entire flue gas stream from an electric generating unit or set of units must sequester at least 50 percent of the carbon dioxide in the stream. Projects that treat only a portion of the flue gas stream must capture at least 80 percent of the carbon dioxide in the stream. The modified proposal removes the requirement that qualified retrofitted facilities must have power production capacities greater than 250 megawatts.

The total amount of credits that may be allocated by the Secretary of the Treasury remains $2 billion under the modified proposal. However, under the modified proposal, applications for the investment credit are due two years after the date of enactment. In addition, no more than $800 million of such credits may flow to projects that capture and store less than 80 percent of their carbon dioxide emissions.

The proposed CO_2 capture credit is substantially similar to the proposal found in the President's fiscal year 2016 budget proposal.

C. Reform and Expand the Low-Income Housing Tax Credit

Present Law

In general

The low-income housing tax credit ("LIHTC") may be claimed over a 10-year period for the cost of building rental housing occupied by tenants having incomes below specified levels.[168] The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building. Eligible basis is generally adjusted basis at the close of the first taxable year of the credit period.

Qualified allocation plan

Each State must develop a qualified allocation plan for allocating low-income housing credits.[169] First, the qualified allocation plan must set forth selection criteria to be used to determine housing priorities of the housing credit agency that are appropriate to local conditions.[170] The qualified action plan must also give preference in allocating housing credit dollar amounts among selected projects to projects: (1) serving the lowest income tenants, (2) obligated to serve qualified tenants for the longest periods, and (3) located in qualified census tracts and the development of which contributes to a concerted community revitalization plan. Third, the qualified allocation plan must provide a procedure that the agency will follow in monitoring for, and notifying the IRS of, noncompliance with section 42 and in monitoring for noncompliance with habitability standards through regular site visits.

General public use requirement

To be eligible for the low-income housing credit, the residential units in a qualified low-income housing project must be available for use by the general public. A project is available for general public use if: (1) the project complies with housing nondiscrimination policies including those set forth in the Fair Housing Act (42 U.S.C. 3601), and (2) the project does not restrict occupancy based on membership in a social organization or employment by specific employers.[171] In addition, any residential unit that is part of a hospital, nursing home,

[168] Sec. 42.

[169] Sec. 42(m)(1)(B).

[170] The selection criteria set forth in a qualified allocation plan must include: (1) project location; (2) housing needs characteristics; (3) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan; (4) sponsor characteristics; (5) tenant populations with special housing needs; (6) public housing waiting lists; (7) tenant populations of individuals with children; (8) projects intended for eventual tenant ownership; (9) the energy efficiency of the project; and (10) the historic nature of the project. Sec. 42(m)(1)(C).

[171] See Treas. Reg. sec. 1.42-9.

sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally or physically handicapped is not available for use by the general public.

Description of Modification

This proposal is substantially similar to a proposal found in the President's fiscal year 2016 budget proposal. There are two principal modifications to that proposal.

First, the fiscal year 2016 budget proposal increased the discount rate used in the calculation of the applicable percentage used to determine the amount of the credit. The current proposal no longer includes this provision.

Second, the proposal adds a fourth category of projects to which the qualified allocation plan must give preference, that is, to projects that further fair housing.

Analysis

Applicable percentage calculation

The minimum applicable percentage of nine percent for newly constructed non-Federally subsidized buildings was first enacted in the Housing Assistance Tax Act of 2008.[172] Prior to that, the applicable percentage for such buildings had not been as high as nine percent since December 1990. A provision in the "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act")[173] made permanent the minimum applicable percentage of nine percent for newly constructed non-Federally subsidized buildings. In the absence of that provision, the applicable percentage for buildings placed in service in June 2016 would be 7.42 percent.[174]

One could view the higher discount rates under the President's fiscal year 2016 budget proposal as an alternative method of increasing the applicable percentage. At the time of that proposal, the then-temporary minimum applicable percentage had expired. With the now-permanent minimum applicable percentage for non-Federally subsidized new buildings, it could be argued that it is not necessary to increase the credit rates by increasing the discount rates used in the calculation. The nine percent applicable percentage corresponds to a discount rate of approximately six percent. Under the prior proposal, the average of the annual Federal mid-term and long-term rates would need to exceed four percent to result in a discount rate that high. The average for June was approximately 1.8 percent.

[172] Pub. L. No. 110-289.

[173] Pub. L. No. 114-113, Division Q, sec 131.

[174] Rev. Rul. 2016-13, Table 4.

Allocation preference

The Fair Housing Act states "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."[175] In addition to prohibiting discrimination because of race, color, religion, sex, familial status, national origin, or handicap, the Fair Housing Act requires that the Secretary of Housing and Urban Development ("HUD") and all executive departments and agencies "administer their programs and activities relating to housing and urban development … in a manner affirmatively to further" the policies or purposes of the Fair Housing Act.[176]

HUD recently published a rule providing HUD program participants with an approach to incorporate into their planning processes the duty affirmatively to further fair housing.[177] In that rule, HUD declined to mandate coordination with other planning processes at other agencies, including qualified allocation plans under the LIHTC. HUD noted that some commentators thought HUD should make all efforts to have the Department of Treasury incorporate the principles set forth in the rule into the administration of the LIHTC, while others suggested that HUD lacked the legal authority to mandate coordination with any plan or programs that are beyond the control of the HUD program participant and over which HUD does not have jurisdiction. The proposal may address this concern by placing the priority of affirmatively furthering fair housing directly in the allocation preferences for the LIHTC.

However, there may be a conflict with other goals of the LIHTC. Specifically, there is an existing allocation preference for projects serving the lowest income tenants and for projects located in qualified census tracts (that is, areas with concentrations of low-income residents) if the development also contributes to a concerted community revitalization plan. There is also an increase in qualified basis for projects located in qualified census tracts. These provisions may encourage development of housing for low-income residents in areas that already have high concentrations of low-income residents. Arguably, this may conflict with the affirmatively furthering fair housing goal of "taking meaningful actions that … replac[e] segregated living patterns…[and] transform[] racially and ethnically concentrated areas of poverty."[178] One commentator noted that income targeting of Federal housing policy to the poorest of low-income households may create areas of high concentrations of poverty.[179]

According to HUD, 47.7 percent of LIHTC households in 2013 had annual household income no more than 30 percent of area median income ("AMI") and another 34.3 percent had

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[175] 42 U.S.C. 3601.

[176] 42 U.S.C. 3608(d) and (e)(5).

[177] Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272 (July 16, 2015), available at https://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf.

[178] *Ibid*, and 24 CFR 5.152, p. 42353.

[179] Maryland Department of Housing and Community Development, *Comments on Proposed Rule: FR-5173-P-01 Affirmatively Furthering Fair Housing*, HUD-2013-0066-0743, September 17, 2013, pp. 8-12.

annual household income no more than 50 percent of AMI.[180] For 2013, the poverty rate in the United States was 14.8 percent.[181] According to the U.S. Census Bureau, the average census tract has about 4,000 people.[182] The average low-income housing tax credit property has 65 units, though the average number of units per property for the net increase in properties in 2013 over 2012 is 262 units.[183] If a new LIHTC property the size of an average existing property were placed in service in the average census tract and each unit in the property housed two people, the tract would add 130 residents, about half of whom lived in poverty (30 percent of median household income is close to the poverty threshold for a two person household). The poverty rate in the census tract would increase by about 1.1 percentage points, or nearly 7.5 percent.[184] If a new LIHTC property were the size of the average net increase in properties in 2013 over 2012, the poverty rate would increase by about 4.1 percentage points, or more than 27.5 percent.[185] The percentage increases would be smaller for census tracts with higher than average poverty rates and larger for those with lower than average poverty rates.

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[180] Department of Housing and Urban Development, *Data on Tenants in LIHTC Units as of December 31, 2013*, March 2016, p. 18.

[181] Carmen DeNavas-Walt and Bernadette D. Proctor, U.S. Census Bureau, *Income and Poverty in the United States: 2014*, Current Population Reports, P60-252, September 2015, Table 3, p. 13.

[182] U.S. Census Bureau, *Geographic Terms and Concepts - Census Tract*, https://www.census.gov/geo/reference/gtc/gtc_ct.html, accessed June 22, 2016, stating "[c]ensus tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people."

[183] Department of Housing and Urban Development, *Data on Tenants in LIHTC Units as of December 31, 2013*, March 2016, p. 3. For 2013, the LIHTC properties placed in service database contains 2,286,017 units in 35,288 properties (2,286,017 / 35,288 ≈ 65). There was a net increase of 481 properties containing 125,876 units over 2012 (125,876 / 481 ≈ 262).

[184] For a tract with 4,000 people and a poverty rate of 14.8 percent, there are 592 residents living below the poverty threshold. The 65 new residents below the poverty threshold result in a new poverty rate for the census tract of (592 + 65) / (4,000 + 130) = 15.9 percent. This increase of 1.1 percentage points on a base poverty rate of 14.8 percentage points is an increase of 7.49 percent.

[185] The 262 new residents below the poverty threshold result in a new poverty rate for the census tract of (592 + 262) / (4,000 + 524) = 18.9 percent. This increase of 4.1 percentage points on a base poverty rate of 14.8 percentage points is an increase of 27.55 percent.

D. Increase National Limitation Amount for Bonds for Qualified Highway or Surface Freight Transfer Facilities

Present Law

Present law authorizes the issuance of tax-exempt private activity bonds to finance qualified highway or surface freight transfer facilities. A qualified highway facility or surface freight transfer facility is any surface transportation or international bridge or tunnel project (for which an international entity authorized under Federal or State law is responsible) which receives Federal assistance under title 23 of the United States Code or any facility for the transfer of freight from truck to rail or rail to truck which receives Federal assistance under title 23 or title 49 of the United States Code.

Qualified highway or surface freight transfer facility bonds are not subject to the State volume limitations. Rather, the Department of Transportation is authorized to allocate a total of $15 billion of issuance authority to qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.[186]

The Code imposes a special redemption requirement for qualified highway or surface freight transfer facility bonds. Under present law, the proceeds of qualified highway or surface freight transfer facility bonds must be spent on qualified projects within five years from the date of issuance of such bonds. Proceeds that remain unspent after five years must be used to redeem outstanding bonds.

The qualified highway or surface freight transfer facility bond provision was enacted in 2005 as part of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users ("SAFETEA-LU").[187] As reflected below, as of April 14, 2016, the Department of Transportation has made allocations of approximately $11.5 billion of the $15 billion it is authorized to allocate. Of the $11.5 billion that has been allocated, approximately $5.9 billion of bonds have been issued.[188]

<u>Bonds Issued</u>

Capital Beltway HOT Lanes, Northern Virginia	$ 589,000
North Tarrant Express, Fort Worth, Texas	$ 400,000

[186] See Department of Transportation, *Notice of Solicitation for Requests for Allocations of Tax-exempt Financing and Request for Comments*, 71 Fed. Reg. 642 (January 5, 2006) and Internal Revenue Service, Notice 2006-45, *Exempt Facility Bonds for Qualified Highway or Surface Freight Transfer Facilities*, 2006-20 I.R.B. 891 (May 15, 2006).

[187] Section 11143 of Pub. L. No. 109-59.

[188] Federal Highway Administration, *Innovative Program Delivery*, *Tools & Programs: Federal Debt Financing Tools, Private Activity Bonds*, available at http://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_debt_financing/private_activity_bonds/default.aspx#current.

IH 635 Managed Lanes (LBJ Freeway), Dallas, Texas	$ 615,000
Denver RTD Eagle Project (East Corridor & Gold Line), Denver, Colorado	$ 397,835
CentralPoint Intermodal Center, Joliet, Illinois	$ 150,000
CentralPoint Intermodal Center, Joliet, Illinois	$ 75,000
Downtown Tunnel/Midtown Tunnel/MLK Extension, Norfolk, Virginia	$ 675,004
I-95 HOV/HOT Lanes, Northern Virginia	$ 252,648
Ohio River Bridges East End Crossing, Louisville, Kentucky	$ 676,805
North Tarrant Express Segments 3A & 3B, Fort Worth, Texas	$ 274,030
Goethals Bridge, Staten Island, New York	$ 460,915
U S 36 Managed Lanes/BRT Phase 2, Denver Metro Area, Colorado	$ 20,360
I-69 Section 5, Bloomington to Martinsville, Indiana	$ 243,845
Rapid Bridge Replacement Program, Pennsylvania	$ 721,485
Southern Ohio Veterans Memorial Highway	$ 227,355
I-77 Managed Lanes, Charlotte, NC	$ 100,000
Subtotal	$ 5,879,282

Allocated but bonds not yet issued

Knik Arm Crossing, Anchorage, Alaska	$ 600,000
CenterPoint Intermodal Center, Joliet, Illinois	$ 700,000
I-77 Managed Lanes, Charlotte, North Carolina	$ 725,000
SH-288, Houston Metro Area, Texas	$ 600,000
Purple Line, Maryland	$1,300,000
All Aboard Florida	$1,750,000
Subtotal	$5,675,000
Grand Total	$11,554,282

Description of Proposal

The proposal would increase the $15 billion aggregate amount permitted to be allocated by the Secretary of Transportation to $19 billion with the elimination of this category of bond and conversion to qualified public infrastructure bonds[189] once these funds are allocated.

Analysis

The authority to allocate $15 billion of bonds was enacted in 2005. Since that time only $5.9 billion of the $15 billion has been issued for project finance. Further, approximately $3.5 billion in bond authority remains unallocated. Some would argue that the program does not require an increase in allocations, but a supply of viable projects to receive an allocation. On the other hand, significant capital projects often take years to permit and complete. The existence of unused allocation and failure to issue bonds in the amount of the full $15 billion in the years intervening since 2005 is not an indication of a lack of success of the bond program but may be an indication of the difficulties associated with assembling a viable project. The Administration asserts that the establishment of a new National Surface Transportation and Innovative Finance Bureau within the Department of Transportation, State and local governments will receive the Federal funding, financing or technical assistance needed for these projects.

[189] For a discussion of the "qualified public infrastructure bond" proposal, see Item II.D. *supra*.

E. Provide A New Category of Qualified Private Activity Bonds for Infrastructure Projects Referred to as "Qualified Public Infrastructure Bonds"

Present Law

Interest paid on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes. Because of the income exclusion, investors generally are willing to accept a lower rate on tax-exempt bonds than they might otherwise accept on a taxable investment. This, in turn, lowers the borrowing cost for the beneficiaries of such financing.

Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (*e.g.*, private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

The Code defines a private activity bond as any bond that satisfies (1) the private business test and the private security or payment test ("the private business tests"); or (2) "the private loan financing test."[190] Under the private business tests, a bond is a private activity bond if it is part of an issue in which both:

1. More than 10 percent of the proceeds of the issue (including use of the bond-financed property) are to be used in the trade or business of any person other than a governmental unit ("private business use test"); and

2. More than 10 percent of the payment of principal or interest on the issue is, directly or indirectly, secured by (a) property used or to be used for a private business use, or (b) to be derived from payments in respect of property, or borrowed money, used or to be used for a private business use ("private payment test").[191]

The use of a private management company may trigger the private business use test and make the bonds taxable private activity bonds. A contract between a private management or other service company and a governmental unit to operate bond-financed governmental facilities may result in private business use depending on the terms of the contract.[192] Management contracts include management, service, or incentive pay contracts between a governmental

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[190] Sec. 141.

[191] The 10 percent private business test is reduced to five percent in the case of private business uses (and payments with respect to such uses) that are either unrelated or disproportionate to any governmental use being financed by the issue.

[192] Treas. Reg. sec. 1.141-3(b)(4).

person and a service provider for all or a portion of a financed facility, or any function of a financed facility. A management contract that provides for compensation based in whole or in part on the net profits of the financed facility generally results in private business use. A management contract also results in private business use if the service provider is treated as the lessee or owner for Federal income tax purposes. There are certain safe harbors prescribed by the Treasury Department for management contracts that are deemed not to constitute private business use.

Generally, private activity bonds are taxable unless issued as qualified private activity bonds.

Qualified private activity bonds

Qualified private activity bonds are tax-exempt private activity bonds issued to provide financing for specified privately used facilities or loan programs. The definition of a qualified private activity bond includes an exempt facility bond.[193]

To qualify as an exempt facility bond, 95 percent of the net proceeds must be used to finance an eligible facility.[194] Business facilities eligible for this financing include transportation (airports, ports, local mass commuting, high-speed intercity rail facilities, and qualified highway or surface freight transfer facilities); privately owned and/or operated public works facilities (sewage, solid waste disposal, water, local district heating or cooling, and hazardous waste disposal facilities); privately-owned and/or operated residential rental housing; and certain private facilities for the local furnishing of electricity or gas. Bonds issued to finance "environmental enhancements of hydro-electric generating facilities," qualified public educational facilities, and qualified green building and sustainable design projects also may qualify as exempt facility bonds.

Generally, qualified private activity bonds are subject to a number of additional eligibility restrictions that do not apply to governmental bonds. For example, the aggregate volume of most qualified private activity bonds is restricted by annual State volume limitations (the "State volume cap").[195]

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[193] Sec. 141(e).

[194] Sec. 142(a).

[195] The following private activity bonds are not subject to the State volume cap: qualified 501(c)(3) bonds, exempt facility bonds for airports, docks and wharves, environmental enhancements for hydroelectric generating facilities, and exempt facility bonds for solid waste disposal facilities that are to be owned by a governmental unit. The State volume cap does not apply to 75 percent of exempt facility bonds issued for high speed intercity rail facilities, 100 percent if the high speed intercity rail facility is to be owned by a governmental unit. Qualified veterans mortgage bonds, qualified public educational facility bonds, qualified green building and sustainable project design bonds, and qualified highway or surface freight transfer facility bonds also are not subject to the State volume cap, but the Code subjects such bonds to volume limitations specific to the category of bonds.

Alternative minimum tax

An individual or corporate taxpayer, in addition to determining its "regular" taxable income and corresponding "regular" tax, must compute its "alternative minimum taxable income" ("AMTI") and its corresponding "tentative minimum tax." The Code provides that interest on "specified private activity bonds" is an "item of tax preference." Thus, the interest must be added to taxpayer's regular taxable income in order to compute the taxpayer's AMTI. In general, "specified private activity bond" means any private activity bond issued after August 7, 1986, and the interest on which is not includible in gross income. The Code also specifies that the interest on certain private activity bonds, such as qualified 501(c)(3) bonds, and certain bonds relating to disaster areas and to housing, is not an "item of preference" for purposes of the alternative minimum tax.

Description of Proposal

The proposal creates a new category of tax-exempt qualified private activity bonds called "Qualified Public Infrastructure Bonds" ("QPIBs") to finance certain categories financed with present law exempt facility bonds, including airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, and qualified highway or surface freight transfer facilities. The proposal would also allow the financing of broadband telecommunications infrastructure to provide high-speed internet access for data transmission through wired or wireless networks. The facilities would have to be owned by a State or local government, and meet a public use requirement by serving a general public use or being available on a regular basis for general public use. The bond volume cap would be inapplicable to QPIBs. The interest on QPIBs would not be a preference item for purposes of the alternative minimum tax.

Analysis

Some would argue that the proposal does not significantly differ from present law in that almost all of the qualified project categories overlap. However, because the bonds are qualified private activity bonds, the proposal allows for significant involvement of private parties without triggering the private business test that would make the bonds taxable. Some argue that the proposal allows State and local governments to enter into management contracts for governmental public projects and fully utilize the expertise of private parties and compensate those private parties using terms that may not meet the present law safe-harbor for management contracts in the context of governmental bonds (such as long-term leases and other concessions). Thus, the proposal gives State and local governments more flexibility to use private management companies. On the other hand, the proposal may transfer more of the benefit of tax-exempt financing to private entities

Certain affected exempt facility categories covered by the QPIB proposal, such as airports, docks and wharves, and mass commuting facilities are already exempt from the State bond volume caps. Other project categories covered by the QPIB proposal, such as water facilities, sewage facilities, and qualified highway or surface freight transfer facilities are subject to the State bond volume cap under present law. Some argue that removal of the cap will allow deteriorating water infrastructure and other affected types of infrastructure projects to be replaced, as such projects will no longer have to compete with other projects for volume cap allocation.

By providing that the interest on QPIBs is not a preference item for purposes of the alternative minimum tax, the proposal intends to make such bonds more attractive to potential investors. On the other hand, the interest on other private activity bonds that are not exempted as an item of preference are disadvantaged when compared to QPIBs and may find it harder to attract investors.

F. Modify Like Kind Exchange Rules

The President's fiscal year 2017 budget proposal modifies the President's fiscal year 2016 budget proposal by expanding the application of the $1,000,000 limit on the amount of capital gain that may be deferred under section 1031[196] to all like-kind exchange property (rather than the prior proposal's application of the $1,000,000 limit to only real property).

The revenue estimate for this proposal, originally published in JCX-15-16, has been revised. The revised estimated revenue effects of this proposal are as follows:

Fiscal Years
[Millions of Dollars]

2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
---	115	264	468	820	1,419	2,410	3,821	5,860	8,830	13,078	3,086	37,085

[196] Per taxpayer, per taxable year.

G. Simplify and Better Target Tax Incentives for Education

Description of Modification

The President's fiscal year 2017 budget proposal is substantially similar to the President's fiscal year 2016 proposal, with one modification.[197] The 2017 proposal would exclude the forgiven or discharged portion of a Federal student loan from gross income in cases where the loan was forgiven or discharged as a part of a program administered by the Department of Education. This modifies the prior year proposal, which would only have excluded such forgiven or discharged loans in the case of certain income-driven repayment programs.

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[197] The proposal is also modified by virtue of legislation enacted in the PATH Act. The PATH Act made permanent the American Opportunity tax credit and made certain changes to the tuition reporting requirements for educational institutions. Because of this legislative change, both of these items are no longer included in the proposal.

H. Rationalize Net Investment Income and Self-Employment Contributions Act Taxes

Present Law

In general

As part of the financing for Social Security and Medicare benefits, a tax is imposed on the wages of an individual received with respect to his or her employment under the Federal Insurance Contributions Act ("FICA").[198] A similar tax is imposed on the net earnings from self-employment of an individual under the Self-Employment Contributions Act ("SECA").[199]

FICA

The FICA tax has two components. Under the old-age, survivors, and disability insurance component ("OASDI"), the rate of tax is 12.4 percent, half of which is imposed on the employer, and the other half of which is imposed on the employee.[200] The amount of wages subject to this component is capped at $118,500 for 2016. Under the hospital insurance ("HI") component, the rate is 2.9 percent, also split equally between the employer and the employee. The amount of wages subject to the HI component of the tax is not capped. The employee portion of the HI tax under FICA (not the employer portion) is increased by an additional tax of 0.9 percent on wages received in excess of a threshold amount. The threshold amount for the additional 0.9 percent is $250,000 in the case of a joint return, $125,000 in the case of a married individual filing a separate return, and $200,000 in any other case. The threshold amount is not indexed for inflation.[201] The wages of individuals employed by a business in any form (for example, a C corporation) generally are subject to the FICA tax. The employee portion of the FICA tax is collected through withholding from wages.[202]

SECA

The SECA tax rate is the combined employer and employee rate for FICA taxes. Under the OASDI component, the rate of tax is 12.4 percent and the amount of earnings subject to this component is capped at $118,500 for 2016. Under the HI component, the rate is 2.9 percent, and the amount of self-employment income subject to the HI component is not capped. An additional 0.9 percent HI tax applies to self-employment income in excess of the same threshold amount that is applicable under FICA (reduced by FICA wages).

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[198] See Chapter 21 of the Code.

[199] Sec. 1401.

[200] Secs. 3101 and 3111.

[201] Sec. 3101(b).

[202] Sec. 3102.

For SECA tax purposes, net earnings from self-employment generally includes the gross income derived by an individual from any trade or business carried on by the individual, less the deductions attributable to the trade or business that are allowed under the self-employment tax rules.[203] Net earnings from self-employment generally includes the distributive share of income or loss from any trade or business of a partnership in which the individual is a partner.

Specified types of income or loss are excluded, such as rentals from real estate in certain circumstances, dividends and interest, and gains or loss from the sale or exchange of a capital asset or from timber, certain minerals, or other property that is neither inventory nor held primarily for sale to customers.

Trust Fund

Under the Social Security Act, OASDI taxes are directed to Treasury trust funds that provide Social Security benefits, and HI taxes are directed to the Federal Hospital Insurance Trust Fund.

S corporation shareholders

An S corporation is treated as a passthrough entity for Federal income tax purposes. Each shareholder takes into account and is subject to Federal income tax on the shareholder's pro rata share of the S corporation's income.[204]

A shareholder of an S corporation who performs services as an employee of the S corporation is subject to FICA tax on his or her wages from the S corporation. A shareholder of an S corporation generally is not subject to FICA tax on amounts that are not wages, such as the shareholder's share of the S corporation's income.

An S corporation shareholder's pro rata share of S corporation income is not subject to SECA tax.[205] Nevertheless, courts have held that an S corporation shareholder is subject to FICA tax on the amount of his or her reasonable compensation, even though the amount may have been characterized by the taxpayer as other than wages. The case law has addressed the issue of whether amounts paid to shareholders of S corporations constitute reasonable

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[203] For purposes of determining net earnings from self-employment, taxpayers are permitted a deduction from net earnings from self-employment equal to the product of the taxpayer's net earnings (determined without regard to this deduction) and one-half of the sum of the rates for OASDI (12.4 percent) and HI (2.9 percent), *i.e.*, 7.65 percent of net earnings. This deduction reflects the fact that the FICA rates apply to an employee's wages, which do not include FICA taxes paid by the employer, whereas a self-employed individual's net earnings are economically the equivalent of an employee's wages plus the employer share of FICA taxes. The deduction is intended to provide parity between FICA and SECA taxes. In addition, self-employed individuals may deduct one-half of self-employment taxes for income tax purposes under section 164(f).

[204] Sec. 1366.

[205] See Rev. Rul. 59-221, 1959-1 C.B. 225, and Rev. Rul. 74-44, 1974-1 C.B. 287. This treatment differs from a partner's distributive share of income or loss from the partnership's trade or business, which is generally subject to SECA tax, as described below. Sec. 1402(a).

compensation and therefore are wages subject to the FICA tax, or rather, are properly characterized as another type of income that is not subject to FICA tax.[206]

In cases addressing whether payments to an S corporation shareholder were wages for services or were corporate distributions, courts have recharacterized a portion of corporate distributions as wages if the shareholder performing services did not include any amount as wages.[207] In cases involving whether reasonable compensation was paid (not exclusively in the S corporation context), courts have applied a multi-factor test to determine reasonable compensation, including such factors as whether the individual's compensation was comparable to compensation paid at comparable firms.[208] The Seventh Circuit, however, has adopted an "independent investor" analysis differing from the multi-factor test in that it asks whether an inactive, independent investor would be willing to compensate the employee as he was compensated.[209] The independent investor test has been examined and partially adopted in some other Circuits, changing the analysis under the multi-factor test.[210]

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[206] See the discussion of case law in, *e.g.*, Thomas L. Dickens and Judson R. Jahn, "Reasonable Compensation For S Corporation Shareholder-Employees," 94 *Practical Tax Strategies* 159, April 2015 (also listing websites with ranges of reasonable compensation for various sectors); Richard Winchester, "The Gap in the Employment Tax Gap," 20 *Stanford Law and Policy Review* 127, 2009; James Parker and Claire Y. Nash, "Anticipate Close Inspection of Closely Held Company Pay Practices - Part I," 80 *Practical Tax Strategies* 215, April 2008; "Renewed Focus on S Corp. Officer Compensation," AICPA Tax Division's S Corporation Taxation Technical Resource Panel, *Tax Advisor,* May 2004, at 280.

[207] *David E. Watson, P.C., v. U.S.*, 668 F.3d 1008 (8th Cir. 2012), cert. denied, 133 S. Ct. 364 (2012); *Radtke v. U.S.*, 895 F.2d 1196 (7th Cir. 1990); *Spicer Accounting, Inc. v. U.S.*, 918 F.2d 90 (9th Cir. 1990). See also, *e.g.*, *Joseph M. Grey Public Accountant, P.C., v. U.S.*, 119 T.C. 121 (2002), aff'd, 93 Fed. Appx. 473, 3d Cir., April 7, 2004, and *Nu-Look Design, Inc. v. Commissioner*, 356 F.3d 290 (3d Cir. 2004), cert. denied, 543 U.S. 821 (2004), in which an officer and sole shareholder of an S corporation argued unsuccessfully that he had no wages and that he received payments in his capacity as shareholder or as loans, rather than as wages subject to FICA tax; and *Glass Blocks Unlimited*, T.C. Memo. 2013-180, 106 T.C.M. 96 (2013), applying a facts and circumstances analysis to determine reasonableness of compensation on somewhat similar facts.

[208] See, *e.g.*, *Haffner's Service Stations, Inc. v. Commissioner*, 326 F.3d 1 (1st Cir. 2003).

[209] *Exacto Spring Corp. v. Commissioner*, 196 F.3d 833 (7th Cir. 1999).

[210] In *Metro Leasing and Dev. Corp. v. Commissioner*, 376 F.3d 1015 (9th Cir. 2004) at 10-11, the Ninth Circuit noted that it is helpful to consider the perspective of an independent investor, and pointed to other Circuits that apply the multi-factor test through the lens of the independent investor test, citing *RAPCO Inc. v. Commissioner*, 85 F.3d 950 (2d Cir. 1996). In determining whether compensation is reasonable, the Tax Court has applied the multi-factor test viewed through the lens of an independent investor where a case is appealable to a U.S. Court of Appeals which has neither adopted nor rejected the independent investor test. See *Chickie's and Pete's, Inc. v. Commissioner*, T.C. Memo. 2005-243, 90 T.C.M. 399 (2005), at footnote 9; *Miller & Sons Drywall, Inc. v. Commissioner*, T.C. Memo. 2005-114, 89 T.C.M. 1279 (2005).

Partners

In general

A partnership is treated as a passthrough entity for Federal income tax purposes. Each partner includes in income its distributive share of partnership items of income, deduction, gain and loss.[211]

A partner's distributive share of partnership items is not treated as wages for FICA tax purposes. Rather, a partner who is an individual is subject to the SECA tax on his or her distributive share of trade or business income of the partnership. The net earnings from self-employment generally include the partner's distributive share (whether or not distributed) of income or loss from any trade or business carried on by the partnership (excluding specified types of income, such as rent, dividends, interest, and capital gains and losses, as described above[212]). This rule applies to individuals who are general partners.

Limited partners

An exclusion from SECA applies in certain circumstances for limited partners of a partnership.[213] Under this rule, in determining a limited partner's net earnings from self-employment, an exclusion is generally provided for his or her distributive share of partnership income or loss. The exclusion does not apply with respect to guaranteed payments to the limited partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.[214]

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[211] Secs. 701, 702.

[212] Sec. 1402(a).

[213] Sec. 1402(a)(13).

[214] In *Renkemeyer, Campbell, & Weaver, LLP, v. Commissioner* (136 T. C. 137, 150 (2011)), the Tax Court held that distributive shares of limited partners in a law firm that was an LLP (limited liability partnership under applicable State law) of partnership income "arising from the legal services they performed in their capacity as partners in the law firm are subject to self-employment tax" in the years at issue. See also Amy S. Elliott, "Tax Court Decision Could Reignite Debate Over Partnerships and Employment Taxes," *Tax Notes Today*, March 11, 2011. See also *Howell v. Commissioner* (T.C. Memo. 2012-303, Nov. 1, 2012), in which the Tax Court concluded that a member of a limited liability company (treated as a partnership for tax purposes) who received guaranteed payments had performed services for the partnership and therefore was required to include the payments in net earnings from self-employment; and *Riether v. U.S.* (919 F.Supp.2d 1140 (D.C. N.M., 2012)) in which the District Court held that the two members of a diagnostic imaging LLC should have treated all their income from the LLC as self-employment income because they participated in the partnership business. In 1997, the Treasury Department issued proposed regulations defining a limited partner for purposes of the self-employment tax rules. Prop. Treas. Reg. sec. 1.1402(a)-2 (January 13, 1997). These regulations provided, among other things, that an individual is not a limited partner if the individual participates in the partnership business for more than 500 hours during the taxable year. However, in the Taxpayer Relief Act of 1997, the Congress imposed a moratorium on regulations regarding employment taxes of limited partners. The moratorium provided that any regulations relating to the definition of a limited partner for self-employment tax purposes could not be issued or effective before July 1, 1998. No regulations have been issued to date.

The owners of a limited liability company that is classified as a partnership for Federal tax purposes are treated as partners for tax purposes. However, under State law, limited liability company owners are not defined as either general partners or limited partners.

Net investment income ("NII") tax

Rate and application of the tax

An additional tax is imposed on net investment income in the case of an individual, estate, or trust. In the case of an individual, the tax is 3.8 percent of the lesser of net investment income or the excess of modified adjusted gross income over the threshold amount.

The threshold amount is $250,000 in the case of a joint return or surviving spouse, $125,000 in the case of a married individual filing a separate return, and $200,000 in any other case. The threshold amount is not indexed for inflation. Modified adjusted gross income is adjusted gross income increased by the amount excluded from income as foreign earned income under section 911(a)(1) (net of the deductions and exclusions disallowed with respect to the foreign earned income).

In the case of an estate or trust, the tax is 3.8 percent of the lesser of undistributed net investment income or the excess of adjusted gross income (as defined in section 67(e)) over the dollar amount at which the highest income tax bracket applicable to an estate or trust begins.

The tax does not apply to a nonresident alien or to a trust all the unexpired interests in which are devoted to charitable purposes. The tax also does not apply to a trust that is exempt from tax under section 501 or a charitable remainder trust exempt from tax under section 664.

The tax is subject to the individual estimated tax provisions. The tax is not deductible for income tax purposes.

Net investment income definition

Net investment income is investment income reduced by the deductions properly allocable to such income.

Investment income is the sum of (i) gross income from interest, dividends, annuities, royalties, and rents (other than income derived in the ordinary course of any trade or business to which the tax does not apply), (ii) other gross income derived from any trade or business to which the tax applies, and (iii) net gain (to the extent taken into account in computing taxable income) attributable to the disposition of property other than property held in a trade or business to which the tax does not apply.[215]

The NII tax applies if a trade or business is a passive activity with respect to the taxpayer, or if the trade or business consists of trading financial instruments or commodities (as defined in

[215] Gross income does not include items, such as interest on tax-exempt bonds, veterans' benefits, and excluded gain from the sale of a principal residence, which are excluded from gross income under the income tax.

section 475(e)(2)). In general, for a trade or business to be a passive activity (within the meaning of section 469) with respect to a taxpayer, the taxpayer does not materially participate in the trade or business (with certain exceptions).

Consequently, the NII tax generally does not apply to income or gain from a trade or business conducted as a sole proprietor, partnership, or S corporation, if the individual taxpayer materially participates in the trade or business activity. The NII tax does not apply to wages of an employee.

In the case of the disposition of a partnership interest or stock in an S corporation, gain or loss is taken into account only to the extent gain or loss would be taken into account by the partner or shareholder if the entity had sold all its properties for fair market value immediately before the disposition. Thus, only net gain or loss attributable to property held by the entity which is not property attributable to an active trade or business is taken into account.[216]

Income, gain, or loss on working capital is not treated as derived from a trade or business. Investment income does not include distributions from a qualified retirement plan. Nor does net investment income include amounts subject to SECA tax; thus, in effect, the application of SECA tax is determined before NII is determined.

Description of Proposal

NII tax expanded

The proposal expands the definition of net investment income subject to the NII tax in the case of an individual. Under the proposal, NII tax applies to income and gain of an individual from any trade or business (regardless of whether the taxpayer materially participates in it) that is not otherwise subject to FICA or SECA tax in the hands of the taxpayer. Further, any gain or loss from disposition of such a partnership interest or stock in an S corporation is taken into account under the NII tax. A principal effect is that those S corporation shareholders and limited partners who currently do not pay either SECA or FICA tax on their distributive shares of S corporation and partnership income and gain become subject to NII tax on this income and gain, to the extent they are not subject to SECA under the proposal.

The proposal retains the unindexed threshold amounts above which the NII applies, specifically, $250,000 in the case of a joint return or surviving spouse, $125,000 in the case of a married individual filing a separate return, and $200,000 in any other case.

SECA tax expanded

The proposal expands the SECA tax to apply to the pro rata share of income of S corporation shareholders and the distributive share of income of limited partners, including members of LLCs who might be viewed as limited partners. Under the proposal, S corporation

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[216] For this purpose, a business of trading financial instruments or commodities is not treated as an active trade or business.

shareholders and limited partners who materially participate in a professional service business through the entity must take into account their shares of S corporation or partnership income in determining net earnings from self-employment for SECA purposes.[217]

S corporation shareholders and limited partners who do not materially participate take into account for SECA purposes only that portion of their share of income that represents reasonable compensation for services in the business. Reasonable compensation is defined generally as under present law, but may not be less than any guaranteed payment received for services in the business.

Under the proposal, material participation generally means working for at least 500 hours per year in the professional service business, and includes standards for material participation set forth in regulations under the passive loss rules (present-law section 469), not taking into account the section 1402(a)(13) limited partner exception.

For purposes of the proposal, a professional service business means one in which substantially all the activities involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, brokerage services, and lobbying.

The proposal retains the present-law exclusions from net earnings from self-employment for rents, dividends, interest, and capital gains and losses of the business, and certain retired partner income.

Under the proposal, the wages − currently subject to FICA tax via withholding − of an S corporation shareholder of a professional service business are instead included in earnings subject to SECA taxes. Treasury regulatory authority to implement the proposal is provided.

The proposal does not change the SECA tax treatment of sole proprietorships. The proposal does not change the SECA tax treatment of individuals engaged in businesses other than professional service businesses through an S corporation, a partnership, a limited partnership, or an LLC that is treated for tax purposes as a partnership.

<u>Trust Fund effect</u>

The proposal establishes that all revenue raised under the NII tax after the effective date is directed to the Federal Hospital Insurance Trust Fund.

<u>Effective date</u>.−The proposal is effective for taxable years beginning after December 31, 2016.

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[217] The proposal also makes parallel changes to corresponding provisions of the Social Security Act.

Analysis

In general

Criticism has been expressed about the disparate impact or uneven application of SECA, FICA, and NII taxes across forms of business under present law.[218] This affects taxpayers' choice of business form and business capital structure, and induces taxpayers to characterize income as capital income or labor income, or to perform services or materially participate in a business, or not, based on tax effects rather than economic results.

The current rules may create an unintended incentive to take potentially inconsistent positions due to small or perceived differences in the standards for exclusions from the SECA tax and the NII tax. Limited partners and members of LLCs that are treated as partnerships may take the position that they are not subject to SECA tax under the limited partner exception even if they are performing services, but that they are materially participating for purposes of the NII tax exception for active partners. Similarly, S corporation shareholders may take the position that their distributive shares do not constitute reasonable compensation for services they perform in the S corporation's business, yet the distributive shares do qualify for the NII tax exception for active S corporation shareholders. In the year when a partnership or S corporation sells business assets at a gain, otherwise passive owners may seek to take the position that year that they are active in the business so that gain is not subject to NII tax in the partner's or S corporation shareholder's hands.

By expanding the NII tax, the proposal reduces the instances in which differences among the various sets of rules may induce inconsistent taxpayer positions. More specifically, the proposal has the effect of applying a 3.8-percent tax to almost all trade or business income and gain of an individual above a dollar threshold, whether the individual is performing services or not or is active or passive with respect to the trade or business. The effect is to minimize distinctions between passthrough income that is not subject to any form of the 3.8-percent tax, and other types of income.

The SECA piece of the proposal separately addresses some of the issues of present law by reducing the applicability of the fact-based reasonable compensation test in the case of certain professional service businesses in which the taxpayer materially participates.

The proposal also equalizes the utilization of revenue by directing all revenue under the 3.8-percent tax (whether derived from NII, SECA, or FICA tax) to the same trust fund, the Federal Hospital Insurance Trust Fund.

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[218] See, *e.g.*, Willard B. Taylor, "Should Payroll Taxes Be Repealed?" *Tax Notes*, July 13, 2015; Willard B. Taylor, "Payroll Taxes − Why Should We Care? What Should Be Done?" *Tax Notes*, November 26, 2012; Kara Freidenberg, "Impact of the 3.8 Percent Net Investment Tax on Alternatives," *Tax Notes*, January 23, 2012, page 473.

NII tax

Addressing gaps

Above the NII threshold amount, the proposal closes several present-law gaps. By expanding the NII tax to all income and gain of an individual from any trade or business that is not otherwise subject to FICA or SECA tax, the proposal ensures that most gaps in the base for the FICA and SECA 3.8-percent HI tax are filled.[219] That is, the proposal imposes a 3.8 percent tax on certain income that limited partners and LLC members might take the position is not taxed for purposes of the present-law SECA tax calculation due to the exception for limited partners. The proposal imposes a 3.8-percent tax on the distributive shares of S corporation shareholders that are not treated as either reasonable compensation for services or wages (subject to FICA) under present law. The proposal imposes a 3.8-percent tax on gains from the sale of business assets subject to NII tax under present law in the hands of a passive partner or S corporation shareholder.

Addressing inconsistencies among applicable rules

Because the proposal retains the SECA rules and applies NII only to income that is not subject to SECA or FICA, the inconsistencies between the two sets of rules are highlighted. In general, the proposal modifies SECA to apply equally to individuals' professional service business income whether from a partnership or S corporation form of business. Thus, although differences in present-law treatment of S corporation shareholders, limited partners, and other partners materially participating in a professional service business are eliminated under the proposal, differences between SECA and NII remain.

An important difference is that SECA excludes capital gains, rents, dividends, and interest, whereas NII applies to them. Another difference is that SECA, as modified by the proposal, applies to material participants in the business and to reasonable compensation of non-material participants, whereas NII (as modified by the proposal) applies without regard to the individual's material participation or reasonable compensation. The material participation and reasonable compensation determinations involve significant factual inquiries that can be the subject of recordkeeping requirements for taxpayers, disputes, and litigation that has a cost to both taxpayers and the government. These inquiries, though required for SECA purposes under the proposal, are irrelevant in determining NII tax applicable to the same business income under the proposal. Even if FICA and SECA (but not NII) tax amounts are tracked for nontax (social security benefit) purposes, it may not be necessary to measure FICA and SECA tax amounts using different rules than those for NII tax amounts, particularly if one of the measurement approaches involves potentially burdensome factual inquiries into reasonable compensation and material participation.

[219] United States Department of the Treasury Office of Tax Analysis, "Gaps between the Net Investment Income Tax Base and the Employment Tax Base," April 14, 2016, available at https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/OTA-NIIT-SECA-Coverage.pdf.

Conceptually, another approach to reducing simultaneously applicable inconsistent rules could be to eliminate the separate regimes applying the 2.9- or 3.8-percent tax. Instead, the tax could be collected through the existing income tax rules. Under such an approach, any additional tax needed to fund the Federal Hospital Insurance Trust Fund would be collected through the income tax, for example, by increasing the rate of income tax, imposing a surtax under the income tax, or alternatively expanding the income tax base so as to collect the needed revenue through the income tax. Such an approach would make more transparent the rates of Federal tax imposed on business income of individuals. The tax could be administered under procedural and collection-related rules already applicable to income tax of individuals. In the case of wage income, existing income tax withholding could be applied to improve taxpayer compliance and reduce the administrative cost of collecting the tax. Estimated tax payment requirements of present law under the income tax could be applied to improve collections and unify the types of penalties applicable to the tax. As an alternative to increasing income tax rates or imposing an income surtax to collect the revenue, other changes could be made to the individual income tax base to take account of revenue lost if the HI tax and NII tax did not apply.

However, some might oppose the idea of increasing the individual income tax rates or base instead of just harmonizing the separate NII, employment and self-employment tax regimes that exist today. In addition, without the HI or NII tax revenue, the source of funding for the Federal Hospital Insurance Trust Fund would need to be identified. For example, if the connection between labor income and benefits paid by means of funding of the Federal Hospital Insurance Trust Fund were severed, funding for the Trust Fund could be allocated from the general fund of the United States Treasury. This approach might be criticized as less reliable than a dedicated funding source such as revenues from a separate tax as under present law. Further, transitioning to a merged or single regime could be more difficult than simply expanding one of the existing sets of rules as under the proposal.

SECA tax

In general

A fundamental question about the SECA piece of the proposal is why it makes a rather limited expansion of SECA that could be viewed as conceptually inconsistent with the more encompassing expansion of NII under the proposal. As for the mechanics of the SECA expansion, the proposal's abandonment of FICA withholding in favor of self-assessment under SECA in some situations could be criticized as inconsistent with the proven compliance superiority of withholding regimes over self-assessment regimes. In this context, a different approach might be to credit FICA tax paid with respect to an S corporation shareholder employee against that individual's SECA tax liability under the proposal. Other technical concerns under the proposal would also have to be addressed.

Modestly improving uniformity of application, viewed as a separate proposal

The aspect of the proposal modifying the SECA tax regime could be viewed independently of the NII proposal as an attempt to apply the tax more evenly across business forms on a limited basis. The proposal seeks to reduce administrative difficulties in enforcing the self-employment tax law by reducing the application of the reasonable compensation test, which requires facts and circumstances determinations. That is, in the situation in which an S corporation shareholder materially participates in a professional service business through the entity, the proposal does not apply the reasonable compensation test as under current case law. For such S corporation shareholders, the proposal applies the present-law SECA rule for general partners, which does not involve a reasonable compensation inquiry, and which excludes from SECA tax specified types of capital income such as interest, dividends, rent, and capital gains.

Proponents argue that the favorable self-employment tax treatment of S corporation shareholders and limited partners under present law, compared to the employment and self-employment tax treatment of other business owners and service providers under present law, has led to serious economic distortions.[220] Voluntary compliance with the tax system is soured by the ability of S corporation shareholders and limited partners to escape some or all employment tax, while other business owners' and workers' compensation is subject to the tax.[221] Some attribute the quick growth of S corporations to employment tax avoidance motives, noting that the issue becomes more widespread as time passes.

The SECA piece of the proposal eliminates some of the differences in employment tax treatment among S corporation shareholders and limited partners by applying the same standard to them in particular fact situations. That is, any S corporation shareholder or limited partner is subject to self-employment tax on his or her distributive share of the entity's trade or business income if he or she materially participates in the entity's professional service business. If he or she does not materially participate in the entity's professional service business, then the reasonable compensation factual inquiry of present law is made uniformly applicable under the proposal. That is, the portion of an S corporation's distributive share representing reasonable compensation for his or her services from the professional service business is subject to self-employment tax.

Under the SECA piece of the proposal, the taxpayer applies a material participation standard and maintains records to support his or her position, rather than the current system of

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220 In a 2009 report, the Government Accountability Office (GAO) stated, "[u]sing IRS data, GAO calculated that in the 2003 and 2004 tax years, the net [S corporation] shareholder compensation underreporting equaled roughly $23.6 billion, which could result in billions in annual employment tax underpayments." Government Accountability Office, *Tax Gap: Actions Needed to Address Noncompliance with S Corporation Tax Rules,* December 2009 Report to the Committee on Finance, U.S. Senate, GAO-10-195. See also Peter J. Reilly, "S Corporation SE Avoidance Still a Solid Strategy," *Forbes*, August 25, 2013, available at http://www.forbes.com/sites/peterjreilly/2013/08/25/s-corporation-se-avoidance-still-a-solid-strategy/.

221 Treasury Inspector General for Tax Administration, *Actions are Needed to Eliminate Inequities in the Employment Tax Liabilities of Sole Proprietorships and Single-Shareholder S Corporations*, May 2005, Reference No. 2005-30-080, at 2. The report discusses options for addressing the compliance problem, including an option to apply employment tax generally to the operating income of an S corporation in which any one individual (including his or her family members) owns more than 50 percent of the stock. *Id.* at 18-19. A related report describes the Treasury Inspector General for Tax Administration's review to evaluate whether the IRS has an effective strategy to measure employment tax reporting compliance: Treasury Inspector General for Tax Administration, *Additional Work is Needed to Determine the Extent of Employment Tax Underreporting*, August 2005, Reference No. 2005-30-126. See also, *Renewed Focus on S Corp. Officer Compensation*, AICPA Tax Division's S Corporation Taxation Technical Resource Panel, Tax Advisor, May 2004, p. 280.

enforcement relying largely on IRS audits and the outcome of litigation. Similarly, the taxpayer would have to determine his or her reasonable compensation based on applicable facts and circumstances or on standards ultimately developed under Treasury regulations. This aspect of the proposal does not completely resolve the administrative difficulties of present law, in which the reasonable compensation inquiry raises factual issues. Factual issues of material participation and reasonable compensation could still be the subject of potential disputes under the proposal, unlike under the general partner rule of present law in which material participation and reasonable compensation are irrelevant.

The SECA piece of the proposal does not specifically change the present-law rule in some other fact situations. The proposal does not change the present-law employment tax treatment of S corporation shareholders and limited partners if the entities are not engaged in professional service businesses. The disparity in treatment of S corporation shareholders and other business owners remains under the SECA piece of the proposal for these other businesses. It could be said that these other businesses may be less prevalent in S corporation form, so this difference is not very significant, although others might assert this is not accurate.[222] Further, if the SECA piece of the proposal is taken together with the NII piece of the proposal, a distinction between professional service businesses and other businesses is not made.

Though the SECA piece of the proposal eliminates some disparities in employment tax treatment, other disparities are either retained as-is, or are modified but still give rise to disparate treatment. For example, the proposal does not specify that it changes the present-law employment tax treatment of general partners in partnerships engaged either in professional service businesses, or in other businesses, though the proposal does change the tax treatment of limited partners. Thus, under the proposal, in a limited partnership with both general and limited partners that is engaged in a professional service business, different SECA tax treatment still applies to partners within the same partnership. General partners include their distributive shares in net earnings from self-employment regardless of their material participation. Limited partners who materially participate include their distributive shares in net earnings from self-employment. Limited partners who do not materially participate include a portion of their distributive share equal to reasonable compensation for services in net earnings from self-employment. Further, outside the context of the professional service business, the proposal does not eliminate the disparate treatment under present law of S corporation shareholders, limited partners, and general partners. However, if the SECA piece of the proposal is taken together with the expansion of the NII tax under the proposal, these issues are eliminated.

A relatively small improvement in administrability and uniformity of the SECA rules may be viewed as a reasonable first step, if it were an independent proposal. On the other hand, in the context of the broad NII piece of the proposal, it could be said that a narrow fix in the SECA area is too paltry a solution. Similarly, the absence of any factually oriented test (such as

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[222] Recent data suggest that about a third of returns of S corporations and between a quarter and a third of S corporation net income come from service businesses that could be considered professional service businesses. Internal Revenue Service, *IRS Statistics of Income Corporation Source Book*, Publication 1053 (Rev. 3-2014), available at http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Source-Book:-U.S.-Total-and-Sectors-Listing, and Joint Committee staff calculations based on industry sector codes.

material participation or reasonable compensation) under the NII proposal argues for a more mechanical and formulaic and less fact-dependent resolution of the SECA area. Further, the NII proposal appears to undo present-law SECA exceptions for capital gains, interest and dividends. That is, the NII proposal appears to impose a 3.8 percent tax on capital gains, interest, and dividends (and any other investment income) from a partnership (or S corporation) that are not subject to the 3.8 percent SECA tax today. No factual determination is required for this purpose, and this point could be offered as a criticism of the burdensome factual inquiry into material participation or reasonable compensation that is nevertheless applied to business income of partners and S corporation shareholders under the proposal.

The stated purposes of the proposal also include the purpose to address the issue of a gap in application of NII tax for S corporation shareholders. That is, S corporation shareholders are not only not subject to self-employment tax (except to the extent reasonable compensation exceeds their wages), but also, active S corporation shareholders are generally not subject to the NII tax to which owners of other passthrough entities are generally subject. It could be argued that the nonapplication of both of these taxes exacerbates a tax-motivated entity choice favoring S corporations over other forms of doing business. Applying the self-employment tax to S corporation shareholders to a greater degree than under present law could mitigate this policy concern, it is argued. On the other hand, the NII tax is a separate tax rule and is not related to uneven application of the employment and self-employment tax rules across different forms of business ownership. If reducing tax disparities among business forms is a goal, then a more direct solution might be to reduce the number of different sets of tax rules for businesses, such as by providing for a single type of passthrough entity regime for Federal tax purposes. However, such a proposal is beyond the scope of the employment and self-employment tax rules to which the proposal is addressed.

<u>Other approaches to harmonizing SECA rules</u>

The SECA regime could be more comprehensively altered to make its rules uniform across all types of business activities and business entities (other than C corporations). One way could be to apply the proposal's material participation test and reasonable compensation analysis to all business owners other than C corporation owners. A different approach could be to apply the present-law rule for general partners and sole proprietors to all business owners other than C corporation owners.

Criticisms could be made of either of these approaches. Under the first approach, both the material participation test and any reasonable compensation analysis are dependent on the facts of each situation. Such rules are applied on a case-by-case basis and are not self-executing, bright-line standards. Substituting the material participation and reasonable compensation inquiries for the relatively simple mechanical rule that applies to general partners and sole proprietors under present law worsens rather than improves the administrability of the self-employment tax. This would be contrary to one of the goals of the proposal to reduce enforcement challenges in the self-employment tax. In addition, it would create disparate treatment where none exists today. That is, the application of the SECA tax would depend on material participation, a distinction not made today for general partners or sole proprietors.

The second approach of extending the present-law rule for general partners and sole proprietors to limited partners and S corporation shareholders may not raise either an administrability concern or result in a disparity among business owners. However, some might oppose it on the theory that self-employment tax should apply, conceptually, to labor income and not to capital income. It has been argued that an inquiry into the individual's material participation in a business and limiting the net earnings from self-employment to reasonable compensation is consistent with the notion that self-employment tax should apply to labor income. Historically, the employment tax has applied to labor income, relating very roughly to the rules for accruing benefits under the Social Security system, which requires the individual to perform quarters of labor.[223] But it could be asserted that the present-law calculation of the net earnings from self-employment already excludes capital income from partnerships in the case of general partners, in that the self-employment tax does not apply to specified capital income items, namely real estate rentals in certain circumstances, dividends and interest, and gains or loss from the sale or exchange of a capital asset or from timber, certain minerals, or other non-inventory property.

Technical concerns arising from the SECA piece of the proposal

A technical issue relating to the proposal has to do with non-materially-participating family members (or other related persons) of a service provider in a professional service business. In the absence of a rule addressing the treatment of family members' (or related persons') distributive shares of S corporation income, the material participation standard could potentially be avoided. For example, the material participation threshold could be circumvented using arrangements in which the service provider owns one percent of the stock of an S corporation, and nonservice providing family members own 99 percent. This concern could be addressed, for example, through a statutory rule or regulation providing that a shareholder's pro rata share of S corporation income or loss described in section 1366 that is attributable to the professional service business includes the pro rata share of each member of that shareholder's family of such items of income or loss of the S corporation.

Another technical issue involves tiered entities, for which the proposal does not explicitly provide a rule. For example, the SECA piece of the proposal does not specifically address whether a partnership or S corporation should be considered as engaged in a professional service business if it, or a lower-tier entity, is engaged in a professional service business. For example, if a medical professional service business is conducted in a lower-tier partnership in which an S corporation has an interest through tiers of partnerships, the proposal does not address whether the result would be the same as if the individual taxpayer has a direct interest in the partnership's medical professional service business. Similarly, the proposal does not address the use of wholly or partially commonly owned entities to attempt to separate the provision of services (or material participation in the professional service business) from the distributive share of income.

[223] See the Social Security Act, 42 U.S.C. section 413(a)(2)(A), defining a quarter of coverage. Benefit accruals have historically been tied to performance of labor (quarters of service), but the amount of FICA taxes collected does not necessarily relate to the individual's Social Security benefits.

Statutory or regulatory rules addressing tiered and commonly-owned entities could, however, be developed.

Some might question why the proposal provides that the FICA wages of S corporation shareholder-employees in professional service businesses are converted to SECA net earnings from self-employment under the proposal. Arguably, this approach worsens compliance, as it is demonstrable that withholding (as under FICA) improves compliance compared to nonwithholding collection mechanisms (as under SECA), and further, new lines drawn by the proposal for SECA purposes could introduce new forms of noncompliance. Another possible approach might be to credit FICA tax paid with respect to an S corporation shareholder employee against that individual's SECA tax liability under the proposal.

I. Increase Tobacco Taxes and Index for Inflation

Description of Modification

The President's fiscal year 2017 budget proposal is substantially similar to the fiscal year 2016 proposal, with one modification. The 2016 proposal taxed pipe tobacco and roll-your-own tobacco at a rate of $44.23 per pound, and snuff and chewing tobacco at $10.00 per pound. The 2017 proposal modifies this by taxing snuff and chewing tobacco at the same rate as pipe tobacco and roll-your-own tobacco. Under the 2017 proposal, all of these items are taxed at $44.23 per pound.

J. Expand Federal Unemployment Tax Act (FUTA) Base and Reform FUTA Credit Reduction Rules

Description of Modification

This proposal modifies a proposal contained in previous budget proposals. The President's fiscal year 2017 budget proposal raises the annual FUTA wage base to $40,000 per worker as of 2018, indexes the wage base to wage growth for subsequent years, and reduces the net FUTA tax rate (0.6 percent under present law and 0.8 percent under another budget proposal) to 0.167 percent. States with wage bases below the new FUTA wage base are required to conform to the new FUTA wage base.[224] In addition, the proposal changes the FUTA credit reduction rules. Instead of a reduction in the FUTA credit rate after a State fails to repay outstanding loans for two years, a reduction would apply if a State's unemployment program is at higher risk of insolvency as determined by having an average high cost multiple ("AHCM")[225] of less than 0.5 for two consecutive years. The FUTA credit reduction would apply for each year until the minimum solvency standard of 0.5 AHCM is met.

[224] The proposal also requires States to apply a minimum State unemployment insurance tax rate on employers as of 2018, equivalent to approximately $70 per employee.

[225] The AHCM is a measure of the solvency of a State's unemployment program, under which a value of one (1) indicates that a State has sufficient funds to pay estimated benefits for one year of an average recession.

K. Increase Certainty with Respect to Worker Classification

Present Law

If, in connection with an audit, there is an actual controversy involving an IRS determination as part of an examination that a worker is an employee of a taxpayer for employment tax purposes or that the taxpayer is not entitled to relief under section 530 of the Revenue Act of 1978 ("section 530 relief")[226] with respect to the worker, the taxpayer may petition the Tax Court for a determination of whether the IRS determination is correct and the proper amount of employment tax.[227]

Under Notice 2002-5,[228] the IRS issues a "Notice of Determination of Worker Classification" ("Notice") to a taxpayer reflecting the IRS's determination that one or more workers are employees of the taxpayer for employment tax purposes, that the taxpayer is not entitled to section 530 relief, and of the amount of employment tax owed by the taxpayer. Notice 2002-5 provides that the IRS will issue a Notice only after it has determined both that one or more workers are employees of the taxpayer for employment tax purposes and that the taxpayer is not entitled to section 530 relief. Notice 2002-5 states that the issuance of a Notice by the IRS is a jurisdictional prerequisite for a taxpayer petition seeking Tax Court review of these IRS determinations.

In recent cases, the Tax Court has held that it has jurisdiction to review IRS determinations relating to the status of workers as employees and a taxpayer's entitlement to section 530 relief, regardless of whether the IRS has made a determination with respect to only one or with respect to both and regardless of whether the IRS has issued a Notice.[229]

Description of Modification

As modified, the President's fiscal year 2017 budget proposal states that it clarifies the rules with respect to Tax Court jurisdiction in proceedings involving the classification or reclassification of workers and makes technical and conforming changes to those rules. However, the proposal does not describe the specific changes to be made.

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[226] Pub. L. No. 95-600 (temporary relief) and Pub. L. No. 97-248 (relief made permanent). Section 530 generally allows a taxpayer to treat a worker as not being an employee for employment tax purposes (sections 3101-3512), regardless of the individual's actual status under the common-law test, unless the taxpayer has no reasonable basis for such treatment.

[227] Sec. 7436.

[228] 2002-1 C.B. 320.

[229] *American Airlines, Inc. v. Commissioner*, 144 T.C. 24 (2015), and *SECC Corporation v. Commissioner*, 142 T.C. 225 (2014). In Chief Counsel Notice CC-2016-002 (December 17, 2015), 2015 CCN LEXIS 8, the IRS changed its litigating position with respect to Tax Court jurisdiction.

L. Streamline Private Business Limits on Government Bonds

Present Law

Governmental bonds are bonds that do not meet the private activity bond tests described below. Whether a State or local bond is a governmental bond or a private activity bond is based on whether the bond issue exceeds the limits of the private business tests, or the private loan financing test. The private business tests consist of (1) the two part test of private business use and private security or payment, and (2) certain special private business test rules, *i.e.*, the "unrelated and disproportionate use" limit; the $15 million limit on nonqualified amounts; and special rules for certain utility financings.

Private business tests

The two-part private business test

Under the private business test, a bond is a private activity bond if it is part of an issue in which:

1. More than 10 percent of the proceeds of the issue (including use of the bond-financed property) are to be used in the trade or business of any person other than a governmental unit ("private business use"); and

2. More than 10 percent of the payment of principal or interest on the issue is, directly or indirectly, secured by (a) property used or to be used for a private business use or (b) to be derived from payments in respect of property, or borrowed money, used or to be used for a private business use ("private payment test").[230]

A bond is not a private activity bond unless both parts of the private business test (*i.e.*, the private business use test and the private payment test) are met. Thus, a facility that is 100 percent privately used does not cause the bonds financing such facility to be private activity bonds if the bonds are not secured by or paid with private payments. For example, a stadium that will be used by a professional sports team may be financed with governmental bonds if the team, or other private party, does not pay the debt service on such bonds.

For purposes of the private payment test, both direct and indirect payments made by any private person treated as using the financed property are taken into account. Payments by a person for the use of proceeds generally do not include payments for ordinary and necessary expenses (within the meaning of section 162) attributable to the operation and maintenance of financed property.[231]

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[230] As discussed infra, the 10 percent private business test is reduced to five percent in the case of private business uses (and payments with respect to such uses) that are unrelated to any governmental use being financed by the issue.

[231] Treas. Reg. sec. 1.141-4(c)(3).

Certain special private business test rules

Unrelated and disproportionate use limit.−The Code imposes lower limits when the private use of assets financed with governmental bonds is unrelated or disproportionate to the governmental use. In the case of unrelated and disproportionate business use, the 10 percent private use test is reduced to five percent. The private payment test limit is also reduced to five percent.

$15 million limit on nonqualified amounts.−Even if the "nonqualified amount" of proceeds does not exceed 10 percent of the proceeds (or the five percent amount of the unrelated or disproportionate use limit), a bond may still be classified as a private activity bond. The nonqualified amount is the lesser of (1) the amount proceeds of the issue which are to be used for any private business use, or (2) the amount of proceeds with respect to which there are private payments or security. An issue of bonds will be private activity bonds if the nonqualified amount exceeds $15 million, unless the issuer allocates a portion of its volume cap to such issue in an amount equal to the excess of such nonqualified amount over $15 million.

Special rules for certain utility financings.−A separate special rule applies when five percent or more of proceeds are to be used to finance output facilities (other than a facility for the furnishing of water). The Code imposes a special $15 million volume limitation for such bonds financing output facilities under these circumstances. As a result, an issuer generally cannot issue more than $15 million of tax-exempt bonds to finance an output facility or the bonds will be private activity bonds.

Private loan financing test

A bond will be treated as a private activity bond, even if it does not satisfy the private business tests, if the private loan financing test is satisfied. The private loan financing test is satisfied if the amount of proceeds of the issue which is to be used (directly or indirectly) to make or finance loans to persons other than governmental entities exceeds the lesser of (1) five percent of such proceeds, or (2) $5 million.

Description of Modification

The President's fiscal year 2017 budget proposal would repeal the five-percent unrelated or disproportionate use limit and the $15 million private business limit on nongovernmental output facilities. The proposal would modify the private loan limit to limit private loans to no more than 10 percent of bond proceeds. The proposal would retain the volume cap requirement for private involvement over $15 million in larger governmental bond issues to apply both private business use and private loans.

Analysis

The "unrelated and disproportionate use limit" requires factual determinations as to whether a specific ancillary activity is related to the governmental purpose being financed with proceeds of the bond issue. The penalty for an erroneous determination is loss of tax-exemption on interest for the entire bond issue.[232] By eliminating the "unrelated and disproportionate use" limit and its factual determinations of what is related or disproportionate, the proposal provides a simpler standard, and would lower issuance costs involved in the factual determinations of present law. On the other hand, the unrelated and disproportionate limit is a rule to ensure that the issuance of governmental bonds is predominantly for governmental purposes and to limit the ability of nongovernmental persons to enjoy the benefits of tax-exempt financings intended for governmental purposes.

The general limits on private business use of governmental bond proceeds, combined with the requirement that certain larger issues receive an allocation of State private activity bond volume authority, serve to limit issuance of tax-exempt governmental bonds to situations in which a private party does not receive excessive benefit. Thus, some would argue that the special rule for nongovernmental output facilities is unnecessary and adds complexity.

Some would argue that changing the private loan financing test from a five percent/$5 million test to a simple 10 percent of proceeds test increases the transfer of benefits of tax-exempt financing to private parties. Others would argue that the present-law five percent/$5 million test introduces complexity and is too limiting given rising costs.

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[232] See, Joint Committee on Taxation, *Study of the Overall State of the Federal Tax System and Recommendations for Simplification, Pursuant to Section 8022(3)(B) of the Internal Revenue Code of 1986* (JCS-3-01), April 2001, p. 516.

M. Expand Expensing for Small Business

Description of Modification

The President's fiscal year 2017 budget proposal modifies the President's fiscal year 2016 budget proposal by replacing the section 179 expensing limitations for the cost of qualified zone property placed in service by enterprise zone businesses located in designated empowerment zones with 100-percent bonus depreciation, as described in the President's fiscal year 2017 budget proposal to designate promise zones.[233]

The remainder of the proposal is substantially similar to last year's proposal, except that it has been modified to reflect tax law changes enacted in the "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act").[234] That provision makes permanent the treatment of off-the-shelf computer software as qualifying property. The provision also makes permanent the permission granted to a taxpayer to revoke without the consent of the Commissioner any election, and any specification contained therein, made under section 179. Accordingly, the President's budget proposal no longer specifically adds these modifications.

The PATH Act also makes permanent the treatment of qualified real property as eligible section 179 property.[235] Accordingly, the President's budget proposal no longer excludes qualified real property from section 179.

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[233] See Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, February 2016, pp. 45-46.

[234] Pub. L. No. 114-113, Division Q, Title II, sec. 151.

[235] Further explanation of changes made to section 179 by the PATH Act can be found at Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in 2015* (JCS-1-16), March 2016, Part 13, Division Q, Title I, Item A.15.

N. Modify and Permanently Extend the Deduction for Energy Efficient Commercial Building Property

Description of Modification

The President's fiscal year 2017 budget proposal modifies last year's proposal to permanently extend and modify the deduction for energy efficient commercial building property. Last year's proposal proposed updating the applicable energy efficiency standard of a reference building to the minimum requirement of Standard 90.1-2004 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers, and the Illuminating Engineering Society of North America ("ASHRAE"). This year's proposal updates the applicable energy efficiency standard of a reference building to the minimum requirement of ASHRAE Standard 90.1-2010.[236] Other aspects of the proposal remain the same, although the effective date is moved forward one year, from certified improvements made after December 31, 2015, to certified improvements made after December 31, 2016.

[236] In December 2015, the Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, changed the ASHRAE Standard with respect to the present law deduction for energy efficient commercial building property from 90.1-2001 to 90.1-2007.

PART III – PROPOSALS MODIFIED DUE TO LEGISLATION ENACTED IN 2015

A. Enhance and Simplify Research Incentives

Description of Modification

This proposal is substantially similar to a proposal found in the President's fiscal year 2016 budget proposal, except that it has been modified to reflect tax law changes enacted in the "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act").[237] That provision made permanent the present law research credit. In addition, under that provision, research credits of an eligible small business[238] determined for taxable years beginning after December 31, 2015, may offset both regular tax and alternative minimum tax ("AMT") liabilities.[239]

Making the research credit a permanent feature of the Code was included in last year's proposal. Accordingly, the President's budget proposal no longer specifically adds this modification.

Allowing the research credit to offset AMT liability was also included in last year's proposal. Accordingly, the President's budget proposal clarifies that it allows the research to offset AMT liability for all taxpayers (not just eligible small businesses as in the PATH Act modification).

[237] Pub. L. No. 114-113, Division Q, Title II, sec. 151.

[238] As defined in section 38(c)(5)(C), after application of rules similar to the rules of section 38(c)(5)(D).

[239] Further explanation of changes made to the research credit by the PATH Act can be found at Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in 2015* (JCS-1-16), March 2016, Part 13, Division Q, Title I, Item A.12.

B. Extend and Modify Certain Employment Tax Credits, Including Incentives for Hiring Veterans

Description of Modification

The President's fiscal year 2017 budget proposal is substantially similar to a proposal found in the President's fiscal year 2016 budget proposal, except that it has been modified to reflect tax law changes enacted in the "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act").[240] The PATH Act extended the work opportunity tax credit ("WOTC") for five years, through 2019. Additionally, the PATH Act added qualified long-term unemployment recipients to the list of targeted groups for whom wages paid qualifies for the WOTC.

Like last year's proposal, the Administration's proposal would make WOTC permanent. However, because of the extension in the PATH Act, the proposal would not take effect until 2020. Additionally, in proposing to make WOTC, as it exists under present law, permanent, the proposal is modified from last year's proposal by including qualified long-term unemployment recipients in the list of the WOTC's targeted groups.

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[240] Pub. L. No. 114-113, Division Q, Title II, sec. 151.

C. Designate Promise Zones

Description of Modification

The President's fiscal year 2017 budget proposal is modified in two ways. First, the effective date is changed such that zone designations for the purpose of the tax incentives are in effect from January 1, 2017 through December 31, 2026. Second, the proposal specifies that the Administration has designated 13 local areas as promise zones and the zone designations for the third and final round of nine zones has closed. The first round of five promise zones was announced on January 9, 2014, and the second round of eight zones was announced on April 28, 2015. The third and final round of nine zones was announced on June 6, 2016. Under current law, these designated promise zones receive preferences for certain Federal grant programs and technical assistance from participating Federal agencies but no Federal tax incentives.

D. Extend the Exclusion from Income for Cancellation of Certain Home Mortgage Debt

Description of Modification

The President's fiscal year 2017 budget proposal is substantially similar to a proposal found in the President's fiscal year 2016 budget proposal, except that it has been modified to reflect tax law changes enacted in the "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act").[241] Consistent with the 2016 budget proposal, the PATH Act modified the effective date of the exclusion from income in the case of the cancellation of certain home mortgage debt. That is, the PATH Act excludes not only qualified principal residence indebtedness discharged before a particular date, but also amounts discharged after that date if the discharge was subject to a written arrangement entered into prior to the date. The 2016 budget had proposed January 1, 2018 as this date, but the PATH Act used January 1, 2017.

The President's fiscal year 2017 budget proposal extends the exclusion (including the PATH Act modification) to the dates that had been in the prior year's proposal. That is, the exclusion would apply to amounts that are discharged by December 31, 2017, and to amounts that are discharged pursuant to a written arrangement entered into before December 31, 2017.

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[241] Pub. L. No. 114-113, Division Q, Title II, sec. 151.

E. Expand Requirement of Consistency in Value for Transfer and Income Tax Purposes

Description of Modification

The President's fiscal year 2017 budget proposal is substantially similar to a proposal found in the President's fiscal year 2016 budget proposal, except that it has been modified to reflect tax law changes enacted in the "Surface Transportation and Veterans Health Care Choice Improvement Act of 2015" ("Surface Transportation Act").[242] The Surface Transportation Act included a provision that requires consistency between the estate tax value of property and basis of property acquired from a decedent, but only for property the inclusion of which in the decedent's estate increased the liability for estate tax on such estate.

Last year's proposal was broader than the provision enacted in the Surface Transportation Act in two respects: (1) it generally would have applied to property transferred by gift; and (2) it was not limited to property the inclusion of which in the decedent's estate increased the liability for estate tax on such estate. The President's fiscal year 2017 budget proposal would extend the present-law consistency requirement to the following property that was included in last year's proposal but which was excluded from the provision enacted in the Surface Transportation Act: (1) property qualifying for the estate tax marital deduction, provided a return is required to be filed under section 6018, even though that property does not increase the estate's Federal estate tax liability; and (2) property transferred by gift, provided that the gift is required to be reported on a Federal gift tax return.

[242] Pub. L. No. 114-41, sec. 2004.

F. Enhance and Modify the Conservation Easement Deduction

Description of Modification

The President's fiscal year 2017 budget proposal is substantially similar to a proposal found in the President's fiscal year 2016 budget proposal, except that it has been modified to reflect tax law changes enacted in the "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act").[243] The PATH Act made permanent the increased percentage limits and extended carryforward period for contributions of easements that had expired for contributions made in taxable years beginning after December 31, 2014.

Making the special percentage limit and carryforward rules for easement contributions a permanent feature of the Code was included in last year's proposal. Accordingly, the President's fiscal year 2017 budget proposal no longer includes this portion of the proposal. The fiscal year 2017 proposal retains the remaining portions of the fiscal year 2016 proposal, *i.e.*: (1) various reforms to the conservation easement deduction; (2) elimination of the deduction for easements on golf courses; (3) restrictions on deductions and harmonization of the rules for contributions of easements for historic preservation; and (4) the addition of a pilot program allowing an allocable credit for conservation contributions.

[243] Pub. L. No. 114-113, Division Q, Title II, sec. 111.

G. Increase Oversight of Paid Tax Return Preparers

Description of Modification

The President's fiscal year 2017 budget proposal modifies the President's fiscal year 2016 budget proposal by removing two components that have been enacted into law.[244] The PATH Act included a provision that extended the paid preparer earned income tax credit due diligence requirements to the child tax credit and a provision that increased the penalty applicable to paid tax preparers who engage in willful or reckless conduct. Accordingly, the President's fiscal year 2017 budget proposal contains only the proposal providing Treasury authority to regulate all paid tax return preparers.

[244] Protecting Americans from Tax Hikes of 2015 ("PATH Act"), Pub. L. No. 114-113, Division Q, Title II, secs. 207 and 210, December 18, 2015.

H. Accelerate Information Return Filing Due Dates

<u>Description of Modification</u>

The President's fiscal year 2017 budget proposal is substantially similar to the information reporting component of a proposal first offered in the President's fiscal year 2015 budget proposal to rationalize the filing due dates by staggering the due dates for filing income tax returns by partnership, corporations and individuals as well as the due dates for submitting information returns, except as modified to reflect tax law changes in two bills enacted in the first session of the 114th Congress. First, the "Surface Transportation and Veterans Health Care Choice Improvements Act of 2015" changed the filing due dates of income tax returns for partnerships and corporations.[245] Second, the "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act") amended the due dates for information returns reporting wages or nonemployee compensation and eliminated the extended due date for electronically filing such information returns.[246]

As a result of these two tax law changes, the proposal as modified is limited to the information reporting requirements with respect to items other than wages and nonemployee compensation. The modified proposal requires that information returns with respect to income other than wages and nonemployee compensation be filed by January 31, generally, and a due date of February 15 for reporting with respect to proceeds of broker or barter exchange transactions. Finally, the proposal repeals the extended due date available for electronically filing such third-party information returns.

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[245] Surface Transportation and Veterans Health Care Choice Improvements Act of 2015, Pub. L. No. 114-41, sec. 2006, July 31, 2015.

[246] "Protecting Americans from Tax Hikes Act of 2015" ("PATH Act"), Pub. L. No. 114-113, Division Q, Title II, sec. 201, December 18, 2015.

PART IV – TABLE OF PROPOSALS

The table below contains citations to prior descriptions and analyses of all of the proposals within the President's fiscal year 2017 budget proposal, and where applicable, citations to descriptions of subsequent modifications of those proposals. The citations are as follows: "**2013 Budget**" refers to Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal* (JCS-2-12), June 2012; "**2014 Budget**" refers to Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2014 Budget Proposal* (JCS-4-13), December 2013; "**2015 Budget**" refers to Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2015 Budget Proposal* (JCS-2-14), December 2014; and "**2016 Budget**" refers to Joint Committee on Taxation, *Description of Certain Revenue Provisions Contained in the President's Fiscal Year 2016 Budget Proposal* (JCS-2-15), September 2015.

The right-most column provides a citation for the JCT staff's estimated budget effect of the current proposal, referred to as the "**2017 Budget Table,**" available at Joint Committee on Taxation, *Estimated Budget Effects Of The Revenue Provisions Contained In The President's Fiscal Year 2017 Budget Proposal* (JCX-15-16), March 24, 2016.

Proposal	**Prior Descriptions of Proposals and Modifications**	**Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume**
I. Reform U.S. International Tax System		
A. Restrict Deductions for Excessive Interest of Members of Financial Reporting Groups	Proposal— 2013 Budget, pp. 299-320. Modification— 2016 Budget, pp. 3-4.	Item I.A.
B. Provide Tax Incentives for Locating Jobs and Business Activity in the United States and Remove Tax Deductions for Shipping Jobs Overseas	Proposal— 2013 Budget, pp. 73-82.	Item I.B.
C. Repeal Delay in the Implementation of Worldwide Interest Allocation	Proposal— 2016 Budget, pp. 4-11.	Item I.C.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
D. Impose a 19-percent Minimum Tax on Foreign Income	Proposal— 2016 Budget, pp. 19-52. Modification— See Part II.A of this (2017) document.	Item I.D.
E. Impose a 14-Percent One-Time Tax on Previously Untaxed Foreign Income	Proposal— 2016 Budget, pp. 52-66.	Item I.E.
F. Limit Shifting of Income through Intangible Property Transfers	Proposal— 2013 Budget, pp. 354-371. Modification— 2015 Budget, pp. 17-18.	Item I.F.
G. Disallow the Deduction for Excess Non-Taxed Reinsurance Premiums Paid to Affiliates	Proposal— 2013 Budget, pp. 372-389.	Item I.G.
H. Modify Tax Rules for Dual Capacity Taxpayers	Proposal— 2013 Budget, pp. 403-410.	Item I.H.
I. Tax Gain from the Sale of a Partnership Interest on Look-Through Basis	Proposal— 2013 Budget, pp. 411-416.	Item I.I.
J. Modify Sections 338(h)(16) and 902 To Limit Credits When Non-Double Taxation Exists	Proposal—2013 Budget, pp. 423-425 and 426-431.	Item I.J.
K. Close Loopholes Under Subpart F	Proposal— 2016 Budget, pp. 67-73.	Item I.K.
L. Restrict the Use of Hybrid Arrangements that Create Stateless Income	Proposal— 2015 Budget, pp. 49-58 and 58-66. Modification— 2016 Budget, p. 74.	Item I.L.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
M. Limit the Ability of Domestic Entities to Expatriate	Proposal— 2015 Budget, pp. 66-80. Modification— 2016 Budget, pp. 74-75.	Item I.M.
II. Simplification and Tax Relief for Small Business		
A. Expand Expensing for Small Business	Proposal— 2013 Budget, pp. 741-744. Modifications— 2014 Budget p. 14, 2015 Budget, p. 8, 2016 Budget, p. 76, and Part II.M of this (2017) document.	Item II.A.
B. Expand Simplified Accounting for Small Business and Establish a Uniform Definition of Small Business for Accounting Methods	Proposal— 2014 Budget, pp. 188-189. Modifications— 2015 Budget, p. 241 and 2016 Budget, pp. 76-83.	Item II.B.
C. Increase the Limitations for Deductible New Business Expenditures and Consolidate Provisions for Start-Up and Organizational Expenditures	Proposal— 2015 Budget, pp. 8-11.	Item II.C.
D. Expand and Simplify the Tax Credit Provided to Qualified Small Employers for Non-Elective Contributions to Employee Health Insurance	Proposal— 2013 Budget, pp. 138-145.	Item II.D.
III. Incentives for Job Creation, Manufacturing, Research, and Clean Energy		

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
A. Enhance and Simplify Research Incentives	Proposal— 2013 Budget, pp. 97-116. Modifications— 2016 Budget, p. 84 and Part III.A of this (2017) document.	Item III.A.
B. Extend and Modify Certain Employment Tax Credits, Including Incentives for Hiring Veterans		
1. Permanently extend and modify the work opportunity tax credit ("WOTC")	Proposal— 2015 Budget, pp. 3-6. Modification— See Part III.B of this (2017) document.	Item III.B.1.
2. Permanently extend and modify the Indian employment credit	For a description of this proposal, see 2014 Budget, p. 4. Modification— 2015 Budget, pp. 3-6.	Item III.B.2.
C. Provide New Manufacturing Communities Tax Credit	Proposal— 2013 Budget, pp. 83-87.	Item III.C.
D. Provide Community College Partnership Tax Credit	Proposal— See Part I.C of this (2017) document.	Item III.D.
E. Designate Promise Zones	Proposal— 2013 Budget, pp. 152-177. Modifications— 2014 Budget, p. 60, 2015 Budget, p. 125, 2016 Budget, p. 221, and Part III.C of this (2017) document.	Items III.E.1 and III.E.2.
F. Modify and Permanently Extend Renewable Electricity Production Tax Credit and Investment Tax Credit	Proposal— 2013 Budget, pp. 124-132. Modifications— 2014 Budget, p. 5, 2015 Budget, pp. 6-7, and 2016 Budget, pp. 85-86.	Item III.F.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
G. Modify and Permanently Extend the Deduction for Energy-Efficient Commercial Building Property	Proposal— 2014 Budget, pp. 6-13. Modification— 2015 Budget, p. 7.	Item III.G.
H. Provide a Carbon Dioxide Investment and Sequestration Tax Credit	Proposal— 2016 Budget, pp. 86-90. Modification— See Part II.B of this (2017) document.	Item III.H.
I. Provide Additional Tax Credits for Investment in Qualified Property Used in a Qualified Advanced Energy Manufacturing Project	Proposal— 2013 Budget, pp. 15-18. Modification— 2014 Budget, p. 59 and 2015 Budget, p. 125.	Item III.I.
J. Extend the Tax Credit for Second Generation Biofuel Production	Proposal— 2015 Budget, pp. 127-131.	Item III.J.
K. Provide a Tax Credit for the Production of Advanced Technology Vehicles	Proposal— 2013 Budget, pp. 117-123. Modification— 2015 Budget, p. 126.	Item III.K.
L. Provide a Tax Credit for Medium- and Heavy-Duty Alternative-Fuel Commercial Vehicles	Proposal— 2013 Budget, pp. 117-123. Modification— 2015 Budget, pp. 126-127.	Item III.L.
M. Modify and Extend the Tax Credit for the Construction of Energy-Efficient New Homes	Proposal— 2015 Budget, pp. 131-133.	Item III.M.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
IV. Incentives To Promote Regional Growth		
A. Modify and Permanently Extend the New Markets Tax Credit	Proposal— 2013 Budget, pp. 146-151. Modification— 2014 Budget, p. 15.	Item IV.A.
B. Reform and Expand the Low-Income Housing Tax Credit ("LIHTC")		
1. Allow states to convert private activity bond ("PAB") volume cap into LIHTCs that the State can allocate; and alternative qualification by building owners for PAB-related LIHTCs	Proposal— 2014 Budget, pp. 18-20. Modification— 2015 Budget, pp. 12-13.	Item IV.B.1.
2. Encourage mixed income occupancy by allowing LIHTC-supported projects to elect a criterion employing a restriction on average income	Proposal— 2013 Budget, pp. 186-188.	Item IV.B.2.
3. Add further fair housing and preservation of publicly-assisted affordable housing to allocation criteria	Proposal— 2014 Budget, p. 22. Modification— See Part II.C of this (2017) document.	Item IV.B.3.
4. Remove the qualified Census tract population cap	Proposal— 2016 Budget, pp. 93-95.	Item IV.B.4.
5. Implement requirement that LIHTC-supported housing protect victims of domestic abuse	Proposal— 2015 Budget, pp. 14-16.	Item IV.B.5.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
V. Incentives for Investment in Infrastructure		
A. Provide America Fast Forward Bonds and Expand Eligible Uses	Proposal— 2014 Budget, pp. 61-68. Modification— 2015 Budget, pp. 136-137.	Item V.A.
B. Allow Current Refundings of State and Local Governmental Bonds	Proposal— 2013 Budget, pp. 184-185.	Item V.B.
C. Repeal the $150 Million Nonhospital Bond Limitation on all Qualified 501(c)(3) Bonds	Proposal— 2014 Budget, pp. 69-70.	Item V.C.
D. Increase National Limitation Amount for Qualified Highway or Surface Freight Transfer Facility Bonds	Proposal— 2014 Budget, pp. 71-75. Modification— See Part II.D of this (2017) document.	Item V.D.
E. Provide a New Category of Qualified Private Activity Bonds for Infrastructure Projects Referred to as "Qualified Public Infrastructure Bonds"	Proposal— 2016 Budget pp. 97-107. Modification— See Part II.E of this (2017) document.	Item V.E.
F. Modify Qualified Private Activity Bonds for Public Educational Facilities	Proposal— 2016 Budget, pp. 107-109.	Item V.F.
G. Modify Treatment of Banks Investing in Tax-Exempt Bonds	Proposal— 2016 Budget, pp. 109-113.	Item V.G.
H. Repeal Tax-Exempt Bond Financing of Professional Sports Facilities	Proposal— 2016 Budget, pp. 113-114.	Item V.H.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
I. Allow More Flexible Research Arrangements for Purposes of Private Business Use Limits	Proposal— 2014 Budget, pp. 82-86.	Item V.I.
J. Modify Tax-Exempt Bonds for Indian Tribal Governments	Proposal— 2013 Budget, pp. 180-183.	Item V.J.
VI. Eliminate Fossil Fuel Tax Preferences		
A. Eliminate Oil And Natural Gas Preferences		
1. Repeal enhanced oil recovery ("EOR") credit	Proposal— 2013 Budget, pp. 481-505.	Item VI.A.1.
2. Repeal credit for oil and gas produced from marginal wells	Proposal— 2013 Budget, pp. 481-505.	Item VI.A.2.
3. Repeal expensing of intangible drilling costs	Proposal— 2013 Budget, pp. 481-505.	Item VI.A.3.
4. Repeal deduction for tertiary injectants	Proposal— 2013 Budget, pp. 481-505.	Item VI.A.4.
5. Repeal exception to passive loss limitations for working interests in oil and natural gas properties	Proposal— 2013 Budget, pp. 481-505.	Item VI.A.5.
6. Repeal percentage depletion for oil and natural gas wells	Proposal— 2013 Budget, pp. 481-505.	Item VI.A.6.
7. Repeal domestic manufacturing deduction for oil and natural gas production	Proposal— 2013 Budget, pp. 88-96. Modification— 2014 Budget, p. 47.	Item VI.A.7.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
8. Increase geological and geophysical amortization period for independent producers to seven years	Proposal— 2013 Budget, pp. 481-505.	Item VI.A.8.
B. Eliminate Coal Preferences		
1. Repeal expensing of exploration and development costs	Proposal— 2013 Budget, pp. 481-505.	Item VI.B.1.
2. Repeal percentage depletion for hard mineral fossil fuels	Proposal— 2013 Budget, pp. 481-505.	Item VI.B.2.
3. Repeal capital gains treatment for royalties on disposition of coal or lignite	Proposal— 2013 Budget, pp. 481-505.	Item VI.B.3.
4. Repeal use of the domestic manufacturing deduction for the production of coal and other hard mineral fossil fuels	Proposal— 2013 Budget, pp. 88-96. Modification— 2014 Budget, p. 48.	Item VI.B.4.
5. Repeal exemption from the corporate income tax for publicly traded partnerships with qualifying income and gains from activities relating to fossil fuels	Proposal— 2016 Budget, pp. 117-119.	Item VI.B.5.
VII. Reform the Treatment of Financial and Insurance Industry Products		
A. Require that Derivative Contracts be Marked to Market with Resulting Gain or Loss Treated as Ordinary	Proposal— 2015 Budget, pp. 81-97.	Item VII.A.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
B. Modify Rules that Apply to Sales of Life Insurance Contracts	Proposal— 2013 Budget, pp. 459-463. Modification— 2015 Budget, pp. 97-98.	Item VII.B.
C. Modify Proration Rules for Life Insurance Company General and Separate Accounts	Proposal— 2016 Budget, pp. 121-130.	Item VII.C.
D. Extend Pro Rata Interest Expense Disallowance for Corporate-Owned Life Insurance	Proposal— 2013 Budget, pp. 475-480.	Item VII.D.
E. Conform Net Operating Loss Rules of Life Insurance Companies to Those of Other Corporations	Proposal— 2016 Budget, pp. 131-132.	Item VII.E.
VIII. Other Business Revenue Changes and Loophole Closers		
A. Repeal Last-In, First-Out ("LIFO") Method of Accounting for Inventories	Proposal— 2013 Budget, pp. 516-520.	Item VIII.A.
B. Repeal Lower-Of- Cost-or-Market ("LCM") Inventory Accounting Method	Proposal— 2013 Budget, pp. 521-522.	Item VIII.B.
C. Modify Like-Kind Exchange Rules	Proposal— 2015 Budget, pp. 106-111. Modification— 2016 Budget, p. 133 and Section II.F of this (2017) document.	See section II.F. of this (2017) document for a revised revenue estimate.
D. Modify Depreciation Rules for Purchases of General Aviation Passenger Aircraft	Proposal— 2013 Budget, pp. 523-524.	Item VIII.D.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
E. Expand the Definition of Built-In Loss for Purposes of Partnership Loss Transfers	Proposal— 2013 Budget, pp. 553-555.	Item VIII.E.
F. Extend Partnership Basis Limitation Rules to Nondeductible Expenditures	Proposal— 2013 Budget, pp. 556-558.	Item VIII.F.
G. Deny Deduction for Punitive Damages	Proposal— 2013 Budget, pp. 562-564.	Item VIII.G.
H. Conform Corporate Ownership Standards	Proposal— 2015 Budget, pp. 112-116.	Item VIII.H.
I. Tax Corporate Distributions as Dividends	Proposal— 2016 Budget, pp. 135-139.	Item VIII.I.
J. Repeal Federal Insurance Contributions Act ("FICA") Tip Credit	Proposal— 2016 Budget, pp. 139-141.	Item VIII.J.
K. Repeal the Excise Tax Credit for Distilled Spirits with Flavor and Wine Additives	Proposal— 2014 Budget, pp. 49-52.	Item VIII.K.
IX. Middle Class and Pro-Work Reforms		
A. Reform Child Care Tax Incentives	Proposal— 2016 Budget, pp. 143-150.	Item IX.A.
B. Simplify and Better Target Tax Benefits for Education	Proposal— 2016 Budget, pp. 150-161. Modification— See Part II.G of this (2017) document.	Item IX.B.
C. Expand the EITC for Workers without Qualifying Children	Proposal— 2015 Budget, pp. 140-143.	Item IX.C.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
D. Simplify the Rules for Claiming the EITC for Workers Without Qualifying Children	Proposal— 2013 Budget, pp. 657-660.	Item IX.D.
E. Provide a Second-Earner Tax Credit	Proposal— 2016 Budget, pp. 180-184.	Item IX.E.
F. Extend Exclusion from Income for Cancellation of Certain Home Mortgage Debt	Proposal— 2013 Budget, pp. 64-66. Modification— See Part III.D of this (2017) document.	Item IX.F.
X. Reforms to Retirement and Health Benefit Plans		
A. Provide for Automatic Enrollment in IRAs, Including a Small Employer Tax Credit, Increase the Tax Credit for Small Employer Plan Start-Up Costs, and Provide an Additional Tax Credit for Small Employer Plans Newly Offering Auto-enrollment	Proposal— 2013 Budget, pp. 40-58. Modification— 2016 Budget, pp. 161-162.	Item X.A.
B. Expand Penalty-Free Withdrawals for Long-Term Unemployed	Proposal— 2016 Budget, pp. 162-165.	Item X.B.
C. Require Retirement Plans to Allow Long-Term Part-Time Workers to Participate	Proposal— 2016 Budget, pp. 166-174.	Item X.C.
D. Facilitate Annuity Portability	Proposal— 2016 Budget, pp. 174-179.	Item X.D.
E. Simplify Minimum Required Distribution ("MRD") Rules	Proposal— 2013 Budget, pp. 661-672. Modification— 2015 Budget, pp. 232-239.	Item X.E.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
F. Allow All Inherited Plan and IRA Balances to be Rolled Over Within 60 Days	Proposal— 2013 Budget, pp. 673-677.	Item X.F.
G. Permit Unaffiliated Employers to Maintain a Single Multiple-Employer Defined Contribution Plan	Proposal— See Part I.A of this (2017) document.	Item X.G.
H. Improve the Excise Tax on High Cost Employer-Sponsored Health Coverage	Proposal— See Part I.B of this (2017) document.	Item X.I.
XI. Reforms to Capital Gains Taxation, Upper-Income Tax Benefits, and the Taxation of Financial Institutions		
A. Reduce the Value of Certain Tax Expenditures	Proposal— 2013 Budget, pp. 219-228. Modification— 2014 Budget, p. 98.	Item XI.A.
B. Reform the Taxation of Capital Income	Proposal— 2016 Budget, pp. 185-198.	Item XI.B.
C. Implement the Buffett Rule by Imposing a New "Fair Share Tax"	Proposal— 2014 Budget, pp. 99-102.	Item XI.C.
D. Impose a Financial Fee	Proposal— 2013 Budget, pp. 432-448. Modification— 2016 Budget, pp. 198-199.	Item XI.D.
XII. Loophole Closers		
A. Require Current Inclusion in Income of Accrued Market Discount and Limit the Accrual Amount for Distressed Debt	Proposal— 2014 Budget, pp. 111-112.	Item XII.A.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
B. Require that the Cost Basis of Stock that is a Covered Security Must Be Determined Using an Average Cost Basis Method	Proposal— 2014 Budget, pp. 113-117.	Item XII.B.
C. Tax Carried (Profits) Interests as Ordinary Income	Proposal— 2013 Budget, pp. 538-552.	Item XII.C.
D. Require Non-Spouse Beneficiaries of Deceased IRA Owners and Retirement Plan Participants to Take Inherited Distributions Over No More Than Five Years	Proposal— 2014 Budget, pp. 128-135.	Item XII.D.
E. Limit the Total Accrual of Tax-Favored Retirement Benefits	Proposal— 2014 Budget, pp. 136-154. Modification— 2015 Budget, p. 165.	Item XII.E.
F. Rationalize Net Investment Income and Self-Employment Contributions Act ("SECA") Taxes	Proposal— 2015 Budget, pp. 166-175. Modification— See Part II.H of this (2017) document.	Item XII.F.
G. Limit Roth Conversions to Pre-Tax Dollars	Proposal— 2016 Budget, pp. 201-210.	Item XII.G.
H. Eliminate Deduction for Dividends on Stock of Publicly-Traded Corporations Held in Employee Stock Ownership Plans	Proposal— 2014 Budget, pp. 53-58. Modification— 2015 Budget, p. 183.	Item XII.H.
I. Repeal Exclusion of Net Unrealized Appreciation in Employer Securities	Proposal— 2016 Budget, pp. 211-216.	Item XII.I.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
J. Disallow the Deduction for Charitable Contributions that are a Prerequisite for Purchasing Tickets to College Sporting Events	Proposal— 2016 Budget, pp. 217-220.	Item XII.J.
XIII. Modify Estate and Gift Tax Provisions		
A. Restore the Estate, Gift and Generation-Skipping Transfer ("GST") Tax Parameters in Effect in 2009 with Portability of Exemption Amount Between Spouses	Proposal— 2013 Budget, pp. 769-796. Modifications— 2014 Budget, p. 103 and 2016 Budget, p. 226.	Item XIII.A.
B. Expand Requirement for Consistency in Value for Transfer and Income Tax Purposes	Proposal— 2016 Budget, pp. 226-227. Modification— See Part III.E of this (2017) document.	Item XIII.B.
C. Modify Transfer Tax Rules for Grantor Retained Annuity Trusts ("GRATs") and Other Grantor Trusts	Proposal— 2013 Budget, pp. 269-273 and pp. 282-293. Modification— 2014 Budget, pp. 104-105 and 2016 Budget, pp. 227-228.	Item XIII.C.
D. Limit Duration of GST Tax Exemption	Proposal— 2013 Budget, pp. 274-281.	Item XIII.D.
E. Extend the Lien on Estate Tax Deferrals where Estate Consists Largely of Interest in Closely Held Business	Proposal— 2013 Budget, pp. 294-298.	Item XIII.E.
F. Modify GST Tax Treatment of Health and Education Exclusion Trusts	Proposal— 2014 Budget, pp. 106-110.	Item XIII.F.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
G. Simplify Gift Tax Exclusion for Annual Gifts	Proposal— 2015 Budget, pp. 155-162. Modification— 2016 Budget, p. 229.	Item XIII.G.
H. Expand Applicability of Definition of Executor	Proposal— 2015 Budget, pp. 162-163. Modification— 2016 Budget, p. 229.	Item XIII.H.
XIV. Other Revenue Raisers		
A. Impose an Oil Fee	Proposal— See Part I.D of this (2017) document.	Item XIV.A.
B. Increase Oil Spill Liability Trust Fund Financing Rate (to 10 Cents Per Barrel Effective 2017) and Update the Law to Include Other Sources of Crudes		Item XIV.B.
C. Reinstate Superfund Taxes		
1. Reinstate and Extend Superfund Excise Taxes	Proposal— 2013 Budget, pp. 508-510. Modification— 2016 Budget, p. 230.	Item XIV.C.1.
2. Reinstate Superfund Environmental Income Tax	Proposal— 2013 Budget, pp. 508-510.	Item XIV.C.2.
D. Increase Tobacco Taxes and Index for Inflation	Proposal— 2016 Budget, pp. 230-244. Modification— See Part II.I of this (2017) document.	Item XIV.D.
E. Make Unemployment Insurance ("UI") Surtax Permanent	Proposal— 2013 Budget, pp. 511-512.	Item XIV.E.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
F. Expand Federal Unemployment Tax Act ("FUTA") Base and Reform FUTA Credit Reduction Rules	Proposal— 2013 Budget, pp. 513-515. Modification— See Part II.J of this (2017) document.	Item XIV.F.
XV. Reduce the Tax Gap and Make Reforms		
A. Expand Information Reporting		
1. Improve information reporting for certain businesses and contractors	Proposal— 2013 Budget, pp. 574-576 and pp. 576-579.	Items XV.A.1.a and b.
2. Provide an exception to the limitation on disclosing tax return information to expand TIN matching beyond forms where payments are subject to backup withholding	Proposal— 2016 Budget, pp. 245-248.	Item XV.A.2.
3. Provide for reciprocal reporting of information in connection with the implementation of the Foreign Account Tax Compliance Act ("FATCA")	Proposal— 2015 Budget, pp. 184-190. Modification— 2016 Budget, p. 248.	Item XV.A.3.
4. Require Form W-2 reporting for employer contributions to defined contribution plans	Proposal— 2016 Budget, pp. 249-253.	Item XV.A.4.
B. Improve Compliance By Businesses		
1. Increase certainty with respect to worker classification	Proposal— 2013 Budget, pp. 591-610. Modification— See Part II.K of this (2017) document.	Item XV.B.1.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
2. Increase information sharing to administer excise taxes	Proposal— 2015 Budget, pp. 201-203.	Item XV.B.2.
3. Provide authority to readily share beneficial ownership of U.S. companies with law enforcement	Proposal— 2015 Budget, pp. 190-200. Modification— 2016 Budget, p. 254.	Item XV.B.3.
C. Strengthen Tax Administration		
1. Modify the conservation easement deduction and pilot a conservation credit		
a. Reform the deduction for conservation easements	Proposal— 2015 Budget, pp. 177-182. Modification— 2016 Budget, pp. 223-224 and Part III.F of this (2017) document.	Item XV.C.1.a.
b. Eliminate the deduction for contributions of conservation easements on golf courses	Proposal— 2013 Budget, pp. 565-573.	Item XV.C.1.b.
c. Restrict deductions and harmonize the rules for contributions of conservation easements for historic preservation	Proposal— 2014 Budget, pp. 121-127.	Item XV.C.1.c.
d. Pilot an allocable credit for conservation contributions and report to Congress	Proposal— 2016 Budget, p. 224.	Item XV.C.1.d.
2. Impose liability on shareholders to collect unpaid income taxes of applicable corporations	Proposal— 2014 Budget, pp. 163-171. Modification— 2015 Budget, pp. 203-205.	Item XV.C.2.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
3. Implement a program integrity statutory cap adjustment for tax administration	Proposal— 2013 Budget, pp. 732-733. Modifications— 2014 Budget, p.172 and 2015 Budget pp. 205-206.	Item XV.C.3.
4. Revise offer-in-compromise application rules	Proposal— 2013 Budget, pp. 626-631.	Item XV.C.4.
5. Make repeated willful failure to file a tax return a felony	Proposal— 2013 Budget, pp. 633-635.	Item XV.C.5.
6. Facilitate tax compliance with local jurisdictions	Proposal— 2013 Budget, pp. 635-637.	Item XV.C.6.
7. Improve investigative disclosure statute	Proposal— 2013 Budget, pp. 640-641.	Item XV.C.7.
8. Allow the IRS to absorb credit and debit card processing fees for certain tax payments	Proposal— 2013 Budget, pp. 644-646.	Item XV.C.8.
9. Provide the IRS with greater flexibility to address correctable errors	Proposal— 2013 Budget, pp. 649-654. Modification— 2015 Budget, pp. 208-210.	Item XV.C.9.
10. Enhance electronic filing of returns	Proposal— 2013 Budget, pp. 580-582, 582-585, and 642-644, and 2014 Budget, pp. 157-160. Modifications— 2015 Budget, pp. 207-208 and pp. 210-211.	Item XV.C.10.
11. Improve the whistleblower program	Proposal— 2014 Budget, pp. 175-177.	Item XV.C.11.
12. Index all civil penalties for inflation	Proposal— 2014 Budget, p. 178.	Item XV.C.12.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
13. Combat tax-related identity theft	Proposal— 2015 Budget, pp. 212-214.	Item XV.C.13.
14. Allow States to send notices of intent to offset Federal tax refunds to collect State tax obligations by regular first-class mail instead of certified mail	Proposal— 2015 Budget, pp. 215-216.	Item XV.C.14.
15. Accelerate information return due dates	Proposal— 2015 Budget, pp. 222-227. Modification— 2016 Budget, pp. 277-278 and Part III.H of this (2017) document.	Item XV.C.15.
16. Increase oversight of paid tax return preparers - explicitly provide that the Secretary has authority to regulate all paid return preparers	Proposal— 2014 Budget, pp. 179-183, 2015 Budget, pp. 216-222 and 227-228, and Part III.G of this (2017) document.	Item XV.C.16.
17. Enhance administrability of the appraiser penalty	Proposal— 2015 Budget, pp. 228-231.	Item XV.C.17.
XVI. Simplify the Tax System		
A. Modify Adoption Credit to Allow Tribal Determination of Special Needs	Proposal— 2014 Budget, pp. 186-187.	Item XVI.A.
B. Repeal Non-Qualified Preferred Stock (“NQPS”) Designation	Proposal— 2013 Budget, pp. 683-692.	Item XVI.B.
C. Reform Excise Tax Based on Investment Income of Private Foundations	Proposal— 2013 Budget, pp. 699-703.	Item XVI.C.
D. Simplify Arbitrage Investment Restrictions	Proposal— 2013 Budget, pp. 707-710.	Item XVI.D.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
E. Simplify Single-Family Housing Mortgage Bond Targeting Requirements	Proposal— 2013 Budget, pp. 710-713.	Item XVI.E.
F. Streamline Private Business Limits on Governmental Bonds	Proposal— 2013 Budget, pp. 713-716. Modification— See Part II.L of this (2017) document.	Item XVI.F.
G. Repeal Technical Terminations of Partnerships	Proposal— 2014 Budget, pp. 190-193.	Item XVI.G.
H. Repeal Anti-Churning Rules of Code Section 197	Proposal— 2014 Budget, pp. 194-196.	Item XVI.H.
I. Repeal Special Estimated Tax Payment Provision for Certain Insurance Companies	Proposal— 2013 Budget, pp. 610-615.	Item XVI.I.
J. Repeal the Telephone Excise Tax	Proposal— 2015 Budget, pp. 242-245.	Item XVI.J.
K. Increase the Standard Mileage Rate for Automobile Use by Volunteers	Proposal— 2015 Budget, pp. 245-248.	Item XVI.K.
L. Consolidate Contribution Limitations for Charitable Deductions and Extend the Carryforward Period for Excess Charitable Contribution Deduction Amounts	Proposal— 2016 Budget, pp. 283-291.	Item XVI.L.
M. Exclude from Gross Income Subsidies from Public Utilities for Purchase of Water Runoff Management	Proposal— 2016 Budget, pp. 291-292.	Item XVI.M.
N. Provide Relief for Certain Accidental Dual Citizens	Proposal— 2016 Budget, pp. 293-296.	Item XVI.N.

Proposal	Prior Descriptions of Proposals and Modifications	Estimated Revenue Effects, Item in 2017 Budget Table, Reprinted in the Back of This Volume
XVII. User Fees		
A. Reform Inland Waterways Funding	Proposal— 2013 Budget, pp. 717-718.	Item XVII.A.
XVIII. Trade Initiative - Enact the Trans-Pacific Partnership Trade Agreement		
XIX. Other Initiatives		
A. Allow Offset of Federal Income Tax Refunds to Collect Delinquent State Income Taxes for Out-of-State Residents	Proposal— 2013 Budget, pp. 719-720.	Item XIX.A.
B. Improve Disclosure for Child Support Enforcement	Proposal— See Part I.E of this (2017) document.	Item XIX.B.
C. Authorize the Limited Sharing of Business Tax Return Information to Improve the Accuracy of Important Measures of the Economy	Proposal— 2013 Budget, pp. 721-726.	Item XIX.C.
D. Eliminate Certain Reviews Conducted by the U.S. Treasury Inspector General for Tax Administration ("TIGTA")	Proposal— 2013 Budget, pp. 727-729.	Item XIX.D.
E. Modify Indexing to Prevent Deflationary Adjustments	Proposal— 2013 Budget, pp. 730-731.	Item XIX.E.

ESTIMATED BUDGET EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN THE PRESIDENT'S BUDGET PROPOSAL

JOINT COMMITTEE ON TAXATION
March 24, 2016
JCX-15-16

ESTIMATED BUDGET EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN THE PRESIDENT'S FISCAL YEAR 2017 BUDGET PROPOSAL [1]

Fiscal Years 2016 - 2026

[Millions of Dollars]

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
I. Reform U.S. International Tax System														
A. Restrict Deductions for Excessive Interest of Members of Financial Reporting Groups......................	tyba 12/31/16	---	2,770	5,660	6,026	6,711	7,613	8,169	8,270	8,385	8,955	9,517	28,779	72,076
B. Provide Tax Incentives for Locating Jobs and Business Activity in the United States and Remove Tax Deductions for Shipping Jobs Overseas.................	epoia DOE	-1	-13	-25	-29	-31	-32	-32	-33	-34	-35	-37	-130	-302
C. Repeal Delay in the Implementation of Worldwide Interest Allocation...	tyba 12/31/16	---	-1,071	-2,142	-2,251	-2,401	-889	938	965	385	102	127	-8,754	-6,237
D. Impose a 19-Percent Minimum Tax on Foreign Income	tyba 12/31/16	---	13,324	31,560	34,882	33,170	31,172	30,808	30,464	30,250	31,222	31,095	144,107	297,946
E. Impose a 14-Percent One-Time Tax on Previously Untaxed Foreign Income...	[2]	---	61,407	52,862	32,940	36,540	40,124	13,869	-12,671	-11,650	-10,135	-8,725	223,874	194,562
F. Limit Shifting of Income through Intangible Property Transfers..	tyba 12/31/16	---	83	172	183	196	210	224	237	251	266	282	843	2,102
G. Disallow the Deduction for Excess Non-Taxed Reinsurance Premiums Paid to Affiliates......................	pii tyba 12/31/16	---	329	835	866	897	927	955	982	1,007	1,029	1,047	3,854	8,874
H. Modify Tax Rules for Dual Capacity Taxpayers..	generally tyba 12/31/16	---	818	871	962	1,054	1,130	1,212	1,370	1,595	1,820	1,866	4,835	12,697
I. Tax Gain from the Sale of a Partnership Interest on Look-Through Basis..	soea 12/31/16	---	164	241	250	260	271	282	293	306	318	331	1,186	2,717
J. Modify Sections 338(h)(16) and 902 To Limit Credits When Non-Double Taxation Exists...............................	toa 12/31/16	---	50	86	87	87	88	89	90	91	92	94	398	853
K. Close Loopholes Under Subpart F................................	tyba 12/31/16	---	954	2,222	2,388	2,287	2,176	2,137	2,098	2,192	2,355	2,181	10,027	20,991
L. Restrict the Use of Hybrid Arrangements that Create Stateless Income...	tyba 12/31/16	---	90	169	206	234	249	263	277	292	310	329	947	2,418
M. Limit the Ability of Domestic Entities to Expatriate..	Tca 12/31/16 & after 12/31/16	---	138	474	751	1,106	1,479	1,857	2,325	2,816	3,329	3,866	3,947	18,141
Total of Reform U.S. International Tax System……………………………….		**-1**	**79,043**	**92,985**	**77,261**	**80,110**	**84,518**	**60,771**	**34,667**	**35,886**	**39,628**	**41,973**	**413,913**	**626,838**
II. Simplification and Tax Relief for Small Business														
A. Expand Expensing for Small Business..........................	ppisa 12/31/16	---	-1,115	-2,378	-2,747	-4,610	-5,404	-3,838	-3,188	-3,053	-2,764	-2,698	-16,255	-31,797

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
B. Expand Simplified Accounting for Small Business and Establish a Uniform Definition of Small Business for Accounting Methods..	tyba 12/31/16 & tyba 12/31/17	---	-3,548	-3,819	-3,014	-2,522	-2,330	-2,269	-2,177	-2,076	-1,977	-1,880	-15,234	-25,614
C. Increase the Limitations for Deductible New Business Expenditures and Consolidate Provisions for Start-Up and Organizational Expenditures...............	tyba 12/31/16	---	-40	-100	-141	-183	-226	-272	-319	-369	-420	-474	-691	-2,545
D. Expand and Simplify the Tax Credit Provided to Qualified Small Employers for Non-Elective Contributions to Employee Health Insurance [3]...........	tyba 12/31/15	-115	-167	-126	-164	-108	-106	-176	-184	-197	-203	-211	-786	-1,757
Total of Simplification and Tax Relief for Small Business.........................		**-115**	**-4,870**	**-6,423**	**-6,066**	**-7,423**	**-8,066**	**-6,555**	**-5,868**	**-5,695**	**-5,364**	**-5,263**	**-32,966**	**-61,713**
III. Incentives for Job Creation, Manufacturing, Research, and Clean Energy														
A. Enhance and Simplify Research Incentives....................	Epoia 12/31/16	---	-1,078	-1,994	-2,495	-2,977	-3,439	-3,879	-4,295	-4,715	-5,153	-5,401	-11,984	-35,427
B. Extend and Modify Certain Employment Tax Credits, Including Incentives for Hiring Veterans														
1. Permanently extend and modify the work opportunity tax credit ("WOTC")..	wptqiwbwftea 12/31/19	---	---	---	---	-446	-1,086	-1,380	-1,638	-1,944	-2,262	-2,474	-1,532	-11,229
2. Permanently extend and modify the Indian employment credit...	wptqei tyba 12/31/16 & tyba 12/31/16	---	-1	-4	-4	-5	-5	-5	-5	-5	-6	-6	-20	-47
C. Provide New Manufacturing Communities Tax Credit...	qiai 2017-2019	---	---	-2	-13	-47	-99	-154	-192	-223	-243	-242	-162	-1,216
D. Provide Community College Partnership Tax Credit...	tcai 2017-2021	---	-62	-187	-298	-383	-443	-374	-209	-107	-50	-21	-1,373	-2,134
E. Designate Promise Zones														
1. Employment credit provided to businesses that employ zone residents...	tyba 12/31/16	---	-73	-213	-224	-235	-247	-259	-272	-286	-300	-315	-993	-2,425
2. Allow qualified property placed in service within the zone to be eligible for additional first-year depreciation of 100% of the adjusted basis of the property................	tyba 12/31/16	---	-233	-595	-420	-307	-224	-159	-120	-102	-94	-93	-1,779	-2,348
F. Modify and Permanently Extend Renewable Electricity Production Tax Credit and Investment Tax Credit [3]...	powcba 12/31/16	---	-445	-843	-1,019	-1,218	-1,410	-1,699	-2,237	-2,955	-3,730	-4,273	-4,935	-19,830
G. Modify and Permanently Extend the Deduction for Energy-Efficient Commercial Building Property...........	cima 12/31/16	---	-363	-714	-727	-743	-734	-706	-708	-695	-672	-670	-3,280	-6,730
H. Provide a Carbon Dioxide Investment and Sequestration Tax Credit [3]..	DOE	---	---	-176	-404	-637	-914	-1,147	-995	-826	-817	-812	-2,130	-6,727
I. Provide Additional Tax Credits for Investment in Qualified Property Used in a Qualified Advanced Energy Manufacturing Project.......................................	DOE	-33	-133	-216	-319	-386	-416	-346	-191	-89	-39	-6	-1,503	-2,172
J. Extend the Tax Credit for Second Generation Biofuel Production (sunset 12/31/26)...	fsoua 12/31/16	---	-31	-76	-103	-127	-152	-179	-184	-161	-129	-86	-489	-1,228

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
K. Provide a Tax Credit for the Production of Advanced Technology Vehicles [4]...............................	vpisa 12/31/16 & before 1/1/24	---	-196	-329	-266	-216	-223	-262	-308	-68	56	38	-1,230	-1,774
L. Provide a Tax Credit for Medium- and Heavy-Duty Alternative-Fuel Commercial Vehicles [5].....................	vpisa 12/31/16 & before 1/1/23	---	-33	-53	-63	-76	-89	-100	-55	-30	-26	-21	-315	-547
M. Modify and Extend the Tax Credit for the Construction of Energy-Efficient New Homes..............	haa 12/31/16 & before 1/1/27	---	-93	-163	-225	-249	-268	-294	-297	-314	-310	-319	-998	-2,533
Total of Incentives for Manufacturing, Research, and Clean Energy…………………...……………………………………………………		**-33**	**-2,741**	**-5,565**	**-6,580**	**-8,052**	**-9,749**	**-10,943**	**-11,706**	**-12,520**	**-13,775**	**-14,701**	**-32,723**	**-96,367**
IV. Incentives To Promote Regional Growth														
A. Modify and Permanently Extend the New Markets Tax Credit...	tyba 12/31/19	---	---	---	---	-17	-67	-210	-310	-468	-650	-856	-84	-2,577
B. Reform and Expand the Low-Income Housing Tax Credit ("LIHTC")														
1. Allow states to convert private activity bond ("PAB") volume cap into LIHTCs that the State can allocate; and alternative qualification by building owners for PAB-related LIHTCs...	[6]	---	-6	-49	-167	-363	-620	-921	-1,238	-1,560	-1,884	-2,214	-1,205	-9,023
2. Encourage mixed income occupancy by allowing LIHTC-supported projects to elect a criterion employing a restriction on average income...................	[7]	---	[8]	-4	-6	-8	-9	-11	-12	-12	-15	-15	-27	-92
3. Add further fair housing and preservation of publicly-assisted affordable housing to allocation criteria...	ami cyba DOE	-- *Negligible Revenue Effect* --												
4. Remove the qualified Census tract population cap........	DOE	---	[8]	-6	-11	-13	-15	-17	-21	-22	-23	-23	-45	-151
5. Implement requirement that LIHTC-supported housing protect victims of domestic abuse....................	[9]	-- *Negligible Revenue Effect* --												
Total of Incentives To Promote Regional Growth………………………………		**[10]**	**-6**	**-59**	**-184**	**-401**	**-711**	**-1,159**	**-1,581**	**-2,062**	**-2,572**	**-3,108**	**-1,361**	**-11,843**
V. Incentives for Investment in Infrastructure														
A. Provide America Fast Forward Bonds and Expand Eligible Uses [3]...	bia 12/31/16	---	-7	-58	-151	-247	-345	-447	-551	-658	-768	-882	-809	-4,114
B. Allow Current Refundings of State and Local Governmental Bonds...	DOE	-- *Negligible Revenue Effect* --												
C. Repeal the $150 Million Nonhospital Bond Limitation on all Qualified 501(c)(3) Bonds..................................	bia DOE	[8]	-1	-2	-4	-6	-8	-10	-13	-15	-17	-19	-21	-95
D. Increase National Limitation Amount for Qualified Highway or Surface Freight Transfer Facility Bonds.....	DOE	[8]	-1	-6	-14	-25	-34	-40	-41	-40	-40	-39	-80	-280
E. Provide a New Category of Qualified Private Activity Bonds for Infrastructure Projects Referred to as “Qualified Public Infrastructure Bonds”........................	bis 1/1/17	---	-17	-86	-190	-298	-407	-517	-628	-740	-854	-968	-998	-4,705

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
F. Modify Qualified Private Activity Bonds for Public Educational Facilities..	bia DOE	[8]	-25	-58	-69	-80	-90	-99	-108	-118	-129	-139	-322	-915
G. Modify Treatment of Banks Investing in Tax-Exempt Bonds...	bii cyba 12/31/16	---	-56	-137	-231	-322	-405	-471	-523	-567	-606	-640	-1,150	-3,958
H. Repeal Tax-Exempt Bond Financing of Professional Sports Facilities...	bia 12/31/16	---	2	7	15	26	36	47	58	70	82	95	85	437
I. Allow More Flexible Research Arrangements for Purposes of Private Business Use Limits......................	raeia DOE	[8]	[8]	-1	-3	-5	-7	-9	-11	-13	-15	-17	-16	-81
J. Modify Tax-Exempt Bonds for Indian Tribal Governments...	DOE	[8]	-1	-4	-8	-12	-17	-22	-27	-32	-38	-44	-42	-205
Total of Incentives for Investment in Infrastructure................................		**[8]**	**-106**	**-345**	**-655**	**-969**	**-1,277**	**-1,568**	**-1,844**	**-2,113**	**-2,385**	**-2,653**	**-3,353**	**-13,916**
VI. Eliminate Fossil Fuel Preferences														
A. Eliminate Oil And Natural Gas Preferences														
1. Repeal enhanced oil recovery ("EOR") credit................	pocia 12/31/16	---	191	125	39	15	---	---	---	---	---	---	371	371
2. Repeal credit for oil and gas produced from marginal wells..	pocia 12/31/16	---						*No Revenue Effect*						
3. Repeal expensing of intangible drilling costs................	pocia 12/31/16	---	1,590	2,335	2,194	2,063	1,807	1,346	784	411	273	247	9,990	13,050
4. Repeal deduction for tertiary injectants.........................	pocia 12/31/16	---	5	7	7	8	9	10	11	13	15	15	36	100
5. Repeal exception to passive loss limitations for working interests in oil and natural gas properties.........	pocia 12/31/16	---	16	32	32	33	33	33	33	33	33	32	146	310
6. Repeal percentage depletion for oil and natural gas wells..	pocia 12/31/16	---	631	1,007	1,082	1,156	1,217	1,279	1,344	1,418	1,472	1,494	5,095	12,103
7. Repeal domestic manufacturing deduction for oil and natural gas production...	pocia 12/31/16	---	385	1,017	1,103	1,114	1,127	1,148	1,178	1,215	1,259	1,312	4,747	10,859
8. Increase geological and geophysical amortization period for independent producers to seven years...........	pocia 12/31/16	---	48	168	251	236	188	141	91	58	49	48	891	1,278
B. Eliminate Coal Preferences														
1. Repeal expensing of exploration and development costs..	pocia 12/31/16	---	59	84	77	73	69	62	78	84	90	92	362	768
2. Repeal percentage depletion for hard mineral fossil fuels..	pocia 12/31/16	---	66	69	72	78	81	90	91	93	98	102	366	840
3. Repeal capital gains treatment for royalties on disposition of coal or lignite..	Ara tyba 12/31/16	---	33	46	46	45	45	45	46	47	47	48	215	449
4. Repeal use of the domestic manufacturing deduction for the production of coal and other hard mineral fossil fuels..	pocia 12/31/16	---	9	24	25	27	27	28	29	30	31	33	112	262
5. Repeal exemption from the corporate income tax for publicly traded partnerships with qualifying income and gains from activities relating to fossil fuels............	tyba 12/31/21	---	---	---	---	---	---	92	166	173	181	190	---	802
Total of Eliminate Fossil Fuel Preferences..		**---**	**3,033**	**4,914**	**4,928**	**4,848**	**4,603**	**4,274**	**3,851**	**3,575**	**3,548**	**3,613**	**22,331**	**41,192**

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
VII. Reform the Treatment of Financial and Insurance Industry Products														
A. Require that Derivative Contracts be Marked to Market with Resulting Gain or Loss Treated as Ordinary........	dceia 12/31/16	---	410	2,652	2,164	1,896	1,542	1,395	1,283	1,160	1,052	926	8,664	14,478
B. Modify Rules that Apply to Sales of Life Insurance Contracts........	[11]	---	42	54	67	79	93	113	126	172	165	175	335	1,086
C. Modify Proration Rules for Life Insurance Company General and Separate Accounts........	tyba 12/31/16	---	189	513	559	612	673	685	700	714	729	743	2,546	6,117
D. Extend Pro Rata Interest Expense Disallowance for Corporate-Owned Life Insurance........	[12]	---	45	194	389	482	631	768	956	1,104	1,293	1,353	1,741	7,215
E. Conform Net Operating Loss Rules of Life Insurance Companies to Those of Other Corporations........	tyba 12/31/16	---	40	68	32	33	34	35	36	37	38	39	207	392
Total of Reform Treatment of Financial and Insurance Industry Products........		**---**	**726**	**3,481**	**3,211**	**3,102**	**2,973**	**2,996**	**3,101**	**3,187**	**3,277**	**3,236**	**13,493**	**29,288**
VIII. Other Business Revenue Changes and Loophole Closers														
A. Repeal Last-In, First-Out ("LIFO") Method of Accounting for Inventories........	ftyba 12/31/16	---	5,534	11,087	11,124	11,162	11,201	11,240	11,281	11,322	11,364	11,407	50,108	106,721
B. Repeal Lower-Of- Cost-or-Market ("LCM") Inventory Accounting Method........	tyba 12/31/16	---	523	1,046	1,048	1,049	567	85	86	88	90	92	4,234	4,674
C. Modify Like-Kind Exchange Rules........	lkeca 12/31/16	---	42	93	157	261	430	703	1084	1630	2437	3633	984	10,470
D. Modify Depreciation Rules for Purchases of General Aviation Passenger Aircraft........	ppisa 12/31/16	---	84	292	469	541	621	650	493	292	195	202	2,007	3,839
E. Expand the Definition of Built-In Loss for Purposes of Partnership Loss Transfers........	soea DOE	7	45	58	60	63	65	69	72	75	78	81	298	673
F. Extend Partnership Basis Limitation Rules to Nondeductible Expenditures........	ptybo/a DOE	14	90	117	122	127	132	138	144	150	157	162	602	1,353
G. Deny Deduction for Punitive Damages........	dpoia 12/31/16	---	28	38	39	40	42	43	44	45	47	48	187	414
H. Conform Corporate Ownership Standards........	toa 12/31/16	---	17	20	20	21	22	22	23	23	24	25	99	217
I. Tax Corporate Distributions as Dividends........	DOE & toa 12/31/16	---	43	62	64	68	70	72	74	77	79	84	308	693
J. Repeal Federal Insurance Contributions Act ("FICA") Tip Credit [13]........	tyba 12/31/16	---	547	853	945	1,020	1,076	1,129	1,186	1,245	1,269	1,274	4,440	10,544
K. Repeal the Excise Tax Credit for Distilled Spirits with Flavor and Wine Additives........	aspioiiUSa 12/31/16	---	136	184	188	192	196	201	205	210	215	219	896	1,946
Total of Other Revenue Changes and Loophole Closers........		**21**	**7,089**	**13,851**	**14,236**	**14,544**	**14,422**	**14,351**	**14,692**	**15,158**	**15,954**	**17,227**	**64,162**	**141,544**
IX. Middle Class and Pro-Work Reforms														
A. Reform Child Care Tax Incentives [3]........	tyba 12/31/16	---	-40	-3,957	-4,161	-4,391	-4,640	-4,885	-5,134	-5,401	-5,685	-5,957	-17,189	-44,251

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
B. Simplify and Better Target Tax Benefits for Education														
1. Expand and modify the AOTC and repeal Lifetime Learning Credits [3]..	tyba 12/31/16	---	42	-2,290	-2,487	-2,686	-3,480	-3,768	-4,495	-5,336	-5,594	-6,385	-10,902	-36,480
2. Make Pell grants excludable from income [3]...............	tyba 12/31/16	---	-15	-571	-578	-556	-543	-546	-536	-546	-537	-525	-2,263	-4,952
3. Modify reporting of tuition expenses and scholarships on Form 1098-T [3]..	tyba 12/31/16	---	3	32	34	36	38	40	42	45	46	48	143	364
4. Repeal the student loan interest deduction and provide exclusion for certain debt relief and scholarships [3][14]..	tyba 12/31/16, dola 12/31/16 & DOE	---	-17	-31	-31	-37	-11	124	273	432	608	778	-127	2,087
C. Expand the EITC for Workers without Qualifying Children [3]...	tyba 12/31/16	---	-351	-7,044	-7,397	-7,662	-7,765	-7,939	-8,083	-8,263	-8,437	-8,643	-30,220	-71,585
D. Simplify the Rules for Claiming the EITC for Workers Without Qualifying Children [3]...................................	tyba 12/31/16	---	-25	-504	-590	-579	-580	-587	-591	-598	-604	-620	-2,278	-5,278
E. Provide a Second-Earner Tax Credit [3].......................	tyba 12/31/16	---	-2,536	-8,506	-8,685	-8,884	-9,079	-9,250	-9,427	-9,619	-9,788	-10,074	-37,690	-85,849
F. Extend Exclusion from Income for Cancellation of Certain Home Mortgage Debt (sunset 12/31/17)...........	doioa 12/31/14	---	-360	-2,066	---	---	---	---	---	---	---	---	-2,426	-2,426
Total of Middle Class and Pro-Work Reforms......................................		**---**	**-3,299**	**-24,937**	**-23,895**	**-24,759**	**-26,061**	**-26,811**	**-27,950**	**-29,286**	**-29,991**	**-31,379**	**-102,952**	**-248,370**
X. Reforms to Retirement and Health Benefit Plans														
A. Provide for Automatic Enrollment in IRAs, Including a Small Employer Tax Credit, Increase the Tax Credit for Small Employer Plan Start-Up Costs, and Provide an Additional Tax Credit for Small Employer Plans Newly Offering Auto-enrollment [3]............................	tyba 12/31/17	---	---	-563	-1,432	-1,493	-1,498	-1,480	-1,552	-1,622	-1,695	-1,777	-4,985	-13,110
B. Expand Penalty-Free Withdrawals for Long-Term Unemployed...	edoa 12/31/16	---	-93	-132	-145	-158	-167	-176	-185	-194	-204	-214	-696	-1,668
C. Require Retirement Plans to Allow Long-Term Part-Time Workers to Participate [3][15].....................	pyba 12/31/16	---	-31	-47	-55	-63	-70	-80	-89	-100	-111	-125	-265	-771
D. Facilitate Annuity Portability..	pyba 12/31/16	------ *Negligible Revenue Effect* ------												
E. Simplify Minimum Required Distribution ("MRD") Rules..	[16]	---	-4	-18	-27	-20	1	25	57	99	149	210	-68	472
F. Allow All Inherited Plan and IRA Balances to be Rolled Over Within 60 Days...	dma 12/31/16	------ *Negligible Revenue Effect* ------												
G. Permit Unaffiliated Employers to Maintain a Single Multiple-Employer Defined Contribution Plan [17]......	yba 12/31/16	---	-41	-83	-165	-289	-417	-549	-683	-822	-964	-997	-995	-5,010
H. Enact Changes to the Military Retirement Reform Enacted in the FY 2016 National Defense Authorization Act [18]..	10/1/16	---	---	4	7	7	6	4	2	1	-1	-3	24	27
I. Improve the Excise Tax on High Cost Employer-Sponsored Health Coverage [19]..................................	[20]	---	---	---	---	-371	-739	-903	-1,087	-1,337	-1,548	-1,802	-1,110	-7,787

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
J. Extend the Children's Health Insurance Program ("CHIP") Through 2019 [3] [21] [22]...........................	10/1/16	---	---	-763	-2,939	-727	-316	-1	---	---	---	---	-4,745	-4,746
K. Create State Option to Provide 12-Month Continuous Medicaid Eligibility for Adults [3] [21] [23]................	10/1/16	---	---	-453	-915	-1,165	-1,290	-1,402	-1,514	-1,639	-1,760	-1,891	-3,823	-12,029
L. Ensure Access to Enhanced Federal Match for all Medicaid Expansion States [3] [21] [24]......................	10/1/16	---	-840	-1,050	-4,177	-4,051	-4,220	-3,646	-3,426	-3,243	-2,914	-2,919	-14,338	-30,486
M. Standardize Definition of American Indian and Alaska Native in the Affordable Care Act [3] [21] [25]...........	10/1/16	---	-31	-53	-61	-66	-69	-72	-75	-80	-84	-88	-280	-679
Total of Reforms to Retirement and Health Benefit Plans……………………		**---**	**-1,040**	**-3,158**	**-9,909**	**-8,396**	**-8,779**	**-8,280**	**-8,552**	**-8,937**	**-9,132**	**-9,606**	**-31,281**	**-75,787**
XI. Reforms to Capital Gains Taxation, Upper-Income Tax Benefits, and the Taxation of Financial Institutions														
A. Reduce the Value of Certain Tax Expenditures............	tyba 12/31/16	-675	14,314	50,939	49,041	52,077	55,178	58,091	61,062	64,227	67,480	70,567	220,875	542,302
B. Reform the Taxation of Capital Income........................	[26]	3,786	22,458	3,513	20,465	21,750	23,481	25,578	27,846	30,328	33,258	36,279	95,452	248,739
C. Implement the Buffett Rule by Imposing a New “Fair Share Tax"...	tyba 12/31/16	1,857	8,617	-10,235	3,743	3,927	4,101	4,375	4,566	4,783	5,037	5,315	12,010	36,086
D. Impose a Financial Fee...	1/1/17	---	5,645	10,901	11,080	11,160	11,416	11,652	11,949	12,223	12,504	12,791	50,202	111,321
Total of Reforms to Capital Gains Taxation, Upper-Income Tax Benefits, and the Taxation of Financial Institutions………………………		**4,968**	**51,034**	**55,118**	**84,329**	**88,914**	**94,176**	**99,696**	**105,423**	**111,561**	**118,279**	**124,952**	**378,539**	**938,448**
XII. Loophole Closers														
A. Require Current Inclusion in Income of Accrued Market Discount and Limit the Accrual Amount for Distressed Debt..	dsaa 12/31/16	---	11	38	68	91	105	108	102	91	75	61	313	750
B. Require that the Cost Basis of Stock that is a Covered Security Must Be Determined Using an Average Cost Basis Method...	psaa 12/31/16	-2	-10	-9	-4	16	47	88	151	225	304	393	38	1,200
C. Tax Carried (Profits) Interests as Ordinary Income........	tyea 12/31/16	109	1,549	1,722	2,040	2,126	2,004	2,002	2,006	2,013	2,022	2,031	9,550	19,624
D. Require Non-Spouse Beneficiaries of Deceased IRA Owners and Retirement Plan Participants to Take Inherited Distributions Over No More Than Five Years...	[27]	---	[28]	46	175	324	540	1,026	1,097	1,049	998	943	1,085	6,197
E. Limit the Total Accrual of Tax-Favored Retirement Benefits [29]..	caaf tyba 12/31/16	---	297	404	414	425	437	448	462	475	489	503	1,977	4,354
F. Rationalize Net Investment Income and Self-Employment Contributions Act ("SECA") Taxes [30]..	tyba 12/31/16	---	13,734	21,125	21,620	22,969	23,850	24,445	25,198	26,281	27,618	29,028	103,299	235,869
G. Limit Roth Conversions to Pre-Tax Dollars..................	doa 12/31/16	---	1	3	8	13	19	25	31	37	44	51	44	231
H. Eliminate Deduction for Dividends on Stock of Publicly-Traded Corporations Held in Employee Stock Ownership Plans..	dadpa DOE	205	911	1,438	1,489	1,541	1,595	1,651	1,708	1,768	1,830	1,894	7,179	16,030

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
I. Repeal Exclusion of Net Unrealized Appreciation in Employer Securities..	dma 12/31/16	---	-16	-22	-16	-10	-4	2	11	20	29	42	-68	36
J. Disallow the Deduction for Charitable Contributions that are a Prerequisite for Purchasing Tickets to College Sporting Events..	cmi tyba 12/31/16	---	45	227	236	245	255	265	276	287	299	311	1,009	2,446
Total of Loophole Closers...		**312**	**16,523**	**24,972**	**26,030**	**27,741**	**28,848**	**30,060**	**31,042**	**32,246**	**33,708**	**35,256**	**124,426**	**286,737**
XIII. Modify Estate and Gift Tax Provisions														
A. Restore the Estate, Gift and Generation-Skipping Transfer ("GST") Tax Parameters in Effect in 2009 with Portability of Exemption Amount Between Spouses...	dda & tma 12/31/16	---	1,171	9,631	11,787	14,086	16,588	18,193	19,695	21,281	23,353	25,314	53,263	161,099
B. Expand Requirement for Consistency in Value for Transfer and Income Tax Purposes...............................	ta YOE	---	1	6	9	11	12	13	14	16	17	19	40	119
C. Modify Transfer Tax Rules for Grantor Retained Annuity Trusts ("GRATs") and Other Grantor Trusts....	[31]	---	110	303	441	609	843	1,163	1,597	2,187	2,977	4,017	2,306	14,246
D. Limit Duration of GST Tax Exemption........................	generally tca DOE							*Negligible Revenue Effect*						
E. Extend the Lien on Estate Tax Deferrals where Estate Consists Largely of Interest in Closely Held Business...	[32]	---	6	7	8	8	7	6	5	5	7	7	37	68
F. Modify GST Tax Treatment of Health and Education Exclusion Trusts...	[33]	---	-10	-21	-22	-21	-19	-18	-16	-14	-12	-10	-93	-163
G. Simplify Gift Tax Exclusion for Annual Gifts...............	gma YOE	---	---	39	87	136	202	265	349	429	542	641	464	2,692
H. Expand Applicability of Definition of Executor............	DOE							*Negligible Revenue Effect*						
Total of Modify Estate and Gift Tax Provisions.....................................		**[10]**	**1,278**	**9,965**	**12,310**	**14,829**	**17,633**	**19,622**	**21,644**	**23,904**	**26,884**	**29,988**	**56,017**	**178,061**
XIV. Other Revenue Raisers														
A. Impose an Oil Fee..	10/1/16	---	5,731	9,905	15,640	21,593	28,374	35,248	38,393	39,204	39,534	39,822	81,243	273,444
B. Increase Oil Spill Liability Trust Fund Financing Rate (to 10 Cents Per Barrel Effective 2017) and Update the Law to Include Other Sources of Crudes [34]................	[35]	---	70	110	113	117	121	125	129	133	137	139	530	1,192
C. Reinstate Superfund Taxes														
1. Reinstate and Extend Superfund Excise Taxes..	pba 12/31/16 & before 1/1/27	---	461	619	624	627	632	636	638	639	640	640	2,963	6,156
2. Reinstate Superfund Environmental Income Tax..	tyba 12/31/16 & before 1/1/27	---	890	1,392	1,416	1,444	1,485	1,534	1,590	1,650	1,713	1,735	6,627	14,848
D. Increase Tobacco Taxes and Index for Inflation [3] [36]...	ara 12/31/16	---	5,979	7,687	7,520	7,749	7,992	8,250	8,509	8,740	8,961	9,158	36,927	80,546
E. Make Unemployment Insurance ("UI") Surtax Permanent [21]..	wpa 12/31/16	---	1,103	1,481	1,492	1,504	1,516	1,528	1,541	1,554	1,566	1,579	7,095	14,864

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
F. Expand Federal Unemployment Tax Act ("FUTA") Base and Reform FUTA Credit Reduction Rules [21]...	DOE	---	---	13,289	10,563	-790	-3,216	-3,272	-3,621	-4,470	-4,646	-4,897	19,846	-1,060
G. Reform the UI Extended Benefits Program [21]............	10/1/16	---	---	---	-1	-8	-19	-40	-62	-73	-86	-121	-28	-410
H. Modernize the UI Program [21]....................................	10/1/16	---	---	---	-87	-202	78	537	923	989	1,236	1,433	-211	4,906
I. Create a Mandatory Reemployment Services Eligibility Assessment ("RESEA") Program [21] [37]....................	10/1/16	*No Scorable Revenue Effect*												
J. Levy a Fee on the Production of Hardrock Minerals to Restore Abandoned Mines [21]................................	rma 12/31/17	---	---	112	149	149	149	149	149	149	149	149	560	1,304
K. Return Fees on the Production of Coal to Pre-2006 Levels to Restore Abandoned Mines [21].....................	Cma 9/30/16	---	37	37	39	39	40	---	---	---	---	---	193	193
Total of Other Revenue Raisers..		**---**	**14,271**	**34,632**	**37,468**	**32,222**	**37,152**	**44,695**	**48,189**	**48,514**	**49,204**	**49,637**	**155,744**	**395,982**
XV. Reduce the Tax Gap and Make Reforms														
A. Expand Information Reporting														
1. Improve information reporting for certain businesses and contractors:														
a. Require a certified taxpayer identification number ("TIN") from contractors and allow certain withholding..	pmtca 12/31/16	---	7	56	38	40	42	44	46	48	51	53	182	424
b. Require information reporting for private separate accounts of life insurance companies.......................	tyba 12/31/16	*Negligible Revenue Effect*												
2. Provide an exception to the limitation on disclosing tax return information to expand TIN matching beyond forms where payments are subject to backup withholding...	DOE	*Negligible Revenue Effect*												
3. Provide for reciprocal reporting of information in connection with the implementation of the Foreign Account Tax Compliance Act ("FATCA").......	rrtbfa 12/31/17	---	---	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	1
4. Require Form W-2 reporting for employer contributions to defined contribution plans....................	irdf cyba 12/31/16	*Negligible Revenue Effect*												
B. Improve Compliance By Businesses														
1. Increase certainty with respect to worker classification [3] [38]..	DOE	---	158	551	993	1,183	1,254	1,277	1,306	1,335	1,359	1,378	4,140	10,796
2. Increase information sharing to administer excise taxes	DOE	---	4	8	14	15	16	17	18	19	19	20	57	151
3. Provide authority to readily share beneficial ownership of U.S. companies with law enforcement......................	DOE	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	1
C. Strengthen Tax Administration														
1. Modify the conservation easement deduction and pilot a conservation credit:														
a. Reform the deduction for contributions of conservation easements [39]....................................	cma DOE	---	7	17	18	19	22	26	29	32	34	37	82	240

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
b. Eliminate the deduction for contributions of conservation easements on golf courses....................	cma DOE	6	20	27	28	29	29	29	30	31	32	33	139	294
c. Restrict deductions and harmonize the rules for contributions of conservation easements for historic preservation..	cma DOE	[28]	3	17	17	18	19	19	20	20	21	22	74	176
d. Pilot an allocable credit for conservation contributions and report to Congress........................	cma DOE	---	-5	-19	-25	-25	-25	-25	-25	-25	-25	-25	-99	-224
2. Impose liability on shareholders to collect unpaid income taxes of applicable corporations........................	[40]	44	271	171	147	153	160	166	173	180	187	195	946	1,847
3. Implement a program integrity statutory cap adjustment for tax administration [21] [37]...................	10/1/16	--- No Scorable Revenue Effect ---												
4. Revise offer-in-compromise application rules................	oicsa DOE	-5	-5	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	-10	-10
5. Make repeated willful failure to file a tax return a felony..	rrtbfa 12/31/16	--- Negligible Revenue Effect ---												
6. Facilitate tax compliance with local jurisdictions..........	Dma DOE	--- Negligible Revenue Effect ---												
7. Improve investigative disclosure statute.........................	Dma DOE	--- Negligible Revenue Effect ---												
8. Allow the IRS to absorb credit and debit card processing fees for certain tax payments........................	pma DOE	--- Negligible Revenue Effect ---												
9. Provide the IRS with greater flexibility to address correctable errors [3]...	DOE	[28]	[28]	27	28	29	30	30	31	32	33	34	113	274
10. Enhance electronic filing of returns...	tyba DOE & rrtbfa 12/31/16	--- Negligible Revenue Effect ---												
11. Improve the whistleblower program...............................	DOE	--- Negligible Revenue Effect ---												
12. Index all civil penalties for inflation.............................	DOE	---	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]
13. Combat tax-related identity theft...................................	DOE	--- Negligible Revenue Effect ---												
14. Allow States to send notices of intent to offset Federal tax refunds to collect State tax obligations by regular first-class mail instead of certified mail.........................	DOE	--- Negligible Revenue Effect ---												
15. Accelerate information return due dates [3]..................	rrtbfa 12/31/16	---	1	4	6	8	8	8	9	9	10	10	26	72
16. Increase oversight of paid tax return preparers - explicitly provide that the Secretary has authority to regulate all paid return preparers [3]..............................	DOE	[28]	6	11	12	13	15	15	16	17	18	19	57	142
17. Enhance administrability of the appraiser penalty.........	rrtbfa 12/31/16	--- Negligible Revenue Effect ---												
18. Enhance UI program integrity [3] [21] [37]...................	10/1/16	---	---	---	-22	-44	-41	-34	-28	-22	-19	-17	-108	-229
19. Request a program integrity cap adjustment for the RESEA program [21] [37]..	10/1/16	--- No Scorable Revenue Effect ---												
Total of Reduce the Tax Gap and Make Reforms ……………………………		**45**	**466**	**870**	**1,253**	**1,437**	**1,527**	**1,573**	**1,626**	**1,677**	**1,719**	**1,759**	**5,598**	**13,956**
XVI. Simplify the Tax System														
A. Modify Adoption Credit to Allow Tribal Determination of Special Needs....................................	tyba 12/31/16	[8]	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-3	-7

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
B. Repeal Non-Qualified Preferred Stock ("NQPS") Designation	sia 12/31/16	5	11	12	12	13	13	14	15	16	17	18	66	146
C. Reform Excise Tax Based on Investment Income of Private Foundations	tyba DOE	---	-9	-14	-15	-15	-16	-16	-17	-18	-19	-19	-69	-158
D. Simplify Arbitrage Investment Restrictions	bia DOE	[8]	-3	-19	-44	-61	-64	-67	-70	-73	-76	-79	-191	-556
E. Simplify Single-Family Housing Mortgage Bond Targeting Requirements	bia DOE	[8]	-1	-6	-14	-23	-31	-40	-48	-57	-66	-76	-76	-363
F. Streamline Private Business Limits on Governmental Bonds	bia DOE	[8]	[8]	-1	-3	-5	-7	-9	-10	-11	-13	-16	-16	-75
G. Repeal Technical Terminations of Partnerships	ta 12/31/16	---	10	17	20	21	22	23	24	25	28	30	90	220
H. Repeal Anti-Churning Rules of Code Section 197	aa 12/31/16	---	-21	-73	-147	-241	-356	-419	-419	-419	-419	-419	-838	-2,932
I. Repeal Special Estimated Tax Payment Provision for Certain Insurance Companies	tyba 12/31/16	*Negligible Revenue Effect*												
J. Repeal the Telephone Excise Tax	[41]	---	-364	-362	-321	-285	-253	-225	-199	-177	-157	-139	-1,586	-2,484
K. Increase the Standard Mileage Rate for Automobile Use by Volunteers	cmi tyba 12/31/16	---	-14	-57	-59	-61	-63	-64	-66	-68	-70	-72	-253	-593
L. Consolidate Contribution Limitations for Charitable Deductions and Extend the Carryforward Period for Excess Charitable Contribution Deduction Amounts	cmi tyba 12/31/16	---	-15	-245	-267	-285	-297	-510	-700	-859	-1,011	-1,153	-1,109	-5,342
M. Exclude from Gross Income Subsidies from Public Utilities for Purchase of Water Runoff Management	spfwcaswma 12/31/16	---	---	-1	-1	-1	-1	-2	-2	-2	-2	-2	-5	-15
N. Provide Relief for Certain Accidental Dual Citizens	1/1/17	-5	-32	-33	-32	-18	-20	-23	-27	-30	-32	-34	-139	-285
Total of Simplify the Tax System		**[8]**	**-439**	**-783**	**-872**	**-962**	**-1,074**	**-1,339**	**-1,520**	**-1,674**	**-1,821**	**-1,962**	**-4,129**	**-12,444**
XVII. User Fees														
A. Reform Inland Waterways Funding [21]	vuicwtba 9/30/16	---	2	58	88	116	116	116	116	116	115	115	381	960
B. Reauthorize Special Assessment On Domestic Nuclear Utilities [21]	10/1/16	---	156	159	163	166	170	174	178	182	187	191	813	1,726
C. Establish User Fee for Electronic Visa Update System ("EVUS") [21]	10/1/16	---	31	25	27	31	27	31	29	34	24	28	141	287
Total of User Fees		**---**	**189**	**242**	**278**	**313**	**313**	**321**	**323**	**332**	**326**	**334**	**1,335**	**2,973**
XVIII. Trade Initiative - Enact the Trans-Pacific Partnership Trade Agreement [21] [42]	**10/1/17**	**---**	**---**	**-1,690**	**-2,343**	**-2,586**	**-2,858**	**-3,147**	**-3,445**	**-3,724**	**-4,003**	**-4,318**	**-9,477**	**-28,114**
XIX. Other Initiatives														
A. Allow Offset of Federal Income Tax Refunds to Collect Delinquent State Income Taxes for Out-of-State Residents	DOE	*Negligible Revenue Effect*												
B. Improve Disclosure for Child Support Enforcement	DOE	*No Revenue Effect*												

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
C. Authorize the Limited Sharing of Business Tax Return Information to Improve the Accuracy of Important Measures of the Economy..	DOE	- - - - - - No Revenue Effect - - - - - -												
D. Eliminate Certain Reviews Conducted by the U.S. Treasury Inspector General for Tax Administration ("TIGTA")..	after 12/31/16	- - - - - - No Revenue Effect - - - - - -												
E. Modify Indexing to Prevent Deflationary Adjustments..	DOE	- - - - - - No Revenue Effect - - - - - -												
F. Enact Comprehensive Immigration Reform..................	DOE	- - - - - - JCT's Estimate of the Revenue Effects of Immigration Reform is Included in the CBO Immigration Cost Estimate - - - - - -												
Total of Other Initiatives..		- - - - - - ***Negligible Revenue Effect*** - - - - - -												
NET TOTAL		**5,197**	**161,150**	**198,070**	**210,799**	**214,513**	**227,590**	**218,557**	**202,093**	**210,029**	**223,483**	**234,984**	**1,017,317**	**2,106,464**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is generally assumed to be July 1, 2016.

Legend for "Effective" column:

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aa = acquisitions after
ami = allocations made in
ara = articles removed after
Ara = amounts realized after
aspioiiUSa = all spirits produced in or imported into the United States after
bia = bonds issued after
bii = bonds issued in
bis = bonds issued starting
caaf = contributions and accruals for
cma = contributions made after
Cma = coal mined after
cmi = contributions made in
cyba = calendar years beginning after
dadpa = dividends and distributions paid after
dceia = derivative contracts entered into after
dda = decedents dying after
dma = distributions made after
Dma = disclosures made after
doa = distributions occurring after
DOE = date of enactment
doioa = discharge of indebtedness occurring after
dola = discharges of loans after
dpoia = damages paid or incurred after
dsaa = debt securities acquired after
edoa = eligible distributions occurring after
epoia = expenses paid or incurred after
Epoia = expenditures paid or incurred after
fsoua = fuel sold or used after
ftyba = first taxable year beginning after
gma = gifts made after
irdf = information returns due for
lkeca = like-kind exchanges completed after
oicsa = offers-in-compromise submitted after
pba = periods beginning after
pii = policies issued in
pma = payments made after
pmtca = payments made to contractors after
pocia = production of costs incurred after
powcba = property on which construction begins after
ppisa = property placed in service after
psaa = portfolio stock acquired after
ptybo/a = partnership's taxable year beginning on or after
pyba = plan years beginning after
qiai = qualified investments approved in
qwpdt12mpbo = qualified wages paid during the 12-month period beginning on
raeia = research agreements entered into after
rma = rock mined after
rrtbfa = returns required to be filed after
sia = stock issued after
soea = sales or exchanges after
spfwcaswma = subsidies provided for water conservation and storm water management after
ta = transfers after
tca = trusts created after
Tca = transactions completed after
tcai = tax credit authority in
tma = transfers made after
toa = transactions occurring after
tyba = taxable years beginning after
tyea = taxable years ending after
vpisa = vehicles placed in service after
vuicwtba = vessels used in commercial waterway transportation beginning after
wpa = wages paid after
wptqei = wages paid to qualified employees in
wptqiwbwftea = wages paid to qualified individuals who begin work for the employer after
yba = years beginning after
YOE = year of enactment

[Footnotes for JCX-15-16 appear on the following pages]

Footnotes for JCX-15-16:

[1] To the extent the proposals are not fully specified, estimates will be updated as new information becomes available and policy intent is clarified.
[2] Effective on the date of enactment and would apply to earnings accumulated for taxable years beginning on or before December 31, 2016.
[3] Estimate includes the following outlay effects [43]:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Expand and simplify the tax credit provided to qualified small employers for non-elective contributions to employee health insurance…………………	10	14	11	14	9	9	15	16	17	17	18	67	150
Modify and permanently extend renewable electricity production tax credit and investment tax credit………………………………………………	---	223	422	510	609	705	850	1,119	1,478	1,865	2,137	2,467	9,914
Provide a carbon dioxide investment and sequestration tax credit …………..	---	---	71	162	255	366	459	398	330	327	325	852	2,691
Provide America Fast Forward Bonds and expand eligible uses………………	---	15	1,123	2,321	3,531	4,749	5,979	7,214	9,462	10,719	11,988	11,739	57,100
Reform child care tax incentives ………………………………………………	---	---	749	781	818	843	860	882	905	930	934	3,191	7,702
Expand and modify the AOTC and repeal Lifetime Learning Credits……….	---	---	3,117	3,186	3,189	3,335	3,400	3,473	3,605	3,589	3,587	12,827	30,481
Make Pell grants excludable from income………………..……………………	---	---	426	437	422	419	432	423	438	433	420	1,704	3,849
Modify reporting of tuition expenses and scholarships on Form 1098-T……..	---	---	-10	-10	-11	-11	-12	-13	-13	-14	-14	-42	-108
Repeal the student loan interest deduction and provide exclusion for certain debt relief and scholarships ……………………………..	---	---	---	---	---	---	-15	-31	-49	-68	-90	---	-254
Expand the EITC for workers without qualifying children……………………	---	285	5,705	5,993	6,192	6,264	6,388	6,500	6,629	6,763	6,912	24,439	57,632
Simplify the rules for claiming the EITC for workers without qualifying children…………………………………………………………………	---	20	408	477	467	467	472	474	480	484	492	1,839	4,241
Provide a second-earner tax credit …………………………………………….	---	---	697	714	725	729	730	726	723	713	714	2,865	6,471
Provide for automatic enrollment in IRAs, including a small employer tax credit, and increase the tax credit for small employer plan start-up costs and provide an additional tax credit for small employer plans newly offering auto-enrollment…………………………………………………………………	---	---	---	397	421	444	461	484	508	529	542	1,262	3,785
Require retirement plans to allow long-term part-time workers to participate..	---	---	-7	-9	-11	-12	-13	-15	-16	-18	-18	-38	-119
Extend the CHIP through 2019 [21]………………………………………….	---	---	881	3,583	1,308	665	---	---	---	---	---	6,437	6,437
Create State option to provide 12-month continuous Medicaid eligibility for adults [21]…………………………………………………………………	---	---	648	1,339	1,741	1,917	2,075	2,235	2,407	2,574	2,761	5,645	17,697
Ensure access to enhanced Federal match for all Medicaid expansion States [21]…………………………………………………………………	---	840	1,050	4,247	4,096	4,242	3,659	3,435	3,252	2,917	2,919	14,475	30,657
Standardize definition of American Indian and Alaska Native in the Affordable Care Act [21]……………………………………………………	---	25	43	50	54	57	59	62	66	70	73	229	559
Increase tobacco taxes and index for inflation [21]…………………………..	---	-17	-79	-132	-178	-227	-277	-317	-344	-366	-363	-633	-2,300
Increase certainty with respect to worker classification………………………	---	34	59	88	70	83	83	83	83	82	82	334	746
Provide the IRS with greater flexibility to address correctable errors………..	[44]	[44]	-17	-17	-18	-18	-19	-20	-20	-21	-21	-71	-172
Accelerate information return due dates………………………………………	---	[44]	-1	-1	-2	-2	-2	-2	-2	-2	-2	-7	-18
Increase oversight of paid tax return preparers - explicitly provide that the Secretary has authority to regulate all paid return preparers…………………	[44]	-2	-4	-4	-4	-5	-5	-5	-6	-6	-6	-19	-47
Enhance UI program integrity [21]……………………………………………	---	---	---	22	46	49	52	55	56	59	60	118	399
Total Outlay Effects …………………………………………………………	10	1,437	15,293	24,147	23,729	25,067	25,630	27,176	29,989	31,576	33,449	89,681	237,494

[Footnotes for JCX-15-16 are continued on the following pages]

Footnotes for JCX-15-16 continued:

[4] The credit would be 75 percent of the otherwise allowable amount for vehicles placed in service in 2020, 50 percent of such amount for vehicles placed in service in 2021, and 25 percent of such amount for vehicles placed in service in 2022.

[5] For vehicles placed in service in calendar year 2021, the credit would be limited to 50 percent of the otherwise allowable amount.

[6] Effective with respect to PAB volume cap to be received in, and additional LIHTC allocation authority received for, calendar years beginning after the date of enactment; and effective for projects that are allocated volume cap after the date of enactment.

[7] Effective for elections under section 42(g)(1) that are made after the date of enactment.

[8] Loss of less than $500,000.

[9] The proposed requirements for Long-Term Use Agreements would be effective for Agreements that are either first executed, or subsequently modified, 30 days or more after enactment. The proposed clarification of the general public use requirement would be effective for taxable years ending after the date of enactment.

[10] Negligible revenue effect.

[11] Effective for sales or assignment of interests in life insurance policies occurring after December 31, 2016.

[12] Effective for contracts issued after December 31, 2016, in taxable years ending after that date.

[13] Estimate includes the following effects:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	547	853	945	1,020	1,076	1,129	1,186	1,245	1,269	1,274	4,440	10,544
On-budget effects	---	581	924	1,032	1,115	1,178	1,237	1,298	1,363	1,391	1,397	4,831	11,517
Off-budget effects	---	-35	-71	-88	-96	-102	-107	-113	-118	-122	-123	-391	-974

[14] Estimate includes the following effects:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	-17	-31	-31	-37	-11	124	273	432	608	778	-127	2,088
On-budget effects	---	-14	-25	-26	-31	-6	130	279	438	614	784	-102	2,144
Off-budget effects	---	-3	-6	-6	-6	-6	-6	-6	-6	-6	-7	-26	-57

[15] Estimate includes the following effects:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	-31	-47	-55	-63	-70	-80	-89	-100	-111	-125	-265	-771
On-budget effects	---	-25	-38	-45	-52	-57	-65	-74	-82	-93	-104	-217	-636
Off-budget effects	---	---	-7	-9	-11	-12	-13	-15	-16	-18	-18	-38	-119

[16] Generally effective for taxpayers attaining age 70½ on or after December 31, 2016, and for taxpayers who die on or after December 31, 2016, before attaining age 70½.

[17] Estimate includes the following effects:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	-41	-83	-165	-289	-417	-549	-683	-822	-964	-997	-995	-5,010
On-budget effects	---	-38	-77	-154	-269	-388	-510	-636	-765	-898	-930	-925	-4,663
Off-budget effects	---	-3	-6	-12	-21	-30	-39	-48	-57	-66	-67	-71	-347

[18] Estimate provided by the staff of the Joint Committee on Taxation and the Congressional Budget Office.

[19] Estimate includes the following effects:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	---	---	---	-371	-739	-903	-1,087	-1,337	-1,548	-1,802	-1,110	-7,787
On-budget effects	---	---	---	---	-283	-590	-713	-852	-1,035	-1,189	-1,390	-873	-6,053
Off-budget effects	---	---	---	---	-88	-150	-190	-235	-302	-358	-412	-238	-1,735

[20] Effective for tax years beginning after December 31, 2016. However, as under present law, no plans would be subject to tax until 2020.

[21] Estimate provided by the Congressional Budget Office (the "CBO").

[22] Estimate includes the following effects [21]:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	---	118	644	581	349	-1	---	---	---	---	1,692	1,691
On-budget effects	---	---	78	426	385	231	-1	---	---	---	---	1,120	1,119
Off-budget effects	---	---	40	218	196	118	---	---	---	---	---	572	572

[Footnotes for JCX-15-16 are continued on the following pages]

Footnotes for JCX-15-16 continued:

[23] Estimate includes the following effects [21]:	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	---	195	424	576	627	673	721	768	814	870	1,822	5,668
On-budget effects	---	---	149	324	439	476	510	546	580	613	655	1,388	4,292
Off-budget effects	---	---	46	100	137	151	163	175	188	201	215	434	1,376

[24] Estimate includes the following effects [21]:	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	---	---	70	45	22	13	9	9	3	---	137	171
On-budget effects	---	---	---	48	31	15	9	6	6	2	---	94	117
Off-budget effects	---	---	---	22	14	7	4	3	3	1	---	43	54

[25] Estimate includes the following	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
on-budget effects [21]	---	-6	-10	-11	-12	-12	-13	-13	-14	-14	-15	-51	-120

[26] Effective for capital gains realized and qualified dividends received in taxable years beginning after December 31, 2016, and for gains on gifts made and of decedents dying after December 31, 2016.

[27] Generally effective for distributions with respect to plan participants or IRA owners who die after December 31, 2016.

[28] Gain of less than $500,000.

[29] Estimate includes the following effects:	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	297	404	414	425	437	448	462	475	489	503	1,977	4,354
On-budget effects	---	291	396	406	416	428	439	452	465	479	493	1,937	4,265
Off-budget effects	---	6	8	9	9	9	9	10	10	10	10	41	90

[30] Estimate includes the following effects:	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	13,734	21,125	21,620	22,969	23,850	24,445	25,198	26,281	27,618	29,028	103,299	235,869
On-budget effects	---	11,553	17,432	17,872	19,082	19,823	20,344	21,020	21,962	23,130	24,256	85,762	196,474
Off-budget effects	---	2,181	3,693	3,748	3,888	4,027	4,101	4,178	4,319	4,488	4,772	17,537	39,395

[31] Grantor retained annuity trusts created after the date of enactment and other grantor trusts that engage in a specified transaction after the date of enactment.

[32] The proposal would be effective for the estates of all decedents dying on or after the date of enactment, as well as for all estates of decedents dying before the date of enactment as to which the section 6324(a)(1) lien has not expired on the effective date.

[33] Effective for trusts created after the introduction of the bill proposing this change, and to transfers after that date made to pre-existing trusts.

[34] The revenue estimate assumes a permanent extension of the financing rate at the rate of 10 cents per barrel effective for production after December 31, 2017.

[35] Effective at the applicable rate on such crudes received at a U.S. refinery, entered into the United States, or used or exported as described above after December 31, 2016.

[36] Estimate provided in consultation with the Congressional Budget Office and includes both outlay effects (see footnote 2 above) and indirect effects (following) resulting from the

health benefits of a reduction in tobacco consumption:	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
On-budget effects	---	11	30	41	48	59	72	87	104	124	145	189	720
Off-budget effects	---	4	11	15	17	21	25	31	37	44	52	68	256

[37] The budgetary savings of the following provisions would not be counted for Congressional scorekeeping purposes:	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Create a mandatory RESEA program [21]	---	---	---	-9	-48	-114	-183	-240	-282	-311	-330	-171	-1,517
Implement a program integrity statutory cap adjustment for tax administration [21]	---	278	1,577	3,214	4,815	6,321	7,570	8,205	8,263	8,153	7,982	16,206	56,378
Enhance UI program integrity [21] [45]	---	---	---	46	91	84	70	57	45	39	35	221	467
Request a program integrity cap adjustment for the RESEA program [21]	---	---	-5	-19	-29	-26	-17	-10	-5	-1	---	-80	-112

[Footnotes for JCX-15-16 are continued on the following page]

Footnotes for JCX-15-16 continued:

[38] Estimate includes the following effects:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Total Revenue Effects	---	158	551	993	1,183	1,254	1,277	1,306	1,335	1,359	1,378	4,140	10,796
On-budget effects	---	-8	-13	-14	-35	-64	-70	-76	-81	-88	-96	-133	-545
Off-budget effects	---	166	564	1,007	1,218	1,318	1,348	1,382	1,417	1,447	1,474	4,273	11,341

[39] Estimate includes interaction with the proposal to create an allocable credit for conservation contributions.

[40] Effective for sales of controlling interests in the stock of applicable C corporations occurring on or after April 10, 2013.

[41] Effective for amounts paid pursuant to bills first rendered more than 90 days after enactment of legislation repealing the tax.

[42] Pending further analysis, the CBO uses the Administration’s estimate as a placeholder.

[43] The outlay effects are preliminary and subject to change.

[44] Decrease in outlays of less than $500,000.

[45] Estimate includes the following nonscorable outlay effect:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
Enhance UI program integrity [21]	---	---	---	-46	-94	-100	-106	-112	-115	-120	-122	-240	-815