



JOINT COMMITTEE ON TAXATION

January 22, 2009

JCX-8-09

**DESCRIPTION OF THE CHAIRMAN'S AMENDMENT IN THE NATURE  
OF A SUBSTITUTE TO TITLES I AND III OF H.R. 598**

**The Chairman's amendment in the nature of a substitute makes the following modifications to Title I of H.R. 598, the "American Recovery and Reinvestment Tax Act of 2009," and Title III of H.R. 598, the "Health Insurance Assistance for the Unemployed Act of 2009," as introduced:**

**1. Modification to proposal providing five-year carryback of operating losses**

The Chairman's amendment in the nature of a substitute provides an election to increase the present-law carryback period for an applicable 2008 or 2009 net operating loss ("NOL") from two to any whole number of years elected by the taxpayer which is more than two and less than six. An applicable NOL is the taxpayer's NOL for any taxable year ending in 2008 or 2009, or, if elected by the taxpayer, the NOL for any taxable year beginning in 2008 or 2009. If an election is made to increase the carryback period, the applicable NOL is permanently reduced by 10 percent.

The 90-percent limitation on the use of any alternative tax NOL deduction is suspended for carrybacks of losses from taxable years ending in 2008 or 2009 and carryovers of losses to such taxable years (this rule applies to taxable years beginning in 2008 or 2009 if an election is in place to use such years as applicable NOLs).

The amendment also modifies the election of life insurance companies for the carryback of a loss from operations for up to two taxable years, at the election of the taxpayer, either beginning in or ending in 2008 or 2009. If an election is made to increase the carryback period, the applicable loss from operations is permanently reduced by 10 percent.

**2. Modification to clarification of regulations related to limitations on certain built-in losses following an ownership change**

The Chairman's amendment in the nature of a substitute clarifies that Internal Revenue Service Notice 2008-83 shall have the force and effect of law with respect to an ownership change occurring after January 16, 2009, that was described on or before such date in a public announcement, or in a filing with the Securities and Exchange Commission required by reason of such change, if the ownership change is pursuant to a written agreement entered into on or before

January 16, 2009 and such written agreement was described in such public announcement or filing. Thus, for example, Notice 2008-83 has no force or effect for ownership changes after January 16, 2009, with respect to which there was no written agreement before January 16, 2009, even if such ownership change was described in a public announcement (or in a filing with the Securities and Exchange Commission).

### **3. Modification to small-issuer exception to tax-exempt interest expense allocation rules for financial institutions**

The Chairman's amendment in the nature of a substitute clarifies that for purposes of determining whether an issuer meets the requirements of the small issuer exception, qualified 501(c)(3) bonds issued in 2009 or 2010 are treated as if they were issued by the 501(c)(3) organization for whose benefit they were issued (and not by the actual issuer of such bonds). In addition, in the case of an organization described in section 501(c)(3) and exempt from taxation under section 501(a), requirements for "qualified financing issues" shall be applied as if the section 501(c)(3) organization were the issuer. Thus, in any event, an organization described in section 501(c)(3) and exempt from taxation under section 501(a) shall be limited to the \$30 million per issuer cap for qualified tax exempt obligations described in section 265(b)(3). A "qualified financing issue" is any composite or pooled issue the proceeds of which are used directly or indirectly to make or finance loans to two or more ultimate borrowers all of whom are qualified borrowers.

### **4. Expand qualified school construction bonds**

The Chairman's amendment in the nature of a substitute increases the national volume limitation for qualified school construction bonds in 2009 and 2010, respectively from \$10 billion to \$11 billion.

### **5. Expand definition of qualified conservation purposes under qualified energy conservation tax credit bonds**

The Chairman's amendment in the nature of a substitute expands eligibility for these tax credit bonds to include loans and grants for green community programs. For example, this expansion will enable States to issue these tax credit bonds to finance loans and/or grants to individual homeowners to retrofit existing housing. The use of bond proceeds for such loans and grants will not cause such bond to be treated as a private activity bond for purposes of the private activity bond restrictions contained in the qualified energy conservation bond provisions.

### **6. Expand definition of recovery zone for purposes of recovery zone economic development bonds and recovery zone facility bonds**

The Chairman's amendment in the nature of a substitute expands the definition of recovery zones to include any area of general distress (see section 1392(a)(2)). In addition, the applicable percentage for recovery zone economic development bonds is increased from 40 percent to 55 percent.

## **7. Clerical and other amendments**

The Chairman's amendment in the nature of a substitute makes clerical amendments to Titles I and III of H.R. 598. In addition, for purpose of the subsidy for COBRA continuation coverage in section 3002 of H.R. 598, the Chairman's amendment in the nature of a substitute clarifies that: (1) the payroll tax offset mechanism for reimbursement of the subsidy includes both an offset against an employer's obligation to periodically deposit payroll taxes and an offset against payments that an employer makes in connection with filing a payroll tax return; and (2) the Secretary of the Treasury is to issue regulations or guidance addressing the reimbursement of the continuation coverage subsidy in the case of a multiemployer group health plan.