111TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 111–447

SMALL BUSINESS AND INFRASTRUCTURE JOBS TAX ACT OF 2010

MARCH 19, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LEVIN, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4849]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4849) to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, extend the Build America Bonds program, provide other infrastructure job creation tax incentives, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Small Business and Infrastructure Jobs Tax Act of 2010".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

89–006

TITLE I—SMALL BUSINESS TAX INCENTIVES

Subtitle A—General Provisions

SEC. 101. TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) IN GENERAL.—Subsection (a) of section 1202 is amended by adding at the end the following new paragraph:

"(4) SPECIAL 100 PERCENT EXCLUSION.—In the case of qualified small business stock acquired after March 15, 2010, and before January 1, 2012—

"(A) paragraph (1) shall be applied by substituting '100 percent' for '50 percent',

"(B) paragraph (2) shall not apply, and

"(C) paragraph (7) of section 57(a) shall not apply.".

(b) CONFORMING AMENDMENTS.—Paragraph (3) of section 1202(a) is amended—

(1) by striking "after the date of the enactment of this paragraph and before January 1, 2011" and inserting "after February 17, 2009, and before March 16, 2010", and

(2) by striking "SPECIAL RULES FOR 2009 AND 2010" in the heading and inserting "SPECIAL 75 PERCENT EXCLUSION".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired after March 15, 2010.

Subtitle B—Limitations and Reporting on Certain Penalties

SEC. 111. LIMITATION ON PENALTY FOR FAILURE TO DISCLOSE CERTAIN INFORMATION.

(a) IN GENERAL.—Subsection (b) of section 6707A is amended to read as follows:

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount of the penalty under subsection (a) with respect to any reportable transaction shall be 75 percent of the decrease in tax shown on the return as a result of such transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes).

"(2) MAXIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any reportable transaction for any taxable year shall not exceed—

"(A) in the case of a listed transaction, $200,000 ($100,000 in the case of a natural person), or

"(B) in the case of any other reportable transaction, $50,000 ($10,000 in the case of a natural person).

"(3) MINIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any transaction for any taxable year shall not be less than $10,000 ($5,000 in the case of a natural person).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after December 31, 2006.

SEC. 112. ANNUAL REPORTS ON PENALTIES AND CERTAIN OTHER ENFORCEMENT ACTIONS.

(a) IN GENERAL.—The Commissioner of Internal Revenue, in consultation with the Secretary of the Treasury, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on the penalties assessed by the Internal Revenue Service during the preceding year under each of the following provisions of the Internal Revenue Code of 1986:

(1) Section 6662A (relating to accuracy-related penalty on understatements with respect to reportable transactions).

(2) Section 6700(a) (relating to promoting abusive tax shelters).

(3) Section 6707 (relating to failure to furnish information regarding reportable transactions).

(4) Section 6707A (relating to failure to include reportable transaction information with return).

(5) Section 6708 (relating to failure to maintain lists of advisees with respect to reportable transactions).

(b) ADDITIONAL INFORMATION.—The report required under subsection (a) shall also include information on the following with respect to each year:

(1) Any action taken under section 330(b) of title 31, United States Code, with respect to any reportable transaction (as defined in section 6707A(c) of the Internal Revenue Code of 1986).

(2) Any extension of the time for assessment of tax enforced, or assessment of any amount under such an extension, under paragraph (10) of section 6501(c) of the Internal Revenue Code of 1986.

(c) DATE OF REPORT.—The first report required under subsection (a) shall be submitted not later than December 31, 2010.

Subtitle C—Other Provisions

SEC. 121. NONRECOURSE SMALL BUSINESS INVESTMENT COMPANY LOANS FROM THE SMALL BUSINESS ADMINISTRATION TREATED AS AMOUNTS AT RISK.

(a) IN GENERAL.—Subparagraph (B) of section 465(b)(6) is amended to read as follows:

"(B) QUALIFIED NONRECOURSE FINANCING.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified nonrecourse financing' means any financing—

"(I) which is qualified real property financing or qualified SBIC financing,

"(II) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

"(III) which is not convertible debt.

"(ii) QUALIFIED REAL PROPERTY FINANCING.—The term 'qualified real property financing' means any financing which—

"(I) is borrowed by the taxpayer with respect to the activity of holding real property,

"(II) is secured by real property used in such activity, and

"(III) is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

"(iii) QUALIFIED SBIC FINANCING.—The term 'qualified SBIC financing' means any financing which—

"(I) is borrowed by a small business investment company (within the meaning of section 301 of the Small Business Investment Act of 1958), and

"(II) is borrowed from, or guaranteed by, the Small Business Administration under the authority of section 303(b) of such Act.".

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 465(b)(6) is amended—

(1) by striking "in the case of an activity of holding real property,", and

(2) by striking "which is secured by real property used in such activity".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to loans and guarantees made after the date of the enactment of this Act.

SEC. 122. INCREASE IN AMOUNT ALLOWED AS DEDUCTION FOR START-UP EXPENDITURES.

(a) IN GENERAL.—Subsection (b) of section 195 is amended by adding at the end the following new paragraph:

"(3) INCREASED LIMITATION FOR TAXABLE YEARS BEGINNING IN 2010 OR 2011.—In the case of any taxable year beginning in 2010 or 2011, paragraph (1)(A)(ii) shall be applied—

"(A) by substituting '$20,000' for '$5,000', and

"(B) by substituting '$75,000' for '$50,000'.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

TITLE II—INFRASTRUCTURE INCENTIVES

SEC. 201. EXTENSION OF BUILD AMERICA BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 54AA(d)(1) is amended by striking "January 1, 2011" and inserting "April 1, 2013".

(b) EXTENSION OF PAYMENTS TO ISSUERS.—

(1) IN GENERAL.—Subsection (a) of section 6431 is amended by striking "January 1, 2011" and inserting "April 1, 2013".

(2) CONFORMING AMENDMENTS.—Subsection (g) of section 54AA is amended—

(A) by striking "January 1, 2011" and inserting "April 1, 2013", and

(B) by striking "QUALIFIED BONDS ISSUED BEFORE 2011" in the heading and inserting "CERTAIN QUALIFIED BONDS".

(c) REDUCTION IN PERCENTAGE OF PAYMENTS TO ISSUERS.—Subsection (b) of section 6431 is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary",

(2) by striking "35 percent" and inserting "the applicable percentage", and

(3) by adding at the end the following new paragraph:

"(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the percentage determined in accordance with the following table:

"In the case of a qualified bond issued during calendar year:	The applicable percentage is:
2009 or 2010	35 percent
2011	33 percent
2012	31 percent
2013	30 percent".

(d) CURRENT REFUNDINGS PERMITTED.—Subsection (g) of section 54AA is amended by adding at the end the following new paragraph:

"(3) TREATMENT OF CURRENT REFUNDING BONDS.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified build America bond' includes any bond (or series of bonds) issued to refund a qualified build America bond if—

"(i) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(ii) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(iii) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

"(B) APPLICABLE PERCENTAGE.—In the case of a refunding bond referred to in subparagraph (A), the applicable percentage with respect to such bond under section 6431(b) shall be the lowest percentage specified in paragraph (2) of such section.

"(C) DETERMINATION OF AVERAGE MATURITY.—For purposes of subparagraph (A)(i), average maturity shall be determined in accordance with section 147(b)(2)(A).".

(e) CLARIFICATION RELATED TO LEVEES AND FLOOD CONTROL PROJECTS.—Subparagraph (A) of section 54AA(g)(2) is amended by inserting "(including capital expenditures for levees and other flood control projects)" after "capital expenditures".

SEC. 202. EXEMPT-FACILITY BONDS FOR SEWAGE AND WATER SUPPLY FACILITIES.

(a) BONDS FOR WATER AND SEWAGE FACILITIES EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY BONDS.—

(1) IN GENERAL.—Paragraph (3) of section 146(g) is amended by inserting "(4), (5)," after "(2),".

(2) CONFORMING AMENDMENT.—Paragraphs (2) and (3)(B) of section 146(k) are both amended by striking "(4), (5), (6)," and inserting "(6)".

(b) TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOVERNMENTS.—

(1) IN GENERAL.—Subsection (c) of section 7871 is amended by adding at the end the following new paragraph:

"(4) EXCEPTION FOR BONDS FOR WATER AND SEWAGE FACILITIES.—Paragraph (2) shall not apply to an exempt facility bond 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide facilities described in paragraph (4) or (5) of section 142(a).".

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 7871(c) is amended by striking "paragraph (3)" and inserting "paragraphs (3) and (4)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 203. EXTENSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX TREATMENT FOR CERTAIN TAX-EXEMPT BONDS.

(a) IN GENERAL.—Clause (vi) of section 57(a)(5)(C) is amended—

(1) by striking "January 1, 2011" in subclause (I) and inserting "January 1, 2012", and

(2) by striking "AND 2010" in the heading and inserting ", 2010, AND 2011".

(b) ADJUSTED CURRENT EARNINGS.—Clause (iv) of section 56(g)(4)(B) is amended—

(1) by striking "January 1, 2011" in subclause (I) and inserting "January 1, 2012", and

(2) by striking "AND 2010" in the heading and inserting ", 2010, AND 2011".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2010.

SEC. 204. ELECTIVE PAYMENTS IN LIEU OF LOW INCOME HOUSING CREDITS.

(a) IN GENERAL.—Chapter 65 (relating to abatements, credits, and refunds) is amended by adding at the end the following new subchapter:

"Subchapter C—Direct Payment Provisions

"SEC. 6451. ELECTIVE PAYMENTS IN LIEU OF LOW INCOME HOUSING CREDIT FOR BOND-FINANCED BUILDINGS.

"(a) IN GENERAL.—Any person making an election under this section with respect to any qualified bond-financed low-income building originally placed in service by such person during the taxable year shall be treated as making a payment, against the tax imposed by subtitle A for the taxable year, equal to the direct payment amount with respect to such building. Such payment shall be treated as made on the later of the due date of the return of such tax or the date on which such return is filed.

"(b) QUALIFIED BOND-FINANCED LOW-INCOME BUILDING.—For purposes of this section, the term 'qualified bond-financed low-income building' means any qualified low-income building to which paragraph (1) of section 42(h) does not apply by reason of paragraph (4)(B) of such section.

"(c) DIRECT PAYMENT AMOUNT.—For purposes of this section, the term 'direct payment amount' means, with respect to any building, 25.5 percent of the qualified basis of such building.

"(d) SPECIAL RULES FOR CERTAIN NON-TAXPAYERS.—

"(1) DENIAL OF PAYMENT.—Subsection (a) shall not apply with respect to any building placed in service by—

"(A) any governmental entity, or

"(B) any organization described in section 501(c) or 401(a) and exempt from tax under section 501(a).

"(2) SPECIAL RULES FOR PARTNERSHIPS AND S CORPORATIONS.—In the case of property originally placed in service by a partnership or an S corporation—

"(A) the election under subsection (a) may be made only by such partnership or S corporation,

"(B) such partnership or S corporation shall be treated as making the payment referred to in subsection (a) only to the extent of the proportionate share of such partnership or S corporation as is owned by persons who would be treated as making such payment if the building were placed in service by such persons, and

"(C) the return required to be made by such partnership or S corporation under section 6031 or 6037 (as the case may be) shall be treated as a return of tax for purposes of subsection (a).

For purposes of subparagraph (B), rules similar to the rules of section 168(h)(6) (other than subparagraph (F) thereof) shall apply.

"(e) COORDINATION WITH LOW INCOME HOUSING CREDIT.—In the case of any property with respect to which an election is made under this section, no credit shall be determined under section 42 with respect to such building for any taxable year.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) OTHER DEFINITIONS.—Terms used in this section which are also used in section 42 shall have the same meaning for purposes of this section as when used in such section.

"(2) APPLICATION OF RECAPTURE RULES, ETC.—Except as otherwise provided by the Secretary, rules similar to the rules of section 42 shall apply, including the recapture rules of section 42(j).

"(3) PROVISION OF INFORMATION.—A person shall not be treated as having elected the application of this section unless the taxpayer provides such information as the Secretary may require for purposes of verifying the proper amount to be treated as a payment under subsection (a) and evaluating the effectiveness of this section.

"(4) EXCLUSION FROM GROSS INCOME.—Any credit or refund allowed or made by reason of this section shall not be includible in gross income or alternative minimum taxable income.

"(g) TERMINATION.—Subsection (a) shall not apply with respect to any building placed in service during a taxable year beginning after December 31, 2010.".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6211(b)(4) is amended by inserting "and subchapter C of chapter 65 (including any payment treated as made under such subchapter)" after "6431".

(2) Subparagraph (B) of section 6425(c)(1) is amended—

(A) by striking "the credits" and inserting "the sum of—

"(i) the credits",

(B) by striking the period at the end of clause (i) thereof (as amended by this paragraph) and inserting ", plus", and

(C) by adding at the end the following new clause:

"(ii) the credits allowed (and payments treated as made) under subchapter C.".

(3) Paragraph (3) of section 6654(f) is amended—

(A) by striking "the credits" and inserting "the sum of—

"(A) the credits",

(B) by striking the period at the end of subparagraph (A) thereof (as amended by this paragraph) and inserting ", and", and

(C) by adding at the end the following new subparagraph:

"(B) the credits allowed (and payments treated as made) under subchapter C of chapter 65.".

(4) Subparagraph (B) of section 6655(g)(1) is amended—

(A) by striking "the credits" and inserting "the sum of—

"(i) the credits",

(B) by striking the period at the end of clause (i) thereof (as amended by this paragraph) and inserting ", plus", and

(C) by adding at the end the following new clause:

"(ii) the credits allowed (and payments treated as made) under subchapter C of chapter 65.".

(5) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting ", or from the provisions of subchapter C of chapter 65 of such Code" before the period at the end.

(6) The table of subchapters for chapter 65 is amended by adding at the end the following new item:

SUBCHAPTER C. DIRECT PAYMENT PROVISIONS

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings placed in service after the date of the enactment of this Act.

SEC. 205. EXTENSION AND ADDITIONAL ALLOCATIONS OF RECOVERY ZONE BOND AUTHORITY.

(a) EXTENSION OF RECOVERY ZONE BOND AUTHORITY.—Section 1400U–2(b)(1) and section 1400U–3(b)(1)(B) are each amended by striking "January 1, 2011" and inserting "January 1, 2012".

(b) ADDITIONAL ALLOCATIONS OF RECOVERY ZONE BOND AUTHORITY BASED ON UNEMPLOYMENT.—Section 1400U–1 is amended by adding at the end the following new subsection:

"(c) ALLOCATION OF 2010 RECOVERY ZONE BOND LIMITATIONS BASED ON UNEMPLOYMENT.—

"(1) IN GENERAL.—The Secretary shall allocate the 2010 national recovery zone economic development bond limitation and the 2010 national recovery zone facility bond limitation among the States in the proportion that each such State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all of the States.

"(2) MINIMUM ALLOCATION.—The Secretary shall adjust the allocations under paragraph (1) for each State to the extent necessary to ensure that no State (prior to any reduction under paragraph (3)) receives less than 0.9 percent of the 2010 national recovery zone economic development bond limitation and 0.9 percent of the 2010 national recovery zone facility bond limitation.

"(3) ALLOCATIONS BY STATES.—

"(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities (as defined in subsection (a)(3)(B)) in such State in the proportion that each such county's or municipality's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all the counties and large municipalities (as so defined) in such State.

"(B) 2010 ALLOCATION REDUCED BY AMOUNT OF PREVIOUS ALLOCATION.—Each State shall reduce (but not below zero)—

"(i) the amount of the 2010 national recovery zone economic development bond limitation allocated to each county or large municipality (as so defined) in such State by the amount of the national recovery zone economic development bond limitation allocated to such county or large municipality under subsection (a)(3)(A) (determined without regard to any waiver thereof), and

"(ii) the amount of the 2010 national recovery zone facility bond limitation allocated to each county or large municipality (as so defined) in such State by the amount of the national recovery zone facility bond limitation allocated to such county or large municipality under subsection (a)(3)(A) (determined without regard to any waiver thereof).

"(C) WAIVER OF SUBALLOCATIONS.—A county or municipality may waive any portion of an allocation made under this paragraph. A State may by law treat a county or municipality as waiving any portion of an allocation made under this paragraph if there is a reasonable expectation that such allocation would not otherwise be used.

"(D) SPECIAL RULE FOR A MUNICIPALITY IN A COUNTY.—In the case of any large municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

"(4) 2009 UNEMPLOYMENT NUMBER.—For purposes of this subsection, the term '2009 unemployment number' means, with respect to any State, county or municipality, the number of individuals in such State, county, or municipality who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

"(5) 2010 NATIONAL LIMITATIONS.—

"(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—The 2010 national recovery zone economic development bond limitation is $10,000,000,000. Any allocation of such limitation under this subsection shall be treated for purposes of section 1400U–2 in the same manner as an allocation of national recovery zone economic development bond limitation.

"(B) RECOVERY ZONE FACILITY BONDS.—The 2010 national recovery zone facility bond limitation is $15,000,000,000. Any allocation of such limitation under this subsection shall be treated for purposes of section 1400U–3 in the same manner as an allocation of national recovery zone facility bond limitation.".

(c) AUTHORITY OF STATE TO WAIVE CERTAIN 2009 ALLOCATIONS.—Subparagraph (A) of section 1400U–1(a)(3) is amended by adding at the end the following: "A State may by law treat a county or municipality as waiving any portion of an allocation made under this subparagraph if there is a reasonable expectation that such allocation would not otherwise be used.".

SEC. 206. ALLOWANCE OF NEW MARKETS TAX CREDIT AGAINST ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(4) is amended by redesignating clauses (v) through (viii) as clauses (vi) through (ix), respectively, and by inserting after clause (iv) the following new clause:

"(v) the credit determined under section 45D, but only with respect to credits determined with respect to qualified equity investments (as defined in section 45D(b)) initially made before January 1, 2012,".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified equity investments (as defined in section 45D(b) of the Internal Revenue Code of 1986) initially made after March 15, 2010.

TITLE III—REVENUE PROVISIONS

SEC. 301. LIMITATION ON TREATY BENEFITS FOR CERTAIN DEDUCTIBLE PAYMENTS.

(a) IN GENERAL.—Section 894 (relating to income affected by treaty) is amended by adding at the end the following new subsection:

"(d) LIMITATION ON TREATY BENEFITS FOR CERTAIN DEDUCTIBLE PAYMENTS.—

"(1) IN GENERAL.—In the case of any deductible related-party payment, any withholding tax imposed under chapter 3 (and any tax imposed under subpart A or B of this part) with respect to such payment may not be reduced under any treaty of the United States unless any such withholding tax would be reduced under a treaty of the United States if such payment were made directly to the foreign parent corporation.

"(2) DEDUCTIBLE RELATED-PARTY PAYMENT.—For purposes of this subsection, the term 'deductible related-party payment' means any payment made, directly or indirectly, by any person to any other person if the payment is allowable as a deduction under this chapter and both persons are members of the same foreign controlled group of entities.

"(3) FOREIGN CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'foreign controlled group of entities' means a controlled group of entities the common parent of which is a foreign corporation.

"(B) CONTROLLED GROUP OF ENTITIES.—The term 'controlled group of entities' means a controlled group of corporations as defined in section 1563(a)(1), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein, and

"(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

"(4) FOREIGN PARENT CORPORATION.—For purposes of this subsection, the term 'foreign parent corporation' means, with respect to any deductible related-party payment, the common parent of the foreign controlled group of entities referred to in paragraph (3)(A).

"(5) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as are necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which provide for—

"(A) the treatment of two or more persons as members of a foreign controlled group of entities if such persons would be the common parent of such group if treated as one corporation, and

"(B) the treatment of any member of a foreign controlled group of entities as the common parent of such group if such treatment is appropriate taking into account the economic relationships among such entities.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 302. TREATMENT OF SECURITIES OF A CONTROLLED CORPORATION EXCHANGED FOR ASSETS IN CERTAIN REORGANIZATIONS.

(a) IN GENERAL.—Section 361 (relating to nonrecognition of gain or loss to corporations; treatment of distributions) is amended by adding at the end the following new subsection:

"(d) SPECIAL RULES FOR TRANSACTIONS INVOLVING SECTION 355 DISTRIBUTIONS.— In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355—

"(1) this section shall be applied by substituting 'stock other than nonqualified preferred stock (as defined in section 351(g)(2))' for 'stock or securities' in subsections (a) and (b)(1), and

"(2) the first sentence of subsection (b)(3) shall apply only to the extent that the sum of the money and the fair market value of the other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c)))."

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 361(b) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to exchanges after the date of the enactment of this Act.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any exchange pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on March 15, 2010, and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

SEC. 303. REPEAL OF SPECIAL RULES FOR INTEREST AND DIVIDENDS RECEIVED FROM PERSONS MEETING THE 80-PERCENT FOREIGN BUSINESS REQUIREMENTS.

(a) REPEAL OF SPECIAL RULE TREATING INTEREST AS UNITED STATES SOURCE.—Paragraph (1) of section 861(a) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) REPEAL OF EXCEPTION TO TAX ON DIVIDENDS RECEIVED BY NONRESIDENT ALIENS.—Paragraph (2) of section 871(i) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(c) CONFORMING AMENDMENTS.—

(1) Section 861 is amended by striking subsection (c) and by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(2) Paragraph (9) of section 904(h) is amended to read as follows:

"(9) TREATMENT OF CERTAIN DOMESTIC CORPORATIONS.—In the case of any dividend treated as not from sources with the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.".

(3) Subsection (c) of section 2104 is amended in the last sentence by striking "or to a debt obligation of a domestic corporation" and all that follows and inserting a period.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2010.

(2) GRANDFATHER RULE FOR OUTSTANDING DEBT OBLIGATIONS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to payments of interest on obligations issued before the date of the enactment of this Act.

(B) EXCEPTION FOR RELATED PARTY DEBT.—Subparagraph (A) shall not apply to any interest which is payable to a related person (determined under rules similar to the rules of section 954(d)(3)).

(C) SIGNIFICANT MODIFICATIONS TREATED AS NEW ISSUES.—For purposes of subparagraph (A), a significant modification of the terms of any obligation (including any extension of the term of such obligation) shall be treated as a new issue.

SEC. 304. INFORMATION REPORTING FOR RENTAL PROPERTY EXPENSE PAYMENTS.

(a) IN GENERAL.—Section 6041 is amended by adding at the end the following new subsection:

"(h) TREATMENT OF RENTAL PROPERTY EXPENSE PAYMENTS.—

"(1) IN GENERAL.—For purposes of subsection (a), a person receiving rental income from real estate (other than a qualified residence) shall be considered to be engaged in a trade or business of renting property.

"(2) QUALIFIED RESIDENCE.—For purposes of paragraph (1), the term 'qualified residence' means——

"(A) the principal residence (within the meaning of section 121) of the taxpayer, and

"(B) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2010.

SEC. 305. APPLICATION OF LEVY TO PAYMENTS TO FEDERAL VENDORS RELATING TO PROPERTY.

(a) IN GENERAL.—Section 6331(h)(3) is amended by striking "goods or services" and inserting "property, goods, or services".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to levies approved after the date of the enactment of this Act.

SEC. 306. APPLICATION OF CONTINUOUS LEVY TO EMPLOYMENT TAX LIABILITY OF CERTAIN FEDERAL CONTRACTORS.

(a) IN GENERAL.—Section 6330(h) is amended by inserting "or if the person subject to the levy (or any predecessor thereof) is a Federal contractor that was identified as owing such employment taxes through the Federal Payment Levy Program" before the period at the end of the first sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to levies issued after December 31, 2010.

SEC. 307. REQUIRED MINIMUM 10-YEAR TERM, ETC., FOR GRANTOR RETAINED ANNUITY TRUSTS.

(a) IN GENERAL.—Subsection (b) of section 2702 is amended—

(1) by redesignating paragraphs (1), (2) and (3) as subparagraphs (A), (B), and (C), respectively, and by moving such subparagraphs (as so redesignated) 2 ems to the right,

(2) by striking "For purposes of" and inserting the following:

"(1) IN GENERAL.—For purposes of", and

(3) by striking "paragraph (1) or (2)" in paragraph (1)(C) (as so redesignated) and inserting "subparagraph (A) or (B)", and

(4) by adding at the end the following new paragraph:

"(2) ADDITIONAL REQUIREMENTS WITH RESPECT TO GRANTOR RETAINED ANNUITIES.—For purposes of subsection (a), in the case of an interest described in paragraph (1)(A) (determined without regard to this paragraph) which is retained by the transferor, such interest shall be treated as described in such paragraph only if—

"(A) the right to receive the fixed amounts referred to in such paragraph is for a term of not less than 10 years,

"(B) such fixed amounts, when determined on an annual basis, do not decrease relative to any prior year during the first 10 years of the term referred to in subparagraph (A), and

"(C) the remainder interest has a value greater than zero determined as of the time of the transfer.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made after the date of the enactment of this Act.

SEC. 308. INCREASE IN INFORMATION RETURN PENALTIES.

(a) FAILURE TO FILE CORRECT INFORMATION RETURNS.—

(1) IN GENERAL.—Subsections (a)(1), (b)(1)(A), and (b)(2)(A) of section 6721 are each amended by striking "$50" and inserting "$100".

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (a)(1), (d)(1)(A), and (e)(3)(A) of section 6721 are each amended by striking "$250,000" and inserting "$1,500,000".

(b) REDUCTION WHERE CORRECTION WITHIN 30 DAYS.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(1) is amended by striking "$15" and inserting "$30".

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(1)(B) and (d)(1)(B) of section 6721 are each amended by striking "$75,000" and inserting "$250,000".

(c) REDUCTION WHERE CORRECTION ON OR BEFORE AUGUST 1.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(2) is amended by striking "$30" and inserting "$60".

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(2)(B) and (d)(1)(C) of section 6721 are each amended by striking "$150,000" and inserting "$500,000".

(d) AGGREGATE ANNUAL LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—Paragraph (1) of section 6721(d) is amended—

(1) by striking "$100,000" in subparagraph (A) and inserting "$500,000",

(2) by striking "$25,000" in subparagraph (B) and inserting "$75,000", and

(3) by striking "$50,000" in subparagraph (C) and inserting "$200,000".

(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—Paragraph (2) of section 6721(e) is amended by striking “$100” and inserting “$250”.

(f) ADJUSTMENT FOR INFLATION.—Section 6721 is amended by adding at the end the following new subsection:

“(f) ADJUSTMENT FOR INFLATION.—

“(1) IN GENERAL.—For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d) (other than paragraph (2)(A) thereof), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting ‘calendar year 2011’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(2) ROUNDING.—If any amount adjusted under paragraph (1)—

“(A) is not less than $75,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

“(B) is not described in subparagraph (A) and is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to information returns required to be filed on or after January 1, 2011.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 4849, as amended, provides tax incentives for small business job creation, extends the Build America Bonds program, and provides other infrastructure job creation incentives without increasing the national debt. The bill funds these incentives by limiting tax treaty benefits with respect to certain deductible payments, requiring information reporting for rental property expense payments, requiring a minimum 10-year term for grantor retained annuity trusts, and making other necessary changes to the tax laws.

B. BACKGROUND AND NEED FOR LEGISLATION

The provisions of the bill reflect a need to encourage small business growth and provide further support for State and local infrastructure projects in order to improve the economy and create jobs.

C. LEGISLATIVE HISTORY

The Committee on Ways and Means marked up the provisions of the bill on March 17, 2010, and reported the provisions, as amended, on March 17, 2010, by a roll call vote, with a quorum present.

II. EXPLANATION OF THE BILL

TITLE I—SMALL BUSINESS TAX INCENTIVES

A. GENERAL PROVISIONS

1. Temporary exclusion of 100 percent of gain on certain small business stock (sec. 101 of the bill and sec. 1202 of the Code)

PRESENT LAW

In general

Under present law, individuals may exclude 50 percent (60 percent for certain empowerment zone businesses) of the gain from the sale of certain small business stock acquired at original issue and held for at least five years.[1] The amount of gain eligible for the exclusion by an individual with respect to any corporation is the greater of (1) ten times the taxpayer's basis in the stock or (2) $10 million. In order to qualify as a small business, when the stock is issued, the gross assets of the corporation may not exceed $50 million. The corporation also must meet certain active trade or business requirements.

The portion of the gain includible in taxable income is taxed at a maximum rate of 28 percent under the regular tax.[2] A percentage of the excluded gain is an alternative minimum tax preference;[3] the portion of the gain includible in alternative minimum taxable income is taxed at a maximum rate of 28 percent under the alternative minimum tax.

Thus, under present law, gain from the sale of qualified small business stock is taxed at effective rates of 14 percent under the regular tax[4] and (i) 14.98 percent under the alternative minimum tax for dispositions before January 1, 2011; (ii) 19.98 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired before January 1, 2001; and (iii) 17.92 percent under the alternative minimum tax for dispositions after December 31, 2010, in the case of stock acquired after December 31, 2000.[5]

Temporary increase in exclusion

Under present law, the percentage exclusion for qualified small business stock acquired after February 17, 2009, and before January 1, 2011, is increased to 75 percent. As a result of the increased exclusion, gain from the sale of this qualified small business stock held at least five years is taxed at effective rates of seven percent under the regular tax[6] and 12.88 percent under the alternative minimum tax.[7]

REASONS FOR CHANGE

The Committee believes that increasing the exclusion of gain for small business stock will encourage and new and additional investment in small businesses. Access to additional capital will help these small businesses expand and create jobs.

EXPLANATION OF PROVISION

Under the provision, the percentage exclusion for qualified small business stock is increased to 100 percent and the minimum tax

[1] Sec. 1202.
[2] Sec. 1(h).
[3] Sec. 57(a)(7). In the case of qualified small business stock, the percentage of gain excluded from gross income which is an alternative minimum tax preference is (i) seven percent in the case of stock disposed of in a taxable year beginning before 2011; (ii) 42 percent in the case of stock acquired before January 1, 2001, and disposed of in a taxable year beginning after 2010; and (iii) 28 percent in the case of stock acquired after December 31, 2000, and disposed of in a taxable year beginning after 2010.
[4] The 50 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.
[5] The amount of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. The amount so included is the sum of (i) 50 percent (the percentage included in taxable income) of the total gain and (ii) the applicable preference percentage of the one-half gain that is excluded from taxable income.
[6] The 25 percent of gain included in taxable income is taxed at a maximum rate of 28 percent.
[7] The 46 percent of gain included in alternative minimum tax is taxed at a maximum rate of 28 percent. Forty-six percent is the sum of 25 percent (the percentage of total gain included in taxable income) plus 21 percent (the percentage of total gain which is an alternative minimum tax preference).

preference does not apply. Thus, no regular tax or alternative minimum tax is imposed on the sale of this stock held at least five years.

EFFECTIVE DATE

The provision is effective for stock acquired after March 15, 2010, and before January 1, 2012.

B. LIMITATIONS AND REPORTING ON CERTAIN PENALTIES

1. Limitation on penalty for failure to disclose certain information (sec. 111 of the bill and sec. 6707A of the Code)

PRESENT LAW

The reporting requirements of sections 6011 through 6112 create interlocking disclosure obligations for both taxpayers and advisors. Each of these disclosure statutes has a parallel penalty provision that enforces it. Prior to enactment of the American Jobs Creation Act of 2004, no penalty was imposed on taxpayers who failed to disclose participation in transactions subject to section 6011. For disclosures that were due after enactment of that legislation, a strict liability penalty under section 6707A applies to any failure to disclose a reportable transaction.

Regulations under section 6011 require a taxpayer to disclose with its tax return certain information with respect to each "reportable transaction" in which the taxpayer participates.[8] A reportable transaction is defined as one that the Treasury Secretary determines is required to be disclosed because it is determined to have a potential for tax avoidance or evasion.[9] There are five categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, certain loss transactions and transactions of interest.[10]

Transactions falling under the first and last categories of reportable transactions are transactions that are described in publications issued by the Treasury Department and identified as one of these types of transaction. A listed transaction is defined as a reportable transaction which is the same as, or substantially similar[11] to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of the reporting disclosure requirements.[12] A "transaction of interest" is one that is the same or substantially similar to a transaction identified by the Secretary as one about which the Secretary is concerned but does not yet have sufficient knowledge to determine that the transaction is abusive.[13]

The other categories of reportable transactions are not specifically identified in published guidance, but are defined as classes of transactions sharing certain characteristics. In general, a transaction is considered to be offered to a taxpayer under conditions of

[8] Treas. Reg. sec. 1.6011–4.
[9] Sec. 6707A(c)(1).
[10] Treas. Reg. sec. 1.6011–4(b)(2)–(6).
[11] The regulations clarify that the term "substantially similar" includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Further, the term must be broadly construed in favor of disclosure. Treas. Reg. sec. 1.6011–4(c)(4).
[12] Sec. 6707A(c)(2).
[13] Treas. Reg. sec. 1.6011–4(b)(6).

confidentiality if an advisor who is paid a minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies (irrespective if such terms are legally binding).[14] A transaction involves contractual protection if (1) the taxpayer has the right to a full or partial refund of fees if the intended tax consequences from the transaction are not sustained or, (2) the fees are contingent on the intended tax consequences from the transaction being sustained.[15] A reportable loss transaction generally includes any transaction that results in a taxpayer claiming a loss (under section 165) of at least (1) $10 million in any single year or $20 million in any combination of years by a corporate taxpayer or a partnership with only corporate partners; (2) $2 million in any single year or $4 million in any combination of years by all other partnerships, S corporations, trusts, and individuals; or (3) $50,000 in any single year for individuals or trusts if the loss arises with respect to foreign currency translation losses.[16] Treasury has announced its intention to add a sixth category of reportable transactions, patented transactions, but has not yet done so.[17]

Section 6707A imposes a penalty for failure to comply with the reporting requirements of 6011. A single reportable transaction may have to be reported by multiple taxpayers in connection with multiple tax returns. For example, a reportable transaction entered into by a partnership may have to be reported under section 6011 by both the partnership and its partners.[18] The amount of the penalty due for each taxpayer's failure to comply varies depending upon whether or not the transaction is a listed transaction and whether the relevant taxpayer is an individual. For listed transactions, the maximum penalty is $100,000 for natural persons and $200,000 for all other persons. For reportable transactions other than listed transactions, the maximum penalty is $10,000 for natural persons and $50,000 for all other persons.

A public entity that is required to pay a penalty for an undisclosed listed or reportable transaction must disclose the imposition of the penalty in reports to the SEC for such periods specified by the Secretary. Disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).[19] However, the taxpayer is only required to report the penalty one time. A public entity that is subject to a gross valuation misstatement penalty under section 6662(h) attributable to a non-disclosed listed transaction or non-disclosed, portable avoidance transaction may also be required to make disclosures in its SEC filings.[20]

[14] Treas. Reg. sec. 1.6011–4(b)(3).
[15] Treas. Reg. sec. 1.6011–4(b)(4).
[16] Treas. Reg. sec. 1.6011–4(b)(5).
[17] Proposed Treas. Reg. sec. 1.6011–4(b)(7), published September 26, 2007 (REG–129916–07).
[18] See, e.g., Treas. Reg. sec. 1.6011–4(c)(3)(ii), Example 2.
[19] Sec. 6707A(e).
[20] Sec. 6707A(e)(2)(C); Rev. Proc. 2005–51, 2005–2, CB 296.

For reportable transactions other than listed transactions, the IRS Commissioner or his delegate can rescind (or abate) the penalty only if rescinding the penalty would promote compliance with the tax laws and effective tax administration.[21] The decision to rescind a penalty must be accompanied by a record describing the facts and reasons for the action and the amount rescinded. Determinations by the Commissioner regarding rescission are not subject to judicial review.[22] The IRS also is required to submit an annual report to Congress summarizing the application of the disclosure penalties and providing a description of each penalty rescinded under this provision and the reasons for the rescission. The section 6707A penalty cannot be waived with respect to a listed transaction.

The section 6707A penalty is assessed in addition to any accuracy-related penalties. If the taxpayer does not adequately disclose a reportable transaction, the strengthened reasonable cause exception to the accuracy-related penalty is not available and the taxpayer is subject to an increased penalty equal to 30 percent of the understatement.[23] However, a taxpayer will be treated as having adequately disclosed a transaction for this purpose if the IRS Commissioner has separately rescinded the separate penalty under section 6707A for failure to disclose a reportable transaction.[24] The IRS Commissioner is authorized to do this only if the failure does not relate to a listed transaction and only if rescinding the penalty would promote compliance and effective tax administration.[25]

REASONS FOR CHANGE

At the time that this penalty was enacted in 2004, Congress believed that a penalty for failing to make the required disclosures, when the imposition of such penalty is not dependent on the tax treatment of the underlying transaction ultimately being sustained, would provide an additional incentive for taxpayers to satisfy their reporting obligations under the new disclosure provisions.[26] In the years since enactment, the Committee has learned that this penalty is very often applicable to small businesses and individuals in amounts that exceed the tax savings claimed on these returns, if any. These taxpayers often were not advised that the transactions are reportable to the IRS. In her annual report,[27] the National Taxpayer Advocate informed Congress that the penalties cause unconscionable hardship on taxpayers as there are individuals facing

[21] In determining whether to rescind (or abate) the penalty for failing to disclose a reportable transaction on the grounds that doing so would promote compliance with the tax laws and effective tax administration, it is intended that the IRS Commissioner take into account whether: (1) the person on whom the penalty is imposed has a history of complying with the tax laws; (2) the violation is due to an unintentional mistake of fact; and (3) imposing the penalty would be against equity and good conscience.

[22] This does not limit the ability of a taxpayer to challenge whether a penalty is appropriate (e.g., a taxpayer may litigate the issue of whether a transaction is a reportable transaction (and thus subject to the penalty if not disclosed) or not a reportable transaction (and thus not subject to the penalty)).

[23] Sec. 6662A(c).

[24] Sec. 6664(d).

[25] Sec. 6707A(d).

[26] See, "Reasons for Change" in discussion of section 811 of the American Jobs Creation Act of 2004 ("AJCA") Pub. L. 108–357, at page 361 of the Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 108th Congress (JCS–5–05), May 2005.

[27] See, discussion of "Legislative Recommendations with Legislative Action: Modify Internal Revenue Code Section 6707A to Ameliorate Unconscionable Impact," Vol. 1 National Taxpayer Advocate 2008 Annual Report to Congress, 419.

bankruptcy and loss of a business as a result of the magnitude of the penalty for failure to disclose a reportable transaction. The statute allows penalties of up to $300,000 per year on taxpayers with no underpayment of tax and no knowledge that they entered into a transaction required to be reported. Such individuals generally invested in transactions (often a pension plan) that were required to be disclosed through their small businesses often organized as pass-through entities and claimed benefits for several years. Thus, once determined that the transaction should have been reported, the penalties applied to both the small business and the owner over several years, which resulted in some penalties exceeding over $1 million. The Committee believes that it is appropriate to provide a mechanism for establishing a penalty amount that will be proportionate to the misconduct to be penalized, without discouraging compliance with the requirement to disclose reportable transactions.

EXPLANATION OF PROVISION

The provision changes the general rule for determining the amount of the applicable penalty to achieve proportionality between the penalty and the tax savings that were the object of the transaction, retains the current penalty amounts as the maximum penalty that may be imposed, and establishes a minimum penalty.

First, it provides a general rule that a participant in a reportable transaction who fails to disclose the reportable transaction as required under section 6011 is subject to a penalty equal to 75 percent of the reduction in tax reported on the participant's income tax return as a result of participation in the transaction, or that would result if the transaction were respected for Federal tax purposes. Regardless of the amount determined under the general rule, the penalty for each such failure may not exceed certain maximum amounts. The maximum annual penalty that a taxpayer may incur for failing to disclose a particular reportable transaction other than a listed transaction is $10,000 in the case of a natural person and $50,000 for all other persons. The maximum annual penalty that a taxpayer may incur for failing to disclose a listed transaction is $100,000 in the case of a natural person and $200,000, for all other persons.

The provision also establishes a minimum penalty with respect to failure to disclose a reportable or listed transaction. That minimum penalty is $5,000 for natural persons and $10,000 for all other persons.

The following examples illustrate the operation of the maximum and minimum penalties with respect to a partnership or a corporation. First, assume that two individuals participate in a listed transaction through a partnership formed for that purpose. Both partners, as well as the partnership, are required to disclose the transaction. All fail to do so. The failure by the partnership to disclose its participation in a listed or otherwise reportable transaction is subject to the minimum penalty of $10,000, because income tax liability is not incurred at the partnership level nor reported on a partnership return. The partners in such partnership who also failed to comply with the reporting requirements of section 6011 are each subject to a penalty based on the reduction in tax reported on their respective returns.

In the second example, assume that a corporation participates in a single listed transaction over the course of three taxable years. The decrease in tax shown on the corporate returns is $1 million in the first year, $100,000 in the second year, and $10,000 in the third year. If the corporation fails to disclose the listed transaction in all three years, the corporation is subject to three separate penalties: a penalty of $200,000 in the first year (as a result of the cap on penalties), a $75,000 penalty in the second year (computed under the general rule) and a $10,000 penalty in the third year (as a result of the minimum penalty) for total penalties of $285,000.

EFFECTIVE DATE

The provision applies to all penalties assessed under section 6707A after December 31, 2006.

2. Annual reports on penalties and certain other enforcement actions (sec. 112 of the bill)

PRESENT LAW

Transactions that have the potential for tax avoidance are required to be disclosed by both the taxpayers who engage in the transaction and the various professionals who provide advice with respect to such transactions. Failure to comply with the reporting and disclosure requirements may result in assessment of penalties against both the taxpayer and material advisor and the use of special enforcement measures.

Reporting obligations

These disclosure requirements [28] create interlocking disclosure obligations for both taxpayers and advisors. A taxpayer is required to disclose with its tax re certain information with respect to each "reportable transaction," as defined in regulations.[29] Each advisor who provides material advice with respect to any reportable transaction (including any listed transaction) is required to file an information return with the Secretary (in such form and manner as the Secretary may prescribe).[30] Finally, the advisor is required to maintain a list of those persons he has advised with respect to a reportable transaction and to provide the list to the IRS upon request.[31]

A reportable transaction is defined as one that the Treasury Secretary requires to be disclosed based on its potential for tax avoidance or evasion.[32] There are five categories of reportable transactions: listed transactions, confidential transactions, transacts with contractual protection, certain loss transactions and transactions of interest.[33]

[28] Secs. 6011, 6111 and 6112.
[29] Treas. Reg. sec. 1.6011–4.
[30] Sec. 6111.
[31] Sec. 6112.
[32] Sec. 6707A(c)(1) states that the term means "any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion." Sections 6111(b)(2) and 6112 both define "reportable transaction" by reference to the definition in section 6707A(c). The definition of "listed transaction" similarly depends upon identification of transactions by the Secretary as tax avoidance transactions for purposes of section 6011.
[33] Treas. Reg. sec. 1.6011–4(b)(2)–(6).

Penalties and other enforcement tools related to reportable transactions

Each of the disclosure statutes has a parallel penalty provision to aid enforcement. The taxpayer who participates in a reportable transaction and fails to disclose it is subject to a strict liability penalty.[34] The penalty is assessed in addition to any accuracy-related penalties. It may be rescinded with respect to reportable transactions other than listed transactions. Rescission is discretionary and conditioned upon a determination by the Commissioner that rescinding the penalty would promote compliance and effective tax administration.[35] The Code also imposes a penalty on any material advisor who fails to file an information return, or who files a false or incomplete information return, with respect to a reportable transaction (including a listed transaction). It may be rescinded, subject to limitations similar to those applicable to rescission of the penalty imposed on investors.[36] The IRS may also submit a written request that a material advisor make available the list required to be maintained under section 6612(a). A failure to make the list available upon written request is subject to a penalty of $10,000 per day for as long as the failure continues, unless the advisor can establish reasonable cause for the failure.[37]

In addition to the penalties that specifically address the failure to comply with the disclosure and reporting obligations, other special enforcement provisions are applicable to reportable transactions. An understatement arising from any listed transactions or from a reportable transaction for which a significant purpose is avoidance or evasion of Federal income tax will be subject to an accuracy-related penalty,[38] unless the taxpayer can establish that the failure was due to reasonable cause as determined under a standard that is more stringent than that applicable to other accuracy-related penalties.[39]

If the taxpayer does not adequately disclose a reportable transaction, the strengthened reasonable cause exception is not available and the taxpayer is subject to an increased penalty equal to 30 per-

[34] Section 6707A imposes a penalty for failure to comply with the reporting requirements of 6011. A single reportable transaction may have to be reported by multiple taxpayers in connection with multiple tax returns. For example, a reportable transaction entered into by a partnership may have to be reported under section 6011 by both the partnership and its partners. The amount of the penalty due for each taxpayer's failure to comply varies depending upon whether or not the transaction is a listed transaction and whether the relevant taxpayer is an individual. For listed transactions, the maximum penalty is $100,000 for natural persons and $200,000 for all other persons. For reportable transactions other than listed transactions, the maximum penalty is $10,000 for natural persons and $50,000 for all other persons. A public entity that is required to pay a penalty for an undisclosed listed or reportable transaction must disclose the imposition of the penalty in reports to the SEC for such periods specified by the Secretary. Failure to comply with this reporting requirement may result in assessment of a second tier penalty.

[35] Sec. 6707A(d). In determining whether to rescind (or abate) the penalty for failing to disclose a reportable transaction on the grounds that doing so would promote compliance with the tax laws and effective tax administration, it is intended that the IRS Commissioner take into account whether: (1) the person on whom the penalty is imposed has a history of complying with the tax laws; (2) the violation is due to an unintentional mistake of fact; and (3) imposing the penalty would be against equity and good conscience.

[36] Section 6707 provides a penalty in the amount of $50,000. If the penalty is with respect to a listed transaction, the amount of the penalty is increased to the greater of (1) $200,000, or (2) 50 percent of the gross income of such person with respect to aid, assistance, or advice which is provided with respect to the transaction before the date the information return that includes the transaction is filed. Intentional disregard by a material advisor of the requirement to disclose a listed transaction increases the penalty to 75 percent of the gross income.

[37] Sec. 6708.

[38] Sec. 6662A.

[39] Sec. 6664(d).

cent of the understatement.[40] However, a taxpayer will be treated as having adequately disclosed a transaction for this purpose if the IRS Commissioner has separately rescinded the separate penalty under section 6707A for failure to disclose a reportable transaction.[41] Finally, a new exception to the statute of limitations provides that the period is suspended if a listed transaction is not properly disclosed.[42] If the transaction is disclosed either because the taxpayer files the proper disclosure form or a material advisor identifies the transaction to the IRS in a list maintained under section 6112, the period will remain open for at least one year from the earlier of date of the disclosure by the investor or the disclosure by the material advisor with respect to that transaction.

The Code authorizes civil actions to enjoin any person from specified conduct relating to tax shelters or reportable transactions.[43] The specified conduct includes failure with respect to the requirements relating to the reporting of reportable transactions[44] and the keeping of lists of investors by material advisors.[45] Thus, an injunction may be sought against a material advisor to enjoin the advisor from (1) failing to file an information return with respect to a reportable transaction, or (2) failing to maintain, or to timely furnish upon written request by the Secretary, a list of investors with respect to each reportable transaction. In addition, injunctions, monetary penalties and suspension or disbarment are authorized with respect to violations of any of the rules under Circular 230, which regulates the practice of representatives of persons before the Department of the Treasury.

Reports to Congress by the Secretary

The Secretary is required to maintain records and report on the administration of the penalties for failure to disclose a reportable transaction in two ways. First, each decision to rescind a penalty imposed under section 6707 or section 6707A must be memorialized in a record maintained in the Officer of the Commissioner.[46] That record must include a description of the facts and circumstances of the violation, the reasons for the decision to rescind, and the amount rescinded. Second, the IRS is required to submit an annual report to Congress on the administration of the rescission authority under both sections 6707 and 6707A. The information with respect to the latter is to be in summary form, while the information on rescission of penalties imposed against material advisors is to be more detailed.[47] The report is not required to address administration of the other enforcement tools described above.

[40] Sec. 6662A(c).
[41] Sec. 6664(d).
[42] Sec. 6501(c)(10).
[43] Sec. 7408.
[44] Sec. 6707.
[45] Sec. 6708.
[46] Section 6707(c) incorporates by reference the provisions of section 6707A(d), which details the extent of the Commissioner's authority to rescind the penalty.
[47] AJCA provides:
"The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—
"(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and
"(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.". P.L. 108–357, Title VIII, Subtitle B, Part I, § 811(d), 118 Stat. 1577, Oct. 22, 2004.

REASONS FOR CHANGE

Since the enactment of a number of enforcement measures intended to support IRS efforts to combat abusive tax avoidance transactions, there has been little data available to determine whether the measures had the desired effect. Congress believes that an annual report on administrative experience with all of the enforcement measures modified or added by AJCA will better enable it to assess the efficacy of those measures.

EXPLANATION OF PROVISION

The provision requires that the IRS, in consultation with the Secretary, submit an annual report on administration of certain penalty provisions of the Code to the House Ways and Means Committee and the Senate Committee on Finance. A summary of penalties assessed the preceding year is required. In addition, the Secretary must report actions taken against practitioners appearing before the Treasury or IRS with respect to a reportable transaction [48] and instances in which the IRS attempted to rely on the exception to the limitations period for assessment based on failure to disclose a listed transaction.[49] The penalties that are subject to this reporting requirement are those assessed in the preceding year with respect to (1) a participant's failure to disclose a reportable transaction,[50] (2) reportable transaction understatements,[51] (3) promotion of abusive shelters,[52] (4) failure of a material advisor to furnish information on a reportable transaction,[53] and (5) material advisors' failure to maintain or produce a list of reportable transactions.[54]

EFFECTIVE DATE

The first annual report is required to be submitted not later than December 31, 2010.

C. OTHER PROVISIONS

1. Nonrecourse small business investment company loans from the Small Business Administration treated as amounts at risk (sec. 121 of the bill and sec. 465 of the Code)

PRESENT LAW

Several present-law rules limit losses from business activities held by individuals, including activities held through partnerships. Under present law, the character of partnership items passes through to the partners as if the items were realized directly by the partners. A partner's share of partnership loss is allowed only to the extent of the adjusted basis of the partner's interest in the

[48] 31 U.S.C. sec. 330(b) authorizes the Secretary to impose sanctions on those who appear before the Department, including monetary penalties and suspension or disbarment from practice before the Department.

[49] Sec. 6501(c)(10) provides that the limitations period with respect to tax attributable to a listed transaction shall not expire less than one year after the required disclosure of that transaction is furnished by the taxpayer or by the material advisor, whichever is earlier.

[50] Sec. 6707A.

[51] Sec. 6662A.

[52] Sec. 6700.

[53] Sec. 6707.

[54] Sec. 6708.

partnership at the end of the year in which the loss occurred.[55] The basis of a partnership interest generally includes the amount contributed by the partner to the partnership, and for this purpose, generally an increase in the partner's share of partnership liabilities (including debt) is considered as a contribution by the partner.[56]

In the case of individuals and closely held corporations, present law includes rules designed to prevent the deduction of losses exceeding the taxpayer's economic investment—the at-risk rules[57]—and to limit tax shelters.[58]

Present law provides an at-risk limitation on losses from an activity engaged in by the taxpayer in carrying on a trade or business or for the production of income (including through a partnership), in the case of taxpayers that are individuals or certain closely held corporations. A taxpayer is generally not considered at risk with respect to borrowed amounts if (1) the taxpayer is not personally liable for repayment of the debt (nonrecourse loans), or (2) the lender has an interest (other than as a creditor) in the activity.[59] In the case of the activity of holding real property, a special rule treats qualified nonrecourse financing as an amount at risk.[60] Qualified nonrecourse financing generally includes financing that is secured by real property used in the activity and that is loaned by or guaranteed by a Federal, State, or local government, or is borrowed by the taxpayer from a qualified person that is or is treated as a person actively and regularly engaged in the business of lending money (such as a bank). Any loss not allowed under this rule for a taxable year is carried forward to the succeeding taxable year. A taxpayer's amount at risk is reduced by losses allowed under the rule.

REASONS FOR CHANGE

The Committee is concerned about the difficulty in obtaining credit that small businesses are experiencing under current economic conditions. The Committee believes that Small Business Administration loans and loan guarantees can serve to alleviate some of the difficulties experienced by small businesses in obtaining

[55] Sec. 704(d).
[56] Sec. 722, 752.
[57] Sec. 465.
[58] The passive loss rules limit deductions and credits from passive trade or business activities of individuals and certain closely held corporations (sec. 469, enacted in 1986). A passive activity is generally an activity in which the taxpayer does not materially participate, and certain rental real estate activities regardless of the taxpayer's material participation. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person.
[59] Sec. 465(b).
[60] In its Reasons for Change in adopting the extension of the at-risk rules to real estate and providing an exception for qualified nonrecourse financing for real estate, the Ways and Means Committee stated, "Nonrecourse financing by the seller of real property (or a person related to the seller) is not treated as an amount at risk under the bill, because there may be little or no incentive to limit the amount of such financing to the value of the property. In the case of arm's length third party commercial financing secured solely by the real property, however, the lender is much less likely to make loans which exceed the property's value or which cannot be serviced by the property; it is more likely that such financing will be repaid and that the purchaser consequently has or will have real equity in the activity." H. Rep. No. 99–426, Tax Reform Act of 1985, *Report of the Committee on Ways and Means, House of Representatives, on H.R. 3838,* December 7, 1985, at 293; and see Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986 (H.R. 3838, 99th Cong., Pub. L. No. 99–514),* JCS–10–87, May 4, 1987, at 257.

credit necessary to conduct business activities and hire workers. The provision is intended to provide an incentive for a greater amount of authorized Small Business Administration loans and loan guarantees to be made available to small businesses through small business investment companies. The Committee is aware that nonrecourse financing generally is not treated as an amount at risk, because there may be little or no incentive to limit the amount of such financing to the value of the property. In the case of nonrecourse financing under the Small Business Administration's SBIC program, however, due to the specific programmatic restraints[61] and the concomitant strong expectation that the Small Business Administration has of repayment, it is more likely that the investors in a small business that receives a loan from an SBIC have real equity in the small business.

EXPLANATION OF PROVISION

The provision modifies the at-risk rules. The bill provides that a taxpayer's amount at risk includes qualified SBIC financing, which means any financing that (1) is borrowed by a small business investment company (SBIC), (2) is secured by property held, directly or indirectly, by the SBIC, and (3) is either borrowed from, or guaranteed by, the Small Business Administration (SBA) under the authority of its SBIC program (section 303(b) of the Small Business Investment Act of 1958).

EFFECTIVE DATE

The provision is effective for loans and guarantees made after the date of enactment.

2. Increase in amount allowed as deduction for start-up expenditures (sec. 122 of the bill and sec. 195 of the Code)

PRESENT LAW

A taxpayer can elect to deduct up to $5,000 of start-up expenditures in the taxable year in which the active trade or business begins.[62] However, the $5,000 amount is reduced (but not below zero) by the amount by which the cumulative cost of start-up expenditures exceeds $50,000.[63] Start-up expenditures that are not deductible in the year in which the active trade or business begins are, at the taxpayer's election, amortized over a 15-year period beginning with the month the active trade or business begins.[64] Start-up expenditures are amounts that would have been deductible as trade or business expenses, had they not been paid or incurred before business began.[65]

[61] Under the Small Business Investment Act of 1958, the Small Business Administration investigates whether an applicant for small business investment company status meets minimum private capital requirements, whether its management is independent of its owners, whether the management is qualified and has the knowledge, experience and capability to comply with requirements for the Small Business Administration loan or guarantee, and satisfies other requirements that serve to ensure repayment of the loaned or guaranteed amount. See 15 U.S. Code sec. 681–683. Prospective SBICs must apply to the Small Business Administration for approval, a process that often takes up to a year. Further, the Small Business Administration is constrained by the Congressional appropriations process in the amount of loans and loan guarantees that it can provide.

[62] Sec. 195(b)(1)(A).

[63] Ibid.

[64] Sec. 195(b)(1)(B).

[65] Sec. 195(c).

Treasury regulations[66] provide that a taxpayer is deemed to have made an election under section 195(b) to amortize its start-up expenditures for the taxable year in which the active trade or business to which the expenditures relate begins. A taxpayer that chooses to forgo the deemed election must clearly elect to capitalize its start-up expenditures on its timely filed Federal income tax return for the taxable year the active trade or business commences. The election either to amortize or capitalize start-up expenditures is irrevocable and applies to all start-up expenditures related to the active trade or business

REASON FOR CHANGE

The Committee believes that increasing the amount of start-up expenditures that a taxpayer can elect to deduct, rather than requiring their amortization, may help encourage the formation of new businesses.

EXPLANATION OF PROVISION

For taxable years beginning in 2010 or 2011, the provision increases the amount of startup expenditures a taxpayer can elect to deduct from $5,000 to $20,000. The provision also increases the deduction phase-out threshold such that the $20,000 is reduced (but not below zero) by the amount by which the cumulative cost of start-up expenditures exceeds $75,000.

EFFECTIVE DATE

The provision applies to taxable years beginning in 2010 or 2011.

TITLE II—INFRASTRUCTURE INCENTIVES

A. EXTENSION OF BUILD AMERICA BONDS (SEC. 201 OF THE BILL AND SECS. 54AA AND 6431 OF THE CODE)

PRESENT LAW

Build America Bonds

Section 54AA, added to the Code by the American Recovery and Reinvestment Act of 2009 ("ARRA"),[67] permits an issuer to elect to have an otherwise tax-exempt bond, issued prior to January 1, 2011, treated as a "Build America Bond."[68] In general, Build America Bonds are taxable governmental bonds, the interest on which is subsidized by the Federal government by means of a tax credit to the holder ("tax-credit Build America Bonds") or, in the case of certain qualified bonds, a direct payment to the issuer ("direct-pay Build America Bonds").

Definition and general requirements

A Build America Bond is any obligation (other than a private activity bond) if the interest on such obligation would be (but for sec-

[66] Temp. Treas. Reg. sec. 1.195–1T(b).
[67] Pub. L. No. 111–5.
[68] Sec. 54AA.

tion 54AA) excludable from gross income under section 103,[69] and the issuer makes an irrevocable election to have the rules in section 54AA apply.[70] In determining if an obligation would be tax-exempt under section 103, the credit (or the payment discussed below for direct-pay Build America Bonds) is not treated as a Federal guarantee.[71] Further, for purposes of the restrictions on arbitrage in section 148, the yield on a tax-credit Build America Bond is determined without regard to the credit;[72] the yield on a direct-pay Build America Bond is reduced by the payment made pursuant to section 6431.[73] A Build America Bond does not include any bond if the issue price has more than a de minimis amount of premium over the stated principal amount of the bond.[74]

Treatment of holders of tax-credit Build America Bonds

The holder of a tax-credit Build America Bond accrues a tax credit in the amount of 35 percent of the interest paid on the interest payment dates of the bond during the calendar year.[75] The interest payment date is any date on which the holder of record of the Build America Bond is entitled to a payment of interest under such bond.[76] The sum of the accrued credits is allowed against regular and alternative minimum tax; unused credit may be carried forward to succeeding taxable years.[77] The credit, as well as the interest paid by the issuer, is included in gross income, and the credit may be stripped under rules similar to those provided in section 54A regarding qualified tax credit bonds.[78] Rules similar to those that apply for S corporations, partnerships and regulated investment companies with respect to qualified tax credit bonds also apply to the credit.[79]

Special rules for direct-pay Build America Bonds

Under the special rule for qualified bonds, in lieu of the tax credit to the holder, the issuer is allowed a credit equal to 35 percent of each interest payment made under such bond.[80] A "qualified bond," that is, a direct-pay Build America Bond, is any Build America Bond issued as part of an issue if 100 percent of the excess of available project proceeds of such issue over the amounts in a reasonably required reserve with respect to such issue are to be used

---

[69] Thus, where a bond otherwise satisfies all of the requirements under section 103 to be treated as a tax-exempt bond, it should be possible to issue such bond as a Build America Bond. *C.f.* CCA AM2009–014 (indicating that an Indian tribal government that received an allocation of volume cap pursuant to section 7871(f)(1) to issue Tribal Economic Development Bonds could issue such bonds as Build America Bonds rather than issuing them as tax-exempt bonds under section 103).

[70] Sec. 54AA(d). Subject to updated IRS reporting forms or procedures, an issuer of Build America Bonds makes the election required by 54AA on its books and records on or before the issue date of such bonds. Notice 2009–26, 2009–16 I.R.B. 833.

[71] Sec. 54AA(d)(2)(A). Section 149(b) provides that section 103(a) shall not apply to any State or local bond if such bond is federally guaranteed.

[72] Sec. 54AA(d)(2)(B).

[73] Sec. 6431(c).

[74] Sec. 54AA(d)(2)(C).

[75] Sec. 54AA(a) and (b). Original issue discount ("OID") is not treated as a payment of interest for purposes of determining the credit under the provision. OID is the excess of an obligation's stated redemption price at maturity over the obligation's issue price (sec. 1273(a)).

[76] Sec. 54AA(e).

[77] Sec. 54AA(c).

[78] Sec. 54AA(f).

[79] Ibid.

[80] Sec. 54AA(g)(1). OID is not treated as a payment of interest for purposes of calculating the refundable credit under the provision.

for capital expenditures.[81] Direct-pay Build America Bonds may not be issued to refinance capital expenditures in "refunding issues" (as defined in Treas. Reg. sec. 1.150–1).[82] Direct-pay Build America Bonds also must be issued before January 1, 2011. The issuer must make an irrevocable election to have the special rule for qualified bonds apply.[83]

The payment by the Secretary is to be made contemporaneously with the interest payment made by the issuer, and may be made either in advance or as reimbursement.[84] In lieu of payment to the issue, the payment may be made to a person making interest payments on behalf of the issuer.[85]

REASONS FOR CHANGE

The Committee believes that Build America Bonds have been a very useful and efficient tool for stimulating economic development, creating jobs, and helping to rebuild the country's infrastructure. For these reasons, the Committee believes that the provisions authorizing Build America Bonds should be extended. As the market for Build America Bonds grows, the interest subsidy for direct-pay Build America Bonds can be reduced without compromising the utility of the bonds.

EXPLANATION OF PROVISION

The provision extends both types of Build America Bonds through June 30, 2013. For direct-pay Build America Bonds issued in 2011, the provision provides for a payment to the issuer equal to 33 percent of each interest payment made under such bond. For direct-pay Build America Bonds issued in 2012, the rate for payments to issuers is reduced to 31 percent of each interest payment; for direct-pay Build America Bonds issued in 2013, the rate is reduced to 30 percent.

In addition, the provision expands the definition of qualified Build America Bonds to include a bond issued to effect a current refunding of qualified Build America Bonds, provided that (1) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, (2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and (3) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond. In the case of a direct-pay Build America Bond issued to refund another issue of direct-pay Build America Bonds, the provision provides that the payment to the issuer shall be at the lowest direct-pay rate provided in section 6431 (i.e., 30 percent under the provision).

Also, the provision clarifies that expenditures for levees and other flood control projects are among the present-law capital ex-

[81] Sec. 54AA(g).

[82] Notice 2009–26. In contrast, tax-credit Build America Bonds "may be issued to finance the same kinds of expenditures (e.g., capital expenditures and working capital expenditures) and may involve the same kinds of financings (e.g., original new money financings, current refundings, and one advance refunding) as tax-exempt governmental bonds." Ibid.

[83] Sec. 54AA(g)(2)(B). Subject to updated IRS reporting forms or procedures, an issuer of direct-pay Build America Bonds makes the election required by 54AA(g)(2)(B) on its books and records on or before the issue date of such bonds. Notice 2009–26, 2009–16 I.R.B. 833.

[84] Sec. 6431.

[85] Sec. 6431(b).

penditures that may be financed with direct-pay Build America Bonds.

EFFECTIVE DATE

The provision is effective as of the date of enactment.

B. Exempt-Facility Bonds for Sewage and Water Supply Facilities

(Sec. 202 of the Bill and Secs. 146 and 7871 of the Code)

PRESENT LAW

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. Interest on private activity bonds is taxable unless the bonds are issued for certain purposes permitted by the Code ("qualified private activity bonds").[86]

The definition of a qualified private activity bond includes exempt facility bonds, qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), and student loan bonds.[87] The definition of an exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); low-income residential rental property; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; and qualified green building/sustainable design projects.[88] A facility for the furnishing of water will qualify as an exempt facility if: the water is or will be made available to members of the general public (including electric, industrial, agricultural, or commercial users); and either the facilities are (1) operated by a governmental unit or (2) the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.[89]

Issuance of most qualified private activity bonds is subject (in whole or in part) to annual State volume limitations ("State volume cap").[90] For a calendar year 2010, the State volume cap, which is indexed for inflation, equals $90 per resident of the State, or $273,775,000, if greater.[91]

Exceptions from the State volume cap are provided for bonds issued for certain government-owned facilities (airports, ports, certain high-speed intercity rail, and solid waste disposal) and bonds

[86] Sec. 103(b)(1).
[87] Sec. 141(e).
[88] Sec. 142(a).
[89] Sec. 142(e).
[90] Sec. 146.
[91] Rev. Proc. 2009–50.

which are subject to separate local, State, or national volume limits (public/private educational facilities, enterprise zone facility bonds, qualified green building/sustainable design projects, and qualified highway or surface freight transfer facility bonds).

If an issuing authority's State volume cap for a calendar year exceeds the aggregate amount of tax-exempt private activity bonds issued during the year, the authority generally may elect to treat all (or any portion) of the excess as a carryforward for one or more specified "carryforward purposes." The issuing authority is required to identify the purpose for which the carryforward is elected and specify the portion of the carryforward which is to be used for that purpose. The Code defines "carryforward purpose" to mean one of four purposes: issuing exempt facility bonds; issuing qualified mortgage bonds or mortgage credit certificates; issuing qualified student loan bonds; and issuing qualified redevelopment bonds.[92] A carryforward of unused State volume cap is valid for three years.

Many States have State revolving fund programs ("SRFs") to finance wastewater and drinking water projects. SRFs are pools of capital dedicated to financing public infrastructure formed through Federal and state contributions. SRFs use Federal grants to make loans to local governments to finance the construction of water facilities and to establish debt service reserve funds for bonds the proceeds of which are so be used to make such loans. Although present law generally prohibits the Federal guarantee of tax-exempt bonds,[93] the IRS has ruled that States may use Federal grants to fund debt service reserve funds for tax-ex pt bonds issued to finance SRF loans without affecting the tax-exempt status of such bonds.[94]

Although not States or subdivisions of States, Indian tribal governments are provided with a tax status similar to State and local governments for specified purposes under the Code.[95] Among the purposes for which a tribal government is treated as a State is the issuance of tax-exempt bonds. Under section 7871(c), tribal governments are authorized to issue tax-exempt bonds only if substantially all of the proceeds are used for essential governmental functions.[96] The term essential governmental function does not include any function that is not customarily performed by State and local governments with general taxing powers. Section 7871(c) further prohibits Indian tribal governments from issuing tax-exempt private activity bonds (as defined in section 141(a) of the Code) with the exception of certain bonds for manufacturing facilities. These private activity bonds for manufacturing are not subject to the State volume cap.

REASONS FOR CHANGE

Tax-exempt bonds are an effective tool for assisting communities to build and repair local water and sewage systems. The need to repair and replace this infrastructure is significant, and the construction of these facilities will help create jobs. Therefore, the Committee believes it is appropriate to remove the private activity

[92] Sec. 146(f)(5).
[93] Sec. 149(b).
[94] Notice 88–54, 1988–1 C.B. 539.
[95] Sec. 7871.
[96] Sec. 7871(c).

bond volume cap for water and sewage systems. In addition, the Committee believes that Indian tribal governments should receive equivalent access to tax-exempt bond financing as State and local governments with respect to facilities for the furnishing of water and sewage facilities.

EXPLANATION OF PROVISION

The provision provides that tax-exempt bonds issued to finance privately used or operated facilities for the furnishing of water or sewage facilities are not subject to the State volume caps. Also, the provision allows Indian tribal governments to issue tax-exempt private activity bonds for the furnishing of water or sewage facilities. These bonds are not subject to the State volume cap or the essential government function test.

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment.

C. Extension of Exemption From Alternative Minimum Tax for Certain Tax-Exempt Bonds

(Sec. 203 of the Bill and Secs. 56 and 57 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax ("AMT") on individuals and corporations. AMT is the amount by which the tentative minimum tax exceeds the regular income tax. The tentative minimum tax is computed based upon a taxpayer's alternative minimum taxable income ("AMTI"). AMTI is the taxpayer's taxable income modified to take into account certain preferences and adjustments. One of the preference items is tax-exempt interest on certain tax-exempt bonds issued for private activities (sec. 57(a)(5)). Also, in the case of a corporation, an adjustment based on current earnings is determined, in part, by taking into account 75 percent of items, including tax-exempt interest, that are excluded from taxable income but included in the corporation's earnings and profits (sec. 56(g)(4)(B)).

The American Recovery and Reinvestment Act of 2009 provided that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the alternative minimum tax and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

The Act also provided that tax-exempt interest on private activity bonds issued in 2009 and 2010 to currently refund a private activity bond issued after December 31, 2003, and before January 1, 2009, is not an item of tax preference for purposes of the alternative minimum tax. Also, tax-exempt interest on bonds issued in 2009 and 2010 to currently refund a bond issued after December 31, 2003, and before January 1, 2009, is not included in the corporate adjustment based on current earnings.

REASONS FOR CHANGE

The Committee believes that the AMT treatment of interest on tax-exempt bonds restricts the number of persons willing to hold tax-exempt bonds, resulting in higher financing costs. Higher financing costs, in turn, may make it more difficult for economic development projects to begin or continue. The Committee believes that extending the minimum tax treatment of interest on tax-exempt bonds provided by the American Recovery and Reinvestment Act of 2009 will help create jobs. Accordingly, the provision extends the elimination of the AMT adjustments for interest on tax-exempt bonds issued in 2011.

EXPLANATION OF PROVISION

The provision extends the minimum tax treatment of interest on tax-exempt bonds provided by the American Recovery and Reinvestment Act of 2009 to bonds issued in 2011.

EFFECTIVE DATE

The provision applies to interest on bonds issued after December 31, 2010.

D. Elective Payments in Lieu of Low-Income Housing Credits for 2010

(Sec. 204 of the Bill and Sec. 6451 of the Code)

PRESENT LAW

Tax credits

In general

The low-income housing credit may be claimed over a 10-year period by owners of certain residential rental property for the cost of rental housing occupied by tenants having incomes below specified levels.[97] 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. Generally, the applicable percentage is 70 percent for a new non-Federally subsidized building and 30 percent for all other buildings. Generally, a new building is considered Federally-subsidized if it also receives tax-exempt bond financing. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

Volume limits

Generally, a low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. Each State has a limited amount of low-income housing credit available to allocate. This amount is called the aggregate housing credit dollar amount. The aggregate housing credit dollar amount for each State has four components: (1) the unused housing credit ceiling, if any, of such State from the prior calendar year; (2) the credit ceiling for the year; (3) any returns of credit ceiling to the State during the cal-

[97] Sec. 42.

endar year from previous allocations; and (4) the State's share, if any, of the national pool of unused credits from other States that failed to use them (only States which allocated their entire credit ceiling for the preceding calendar year are eligible for a share of the national pool. For calendar year 2010, each State's credit ceiling is $2.10 per resident, with a minimum annual cap of $2,430,000 for certain small population States.[98] These amounts are indexed for inflation.

Certain buildings that also receive financing with proceeds of tax-exempt bonds do not require an allocation of the low-income housing credit. Generally, these buildings are buildings where 50 percent or more of the aggregate basis of the building and the land on which the building is located is financed with obligations tax exempt under section 103 and subject to the private activity bond volume limits.[99]

Special basis rule

The eligible basis of a qualified building must be reduced by the amount of any Federal grant with respect to such building.

Grants in lieu of tax credits for 2009

Low-income housing grant election amount

Under a special rule, the Secretary of the Treasury makes a grant to each State's housing credit agency in an amount equal to the low-income housing grant election amount for 2009.

The low-income housing grant election amount for a State is an amount elected by the State subject to certain limits. The maximum low-income housing grant election amount for a State may not exceed 85 percent of the product of ten (i.e., the length of the credit period) and the sum of the State's: (1) unused housing credit ceiling for 2008; (2) any returns to the State during 2009 of credit allocations previously made by the State; (3) 40 percent of the State's 2009 credit allocation; and (4) 40 percent of the State's share of the national pool allocated in 2009, if any.

These grants are not taxable income to recipients.

Subawards to low-income housing credit buildings

A State receiving a grant under this election is to use these monies to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings as defined under the low-income housing credit. A subaward may be made to finance a qualified low-income building regardless of whether the building has an allocation of low-income housing credit. However, in the case of qualified low-income buildings without allocations of the low-income housing credit, the State housing credit agency must make a determination that the subaward with respect to such building will increase the total funds available to the State to build and rehabilitate affordable housing. In conjunction with this determination the State housing credit agency must establish a process in which applicants for the subawards must demonstrate good faith efforts to obtain investment commitments before the agency makes such subawards.

---

[98] Rev. Proc. 2009–50

[99] Sec. 146.

Any building receiving grant money from a subaward must satisfy the low-income housing credit rules. The State housing credit agency shall perform asset management functions to ensure compliance with the low-income housing credit rules and the long-term viability of buildings financed with these subawards.[100] Failure to satisfy the low-income housing credit rules will result in recapture enforced by means of liens or other methods that the Secretary (or delegate) deems appropriate. Any such recapture will be payable to the Secretary for deposit in the general fund of the Treasury.

Any grant funds not used to make subawards before January 1, 2011, and any grant monies from subawards returned on or after January 1, 2011, must be returned to the Secretary.

Special basis rule

A grant received under the grant election does not reduce eligible basis of a qualified low-income building.

Reduction in low-income housing credit volume limit for 2009

The otherwise applicable component or components of the aggregate housing credit dollar amounts for any State for 2009 are reduced by the amount taken into account in determining the low-income housing grant election amount.

REASONS FOR CHANGE

Low-income housing tax credit buildings often require intricate financing arrangements in addition to the tax benefit. Private financing options as well as the attractiveness of the tax credit itself can be affected by general economic conditions. Notwithstanding temporary downturns in the general economy, the need for additional affordable housing is ongoing. The Committee believes that the provision will allow certain projects to proceed that may not otherwise be placed-in-service under the present economic circumstances. The construction of these buildings will help create jobs.

EXPLANATION OF PROVISION

Elective payments in lieu of low-income housing credit for certain bond-financed buildings

In general

At the election of the taxpayer, a portion of the otherwise applicable low-income housing credit with respect to certain buildings equal to the "direct payment amount" is treated as a payment against Federal income tax. In this manner, the low-income housing credit otherwise available is converted to a cash equivalent. The direct payment amount with respect to such a building is 85 percent of 30 percent (i.e., 25.5 percent) of the qualified basis of such building. This election is limited only to those tax-exempt bond financed buildings which do not require an allocation of low-income housing credit.

[100] The State housing credit agency may collect reasonable fees from subaward recipients to cover the expenses of the agency's asset management duties. Alternatively, the State housing credit agency may retain a third party to perform these asset management duties.

The election does not apply with respect to any building placed in service by any government entity or tax-exempt organization. In the case of property placed in service by a partnership or S corporation, the election must be made at the entity level.

Low-income housing credit rules

Rules similar to the low-income housing credit rules (including recapture) continue to apply.

Tax treatment of amounts received

Any credit or refund allowed under this provision is not includible in the taxpayer's gross income or alternative minimum taxable income.

Termination

The provision does not apply with respect to any building placed in service during a taxable year beginning after December 31, 2010.

EFFECTIVE DATE

The provision relating to elective payments in lieu of low-income housing credit for certain bond-financed buildings is effective for buildings placed-in-service after the date of enactment.

E. EXTENSION AND ADDITIONAL ALLOCATIONS OF RECOVERY ZONE BOND AUTHORITY

(SEC. 205 OF THE BILL AND SECS. 1400U–1, 1400U–2, AND 1400U–3 OF THE CODE)

PRESENT LAW

In general

Issuers may issue recovery zone economic development bonds and recovery zone facility bonds with respect to a recovery zone. A recovery zone is (1) any area designated by an issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990, or (3) any area for which a designation as an empowerment zone or renewal community is in effect.

There is a national recovery zone economic development bond limitation of $10 billion. In addition, there is a separate national recovery zone facility bond limitation of $15 billion. Present law requires that the Secretary allocate these bond limitations among the States in the proportion that each State's employment decline bears to the national decline in employment (the aggregate 2008 State employment declines for all States). The allocations are adjusted to the extent necessary to ensure that no State receives less than 0.9 percent of each recovery zone bond limitation.

In turn, each State is to reallocate its allocation among the counties (parishes) and large municipalities in such State in the proportion that each such county or municipality's 2008 employment decline bears to the aggregate employment declines for all counties and municipalities in such State. In calculating the local employment decline with respect to a county, the portion of such decline attributable to a large municipality is disregarded for purposes of determining the county's portion of the State employment decline and is attributable to the large municipality only.

The "2008 State employment decline" means, with respect to any State, the excess (if any) of (i) the number of individuals employed in such State as determined for December 2007, over (ii) the number of individuals employed in such State as determined for December 2008. The term "large municipality" means a municipality with a population of more than 100,000.

Recovery zone economic development bonds

A recovery zone economic development bond is a Build America Bond (a type of taxable governmental bond) that entitles the issuer of such bonds to receive a refundable tax credit (payment) equal to 45 percent of the interest payable on an interest payment date.

A recovery zone economic development bond is a Build America Bond issued as part of an issue if 100 percent of the available project proceeds of such issue are to be used for one or more qualified economic development purposes and the issuer designates such bond as a recovery zone economic development bond. A qualified economic development purpose means expenditures for purposes of promoting development or other economic activity in a recovery zone, including (1) capital expenditures paid or incurred with respect to property located in such zone, (2) expenditures for public infrastructure and construction of public facilities located in a recovery zone and (3) expenditures for job training and educational programs.

The aggregate face amount of bonds which may be designated by any issuer cannot exceed the amount of the recovery zone economic development bond limitation allocated to such issuer. Recovery zone economic development bonds must be issued before January 1, 2011.

Recovery zone facility bonds

A recovery zone facility bond is any bond issued as part of an issue if: (1) 95 percent or more of the net proceeds of such issue are to be used for recovery zone property and (2) such bond is issued before January 1, 2011, and (3) the issuer designates such bond as a recovery zone facility bond. The aggregate face amount of bonds which may be designated by any issuer cannot exceed the amount of the recovery zone facility bond limitation allocated to such issuer.

Under the provision, the term "recovery zone property" means any property subject to depreciation to which section 168 applies (or would apply but for section 179) if (1) such property was acquired by the taxpayer by purchase after the date on which the designation of the recovery zone took effect; (2) the original use of such property in the recovery zone commences with the taxpayer; and (3) substantially all of the use of such property is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone. The term "qualified business" means any trade or business except that the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)) and does not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B) (i.e., any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal purpose of which is the sale of alcoholic beverages for consumption off premises).

Subject to the following exceptions and modifications, issuance of recovery zone facility bonds is subject to the general rules applicable to issuance of qualified private activity bonds:

1. Issuance of the bonds is not subject to the aggregate annual State private activity bond volume limits (sec. 146);
2. The restriction on acquisition of existing property does not apply (sec. 147(d));

REASONS FOR CHANGE

The Committee believes that recovery zone bonds are a useful tool for stimulating economic development, creating jobs, and helping rebuild the country's infrastructure, particularly in communities that have been adversely affected by current economic conditions. Some areas of the country with high unemployment did not receive recovery bond allocations under the present-law formulation. The Committee believes it is appropriate to provide additional allocation authority to ensure that all areas nationwide receive at least a minimum allocation of recovery zone bonds based on the number of unemployed in that locality.

EXPLANATION OF PROVISION

The provision extends for one additional year the period for issuing recovery zone economic development bonds and recovery zone facility bonds (through December 31, 2011).

The provision provides for a second allocation of $10 billion of recovery zone economic development bonds and $15 billion of recovery zone facility bonds. This second allocation is made in the proportion that each State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all States. The second round of allocations is adjusted to the extent necessary to ensure that no State receives less than 0.9 percent of each recovery zone bond limitation, before the reduction discussed below.

Similar to present law, each State is to reallocate its allocation among the counties (parishes) and large municipalities in such State in the proportion that each such county or municipality's 2009 unemployment number bears to the aggregate 2009 unemployment number for all counties and municipalities in such State. In the case of any large municipality, any portion of which is in a county, such portion is treated as part of the municipality and not part of the county.

A State is required to reduce, but not below zero, each allocation to a county or large municipality by the amount of the first (present law) recovery zone economic development bond allocation. Similarly, each county or large municipality's second allocation of recovery zone facility bond allocation is reduced, but not below zero, by the amount of the first recovery zone facility bond allocation. These reductions are made without regard to any waiver of allocation made by the county or large municipality. For purposes of the limitations on the amount of bonds that may be designated, any amount of the national allocation that is not allocated by a State to a county or large municipality as a result of such reduction shall be treated as not allocated to any issuer, including the State itself.

Under present law and under the provision, a county or municipality may waive any portion of an allocation made to it. The provision further provides that by State law, a State may treat a county or municipality as waiving any portion of an allocation made to a county or municipality if there is a reasonable expectation that such allocation would not be used. This rule applies to all allocations, including the first round of allocations made in 2009. No negative inference is intended regarding State laws enacted prior to the date of enactment, which deem a county or municipality's allocation waived.

The term "2009 unemployment number" means, with respect to any State, county or municipality, the number of individuals in such State, county, or municipality who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

EFFECTIVE DATE

The provision is effective on the date of enactment.

F. ALLOWANCE OF NEW MARKETS TAX CREDIT AGAINST ALTERNATIVE MINIMUM TAX (SEC. 206 OF THE BILL AND SEC. 38 OF THE CODE)

PRESENT LAW

Under present law, business tax credits generally may not exceed the excess of the taxpayer's income tax liability over the tentative minimum tax (or, if greater, 25 percent of the regular tax liability in excess of $25,000). Credits in excess of the limitation may be carried back one year and carried over for up to 20 years.

The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount. To the extent the tentative minimum tax exceeds the regular tax, a taxpayer is subject to the alternative minimum tax.

Thus, business tax credits generally cannot offset the alternative minimum tax liability.

REASONS FOR CHANGE

The Committee believes that allowing new markets tax credit investments to offset alternative minimum tax liability will broaden the pool of potential investors and put the new markets tax credit on par with other tax credits that can offset the AMT, such as the low-income housing tax credit and the historic rehabilitation tax credit. Broadening the pool of potential investors for new market tax credits increases the efficiencies of the program in attracting private capital to economic development projects that will help to create jobs.

EXPLANATION OF PROVISION

The provision treats the tentative minimum tax as being zero for purposes of determining the tax liability limitation with respect to the new markets tax credit.

Thus, the new markets tax credit may offset the alternative minimum tax liability.

EFFECTIVE DATE

The provision applies to credits determined with respect to qualified equity investments (as defined in section 45D(b)) initially made after March 15, 2010, and before January 1, 2012.

TITLE III—REVENUE PROVISIONS

A. LIMITATION ON TREATY BENEFITS FOR CERTAIN DEDUCTIBLE PAYMENTS

(SEC. 301 OF THE BILL AND SEC. 894 OF THE CODE)

PRESENT LAW

In general

The United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to net-basis U.S. tax only on income that is "effectively connected" with the conduct of a trade or business in the United States. Such "effectively connected income" generally is taxed in the same manner and at the same rates as the income of a U.S. corporation. An applicable tax treaty may limit the imposition of U.S. tax on business operations of a foreign corporation to cases in which the business is conducted through a "permanent establishment" in the United States.

In addition, foreign corporations generally are subject to a gross-basis U.S. tax at a flat 30-percent rate on the receipt of interest, dividends, rents, royalties, and certain similar types of income derived from U.S. sources, subject to certain exceptions. The tax ("U.S. withholding tax") generally is collected by means of withholding by the person making the payment. U.S. withholding tax may be reduced or eliminated under an applicable tax treaty, subject to the conditions discussed below.

Tax treaties

A foreign corporation may not benefit from a provision of a U.S. tax treaty with a foreign country that eliminates or reduces U.S. withholding tax unless the foreign corporation is both a resident of such foreign country and qualifies under any limitation-on-benefits provision contained in the U.S. tax treaty with such foreign country. In general, a foreign corporation is a resident of a foreign country under a U.S. tax treaty with that foreign country if it is liable to tax in that country by reason of its domicile, residence, citizenship, place of management, place of incorporation, or other criterion of a similar nature.[101]

[101] United States Model Income Tax Convention of November 15, 2006, Art. 4, par. 1.

Limitation-on-benefits provisions generally

Limitation-on-benefits provisions in income tax treaties are intended to deny treaty benefits in certain cases of treaty shopping or income stripping engaged in by third-country residents. Treaty shopping is said to occur when an entity that is resident in a country with respect to which there is no relevant tax treaty in force (or there is such a treaty in force but the taxpayer desires better benefits than those offered under that treaty) becomes resident in a treaty country or conducts a transaction in such a country for the purpose of qualifying for treaty benefits. For example, treaty shopping by a third-country resident may involve organizing in a treaty country a corporation that is entitled to the benefits of the treaty. Alternatively, a third-country resident eligible for favorable treatment under the tax rules of its country of residency may attempt to reduce the income base of a related treaty-country resident by having that treaty country resident pay to it, directly or indirectly, interest, royalties, or other amounts that are deductible in the treaty country from which the payments are made.

U.S. tax treaties contain a variety of limitation-on-benefits provisions due to the continued and recently accelerated development of limitation-on-benefits concepts, and the negotiated nature of tax treaties in general. Although many older U.S. tax treaties may lack limitation-on-benefits provisions [102] or lack the refinements now thought essential to such provisions, the U.S. model income tax treaty, as most recently revised in 2006 ("U.S. model treaty"),[103] and the newer U.S. treaties include limitation-on-benefits provisions that limit treaty benefits to resident taxpayers that meet certain detailed requirements intended to minimize these abuses. Present Treasury Department policy, which has been repeatedly ratified by the Senate, is broadly to revise older treaties by tightening limitation-on-benefits provisions to prevent treaty shopping.

The limitation-on-benefits rules included in U.S. income tax treaties and protocols signed since 2001 generally correspond with the limitation-on-benefits provisions of the U.S. model treaty. Certain features of the limitation-on-benefits provisions in recent treaties and protocols, however, differ from the rules in the U.S. model treaty, and some recent treaties and protocols include additional limitation-on-benefits rules not included in the U.S. model treaty. Some of the additions and differences make limitation-on-benefits provisions more restrictive than the rules in the U.S. model treaty, and others make the provisions less restrictive.

The U.S. model treaty limitation-on-benefits provision

The limitation-on-benefits rules of the U.S. model treaty include three provisions under which a resident of a treaty country may qualify for treaty benefits. First, a treaty-country resident may qualify for all treaty benefits if it has any one of several listed attributes. Second, a treaty-country resident that does not have one of the listed attributes may qualify for treaty benefits for income

[102] U.S. income tax treaties with Greece, Hungary, Pakistan, the Philippines, Poland, and Romania are examples of such treaties, each of which entered into force more than 25 years ago. The United States recently signed a new income tax treaty with Hungary that contains a modern limitation-on-benefits provision; the U.S. Senate must still ratify that treaty before it may enter into force.

[103] United States Model Income Tax Convention of November 15, 2006, Art. 22.

items that are derived from the other treaty country and that are related to a trade or business carried on in the residence country. Third, a treaty-country resident that would not be eligible for treaty benefits under either of the preceding two provisions may qualify for treaty benefits at the discretion of the competent authority of the other treaty country. These three provisions are described in more detail below.

Listed attributes qualifying a treaty-country resident for treaty benefits

A treaty-country resident may qualify for treaty benefits under the U.S. model treaty if it has one of the following attributes: it is (1) an individual; (2) a contracting state or a political subdivision or a local authority of the contracting state; (3) a company that satisfies either a public trading or ownership test described below; (4) a pension fund or other tax-exempt organization (if, in the case of a pension fund, more than 50 percent of the fund's beneficiaries, members, or participants are individuals resident in either treaty country); or (5) a person other than an individual that satisfies the ownership and base erosion test described below.

Public trading and ownership tests.—A company satisfies the public trading test if its principal class of shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges and either its principal class of shares is primarily traded on one or more recognized stock exchanges located in the treaty country in which the company is a resident or the company's primary place of management and control is in its country of residence. A company may satisfy the ownership test if at least 50 percent of the aggregate vote and value of the company's shares (and at least 50 percent of any disproportionate class of the company's shares) is owned directly or indirectly by five or fewer companies entitled to benefits under the public trading test described above. This ownership test may be satisfied by indirect ownership only if each intermediate owner is a resident of either treaty country.

Ownership and base erosion test.—A resident of a treaty country satisfies the ownership prong of the ownership and base erosion test if on at least half the days of the taxable year, persons that are residents of that country and that are entitled to treaty benefits as individuals, governments, companies that satisfy the public trading test, or pension funds or other tax-exempt organizations own, directly or indirectly, stock representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the resident for whom treaty benefit eligibility is being tested. This ownership requirement may be satisfied by indirect ownership only if each intermediate owner is a resident of the country of residence of the person for which entitlement to treaty benefits is being tested. A resident of a treaty country satisfies the base erosion prong of the ownership and base erosion test if less than 50 percent of the person's gross income for the taxable year, as determined in the person's country of residence, is paid or accrued, directly or indirectly, in the form of deductible payments to persons who are not residents of either treaty country entitled to treaty benefits as individuals, governments, companies that satisfy the public trading test, or pension funds or other tax-exempt organizations (other than arm's-length payments in the ordinary course of business for services or tangible property).

Items of income derived from an active trade or business

Under the U.S. model treaty, a resident of a treaty country that is not eligible for all treaty benefits under any of the rules described above may be entitled to treaty benefits with respect to a particular item of income derived from the other treaty country. A resident is entitled to treaty benefits for such an income item if the resident is engaged in the active conduct of a trade or business in its country of residence (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance, or securities activities carried on by a bank, an insurance company, or a registered securities dealer) and the income derived from the other treaty country is derived in connection with, or is incidental to, that trade or business. If a resident of a treaty country derives an item of income from a trade or business activity that it conducts in the other treaty country, or derives an income item arising in that other country from a related person, the income item eligibility rule just described is considered satisfied for that income item only if the trade or business activity carried on by the resident in its country of residence is substantial in relation to the trade or business activity carried on by the resident or the related person in the other country. The determination whether a trade or business activity is substantial is based on all the facts and circumstances.

Discretionary grant of benefits by competent authority

A resident of a treaty country not otherwise eligible for treaty benefits under the U.S. model treaty may be eligible for the benefits of the treaty generally or eligible for the benefits with respect to a specific item of income, based on a determination by the competent authority of the other treaty country. The competent authority may grant such benefits if it determines that the establishment, acquisition, or maintenance of the person for whom treaty benefits eligibility is being tested, and the conduct of that person's operations, did not have as one of its principal purposes the obtaining of benefits under the treaty.

REASONS FOR CHANGE

The Committee is aware that even though many recent U.S. income tax treaties include limitation-on-benefits provisions intended to ensure that only persons with sufficient nexus to the treaty partner countries may obtain treaty benefits, foreign multinational taxpayers residing in countries with which the United States does not have comprehensive tax treaties (including tax havens) may engage in treaty shopping. Treaty shopping by foreign multinational companies may involve organizing, in jurisdictions that have income tax treaties with the United States that offer favorable U.S. withholding rates on deductible payments, subsidiaries with no substantial business activities or other connections to those jurisdictions.[104] Such payments may ultimately be distributed to the foreign parent corporations in the nontax-treaty jurisdictions, although payments made directly to the parent companies would not have been eligible for reduced treaty withholding rates. The Committee believes that some instances of treaty shopping of the sort described above involve formerly U.S.-based companies that engaged in corporate inversion transactions prior to the enactment of the anti-inversion rules of section 7874. As a result of these inversion transactions, U.S. parent corporations of multinational groups became subsidiaries of foreign corporations organized in low- or no-tax jurisdictions. The Committee believes that it is inappropriate to allow treaty benefits for deductible related-party payments in cases in which the foreign parent corporation would not have qualified for benefits under a U.S. tax treaty if the payment had been made directly to the parent, including in cases in which the parent is resident in a tax haven.

EXPLANATION OF PROVISION

The provision limits tax treaty benefits with respect to U.S. withholding tax imposed on deductible related-party payments. Under the provision, the amount of U.S. withholding tax imposed on deductible related-party payments may not be reduced under any U.S. income tax treaty unless such withholding tax would have been reduced under a U.S. income tax treaty if the payment were made directly to the "foreign parent corporation" of the payee. A payment is a deductible related-party payment if it is made directly or indirectly by any entity to any other entity, it is allowable as a deduction for U.S. tax purposes, and both entities are members of the same "foreign controlled group of entities."

For purposes of the provision, a foreign controlled group of entities is a "controlled group of corporations" as defined in section 1563(a)(1), modified as described below, in which the common parent company is a foreign corporation. Such common parent company is referred to as the "foreign parent corporation." A controlled group of corporations consists of a chain or chains of corporations connected through direct stock ownership of at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations. For purposes of the provision, the relevant ownership threshold is lowered from "at least 80 percent" to "more than 50 percent," certain members of the controlled group of corporations that would otherwise be treated as excluded members are not treated as excluded members,[105] and insurance

[104] As documented in the Department of the Treasury Report to the Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties, some of the older U.S. income treaties that do not have limitation-on-benefits provisions, or treaties that lack all of the recent refinements to such provisions, provide for zero or low rates of U.S. withholding on certain deductible payments, including interest. Department of the Treasury, *Report to the Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties* 82 (2007).

[105] Under section 1563(b)(2), a corporation which is a member of a controlled group of corporations on December 31 of a taxable year is treated as an excluded member of the group for the taxable year that includes such December 31 if such corporation—

(A) is a member of the group for less than one-half the number of days in such taxable year which precedes such December 31;

(B) is exempt from taxation under section 501(a) for such taxable year;

(C) is a foreign corporation subject to tax under section 881 for such taxable year;

(D) is an insurance company subject to taxation under section 801; or

(E) is a franchised corporation (as defined in section 1563(f)(4)).

companies are not treated as members of a separate controlled group of corporations. In addition, a partnership or other noncorporate entity is treated as a member of a controlled group of corporations if such entity is controlled by members of the group.

The Secretary may prescribe regulations that are necessary or appropriate to carry out the purposes of the provision, including regulations providing for the treatment of two or more persons as members of a foreign controlled group of entities if such persons would be the common parent of such group if treated as one corporation, and regulations providing for the treatment of any member of a foreign controlled group of entities as the common parent of that group if such treatment is appropriate taking into account the economic relationships among the group entities.

For example, under the provision, a deductible payment made by a U.S. entity to a foreign entity with a foreign parent corporation that is resident in a country with respect to which the United States does not have an income tax treaty is always subject to the statutory U.S. withholding tax rate of 30 percent, irrespective of whether the payee qualifies for benefits under a tax treaty. If, instead, the foreign parent corporation is a resident of a country with respect to which the United States does have an income tax treaty that would reduce the withholding tax rate on a payment made directly to the foreign parent corporation (regardless of the amount of such reduction), and the payment would qualify for benefits under that treaty if the payment were made directly to the foreign parent corporation, then the payee entity will continue to be eligible for the reduced withholding tax rate under the U.S. income tax treaty with the payee entity's residence country (even if such reduced treaty rate is lower than the rate that would be imposed on a hypothetical direct payment to the foreign parent corporation).

EFFECTIVE DATE

The provision is effective for payments made after the date of enactment.

B. TREATMENT OF SECURITIES OF A CONTROLLED CORPORATION EXCHANGED FOR ASSETS IN CERTAIN REORGANIZATIONS (SEC. 302 OF THE BILL AND SEC. 361 OF THE CODE)

PRESENT LAW

The transfer of assets by a transferor corporation to another corporation, controlled (immediately after the transfer) by the transferor or one or more of its shareholders, will qualify as a tax-free reorganization if the transfer is made by one corporation ("distributing") of a part of its assets consisting of an active trade or business meeting certain requirements to a controlled subsidiary corporation ("controlled"), followed by the distribution of the stock and securities of the controlled subsidiary in a divisive spin-off, split-off, or split-up which was not used principally as a device for the distribution of earnings and profits ("divisive D reorganization").[106]

[106] Secs. 355 and 368(a)(1)(D). Section 355 imposes other requirements to avoid gain recognition at the corporate level with respect to the spin off, split up, or split off, e.g., secs. 355(d) and (e).

No gain or loss is recognized to a corporation if the corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.[107] If property other than stock or securities is received ("other property"), gain is recognized to the extent the other property is not distributed.[108]

In addition, in the case of a transfer of money or other property received in the exchange to the corporation's creditors in connection with the reorganization, gain is recognized to the extent the sum of the money and the fair market value of the other property exceed the adjusted bases of the assets transferred (net of liabilities).[109] Such a transfer to creditors is aggregated with other assumptions of the transferor corporation's liabilities by the transferee, which generally cause gain recognition if they exceed the adjusted basis of assets transferred.[110]

For example, if in a divisive D reorganization the controlled corporation either (1) directly assumes the debt of the distributing corporation, or (2) borrows and distributes cash to the distributing corporation to pay the distributing corporation's creditors, such debt assumption or cash distribution is treated as money received by the distributing corporation, and is taxable to the extent it exceeds the distributing corporation's basis in the assets transferred to the controlled corporation. By contrast, if the controlled corporation leverages itself by issuing its debt securities to the distributing corporation, the controlled corporation's debt securities are not treated as money received by the distributing corporation. Thus, the distributing corporation could use the controlled corporation's securities to retire the distributing corporation's own debt, recognize no gain, and be in the same economic position as if its debt had been directly assumed by the controlled corporation or as if it had retired its debt with cash received from the controlled corporation.

REASONS FOR CHANGE

The Committee is concerned about the levels of debt incurred in divisive transactions in which one corporation is relieved of debt while the other subsequently separate corporation is heavily burdened. In recent years, Congress has sought to limit a distributing corporation's ability to cause a controlled corporation to distribute cash or assume the distributing corporation's debt prior to a tax-free spin-off For example, in 2004, Congress limited the amount of money and other property that can be distributed to creditors in a divisive D reorganization without gain recognition to the basis of the assets contributed (net of liabilities). While this change made it more difficult for a distributing corporation to reduce its own indebtedness in connection with a spin-off, it was still possible for the distributing corporation to use controlled corporation debt securities to pay down its debt (effectively shifting its liabilities to the separated controlled corporation). The Committee believes that in a divisive D reorganization, debt securities of the controlled corporation (as well as certain preferred stock that is treated as taxable consideration to shareholders in similar present law contexts),

[107] Sec. 361(a).
[108] Sec. 361(b).
[109] The last sentence of sec. 361(b)(3).
[110] Sec. 357(c).

should be treated as cash received by the distributing corporation if retained by the corporation or transferred to its security holders or other creditors. The change more closely conforms the treatment of securities received in these reorganizations with the treatment of securities received in other corporate organizations and reorganizations.

EXPLANATION OF PROVISION

Under the provision, in the case of a divisive D reorganization, no gain or loss is recognized to a corporation if the corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock other than nonqualified preferred stock (as defined in section 351(g)(2)).[111] Thus, under the provision, securities and nonqualified preferred stock are treated as "other property."

Under the provision, the transferor corporation's gain on the exchange is recognized to the extent of the sum of money and the value of other property, including securities and nonqualified preferred stock, not distributed in pursuance of the plan of reorganization. Also, gain on the exchange is recognized to the extent that the sum of money and the value of all property other than stock that is not nonqualified preferred stock which is transferred to creditors exceeds the adjusted bases of the assets transferred (net of liabilities).

For example, under the provision, in a divisive D reorganization, the exchange of the controlled corporation's securities for the distributing corporation's securities would be treated in the same manner as (1) the assumption of the distributing corporation's debt by the controlled corporation or (2) the use of a cash distribution from the controlled corporation to retire debt of the distributing corporation.

EFFECTIVE DATE

The provision applies to exchanges occurring after the date of enactment.

However, the provision does not apply to any exchange in connection with a transaction which is (i) made pursuant to an agreement which was binding on March 15, 2010, and at all times thereafter, (ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or (iii) described on or before such

[111] Section 351(g)(2) defines nonqualified preferred stock as preferred stock if (i) the holder has a right to require the issuer or a related person to redeem or purchase the stock, which right may be exercised within the 20 year period beginning on the issue date and is not subject to a contingency which, as of the issue date, makes remote the likelihood of redemption or purchase; (ii) the issuer or a related person is required to redeem or purchase the stock (within such 20 year period and not subject to such a contingency); (iii) the issuer or a related person has the right to redeem or purchase the stock (which right is exercisable within such 20 year period and not subject to such a contingency) and as of the issue date, it is more likely than not that such right will be exercised, or (iv) the dividend on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices. There are exceptions for certain rights that are exercisable only on the death, disability or mental incompetency of the holder, or only upon the separation from service of a service provider who received the right as reasonable compensation for services, and for certain situations involving publicly traded stock.

Nonqualified preferred stock is treated in the same manner as securities under section 351 and thus is not qualified consideration that may be received tax free by a contributing shareholder. Sections 354(a)(2)(C) and 356(e) treat nonqualified preferred stock as taxable consideration if received in exchange for stock by shareholders of a corporation that itself is a party to a reorganization (except to the extent received in exchange for other nonqualified preferred stock); and section 355 contains a similar rule (sec. 355(a)(3)(D)).

date in a public announcement or in a filing with the Securities and Exchange Commission.

C. Repeal of Special Rules for Interest and Dividends Received From Persons Meeting the 80-Percent Foreign Business Requirements

(Sec. 303 of the Bill and Secs. 861(a)(1)(A) and 871(i) of the Code)

PRESENT LAW

The source of interest and dividend income generally is determined by reference to the country of residence of the payor.[112] Thus, an interest or dividend payment from a U.S. payor to a foreign person generally is treated as U.S.-source income and is subject to the 30-percent gross-basis U.S. withholding tax.[113] However, if a resident alien individual ("individual") or U.S. corporation satisfies an 80-percent active foreign business income requirement (the "80/20 test"), all or a portion of any interest paid by the individual or that U.S. corporation (a so-called "80/20 company") is exempt from U.S. withholding tax. Interest paid by an individual that satisfies the 80/20 test or by an 80/20 company is treated as foreign-source income and is therefore exempt from the 30-percent withholding tax if it is paid to unrelated parties.[114] When an individual or 80/20 company pays interest to a related party, the resourcing rule applies only to the percentage of the interest that is equal to the percentage of the individual or 80/20 company's foreign-source income (described below) as a portion of the individual or 80/20 company's total gross income during the three-year testing period (a so-called "look-through" approach).[115]

In addition to interest, the payment of a dividend by an 80/20 company will also be exempt from U.S. withholding tax. Unlike interest, a dividend paid by an 80/20 company remains U.S. source (for example, for foreign tax credit limitation purposes). However, a percentage of the dividend paid by an 80/20 company to a foreign shareholder is exempt from the 30-percent gross-basis U.S. withholding tax. As with related-party interest, the percentage equals the percentage of the 80/20 company's total gross income during the testing period that is foreign source.[116]

In general, an individual or U.S. corporation meets the 80/20 test if at least 80 percent of the gross income of the individual or corporation during the testing period is derived from foreign sources and is attributable to the active conduct of a trade or business in a foreign country (or a U.S. possession) by the individual or corporation or, in the case of the corporation, a 50-percent owned subsidiary of that corporation. The testing period generally is the three-year period preceding the year in which the interest or dividend is paid.[117]

[112] Secs. 861(a)(1), (2), 862(a)(1), (2).
[113] Secs. 871(a)(1)(A), 881(a)(1), 1441(b), 1442(a).
[114] Sec. 861(a)(1)(A).
[115] Sec. 861(c)(2).
[116] Sec. 871(i).
[117] Sec. 861(c)(1). The income of a subsidiary is attributed to the tested company only to the extent that the tested company actually receives income from the subsidiary in the form of dividends. Conference Report to the 1986 Tax Reform Act, Pub. L. No. 99–514, Vol II, 602. See also Rev. Rul. 73–63, 1973–1 C.B. 336 and P.L.R. 6905161160A (May 16, 1969).

REASONS FOR CHANGE

The Committee is concerned that the 80/20 rules are being used in unintended ways to avoid U.S. tax. For example, some foreign investors may seek to avoid U.S. withholding tax on the receipt of dividend income generated primarily from U.S. domestic operations by satisfying the 80/20 test. In addition, some U.S. corporate taxpayers may seek to increase the foreign tax credit limitation they claim by using the 80/20 company exception to generate low-taxed foreign-source income without a corresponding increase in net taxable income. The Committee believes that use of the 80/20 exceptions for such unintended benefits is inappropriate.

EXPLANATION OF PROVISION

The provision repeals the present law rule that treats as foreign source all or a portion of any interest paid by a resident alien individual or U.S. corporation that meets the 80/20 test. The provision also repeals the present law rule that treats all or a portion of any dividends paid by a U.S. corporation that meets the 80/20 test as being exempt from withholding tax.

The repeal of the 80/20 company provisions relating to the payment of interest shall not apply to payments of interest on obligations issued before the date of enactment unless such interest is payable to a related person (as determined under rules similar to the rules of section 954(d)(3)).[118] However, a significant modification of the terms of any obligation (including any extension of the term of such obligation) shall be treated as the issuance of a new obligation. For purposes of determining what constitutes a significant modification, it is anticipated that rules similar to those under section 1001 shall apply.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2010.

D. INFORMATION REPORTING FOR RENTAL PROPERTY EXPENSE PAYMENTS

(SEC. 304 OF THE BILL AND SEC. 6041 OF THE CODE)

PRESENT LAW

A variety of information reporting requirements apply under present law.[119] These requirements are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether such returns are correct and complete.

[118] A person will be treated as a related person with respect to a controlled foreign corporation if (A) such person is an individual, corporation, partnership, trust or estate which controls, or is controlled by, the controlled foreign corporation, or (B) such person is a corporation, partnership, trust or estate which is controlled by the same person or persons which control the resident controlled foreign corporation. For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply. Sec. 954(d)(3).

[119] Secs. 6031 through 6060.

The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments to any one payee aggregating $600 or more in any taxable year in the course of that payor's trade or business.[120] Payments subject to reporting include fixed or determinable income or compensation, but do not include payments for goods or certain enumerated types of payments that are subject to other specific reporting requirements.[121] The payor is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.[122] The regulations generally except from reporting, payments to corporations, exempt organizations, governmental entities, international organizations, or retirement plans.[123] Additionally, the requirement that businesses report certain fixed or determinable payments of income or gain, by its terms, is not applicable to persons engaged in a passive investment activity.

A taxpayer whose rental real estate activity is a trade or business is subject to this reporting requirement, but a taxpayer whose rental real estate activity is not considered a trade or business is not subject to the requirement.

Persons engaged in certain real estate transactions generally must report the gross proceeds paid from such transactions.[124] A real estate transaction is defined by regulation as a sale or exchange of reportable real estate, which in turn is defined to include present or future ownership interests, but not most leaseholds.[125]

In addition, financial institutions are required to report to both taxpayers and the IRS the amount of interest taxpayers paid during the year on mortgages they held on their rental properties.[126]

A taxpayer is subject to penalties for failure to comply with the information reporting requirements. Such penalties may include a penalty for failure to file the information return,[127] for failure to

---

[120] Sec. 6041(a). Information returns are generally submitted electronically on Forms 1096 and Forms 1099, although certain payments to beneficiaries or employees may require use of Forms W–3 and W–2, respectively. Treas. Reg. sec. 1.6041–1(a)(2).

[121] Sec. 6041(a) requires reporting as to "other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a) or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045)[.]" The payments thus excepted include most interest, royalties, and dividends that are subject to other specific reporting requirements.

[122] Sec. 6041(d). Specifically, the recipient of the payment is required to provide a Form W–9 to the payor, which enables the payee to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor. If a Form W–9 is not provided, the payor is required to "backup withhold" tax at a rate of 28 percent of the gross amount of the payment unless the payee has otherwise established that the income is exempt from backup withholding. The backup withholding tax may be credited by the payee against regular income tax liability, i.e., it is effectively an advance payment of tax, similar to the withholding of tax from wages. This combination of reporting and backup withholding is designed to ensure that U.S. persons pay an appropriate amount of tax with respect to all income, either by providing the IRS with the information that it needs to audit payment of the tax or, in the absence of such information, requiring collection of the tax on payment.

[123] Treas. Reg. sec. 1.6041–3(p). Certain for-profit health provider corporations are not covered by this general exception, including those organizations providing billing services for such companies.

[124] Sec. 6045(e) requires reporting by real estate brokers, persons responsible for closing and others designed in regulations, but excepts from reporting sales of principal residences for $250,000 or less ($500,000 for married persons).

[125] Treas. Reg. sec. 1.6045–4(b)(2) defines reportable real estate to include rights to possession or use of real estate only if such rights were created prior to January 1, 1991, and had a remaining term of at least 30 years.

[126] Sec. 6050H. This information is provided on Form 1098.

[127] Sec. 6721. The penalty for the failure to file an information return generally is $50 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed $250,000. Additionally, special rules apply to reduce the per-failure and maximum penalty where the failure is corrected within a specified period.

furnish payee statements,[128] or for failure to comply with other various reporting requirements.[129]

REASONS FOR CHANGE

One of the principal methods of improving tax compliance is to require information reporting by the third-party payor. The Committee believes that requiring information reporting by taxpayers receiving rental income and deducting expenses on rental activities would improve tax compliance of both the payor and the recipient by reducing opportunities for error and fraud. If the payors are required to provide the IRS information with respect to taxable payments, the recipients are more likely to include the payment in income.[130] The increased third-party reporting of payments to those who provide services with respect to rental property will assist such contractors in properly reporting their income.

The Committee also believes that requiring taxpayers to file information returns with respect to certain rental property expenses may deter such taxpayers from reporting expenses they did not incur. Taxpayers who previously may have overestimated rental expenses will be required to maintain better documentation of such expenses to report them to the payee. Furthermore, the need to report with respect to the payee, and to provide a copy to the IRS, creates a record of such expenses that may subsequently be used upon IRS examination.

EXPLANATION OF PROVISION

The provision treats recipients of rental income from real estate as persons engaged in a trade or business for purposes of the information reporting requirements. Rental income recipients making payments of $600 or more to a service provider (such as a plumber, painter, or accountant) with respect to the rental property are required to provide an information return (typically Form 1099–MISC) to the IRS and to the service provider. However, the recipient of rental income need not report under this provision with respect to the rental income that is derived from a qualified residence.

For this purpose, a qualified residence is the principal residence of the taxpayer, and one other residence of the taxpayer, selected by the taxpayer, that meets a personal use requirement. This requirement is that the residence be used personally by the taxpayer during the calendar year for the greater of (1) fourteen days or (2) 10 percent of the number of days during the year for which the property is let at a fair market rental. Thus, for example, if a property is rented for a total of 90 days during the year, and the taxpayer personally uses the property for 14 days, the property is a qualified residence and expenses paid with respect to that property are not subject to reporting. If the same property had instead been rented for 300 days of the year, and the taxpayer used the property only 14 days, the property would not be a qualified residence and

[128] Sec. 6722. The penalty for failure to provide a correct payee statement is $50 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed $100,000. Special rules apply that increase the per-statement and total penalties where there is intentional disregard of the requirement to furnish a payee statement.

[129] Sec. 6723. The penalty for failure to timely comply with a specified information reporting requirement is $50 per failure, not to exceed $100,000 for a calendar year.

[130] See, <http://www.irs.gov/pub/irs-news/tax__gap__figures.pdf>.

the reporting obligation applies. To be exempt from reporting with respect to expenses on that property, the taxpayer's personal use would have to equal or exceed 30 days.

EFFECTIVE DATE

The provision applies to payments made after December 31, 2010.

E. Application of Levy to Payments to Federal Vendors Relating to Property (Sec. 305 of the Bill and Sec. 6331 of the Code)

PRESENT LAW

In general

Levy is the IRS's administrative authority to seize a taxpayer's property or rights to property to pay the taxpayer's tax liability.[131] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[132] and the IRS has provided both notice of intention to levy[133] and notice of the right to an administrative hearing (referred to as a collections due process notice or "CDP" notice)[134] at least 30 days before the levy is made. A Federal tax lien arises automatically when: (1) a tax assessment has been made, (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment, and (3) the payer has failed to pay the amount assessed within 10 days after the notice and demand.[135]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable in permitting assessment of tax without following the normal deficiency procedures.[136]

The CDP notice (and pre-levy CDP hearing) is not required if the Secretary finds that collection would be jeopardized by delay or the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund. In addition, a levy issued to collect Federal employment taxes is excepted from the CDP notice and the pre-levy CDP hearing requirement if the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served. The taxpayer, however, in each of these three cases, is provided an opportunity for a hearing within a reasonable period of time after the issuance of the levy.[137]

[131] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.
[132] Sec. 6331(a).
[133] Sec. 6331(d).
[134] Sec. 6330. The administrative hearing is referred to as the CDP hearing.
[135] Sec. 6321.
[136] Secs. 6331(d)(3) and 6861.
[137] Sec. 6330(f).

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[138] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments," such as government payments to Federal contractors that are delinquent on their tax obligations. With respect to Federal payments to vendors of goods or services, the continuous levy may be up to 100 percent of each payment.[139] The term "goods or services" is not defined in the statute. The levy (either 15 percent or 100 percent) generally continues in effect until the liability is paid or the IRS releases the levy.

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Financial Management Service ("FMS"), such as certain Social Security benefit and Federal wage records. When the records match, the delinquent taxpayer is provided both notice of intention to levy and notice of the right to the CDP hearing 30 days before the levy is made. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy its Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or IRS releases the levy.

REASONS FOR CHANGE

The Committee believes that ambiguity in the language used to grant authority to impose continuous levy on payments to Federal vendors has limited the effectiveness of that grant of authority. Consistent with its anti-abuse purpose, the continuous levy authority was intended to reach all Federal payments to government contractors. However, the statutory language provides the levy for "goods or services sold or leased." As used elsewhere in the Code, the phrase "goods and services" clearly refers to tangible personal property and personal services.[140] As a result, the extent to which payments with respect to real property or intangible property were intended to be included within the scope of the 100-percent continuous levy authority has been questioned.

The provision eliminates any ambiguity in the statutory language such that the IRS (through the FMS) would be permitted to levy up to 100 percent of all Federal vendor payments.

EXPLANATION OF PROVISION

The provision amends section 6331(h)(3) to add "property" to "goods or services" to allow the IRS can levy 100 percent of any payment due to a Federal vendor with unpaid Federal tax liabilities, including payments made for the sale or lease of real estate and other types of property not considered "goods or services."

[138] Pub. L. No. 105–34.
[139] Sec. 6331(h)(3).
[140] See e.g., Sec. 274(e)(2) ("expenses for goods, services, or facilities" used to identify certain expenses that are deductible if treated as compensation to the taxpayer's employee); Sec. 170(f)(8)(B)(ii) and (iii) (requiring that the recipient of a charitable contribution provide an acknowledgement that states whether any goods or services were provided by the charity in return for the purported donation).

EFFECTIVE DATE

The provision applies to levies approved after the date of enactment.

F. Application of Continuous Levy to Employment Tax Liability of Certain Federal Contractors (Sec. 306 of the Bill and Sec. 6330 of the Code)

PRESENT LAW

In general

Levy is the IRS's administrative authority to seize a taxpayer's property or rights to property to pay the taxpayer's tax liability.[141] (Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[142] and the IRS has provided both notice of intention to levy[143] and notice of the right to an administrative hearing (referred to as a collections due process notice or "CDP" notice)[144] at least thirty days before the levy is made. A Federal tax lien arises automatically when: (1) a tax assessment has been made, (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment, and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[145]

The 30-day pre-levy notice requirements, the taxpayer's rights before, during, and following the CDP hearing, and the Federal payment levy program are discussed below.

Pre-levy notice requirements

The notice of intent to levy and the CDP notice must include a brief statement describing the following: (1) the statutory provisions and procedures for levy, (2) the administrative appeals available to the taxpayer, (3) the alternatives available to avoid levy, and (4) the provisions and procedures regarding redemption of levied property.[146] In addition, the collection due process notice must include the following: (1) the amount of the unpaid tax, and (2) the right to request a hearing during the 30-day period before the IRS serves the levy.

Upon receipt of this information, the taxpayer may stay the levy action by requesting in writing a hearing before the IRS Appeals Office.[147] Otherwise, the IRS will levy after expiration of 30 days from the notice.

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard appli-

[141] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.
[142] Sec. 6331(a).
[143] Sec. 6331(d).
[144] Sec. 6330. The administrative hearing is referred to as the CDP hearing.
[145] Sec. 6321.
[146] Sec. 6330(a)(3), 6331(d)(4). In practice, the notice of intent to levy and the collections due process notice is provided together in one document, Letter 1058, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing.* Chief Counsel Advice Memorandum 2009–041 (November 28, 2008).
[147] Sec. 6330(b).

cable in permitting assessment of tax without following the normal deficiency procedures.[148]

The CDP notice (and pre-levy CDP hearing) is not required if the Secretary finds that collection would be jeopardized by delay or the Secretary has served a levy on a State to collect a Federal tax liability from a state tax refund. In addition, a levy issued to collect Federal employment taxes is excepted from the CDP notice and the pre-levy CDP hearing requirement if the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the 2-year period before the beginning of the taxable period with respect to which the employment tax levy is served. The taxpayer, however, in each of these three cases, is provided an opportunity for a hearing within a reasonable period of time after the levy.[149]

CDP hearing

At the CDP hearing, the taxpayer may present defenses to collection as well as arguments disputing the merits of the underlying tax debt if the taxpayer had no prior opportunity to present such arguments.[150] In addition, CDP includes the right to negotiate an alternative form of payment, such as an offer-in-compromise, under which the IRS would accept less than the full amount, or an installment agreement under which payments in satisfaction of the debt may be made over time rather than in one lump sum, or some combination of such measures.[151] If a taxpayer exercises any of these rights in response to the notice of intent to levy, the IRS may not proceed with its levy.

After the CDP hearing, a taxpayer also has a right to seek, within 30 days, judicial review in the U.S. Tax Court of the determination of the CDP hearing to ascertain whether the IRS abused its discretion in reaching its determination.[152] During this time period, the IRS may not proceed with its levy.

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[153] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments," such as government payments to Federal contractors that are delinquent on their tax obligations. The levy generally continues in effect until the liability is paid or the IRS releases the levy.[154]

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Financial Management Service ("FMS"), such as certain Social Security benefit and Federal wage records. When the records match, the delinquent taxpayer is provided both notice of intention to levy and notice of the right to the CDP hearing 30 days before the levy is made. If the taxpayer does not respond after

[148] Secs. 6331(d)(3) and 6861.
[149] Sec. 6330(f).
[150] Sec. 6330(c).
[151] Sec. 6330(c)(2).
[152] Sec. 6330(d).
[153] Pub. L. No. 105–34.
[154] Sec. 6331(h). With respect to Federal payments to vendors of goods or services (not defined), the continuous levy may be up to 100 percent of each payment. Sec. 6331(h)(3).

30 days, the IRS can instruct FMS to levy its Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or IRS releases the levy.

On the other hand, upon receipt of this information, the taxpayer may stay the levy action by requesting in writing a hearing before the IRS Appeals Office. Also, after the CDP hearing, a taxpayer has a right to seek, within 30 days, judicial review in the U.S. Tax Court of the determination of the CDP hearing to ascertain whether the IRS abused its discretion in reaching its determination. During this time period, the IRS may not proceed with its levy.

REASONS FOR CHANGE

The Committee believes that permitting Federal contractors to delay collection until completion of CDP procedures may deprive the Federal government of the opportunity to levy payments because Treasury likely will have paid the Federal contractor before the CDP requirements are met. This lost opportunity is especially true in cases where taxpayers abuse CDP procedures and raise frivolous arguments simply for the purpose of delaying or evading collection of tax. By changing current law to allow the IRS to proceed with its levy for Federal employment tax liabilities earlier in the debt collection process, the Committee believes that the IRS will collect more unpaid taxes.[155]

The opportunity to delay collection of employment tax liabilities presents a greater risk to the government than delay may present in other contexts because employment tax liabilities continue to increase as ongoing wage payments are made to employees. In addition, much of an employer's employment tax liability consists of the employees' share of FICA tax withheld from employees' wages paid to the government on behalf of the employees. The risk for the government is that the employees are entitled to credits for amounts actually withheld, even if the employer ultimately fails to remit these amounts to the government.

EXPLANATION OF PROVISION

The provision allows the IRS to issue levies prior to a CDP hearing for Federal employment tax liabilities of Federal contractors identified under the Federal Payment Levy Program. When a levy is issued prior to a CDP hearing under this proposal, the taxpayer has an opportunity for a CDP hearing within a reasonable time after the levy.

EFFECTIVE DATE

The provision applies to levies issued after December 31, 2010.

[155] Government Accountability Office, *Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System,* GAO–07–742T (April 19, 2007)(approximately 60,000 Federal contractors were delinquent on over $7 billion in Federal taxes).

G. Required Minimum 10-Year Term, etc., for Grantor Retained Annuity Trusts (Sec. 307 of the Bill and Sec. 2702(b) of the Code)

PRESENT LAW

Overview

Present law provides special rules for valuing certain transfers in trust of temporal interests in property (such as annuity interests and remainder interests).[156] Present law also provides rules for determining when a grantor of a trust will be treated as the owner of all or part of the trust for income tax purposes.[157] Grantor retained annuity trusts (GRATs) and charitable lead trusts (CLTs) are two vehicles, often structured as grantor-owned, that are used to make transfers of temporal interests in property.

Valuation of certain transfers in trust

In the event of a lifetime transfer in trust to (or for the benefit of) a member of the transferor's family where the transferor or an applicable family member retains any interest in the trust, a special rule applies for purposes of determining the value of the transferor's gift.[158] In general, the value of any retained interest that is not a "qualified interest" is treated as zero.[159] Therefore, where a transferor retains an interest that is not a qualified interest, the entire amount transferred to the trust generally is treated as a gift by the transferor to the remainder beneficiaries, which gift is subject to transfer taxation.[160] The value of a retained interest that is a qualified interest, on the other hand, is determined using rates and procedures described in the Code for valuing temporal interests in property.[161]

For these purposes, the term "qualified interest" means: (1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually (i.e., a qualified annuity interest); (2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually) (i.e., a qualified unitrust interest); and (3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in (1) or (2) (i.e., a qualified remainder interest).[162]

A qualified interest is valued under procedures described in section 7520 using tables prescribed by the Secretary of the Treasury and an interest rate (rounded to the nearest two-tenths of one percent) equal to 120 percent of the Federal midterm interest rate in effect under section 1274(d)(1) for the month in which the valuation date falls. The tables and rates described in section 7520 assume that the assets in a trust will grow at a relatively modest rate.

[156] See sec. 2702.
[157] See secs. 671–679.
[158] Sec. 2702(a)(1).
[159] Sec. 2702(a)(2)(A).
[160] The special valuation rule does not apply in certain excepted situations, including: (1) where the transfer is not a completed gift; and (2) transfers to certain personal residence trusts. See sec. 2702(a)(3).
[161] Sec. 2702(a)(2)(B); sec. 7520.
[162] Sec. 2702(b).

"Grantor trust" rules

For income tax purposes, a trust generally is a separate taxpayer. Under certain circumstances however, a grantor is treated as the owner of all or part of a trust for income tax purposes.[163] When a grantor is treated as owner of a trust, the grantor, when computing his or her taxable income and credits, generally must include items of income, deductions, and credits of the trust attributable to the portion of the trust deemed owned by the grantor for income tax purposes.[164]

The Code includes a number of rules regarding when a grantor or another person is treated as the owner of all or part of a trust for income tax purposes.[165] A grantor may, for example, be treated as the owner of a trust for income tax purposes where the grantor has: (1) a sufficient reversionary interest in the corpus or income of the trust;[166] (2) the power to control beneficial enjoyment of the corpus or income of the trust;[167] (3) certain administrative powers;[168] (4) the power to revoke all or part of the trust;[169] or (5) the power to distribute income to or for the benefit of the grantor.[170]

A trust that is structured such that the grantor is treated as the owner for income tax purposes, but not for gift or estate tax purposes, is sometimes referred to as an "intentionally defective grantor trust."

Grantor retained annuity trusts

A GRAT generally is an irrevocable trust in which the grantor retains an annuity interest structured as a "qualified interest" under section 2702. The annuity interest must be an irrevocable right to receive a fixed amount at least annually.[171] The trustee must be required to invade the principal of the trust in the event the income is insufficient to pay the qualified annuity.

Assuming the transfer of assets to the trust is treated as a completed gift for gift tax purposes, the gift to the remainder beneficiaries generally will be subject to gift tax as of the time of the initial transfer of assets to the trust. Therefore, the grantor will be required to use a portion of his or her gift tax exemption equal to—or, to the extent insufficient exemption remains, to pay gift tax on—the value of the remainder interest determined as of the time the grantor funds the trust. The annuity portion of a GRAT is valued using the procedures for valuing qualified interests outlined in section 7520 (described above). To value the remainder interest in a GRAT, the value of any qualified interest, as determined under section 7520, is subtracted from the value of the property transferred to the trust.

When the grantor's retained annuity interest expires, the trust assets are distributed to one or more remainder beneficiaries identified in the trust instrument. Because the value of the transferor's gift for gift tax purposes is determined at the time of the transfer,

[163] See secs. 671–679.
[164] See sec. 671.
[165] See secs. 673–677.
[166] Sec. 673.
[167] Sec. 674.
[168] Sec. 675.
[169] Sec. 676.
[170] Sec. 677.
[171] Treas. Reg. sec. 25.2702–3(b).

if trust property grows at a rate in excess of the growth rate assumed under section 7520, the excess appreciation generally will pass to the remainder beneficiaries without further gift tax consequences to the grantor. If, however, the grantor dies during the trust term, that portion of the trust necessary to generate the annuity amount will be included in the grantor's gross estate for estate tax purposes.[172] Such inclusion generally results in the loss of the transfer tax benefit of using a GRAT.

A GRAT is a grantor trust; therefore, the grantor is treated as owner of the trust during the term of the annuity interest, and the grantor generally must include in determining his or her taxable income and credits the income, deductions, and credits of the trust.

REASONS FOR CHANGE

The valuation rates and tables prescribed by section 7520 often produce relative values of the annuity and remainder interests in a GRAT that are not consistent with actual returns on trust assets. As a result, under present law, taxpayers can use GRATs to make gifts of property with little or no transfer tax consequences, so long as the investment return on assets in the trust is greater than the rate of return assumed under section 7520 for purposes of valuing the lead and remainder interests. The Committee believes that such uses of GRATs for gift tax avoidance are inappropriate.

In some cases, for example, taxpayers "zero out" a GRAT by structuring the trust so that the assumed value of the annuity interest under the actuarial tables equals (or nearly equals) the entire value of the property transferred to the trust. Under this strategy, the value of the remainder interest is deemed to be equal to or near zero, and little or no gift tax is paid. In reality, however, a remainder interest in a GRAT often has real and substantial value, because taxpayers may achieve returns on trust assets substantially in excess of the returns assumed under section 7520. Any such excess appreciation passes to the remainder beneficiaries without further transfer tax consequences.

In addition, grantors often structure GRATs with relatively short terms, such as two years, to minimize the risk that the grantor will die during the trust term, causing all or part of the trust assets to be included in the grantor's estate for estate tax purposes. Because GRATs carry little down-side risk, grantors frequently maintain multiple short-term, zeroed-out GRATs funded with different asset portfolios to improve the grantor's odds that at least one trust will outperform significantly the section 7520 rate assumptions and thereby allow the grantor to achieve a transfer to the remainder beneficiaries at little or no gift tax cost.

The provision is designed to introduce additional downside risk to the use of GRATs by imposing a requirement that GRATs have a minimum term of 10 years. Relative to shorter-term (e.g., two-year) GRATs, a GRAT with a 10-year term carries greater risk that the grantor will die during the trust term and that the trust assets will be included in the grantor's estate for estate tax purposes.[173]

[172] Sec. 2036.

[173] The proposal also requires that the remainder interest of a GRAT have a term greater than zero and prohibits a reduction in the annuity during the GRAT term. These requirements are designed to prohibit circumvention of the ten-year minimum term requirement of the proposal.

The provision limits opportunities to inappropriately achieve gift tax-free transfers to family members in situations where gifts of remainder interests in fact have substantial value.

EXPLANATION OF PROVISION

The provision adds certain requirements for an annuity interest retained by the transferor to be treated as a qualified interest for purposes of the special valuations rules applicable to transfers of a trust interest to a member of the transferor's family: (1) the retained annuity interest must have a term not less than 10 years; (2) the annuity (determined on an annual basis) may not decline during the first 10 years of the annuity term; and (3) the remainder interest must have a value greater than zero at the time of the transfer.

EFFECTIVE DATE

The provision applies to transfers made after the date of enactment.

H. Increase in Information Return Penalties (Sec. 308 of the Bill and Sec. 6721 of the Code)

PRESENT LAW

Present law imposes information reporting requirements on participants in certain transactions. Under section 6721, any person who is required to file a correct information return who fails to do so on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the correct information return is filed. If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the amount of the penalty is $15 per return (the "first-tier penalty"), with a maximum penalty of $75,000 per calendar year. If a person files a correct information return after the date that is 30 days after the prescribed filing date but on or before August 1, the amount of the penalty is $30 per return (the "second-tier penalty"), with a maximum penalty of $150,000 per calendar year. If a correct information return is not filed on or before August 1 of any year, the amount of the penalty is $50 per return (the "third-tier penalty"), with a maximum penalty of $250,000 per calendar year. If a failure is due to intentional disregard of a filing requirement, the minimum penalty for each failure is $100, with no calendar year limit.

Special lower maximum levels for this penalty apply to small businesses. Small businesses are defined as firms having average annual gross receipts for the most recent three taxable years that do not exceed $5 million. The maximum penalties for small businesses are: $25,000 (instead of $75,000) if the failures are corrected on or before 30 days after the prescribed filing date; $50,000 (instead of $150,000) if the failures are corrected on or before August 1; and $100,000 (instead of $250,000) if the failures are not corrected on or before August 1.

Section 6722 imposes penalties for failing to furnish correct payee statements to taxpayers. In addition, section 6723 imposes a penalty for failing to comply with other information reporting requirements. Under both section 6722 and section 6723, the penalty amount is $50 for each failure, up to a maximum of $100,000.

REASONS FOR CHANGE

The amount the penalties imposed for failure to file information returns was last amended in 1989.[174] Since then, the importance of reliable third-party information reporting to the administration of the Code has greatly increased. The Committee believes that it is important to increase the penalties to ensure that they encourage compliance with the reporting obligations.

EXPLANATION OF PROVISION

The provision increases the first-tier penalty from $15 to $30, and increases the calendar year maximum from $75,000 to $250,000. The second-tier penalty is increased from $30 to $60, and the calendar year maximum is increased from $150,000 to $500,000. The third-tier penalty is increased from $50 to $100, and the calendar year maximum is increased from $250,000 to $1,500,000. For small business filers, the calendar year maximum is increased from $25,000 to $75,000 for the first-tier penalty, from $50,000 to $200,000 for the second-tier penalty, and from $100,000 to $500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard is increased from $100 to $250. The proposal also provides that every five years the penalty amounts will be adjusted to account for inflation.

EFFECTIVE DATE

The provision applies with respect to information returns required to be filed on or after January 1, 2011.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of H.R. 4849, the “Small Business and Infrastructure Jobs Tax Act of 2010”.

MOTION TO REPORT RECOMMENDATIONS

The bill, H.R. 4849, as amended, was ordered favorably reported by a roll call vote of 25 yeas to 15 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin	X	....	....	Mr. Camp	....	X	....
Mr. Rangel	X	....	....	Mr. Herger	....	X	....
Mr. Stark	....	....	....	Mr. Johnson	....	X	....
Mr. McDermott	X	....	....	Mr. Brady	....	X	....
Mr. Lewis (GA)	X	....	....	Mr. Ryan	....	X	....
Mr. Neal	X	....	....	Mr. Cantor	....	X	....
Mr. Tanner	X	....	....	Mr. Linder	....	X	....
Mr. Becerra	X	....	....	Mr. Nunes	....	X	....
Mr. Doggett	X	....	....	Mr. Tiberi	....	X	....

[174] The penalty was originally $50 for each failure, up to a maximum of $100,000 per year, as enacted by section 150 of the Tax Reform Act of 1986, Pub. L. No. 99–514. In 1989, the present penalty amounts in three tiers were enacted. Sec. 7711, Pub. L. No. 101–239.

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Pomeroy	X			Ms. Brown-Waite		X	
Mr. Thompson	X			Mr. Davis (KY)		X	
Mr. Larson	X			Mr. Reichert		X	
Mr. Blumenauer	X			Mr. Boustany		X	
Mr. Kind	X			Mr. Heller		X	
Mr. Pascrell	X			Mr. Roskam		X	
Ms. Berkley	X						
Mr. Crowley	X						
Mr. Van Hollen	X						
Mr. Meek	X						
Ms. Schwartz	X						
Mr. Davis (AL)	X						
Mr. Davis (IL)	X						
Mr. Etheridge	X						
Ms. Sanchez	X						
Mr. Higgins	X						
Mr. Yarmuth	X						

Votes on Amendments

An amendment was offered by Mr. Pomeroy on behalf of Mr. Larson which would clarify that capital expenditures for levees and other flood control projects are a permissible type of capital expenditure for qualified Build America Bonds. The amendment was agreed to without objection.

An amendment was offered by Mr. Brady which would strike the provision requiring a minimum term for grantor retained annuity trusts (GRATs). The amendment was defeated by voice vote.

A roll call vote was conducted on the following amendments to the Chairman's amendment in the nature of a substitute.

An amendment was offered by Mr. Herger which would make permanent section 179 expensing at 2009 thresholds was defeated by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin		X		Mr. Camp	X		
Mr. Rangel		X		Mr. Herger	X		
Mr. Stark				Mr. Johnson	X		
Mr. McDermott		X		Mr. Brady	X		
Mr. Lewis (GA)		X		Mr. Ryan	X		
Mr. Neal		X		Mr. Cantor	X		
Mr. Tanner		X		Mr. Linder	X		
Mr. Becerra		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Tiberi	X		
Mr. Pomeroy		X		Ms. Brown-Waite	X		
Mr. Thompson		X		Mr. Davis (KY)	X		
Mr. Larson		X		Mr. Reichert	X		
Mr. Blumenauer		X		Mr. Boustany	X		
Mr. Kind		X		Mr. Heller	X		
Mr. Pascrell		X		Mr. Roskam	X		
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis (AL)		X					
Mr. Davis (IL)		X					
Mr. Etheridge		X					
Ms. Sanchez		X					
Mr. Higgins		X					
Mr. Yarmuth		X					

An amendment was offered by Mr. Brady which would strike the provision that would limit treaty benefits with respect to certain deductible related party payments made to corporations substantially owned by entities outside of the U.S. treaty network was defeated by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin		X		Mr. Camp	X		
Mr. Rangel		X		Mr. Herger	X		
Mr. Stark				Mr. Johnson	X		
Mr. McDermott		X		Mr. Brady	X		
Mr. Lewis (GA)		X		Mr. Ryan	X		
Mr. Neal		X		Mr. Cantor	X		
Mr. Tanner		X		Mr. Linder	X		
Mr. Becerra		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Tiberi	X		
Mr. Pomeroy		X		Ms. Brown-Waite	X		
Mr. Thompson		X		Mr. Davis (KY)	X		
Mr. Larson		X		Mr. Reichert	X		
Mr. Blumenauer		X		Mr. Boustany	X		
Mr. Kind		X		Mr. Heller	X		
Mr. Pascrell		X		Mr. Roskam	X		
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis (AL)		X					
Mr. Davis (IL)		X					
Mr. Etheridge		X					
Ms. Sanchez		X					
Mr. Higgins		X					
Mr. Yarmuth		X					

An amendment was offered by Ms. Brown-Waite which would allow the section 1202 capital gains exclusions to apply to partnerships and S-corporations was defeated by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin		X		Mr. Camp	X		
Mr. Rangel		X		Mr. Herger	X		
Mr. Stark				Mr. Johnson	X		
Mr. McDermott		X		Mr. Brady	X		
Mr. Lewis (GA)		X		Mr. Ryan	X		
Mr. Neal		X		Mr. Cantor	X		
Mr. Tanner		X		Mr. Linder	X		
Mr. Becerra		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Tiberi	X		
Mr. Pomeroy		X		Ms. Brown-Waite	X		
Mr. Thompson		X		Mr. Davis (KY)	X		
Mr. Larson		X		Mr. Reichert	X		
Mr. Blumenauer		X		Mr. Boustany	X		
Mr. Kind		X		Mr. Heller	X		
Mr. Pascrell		X		Mr. Roskam	X		
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis (AL)		X					
Mr. Davis (IL)		X					
Mr. Etheridge		X					
Ms. Sanchez		X					

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Higgins		X					
Mr. Yarmuth		X					

An amendment was offered by Mr. Reichert which would extend the temporary capital gains and dividend rate reduction for two years was defeated by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin		X		Mr. Camp	X		
Mr. Rangel		X		Mr. Herger	X		
Mr. Stark				Mr. Johnson	X		
Mr. McDermott		X		Mr. Brady	X		
Mr. Lewis (GA)		X		Mr. Ryan	X		
Mr. Neal		X		Mr. Cantor	X		
Mr. Tanner		X		Mr. Linder	X		
Mr. Becerra		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Tiberi	X		
Mr. Pomeroy		X		Ms. Brown-Waite	X		
Mr. Thompson		X		Mr. Davis (KY)	X		
Mr. Larson		X		Mr. Reichert	X		
Mr. Blumenauer		X		Mr. Boustany	X		
Mr. Kind		X		Mr. Heller	X		
Mr. Pascrell		X		Mr. Roskam	X		
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis (AL)		X					
Mr. Davis (IL)		X					
Mr. Etheridge		X					
Ms. Sanchez		X					
Mr. Higgins		X					
Mr. Yarmuth		X					

An amendment was offered by Mr. Heller which would provide a partial capital gains exclusion on the purchase of a second home in a high-foreclosure area was defeated by a roll call vote of 16 yeas to 23 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin		X		Mr. Camp	X		
Mr. Rangel		X		Mr. Herger	X		
Mr. Stark				Mr. Johnson	X		
Mr. McDermott		X		Mr. Brady	X		
Mr. Lewis (GA)		X		Mr. Ryan	X		
Mr. Neal		X		Mr. Cantor	X		
Mr. Tanner		X		Mr. Linder	X		
Mr. Becerra		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Tiberi	X		
Mr. Pomeroy		X		Ms. Brown-Waite	X		
Mr. Thompson		X		Mr. Davis (KY)	X		
Mr. Larson		X		Mr. Reichert	X		
Mr. Blumenauer		X		Mr. Boustany	X		
Mr. Kind		X		Mr. Heller	X		
Mr. Pascrell		X		Mr. Roskam	X		
Ms. Berkley	X						
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis (AL)		X					
Mr. Davis (IL)		X					

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Etheridge		X					
Ms. Sanchez		X					
Mr. Higgins							
Mr. Yarmuth		X					

An amendment was offered by Mr. Roskam which would provide that the income amounts in the existing marginal rate brackets are indexed based on the growth of nonsecurity discretionary government spending rather than the current CPI index was defeated by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin		X		Mr. Camp	X		
Mr. Rangel		X		Mr. Herger	X		
Mr. Stark				Mr. Johnson	X		
Mr. McDermott		X		Mr. Brady	X		
Mr. Lewis (GA)		X		Mr. Ryan	X		
Mr. Neal		X		Mr. Cantor	X		
Mr. Tanner		X		Mr. Linder	X		
Mr. Becerra		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Tiberi	X		
Mr. Pomeroy		X		Ms. Brown-Waite	X		
Mr. Thompson		X		Mr. Davis (KY)	X		
Mr. Larson		X		Mr. Reichert	X		
Mr. Blumenauer		X		Mr. Boustany	X		
Mr. Kind		X		Mr. Heller	X		
Mr. Pascrell		X		Mr. Roskam	X		
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis (AL)		X					
Mr. Davis (IL)		X					
Mr. Etheridge		X					
Ms. Sanchez		X					
Mr. Higgins		X					
Mr. Yarmuth		X					

An amendment was offered by Mr. Reichert which would extend the temporary marginal rate reductions for two years was defeated by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin		X		Mr. Camp	X		
Mr. Rangel		X		Mr. Herger	X		
Mr. Stark				Mr. Johnson	X		
Mr. McDermott		X		Mr. Brady	X		
Mr. Lewis (GA)		X		Mr. Ryan	X		
Mr. Neal		X		Mr. Cantor	X		
Mr. Tanner		X		Mr. Linder	X		
Mr. Becerra		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Tiberi	X		
Mr. Pomeroy		X		Ms. Brown-Waite	X		
Mr. Thompson		X		Mr. Davis (KY)	X		
Mr. Larson		X		Mr. Reichert	X		
Mr. Blumenauer		X		Mr. Boustany	X		
Mr. Kind		X		Mr. Heller	X		
Mr. Pascrell		X		Mr. Roskam	X		
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Davis (AL)	....	X	....				
Mr. Davis (IL)	....	X	....				
Mr. Etheridge	....	X	....				
Ms. Sanchez	....	X	....				
Mr. Higgins	....	X	....				
Mr. Yarmuth	....	X	....				

An amendment was offered by Mr. Camp which would provide a temporary 17 percent deduction for businesses with less than 500 employees, and offset the cost of the provision with clarifying that the cellulosic biofuel credit is not available for unprocessed fuels was defeated by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Levin	....	X	....	Mr. Camp	X	....	....
Mr. Rangel	....	X	....	Mr. Herger	X	....	....
Mr. Stark	....	....	....	Mr. Johnson	X	....	....
Mr. McDermott	....	X	....	Mr. Brady	X	....	....
Mr. Lewis (GA)	....	X	....	Mr. Ryan	X	....	....
Mr. Neal	....	X	....	Mr. Cantor	X	....	....
Mr. Tanner	....	X	....	Mr. Linder	X	....	....
Mr. Becerra	....	X	....	Mr. Nunes	X	....	....
Mr. Doggett	....	X	....	Mr. Tiberi	X	....	....
Mr. Pomeroy	....	X	....	Ms. Brown-Waite	X	....	....
Mr. Thompson	....	X	....	Mr. Davis (KY)	X	....	....
Mr. Larson	....	X	....	Mr. Reichert	X	....	....
Mr. Blumenauer	....	X	....	Mr. Boustany	X	....	....
Mr. Kind	....	X	....	Mr. Heller	X	....	....
Mr. Pascrell	....	X	....	Mr. Roskam	X	....	....
Ms. Berkley	....	X	....				
Mr. Crowley	....	X	....				
Mr. Van Hollen	....	X	....				
Mr. Meek	....	X	....				
Ms. Schwartz	....	X	....				
Mr. Davis (AL)	....	X	....				
Mr. Davis (IL)	....	X	....				
Mr. Etheridge	....	X	....				
Ms. Sanchez	....	X	....				
Mr. Higgins	....	X	....				
Mr. Yarmuth	....	X	....				

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 4849 as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2010–2020:

ESTIMATED REVENUE EFFECTS OF H.R. 4849,
THE "SMALL BUSINESS AND INFRASTRUCTURE JOBS TAX ACT OF 2010,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2010 - 2020

[Millions of Dollars]

Provision	Effective	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
I. Small Business Tax Incentives														
A. General Provision - Temporary Exclusion of 100% of Gain on Certain Small Business Stock......	saa 3/15/10 & before 1/1/12	2	16	6	---	---	-338	-923	-454	-123	-91	-57	-314	-1,962
B. Limitations and Reporting on Certain Penalties														
1. Limitation on penalties for failure to disclose reportable transactions based on resulting tax benefits..........	paa 12/31/06	-40	-45	-21	-16	-8	-8	-8	-8	-8	-8	-8	-137	-176
2. Annual reports on certain penalties and other enforcement tools..........	DOE [1]	---------- No Revenue Effect ----------												
C. Other Provisions														
1. Nonrecourse small business investment company loans from the Small Business Administration to be treated as amounts at risk..........	aloga DOE	---	-4	-18	-27	-37	-57	-80	-111	-151	-200	-257	-143	-942
2. Increase in amount allowed as a deduction for start-up expenditures..........	tybi 2010 and 2011	-127	-350	-248	8	36	34	32	30	28	26	23	-647	-508
Total of Business Tax Incentives		**-165**	**-383**	**-281**	**-35**	**-9**	**-369**	**-979**	**-543**	**-254**	**-273**	**-299**	**-1,241**	**-3,588**
II. Infrastructure Provisions														
A. Extend Build America Bonds With Direct-Pay Subsidy Rate Decreasing to 33% for Governmental Capital Project Financing Bonds Issued During 2011, 31% for Such Bonds Issued During 2012, and 30% for Such Bonds Issued After December 31, 2012, and Before April 1, 2013 [2]..........	DOE	---	-145	-563	-781	-853	-853	-853	-853	-853	-853	-853	-3,195	-7,460
B. Exempt-Facility Bonds for Sewage and Water Supply Facilities														
1. Provide that the volume cap for private activity bonds shall not apply to bonds for facilities for the furnishing of water and sewage facilities..........	oia DOE	-1	-3	-7	-14	-23	-31	-39	-47	-55	-63	-71	-79	-354

Provision	Effective	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
2. Permit Indian tribes to issue tax-exempt private activity bonds for sewage and water supply facilities	oia DOE	[3]	[3]	-1	-1	-1	-2	-2	-2	-3	-3	-3	-5	-18
C. Extend Exemption from AMT Tax Treatment for Certain Tax-Exempt Bonds (sunset 12/31/11)	oia 12/31/10	---	-13	-25	-25	-25	-25	-24	-24	-22	-21	-20	-113	-224
D. Low-Income Housing Credit Provisions (Create 4% Cash Out) [2]	[4]	-1,599	-701	-8	-8	-8	-8	-8	-8	-8	-8	-8	-2,332	-2,372
E. Extension and Additional Allocations of Recovery Zone Bond Authority [2]	DOE	-10	-104	-242	-266	-259	-256	-249	-249	-249	-249	-249	-1,137	-2,385
F. Exempt New Market Tax Credits from the AMT	[5]	-1	-5	-18	-34	-49	-58	-61	-57	-47	-18	---	-165	-349
Total of Infrastructure Provisions		**-1,611**	**-971**	**-864**	**-1,129**	**-1,218**	**-1,233**	**-1,236**	**-1,240**	**-1,237**	**-1,215**	**-1,204**	**-7,026**	**-13,162**
III. Revenue Raising Provisions														
A. Limitation on Treaty Benefits	pma DOE	302	636	668	702	719	737	756	775	794	814	832	3,764	7,735
B. Treatment of Securities of a Controlled Corporation Exchanged for Assets in Certain Reorganizations	gea DOE	10	25	25	25	25	25	25	25	25	25	25	135	260
C. Repeal 80/20 Rules	tyba 12/31/10	---	50	100	100	100	100	100	100	100	100	100	450	950
D. Require Information Reporting for Rental Property Expense Payments	pma 12/31/10	---	[6]	227	239	251	261	275	285	299	314	325	978	2,476
E. Application of Levy to Payments to Federal Vendors Relating to Property	laa DOE	6	13	13	13	14	14	14	15	15	15	15	73	147
F. Authorize Post-Levy Due Process	lia 12/31/10	---	39	37	37	38	39	40	40	41	42	43	189	395
G. Require a Minimum 10-Year Term for Grantor Retained Annuity Trusts ("GRATs")	tma DOE	---	4	12	121	260	381	507	621	743	857	945	778	4,450
H. Increase Information Return Penalties	irrtbfo/a 1/1/11	---	30	41	42	42	43	43	43	44	45	47	197	419
Total of Revenue Raising Provisions		**318**	**797**	**1,123**	**1,279**	**1,449**	**1,600**	**1,760**	**1,904**	**2,061**	**2,212**	**2,332**	**6,564**	**16,832**
NET TOTAL		**-1,458**	**-557**	**-22**	**115**	**222**	**-2**	**-455**	**121**	**570**	**724**	**829**	**-1,703**	**82**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

aloga = amounts loaned or guaranteed after
DOE = date of enactment
gea = generally exchanges after
irrtbfo/a = information returns required to be filed on or after
laa = levies approved after
lia = levies issued after
oia = obligations issued after
paa = penalties assessed after
pma = payments made after
saa = stock acquired after
tma = transfers made after
tyba = taxable years beginning after
tybi = taxable years beginning in

[Footnotes for the Table appear on the following page]

Footnotes for the Table:

[1] First report shall be submitted not later than December 31, 2010.

[2] Estimate includes the following increase in outlays:

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
Extend Build America Bonds	---	672	2,701	3,995	4,514	4,514	4,514	4,514	4,514	4,514	4,514	16,396	38,966
Recovery Zone Bonds	14	70	141	141	141	141	141	141	141	141	141	648	1,353
Low-Income Housing Credit Provisions	1,605	705	---	---	---	---	---	---	---	---	---	2,310	2,310

[3] Loss of less than $500,00.

[4] The provision relating to elective payments in lieu of low-income housing credit for certain bond-financed buildings is effective for buildings placed-in-service after the date of enactment.

[5] Effective for qualified equity investments initially made after March 15, 2010, and before January 1, 2012.

[6] Negligible revenue gain.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 19, 2010.

Hon. SANDER M. LEVIN,
Acting Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4849, the Small Business and Infrastructure Jobs Tax Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Grant Driessen.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 4849—Small Business and Infrastructure Jobs Tax Act of 2010

Summary: H.R. 4849 would provide a variety of tax incentives to small businesses and extend and expand certain other tax incentives and bond programs. The legislation also would limit the ability of U.S. subsidiaries of foreign corporations to benefit from U.S. tax treaties.

The Joint Committee on Taxation (JCT) estimates that enacting the bill would increase federal revenues by about $42.7 billion over the 2010–2020 period and increase direct spending by about $42.6 billion over the 2010–2020 period. As a result, the bill would produce an estimated reduction in deficits of $82 million over the 2010–2020 period.

Pay-as-you-go procedures apply because enacting the legislation would affect both direct spending and revenues.

JCT has determined that the bill contains three private-sector mandates and no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). JCT estimates that the costs of the bill's mandates would exceed the annual threshold established by UMRA for private-sector mandates ($141 million in 2010, adjusted annually for inflation) in each of the first five years the mandates are in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4849 is shown in the following table. This legislation's effects on federal spending fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
CHANGES IN REVENUES													
Build America Bonds	0	527	2,138	3,214	3,661	3,661	3,661	3,661	3,661	3,661	3,661	13,201	31,506
Limitation on Treaty Benefits	302	636	668	702	719	737	756	775	794	814	832	3,764	7,735
Minimum Term for Certain Trusts	0	4	12	121	260	381	507	621	743	857	945	778	4,450
Exclusion of Gain on Small Business Stock	2	16	6	0	0	−338	−923	−454	−123	−91	−57	−314	−1,962
Recovery Zone Bonds	4	−34	−101	−125	−118	−115	−108	−108	−108	−108	−108	−489	−1,032
Information Reporting for Rental Expense Payments	0	*	227	239	251	261	275	285	299	314	325	978	2,476
Other Provisions	−147	−259	−130	100	104	66	32	−4	−41	−68	−114	−266	−461
Total Estimated Changes in Revenues	161	890	2,820	4,251	4,877	4,653	4,200	4,776	5,225	5,379	5,484	17,651	42,711
CHANGES IN DIRECT SPENDING													
Building America Bonds:													
Estimated Budget Authority	0	672	2,701	3,995	4,514	4,514	4,514	4,514	4,514	4,514	4,514	16,396	38,966
Estimated Outlays	0	672	2,701	3,995	4,514	4,514	4,514	4,514	4,514	4,514	4,514	16,396	38,966
Low-Income Housing Credit:													
Estimated Budget Authority	1,605	705	0	0	0	0	0	0	0	0	0	2,310	2,310
Estimated Outlays	1,605	705	0	0	0	0	0	0	0	0	0	2,310	2,310
Recovery Zone Bonds:													
Estimated Budget Authority	14	70	141	141	141	141	141	141	141	141	141	648	1,353
Estimated Outlays	14	70	141	141	141	141	141	141	141	141	141	648	1,353
Total Estimated Changes in Spending:													
Estimated Budget Authority	1,619	1,447	2,842	4,136	4,655	4,655	4,655	4,655	4,655	4,655	4,655	19,354	42,629
Estimated Outlays	1,619	1,447	2,842	4,136	4,655	4,655	4,655	4,655	4,655	4,655	4,655	19,354	42,629
NET INCREASE OR DECREASE (−) IN THE DEFICIT FROM CHANGES IN REVENUES AND DIRECT SPENDING													
Estimated Deficit Impact [a]	1,458	557	22	−115	−222	2	455	−121	−570	−724	−829	1,703	−82

Note: * = revenue gain of less than $500,000.

[a] Negative numbers indicate a reduction in the deficit; positive numbers indicate the opposite.

Basis of Estimate: JCT estimated all of the effects of H.R. 4849 on both revenues and outlays.

Revenues

Build America Bonds. The Build America Bond program, which was created in 2009, currently provides a subsidy payment to state and local governments for 35 percent of their interest costs on taxable government bonds issued before January 1, 2011, to finance capital expenditures. H.R. 4849 would extend the program for bonds issued before April 1, 2013. It also would set subsidy payments at 33 percent of the interest payment on bonds issued in 2011, 31 percent on bonds issued in 2012, and 30 percent on those issued in 2013, and would ease the restrictions on bonds that qualify for the program. By substituting taxable for tax-exempt bonds, the program increases taxable income. As a result, JCT estimates that the provision would increase revenues by $31.5 billion over the 2010–2020 period. (It also would increase federal outlays by an estimated $39.0 billion over the 2010–2020 period, as discussed below.)

Limitation on Treaty Benefits. The bill would change tax provisions that in some cases allow a U.S. subsidiary of a foreign corporation to avoid U.S. withholding tax on payments to a related subsidiary in a country that has a tax treaty with the United States. JCT estimates that this provision would increase revenues by $7.7 billion over the 2010–2020 period.

Minimum Term for Certain Trusts. H.R. 4849 would require that grantor retained annuity trusts have a minimum 10-year term in order to qualify for a reduced valuation upon transfer for purposes of gift taxation. JCT estimates that the provision would increase receipts by $4.5 billion over the period from 2010 to 2020.

Exclusion of Gain on Small Business Stock. The bill would temporarily increase the exclusion from taxable income on the amount of gain on sales of small business stock from 75 percent to 100 percent of the gain, through December 31, 2011. JCT estimates that the change would reduce revenues by $2.0 billion from 2010 to 2020.

Recovery Zone Bonds. The bill would extend the allowance period for state and local governments to issue recovery zone bonds by one year, through 2011, and provide an additional $10 billion in authority to issue recovery zone economic development bonds and $15 billion in authority to issue recovery zone facility bonds. JCT estimates that the provision would reduce revenues by $1.0 billion from 2010 to 2020. (The provision also would result in higher direct spending, as discussed below.)

Information Reporting for Rental Expense Payments. Current law requires a variety of information reports be made available for expense payments for rental property. This provision would require a recipient of more than $600 in rental income in a given year to be treated as a person engaged in a trade or business for reporting requirements. JCT estimates that this provision would increase revenues by $2.5 billion over the 2010–2020 period.

Other provisions. H.R. 4849 also would make other changes, including modifying certain tax-exempt bond authority and allowing certain tax credits to apply against the alternative minimum tax, which JCT estimates would reduce revenues by $0.5 billion over the 2010–2020 period.

Direct Spending

Build America Bonds. JCT estimates that the modifications to the Build America Bond program would result in additional outlays of $39.0 billion over the 2010–2020 period.

Low-Income Housing Credits. The bill would allow certain taxpayers in 2010 to elect to receive direct payments in lieu of tax credits for low-income housing. The payments would equal 85 percent of the present value of the forgone tax credit. JCT estimates that the provision would increase outlays by $2.3 billion over the 2010–2020 period.

Recovery Zone Bonds. By increasing the allowance to issue additional bonds for recovery zones, some of which are subsidized by direct federal payments, the bill would result in additional subsidy payments to the issuers of $1.4 billion over the 2010–2020 period, JCT estimates.

Pay-as-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that enacting H.R. 4849 would increase both direct spending and revenues, and would increase the deficit over the 2010–2015 period, but would reduce the cumulative deficits over the 2010–2020 period.

The net changes in outlays and revenues that are subject to pay-as-you go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO ACT EFFECTS FOR H.R. 4849, THE SMALL BUSINESS AND INFRASTRUCTURE JOBS TAX ACT OF 2010, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON MARCH 17, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
	NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-as-You Go Impact	1,458	557	22	−115	−222	2	455	−121	−570	−724	−829	1,703	−82
Memorandum:													
Changes in Outlays	1,619	1,447	2,842	4,136	4,655	4,655	4,655	4,655	4,655	4,655	4,655	19,354	42,629
Changes in Revenues	161	890	2,820	4,251	4,877	4,653	4,200	4,776	5,225	5,379	5,484	17,651	42,711

Intergovernmental and private-sector impact: JCT has determined that the bill contains three private-sector mandates as defined in UMRA: (i) a limitation on treaty benefits; (ii) a requirement to provide information reporting for expense payments for rental property; and (iii) a requirement that grantor retained annuity trusts ("GRATs") have a minimum 10-year term. In aggregate, the costs of all the mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates ($141 million in 2010, adjusted annually for inflation) in each of the first five years the mandates are in effect.

JCT has determined that the bill contains no intergovernmental mandates as defined in UMRA.

Estimate prepared by: Grant Driessen.

Estimate approved by: Frank Sammartino, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill are so small relative to the size of the economy and the degree of uncertainty associated with the estimate as to be incalculable within the context of a model of the aggregate economy.

The bill provides tax incentives for small business and infrastructure investment that seem likely to result in small positive increases in employment and output. Among the tax incentives for small business, the three most notable provisions are: allowing the temporary exclusion of 100 percent of gain on certain small business stock; allowing nonrecourse small business investment company loans from the Small Business Administration to be treated as amounts at risk; and increasing the amount allowed as a deduction for startup expenditures. These provisions increase the after-tax return on capital, thereby lowering the cost of capital and tending to spur investment. Among the tax incentives for infrastructure spending, the three most notable provisions are: extension of Build America Bonds; extension and additional allocation of recovery zone bond authority; and a cash out provision for certain low income housing credit provisions. The bond provisions provide a deeper subsidy than is generally available in the tax exempt bond market, while the cash out provision is intended to open a market to investors who otherwise would not be able to take advantage of the current-law low income housing credits. Thus, these provisions are structured to encourage business and infrastructure investment in the near future, with associated net revenue losses occurring mostly in the later years. At the same time, all of the provisions are structured to provide only a limited amount of tax benefits relative to a small portion of the economy.

There are several sources of uncertainty in quantifying the effects of these incentives. Because they are targeted to specific subsectors of the economy, it is possible that these tax incentives will in part result in a reallocation of capital toward the favored activities, and away from other activities. However, because the economy is currently in an economic downturn, with under-used economic resources, we expect that at least some of the investment respond-ing to these incentives will be new investment. Also, the temporary nature of these incentives increases the amount of uncertainty associated with modeling the effects of these proposals on the economy. Further, there may be timing effects that affect output and employment in the short term but roughly cancel out over the budget horizon.

The projected net revenue losses from small business and infrastructure incentives in the bill are offset by tax increases, most of which are imposed on business income. To the extent that the business provisions decrease the after-tax return to business investment, they might have negative effects on output and employment. Notable among these revenue raisers are: limitations on treaty benefits; required information reporting for rental property expense payments; repeal of the 80/20 rules; and a minimum 10-year term for Grantor Retained Annuity Trusts ("GRATs").

Again, there is considerable uncertainty in quantifying the effect of these provisions. To the extent that these provisions level the playing field among different types of business activities, it is possible that they would enhance efficiency. The proposals affecting U.S. companies that are either controlled by foreign investors and/or conduct a substantial amount of their activity overseas potentially would affect a relatively small amount of aggregate international capital flows. The provision that limits treaty benefits has mixed effects on the relatively small amount of affected capital flows, in part because the provision generally would not affect a U.S. corporation that reinvests earnings from U.S. operations back into U.S. activity. With respect to the potential direct investment consequences of both provisions, other issues such as proximity to customers may tend to dominate the tax issues addressed in the legislation, thus providing incentives to interested foreign parties to restructure their offshore operations and/or work to extend or deepen the U.S. bilateral treaty network, rather than to withdraw or diminish their overall investment in the United States. But there is considerable uncertainty about the business and policy response of interested foreign parties. Finally, the provision affecting GRATs has the effect of increasing estate and gift taxation. There is considerable quantitative uncertainty about whether estate and gift taxes affect investment. Because the bill is approximately revenue neutral over the budget window, standard crowding-out effects on long-term borrowing costs seem likely to be minimal.

While there is considerable uncertainty about the net effect on output and employment, there is some likelihood that the positive effects of the targeted investment and business incentives are not fully offset by the negative effects of the revenue raisers. But as a result of the uncertainty of the effects of the bill, and the small size of the changes relative to the overall U.S. economy, its macroeconomic effects are incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . ."), and from the 16th Amendment to the Constitution.

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the following tax provisions of the reported bill contain Federal private sector mandates within the meaning of Public Law No. 104–4, the Unfunded Mandates Reform Act of 1995: (1) limitation on treaty benefits (sec. 301 of the bill); (2) require information reporting for rental property expense payments (sec. 304 of the bill); and (3) require a minimum 10-year term for grantor retained annuity trusts ("GRATs") (sec. 307 of the bill). The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. APPLICABILITY OF HOUSE RULE XXI 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses.

G. Limited Tax Benefits

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart D—Business Related Credits

* * * * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) * * *

* * * * * * *

(c) Limitation Based on Amount of Tax.—

(1) * * *

* * * * * * *

(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

(A) * * *

(B) SPECIFIED CREDITS.—For purposes of this subsection, the term "specified credits" means—

(i) * * *

* * * * * * *

(v) the credit determined under section 45D, but only with respect to credits determined with respect to qualified equity investments (as defined in section 45D(b)) initially made before January 1, 2012,

【(v)】 *(vi)* the credit determined under section 45G,

【(vi)】 *(vii)* the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48,

【(vii)】 *(viii)* the credit determined under section 46 to the extent that such credit is attributable to the rehabilitation credit under section 47, but only with respect to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and

【(viii)】 *(ix)* the credit determined under section 51.

* * * * * * *

Subpart J—Build America Bonds

* * * * * * *

SEC. 54AA. BUILD AMERICA BONDS.

(a) * * *

* * * * * * *

(d) BUILD AMERICA BOND.—

(1) IN GENERAL.—For purposes of this section, the term "build America bond" means any obligation (other than a private activity bond) if—

(A) * * *

(B) such obligation is issued before 【January 1, 2011】 *April 1, 2013*, and

* * * * * * *

(g) SPECIAL RULE FOR 【QUALIFIED BONDS ISSUED BEFORE 2011】 *CERTAIN QUALIFIED BONDS*.—In the case of a qualified bond issued before 【January 1, 2011】 *April 1, 2013*—

(1) * * *

(2) QUALIFIED BOND.—For purposes of this subsection, the term "qualified bond" means any build America bond issued as part of an issue if—

(A) 100 percent of the excess of—

(i) * * *

* * * * * * *

are to be used for capital expenditures *(including capital expenditures for levees and other flood control projects)*, and

(3) TREATMENT OF CURRENT REFUNDING BONDS.—

(A) IN GENERAL.—For purposes of this subsection, the term "qualified build America bond" includes any bond (or

series of bonds) issued to refund a qualified build America bond if—

(i) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(ii) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(iii) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

(B) APPLICABLE PERCENTAGE.—In the case of a refunding bond referred to in subparagraph (A), the applicable percentage with respect to such bond under section 6431(b) shall be the lowest percentage specified in paragraph (2) of such section.

(C) DETERMINATION OF AVERAGE MATURITY.—For purposes of subparagraph (A)(i), average maturity shall be determined in accordance with section 147(b)(2)(A).

* * * * * * *

PART VI—ALTERNATIVE MINIMUM TAX

* * * * * * *

SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

(a) * * *

* * * * * * *

(g) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—

(1) * * *

* * * * * * *

(4) ADJUSTMENTS.—In determining adjusted current earnings, the following adjustments shall apply:

(A) * * *

(B) INCLUSION OF ITEMS INCLUDED FOR PURPOSES OF COMPUTING EARNINGS AND PROFITS.—

(i) * * *

* * * * * * *

(iv) TAX EXEMPT INTEREST ON BONDS ISSUED IN 2009 [AND 2010], *2010, AND 2011*.—

(I) IN GENERAL.—Clause (i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before [January 1, 2011] *January 1, 2012*.

* * * * * * *

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) GENERAL RULE.—For purposes of this part, the items of tax preference determined under this section are—

(1) * * *

* * * * * * *

(5) TAX-EXEMPT INTEREST.—

(A) * * *

* * * * * * *

(C) SPECIFIED PRIVATE ACTIVITY BONDS.—

(i) * * *

* * * * * * *

(vi) EXCEPTION FOR BONDS ISSUED IN 2009 [AND 2010]*, 2010, AND 2011*.—

(I) IN GENERAL.—For purposes of clause (i), the term "private activity bond" shall not include any bond issued after December 31, 2008, and before [January 1, 2011] *January 1, 2012*.

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

* * * * * * *

Subpart A—Private Activity Bonds

* * * * * * *

SEC. 146. VOLUME CAP.

(a) * * *

* * * * * * *

(g) EXCEPTION FOR CERTAIN BONDS.—Only for purposes of this section, the term "private activity bond" shall not include—

(1) * * *

* * * * * * *

(3) any exempt facility bond issued as part of an issue described in paragraph (1), (2), *(4), (5),* (12), (13), (14), or (15) of section 142(a), and

* * * * * * *

(k) FACILITY MUST BE LOCATED WITHIN STATE.—

(1) * * *

(2) EXCEPTION FOR CERTAIN FACILITIES WHERE STATE WILL GET PROPORTIONATE SHARE OF BENEFITS.—Paragraph (1) shall not apply to any exempt facility bond described in paragraph [(4), (5), (6),] *(6)* or (10) of section 142(a) if the issuer establishes that the State's share of the use of the facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

(3) TREATMENT OF GOVERNMENTAL BONDS TO WHICH VOLUME CAP ALLOCATED.—Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5)—

(A) * * *

(B) for a facility of a type described in paragraph [(4), (5), (6),] *(6)* or (10) of section 142(a),

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 195. START-UP EXPENDITURES.

(a) * * *

(b) ELECTION TO DEDUCT.—

(1) * * *

* * * * * * *

(3) INCREASED LIMITATION FOR TAXABLE YEARS BEGINNING IN 2010 OR 2011.—In the case of any taxable year beginning in 2010 or 2011, paragraph (1)(A)(ii) shall be applied—

(A) by substituting "$20,000" for "$5,000", and

(B) by substituting "$75,000" for "$50,000".

* * * * * * *

Subchapter C—Corporate Distributions and Adjustments

* * * * * * *

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

* * * * * * *

Subpart C—Effects on Corporation

* * * * * * *

SEC. 361. NONRECOGNITION OF GAIN OR LOSS TO CORPORATIONS; TREATMENT OF DISTRIBUTIONS.

(a) * * *

(b) EXCHANGES NOT SOLELY IN KIND.—

(1) * * *

* * * * * * *

(3) TREATMENT OF TRANSFERS TO CREDITORS.—For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3). **[**In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))).**]**

* * * * * * *

(d) SPECIAL RULES FOR TRANSACTIONS INVOLVING SECTION 355 DISTRIBUTIONS.—In the case of a reorganization described in section

368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355—

(1) this section shall be applied by substituting "stock other than nonqualified preferred stock (as defined in section 351(g)(2))" for "stock or securities" in subsections (a) and (b)(1), and

(2) the first sentence of subsection (b)(3) shall apply only to the extent that the sum of the money and the fair market value of the other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))).

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

* * * * * * *

PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart C—Taxable Year for Which Deductions Taken

* * * * * * *

SEC. 465. DEDUCTIONS LIMITED TO AMOUNT AT RISK.

(a) * * *

(b) AMOUNTS CONSIDERED AT RISK.—

(1) * * *

* * * * * * *

(6) QUALIFIED NONRECOURSE FINANCING TREATED AS AMOUNT AT RISK.—For purposes of this section—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, ⟦in the case of an activity of holding real property,⟧ a taxpayer shall be considered at risk with respect to the taxpayer's share of any qualified nonrecourse financing⟦ which is secured by real property used in such activity⟧.

⟦(B) QUALIFIED NONRECOURSE FINANCING.—For purposes of this paragraph, the term "qualified nonrecourse financing" means any financing—

⟦(i) which is borrowed by the taxpayer with respect to the activity of holding real property,

⟦(ii) which is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government,

⟦(iii) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

⟦(iv) which is not convertible debt.⟧

(B) QUALIFIED NONRECOURSE FINANCING.—For purposes of this paragraph—

(i) IN GENERAL.—The term "qualified nonrecourse financing" means any financing—

(I) which is qualified real property financing or qualified SBIC financing,

(II) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

(III) which is not convertible debt.

(ii) QUALIFIED REAL PROPERTY FINANCING.—The term "qualified real property financing" means any financing which—

(I) is borrowed by the taxpayer with respect to the activity of holding real property,

(II) is secured by real property used in such activity, and

(III) is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

(iii) QUALIFIED SBIC FINANCING.—The term "qualified SBIC financing" means any financing which—

(I) is borrowed by a small business investment company (within the meaning of section 301 of the Small Business Investment Act of 1958), and

(II) is borrowed from, or guaranteed by, the Small Business Administration under the authority of section 303(b) of such Act.

* * * * * * *

Subchapter N—Tax Based on Income From Sources Within or Without the United States

* * * * * * *

PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME

* * * * * * *

SEC. 861. INCOME FROM SOURCES WITHIN THE UNITED STATES.

(a) GROSS INCOME FROM SOURCES WITHIN UNITED STATES.—The following items of gross income shall be treated as income from sources within the United States:

(1) INTEREST.—Interest from the United States or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of noncorporate residents or domestic corporations not including—

⟦(A) interest from a resident alien individual or domestic corporation, if such individual or corporation meets the 80-percent foreign business requirements of subsection (c)(1),⟧

⟦(B)⟧ *(A)* interest—

(i) * * *

* * * * * * *

⟦(C)⟧ *(B)* in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

* * * * * * *

⟦(c) FOREIGN BUSINESS REQUIREMENTS.—

⟦(1) FOREIGN BUSINESS REQUIREMENTS.—

⟦(A) IN GENERAL.—An individual or corporation meets the 80-percent foreign business requirements of this paragraph if it is shown to the satisfaction of the Secretary that at least 80 percent of the gross income from all sources of such individual or corporation for the testing period is active foreign business income.

⟦(B) ACTIVE FOREIGN BUSINESS INCOME.—For purposes of subparagraph (A), the term "active foreign business income" means gross income which—

⟦(i) is derived from sources outside the United States (as determined under this subchapter) or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation, and

⟦(ii) is attributable to the active conduct of a trade or business in a foreign country or possession of the United States by the individual or corporation (or by a subsidiary.)

For purposes of this subparagraph, the term "subsidiary" means any corporation in which the corporation referred to in this subparagraph owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting "50 percent" for "80 percent" each place it appears).

⟦(C) TESTING PERIOD.—For purposes of this subsection, the term "testing period" means the 3-year period ending with the close of the taxable year of the individual or corporation preceding the payment (or such part of such period as may be applicable). If the individual or corporation has no gross income for such 3-year period (or part thereof), the testing period shall be the taxable year in which the payment is made.

⟦(2) LOOK-THRU WHERE RELATED PERSON RECEIVES INTEREST.—

⟦(A) IN GENERAL.—In the case of interest received by a related person from a resident alien individual or domestic corporation meeting the 80-percent foreign business requirements of paragraph (1), subsection (a)(1)(A) shall apply only to a percentage of such interest equal to the percentage which—

⟦(i) the gross income of such individual or corporation for the testing period from sources outside the

United States (as determined under this subchapter), is of

⟦(ii) the total gross income of such individual or corporation for the testing period.

⟦(B) RELATED PERSON.—For purposes of this paragraph, the term "related person" has the meaning given such term by section 954(d)(3), except that—

⟦(i) such section shall be applied by substituting "the individual or corporation making the payment" for "controlled foreign corporation" each place it appears, and

⟦(ii) such section shall be applied by substituting "10 percent or more" for "more than 50 percent" each place it appears.⟧

⟦(d)⟧ *(c)* SPECIAL RULE FOR APPLICATION OF SUBSECTION (A)(2)(B).—For purposes of subsection (a)(2)(B), if the foreign corporation has no gross income from any source for the 3-year period (or part thereof) specified, the requirements of such subsection shall be applied with respect to the taxable year of such corporation in which the payment of the dividend is made.

⟦(e)⟧ *(d)* INCOME FROM CERTAIN RAILROAD ROLLING STOCK TREATED AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

(1) * * *

* * * * * * *

⟦(f)⟧ *(e)* CROSS REFERENCE.—For treatment of interest paid by the branch of a foreign corporation, see section 884(f).

* * * * * * *

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

* * * * * * *

Subpart A—Nonresident Alien Individuals

* * * * * * *

SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) * * *

* * * * * * *

(i) TAX NOT TO APPLY TO CERTAIN INTEREST AND DIVIDENDS.—

(1) * * *

(2) AMOUNTS TO WHICH PARAGRAPH (1) APPLIES.—The amounts described in this paragraph are as follows:

(A) * * *

⟦(B) A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).⟧

⟦(C)⟧ *(B)* Income derived by a foreign central bank of issue from bankers' acceptances.

⟦(D)⟧ *(C)* Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.

* * * * * * *

Subpart D—Miscellaneous Provisions

* * * * * * *

SEC. 894. INCOME AFFECTED BY TREATY.

(a) * * *

* * * * * * *

(d) LIMITATION ON TREATY BENEFITS FOR CERTAIN DEDUCTIBLE PAYMENTS.—

(1) IN GENERAL.—In the case of any deductible related-party payment, any withholding tax imposed under chapter 3 (and any tax imposed under subpart A or B of this part) with respect to such payment may not be reduced under any treaty of the United States unless any such withholding tax would be reduced under a treaty of the United States if such payment were made directly to the foreign parent corporation.

(2) DEDUCTIBLE RELATED-PARTY PAYMENT.—For purposes of this subsection, the term "deductible related-party payment" means any payment made, directly or indirectly, by any person to any other person if the payment is allowable as a deduction under this chapter and both persons are members of the same foreign controlled group of entities.

(3) FOREIGN CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

(A) IN GENERAL.—The term "foreign controlled group of entities" means a controlled group of entities the common parent of which is a foreign corporation.

(B) CONTROLLED GROUP OF ENTITIES.—The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1), except that—

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(4) FOREIGN PARENT CORPORATION.—For purposes of this subsection, the term "foreign parent corporation" means, with respect to any deductible related-party payment, the common parent of the foreign controlled group of entities referred to in paragraph (3)(A).

(5) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as are necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which provide for—

(A) the treatment of two or more persons as members of a foreign controlled group of entities if such persons would be the common parent of such group if treated as one corporation, and

(B) the treatment of any member of a foreign controlled group of entities as the common parent of such group if

such treatment is appropriate taking into account the economic relationships among such entities.

* * * * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

* * * * * * *

Subpart A—Foreign Tax Credit

* * * * * * *

SEC. 904. LIMITATION ON CREDIT.

(a) * * *

* * * * * * *

(h) SOURCE RULES IN CASE OF UNITED STATES-OWNED FOREIGN CORPORATIONS.—

(1) * * *

* * * * * * *

[(9) TREATMENT OF CERTAIN DOMESTIC CORPORATIONS.—For purposes of this subsection—

[(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(A), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

[(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation.]

(9) TREATMENT OF CERTAIN DOMESTIC CORPORATIONS.—In the case of any dividend treated as not from sources with the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.

* * * * * * *

Subchapter P—Capital Gains and Losses

* * * * * * *

PART I—TREATMENT OF CAPITAL GAINS

* * * * * * *

SEC. 1202. PARTIAL EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

(a) EXCLUSION.—

(1) * * *

* * * * * * *

(3) [SPECIAL RULES FOR 2009 AND 2010] *SPECIAL 75 PERCENT EXCLUSION*.—In the case of qualified small business stock acquired [after the date of the enactment of this paragraph and before January 1, 2011] *after February 17, 2009, and before March 16, 2010—*

(A) * * *

* * * * * * *

(4) SPECIAL 100 PERCENT EXCLUSION.—In the case of qualified small business stock acquired after March 15, 2010, and before January 1, 2012—

(A) paragraph (1) shall be applied by substituting "100 percent" for "50 percent",

(B) paragraph (2) shall not apply, and

(C) paragraph (7) of section 57(a) shall not apply.

* * * * * * *

Subchapter Y—Short-Term Regional Benefits

* * * * * * *

PART III— RECOVERY ZONE BONDS

* * * * * * *

SEC. 1400U-1. ALLOCATION OF RECOVERY ZONE BONDS.

(a) ALLOCATIONS.—

(1) * * *

* * * * * * *

(3) ALLOCATIONS BY STATES.—

(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion to each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. A county or municipality may waive any portion of an allocation made under this subparagraph. *A State may by law treat a county or municipality as waiving any portion of an allocation made under this subparagraph if there is a reasonable expectation that such allocation would not otherwise be used.*

* * * * * * *

(c) ALLOCATION OF 2010 RECOVERY ZONE BOND LIMITATIONS BASED ON UNEMPLOYMENT.—

(1) IN GENERAL.—The Secretary shall allocate the 2010 national recovery zone economic development bond limitation and the 2010 national recovery zone facility bond limitation among the States in the proportion that each such State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all of the States.

(2) MINIMUM ALLOCATION.—The Secretary shall adjust the allocations under paragraph (1) for each State to the extent necessary to ensure that no State (prior to any reduction under paragraph (3)) receives less than 0.9 percent of the 2010 national recovery zone economic development bond limitation and 0.9 percent of the 2010 national recovery zone facility bond limitation.

(3) ALLOCATIONS BY STATES.—

(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities (as defined in subsection (a)(3)(B)) in such State in the proportion that each such county's or municipality's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all the counties and large municipalities (as so defined) in such State.

(B) 2010 ALLOCATION REDUCED BY AMOUNT OF PREVIOUS ALLOCATION.—Each State shall reduce (but not below zero)—

(i) the amount of the 2010 national recovery zone economic development bond limitation allocated to each county or large municipality (as so defined) in such State by the amount of the national recovery zone economic development bond limitation allocated to such county or large municipality under subsection (a)(3)(A) (determined without regard to any waiver thereof), and

(ii) the amount of the 2010 national recovery zone facility bond limitation allocated to each county or large municipality (as so defined) in such State by the amount of the national recovery zone facility bond limitation allocated to such county or large municipality under subsection (a)(3)(A) (determined without regard to any waiver thereof).

(C) WAIVER OF SUBALLOCATIONS.—A county or municipality may waive any portion of an allocation made under this paragraph. A State may by law treat a county or municipality as waiving any portion of an allocation made under this paragraph if there is a reasonable expectation that such allocation would not otherwise be used.

(D) SPECIAL RULE FOR A MUNICIPALITY IN A COUNTY.—In the case of any large municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

(4) 2009 UNEMPLOYMENT NUMBER.—For purposes of this subsection, the term "2009 unemployment number" means, with respect to any State, county or municipality, the number of individuals in such State, county, or municipality who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

(5) 2010 NATIONAL LIMITATIONS.—

(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—The 2010 national recovery zone economic development bond limitation is $10,000,000,000. Any allocation of such limitation under this subsection shall be treated for purposes of section 1400U–2 in the same manner as an allocation of national recovery zone economic development bond limitation.

(B) RECOVERY ZONE FACILITY BONDS.—The 2010 national recovery zone facility bond limitation is $15,000,000,000. Any allocation of such limitation under this subsection shall be treated for purposes of section 1400U–3 in the same manner as an allocation of national recovery zone facility bond limitation.

SEC. 1400U–2. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.

(a) * * *

(b) RECOVERY ZONE ECONOMIC DEVELOPMENT BOND.—

(1) IN GENERAL.—For purposes of this section, the term "recovery zone economic development bond" means any build America bond (as defined in section 54AA(d)) issued before ⟦January 1, 2011⟧ *January 1, 2012*, as part of issue if—

(A) * * *

SEC. 1400U-3. RECOVERY ZONE FACILITY BONDS.

(a) * * *

(b) RECOVERY ZONE FACILITY BOND.—

(1) IN GENERAL.—For purposes of this section, the term "recovery zone facility bond" means any bond issued as part of an issue if—

(A) * * *

(B) such bond is issued before ⟦January 1, 2011⟧ *January 1, 2012*, and

* * * * * * *

Subtitle B—Estate and Gift Taxes

* * * * * * *

CHAPTER 11—ESTATE TAX

* * * * * * *

Subchapter B—Estates of Nonresidents Not Citizens

* * * * * * *

SEC. 2104. PROPERTY WITHIN THE UNITED STATES.

(a) * * *

* * * * * * *

(c) DEBT OBLIGATIONS.—For purposes of this subchapter, debt obligations of—

(1) * * *

* * * * * * *

owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States. With respect to estates of decedents dying after December 31, 1969, deposits with a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business, shall, for purposes of this subchapter, be deemed property within the United States. This subsection shall not apply to a debt obligation to which section 2105(b) applies⟦ or to a debt obligation of a domestic corporation if any interest on such obligation, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States⟧.

* * * * * * *

CHAPTER 14—SPECIAL VALUATION RULES

* * * * * * *

SEC. 2702. SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF INTERESTS IN TRUSTS.

(a) * * *

(b) QUALIFIED INTEREST.—❲For purposes of❳

(1) IN GENERAL.—For purposes of this section, the term "qualified interest" means—

❲(1)❳ *(A)* any interest which consists of the right to receive fixed amounts payable not less frequently than annually,

❲(2)❳ *(B)* any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and

❲(3)❳ *(C)* any noncontingent remainder interest if all of the other interests in the trust consist of interests described in ❲paragraph (1) or (2)❳ *subparagraph (A) or (B).*

(2) ADDITIONAL REQUIREMENTS WITH RESPECT TO GRANTOR RETAINED ANNUITIES.—For purposes of subsection (a), in the case of an interest described in paragraph (1)(A) (determined without regard to this paragraph) which is retained by the transferor, such interest shall be treated as described in such paragraph only if—

(A) the right to receive the fixed amounts referred to in such paragraph is for a term of not less than 10 years,

(B) such fixed amounts, when determined on an annual basis, do not decrease relative to any prior year during the first 10 years of the term referred to in subparagraph (A), and

(C) the remainder interest has a value greater than zero determined as of the time of the transfer.

* * * * * * *

Subtitle F—Procedure and Administration

* * * * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

Subchapter A—Returns and Records

* * * * * * *

PART III—INFORMATION RETURNS

* * * * * * *

Subpart B—Information Concerning Transactions With Other Persons

* * * * * * *

SEC. 6041. INFORMATION AT SOURCE.

(a) * * *

* * * * * * *

(h) TREATMENT OF RENTAL PROPERTY EXPENSE PAYMENTS.—

(1) IN GENERAL.—For purposes of subsection (a), a person receiving rental income from real estate (other than a qualified residence) shall be considered to be engaged in a trade or business of renting property.

(2) QUALIFIED RESIDENCE.—For purposes of paragraph (1), the term "qualified residence" means——

(A) the principal residence (within the meaning of section 121) of the taxpayer, and

(B) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).

* * * * * * *

CHAPTER 63—ASSESSMENT

* * * * * * *

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

* * * * * * *

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) * * *

(b) RULES FOR APPLICATION OF SUBSECTION (A).—For purposes of this section—

(1) * * *

* * * * * * *

(4) For purposes of subsection (a)—

(A) any excess of the sum of the credits allowable under sections 24(d), 25A by reason of subsection (i)(6) thereof, 32, 34, 35, 36, 36A, 53(e), 168(k)(4), 6428, and 6431 *and subchapter C of chapter 65 (including any payment treated as made under such subchapter)* over the tax imposed by subtitle A (determined without regard to such credits), and

* * * * * * *

CHAPTER 64—COLLECTION

* * * * * * *

Subchapter D—Seizure of Property for Collection of Taxes

* * * * * * *

PART I—DUE PROCESS FOR COLLECTIONS

SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

(a) * * *

* * * * * * *

(h) DISQUALIFIED EMPLOYMENT TAX LEVY.—For purposes of subsection (f), a disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served *or if the person subject to the levy (or any predecessor thereof) is a Federal contractor that was identified as owing such employment taxes through the Federal Payment Levy Program*. For purposes of the preceding sentence, the term "employment taxes" means any taxes under chapter 21, 22, 23, or 24.

PART II—LEVY

* * * * * * *

SEC. 6331. LEVY AND DISTRAINT.

(a) * * *

* * * * * * *

(h) CONTINUING LEVY ON CERTAIN PAYMENTS.—

(1) * * *

* * * * * * *

(3) INCREASE IN LEVY FOR CERTAIN PAYMENTS.—Paragraph (1) shall be applied by substituting "100 percent" for "15 percent" in the case of any specified payment due to a vendor of [goods or services] *property, goods, or services* sold or leased to the Federal Government.

* * * * * * *

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

SUBCHAPTER A. PROCEDURE IN GENERAL

* * * * * * *

SUBCHAPTER C. DIRECT PAYMENT PROVISIONS

* * * * * * *

Subchapter B—Rules of Special Application

* * * * * * *

SEC. 6425. ADJUSTMENT OF OVERPAYMENT OF ESTIMATED INCOME TAX BY CORPORATION.

(a) * * *

* * * * * * *

(c) DEFINITIONS.—For purposes of this section and section 6655(h) (relating to excessive adjustment)—

(1) The term "income tax liability" means the excess of—

(A) * * *

(B) ❲the credits❳ *the sum of—*

(i) the credits against tax provided by part IV of subchapter A of chapter 1❲.❳*, plus*

(ii) the credits allowed (and payments treated as made) under subchapter C.

* * * * * * *

SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO ISSUER.

(a) IN GENERAL.—In the case of a qualified bond issued before ❲January 1, 2011❳ *April 1, 2013*, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

(b) PAYMENT OF CREDIT.—❲The Secretary❳

(1) IN GENERAL.—The Secretary shall pay (contemporaneously with each interest payment date under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) ❲35 percent❳ *the applicable percentage* of the interest payable under such bond on such date.

(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term "applicable percentage" means the percentage determined in accordance with the following table:

In the case of a qualified bond issued during calendar year:	*The applicable percentage is:*
2009 or 2010	*35 percent*
2011	*33 percent*
2012	*31 percent*
2013	*30 percent*

* * * * * * *

Subchapter C—Direct Payment Provisions

SEC. 6451. ELECTIVE PAYMENTS IN LIEU OF LOW INCOME HOUSING CREDIT FOR BOND-FINANCED BUILDINGS.

(a) IN GENERAL.—Any person making an election under this section with respect to any qualified bond-financed low-income building originally placed in service by such person during the taxable year shall be treated as making a payment, against the tax imposed by subtitle A for the taxable year, equal to the direct payment amount with respect to such building. Such payment shall be treat-

ed as made on the later of the due date of the return of such tax or the date on which such return is filed.

(b) QUALIFIED BOND-FINANCED LOW-INCOME BUILDING.—For purposes of this section, the term "qualified bond-financed low-income building" means any qualified low-income building to which paragraph (1) of section 42(h) does not apply by reason of paragraph (4)(B) of such section.

(c) DIRECT PAYMENT AMOUNT.—For purposes of this section, the term "direct payment amount" means, with respect to any building, 25.5 percent of the qualified basis of such building.

(d) SPECIAL RULES FOR CERTAIN NON-TAXPAYERS.—

(1) DENIAL OF PAYMENT.—Subsection (a) shall not apply with respect to any building placed in service by—

(A) any governmental entity, or

(B) any organization described in section 501(c) or 401(a) and exempt from tax under section 501(a).

(2) SPECIAL RULES FOR PARTNERSHIPS AND S CORPORATIONS.—In the case of property originally placed in service by a partnership or an S corporation—

(A) the election under subsection (a) may be made only by such partnership or S corporation,

(B) such partnership or S corporation shall be treated as making the payment referred to in subsection (a) only to the extent of the proportionate share of such partnership or S corporation as is owned by persons who would be treated as making such payment if the building were placed in service by such persons, and

(C) the return required to be made by such partnership or S corporation under section 6031 or 6037 (as the case may be) shall be treated as a return of tax for purposes of subsection (a).For purposes of subparagraph (B), rules similar to the rules of section 168(h)(6) (other than subparagraph (F) thereof) shall apply.

(e) COORDINATION WITH LOW INCOME HOUSING CREDIT.—In the case of any property with respect to which an election is made under this section, no credit shall be determined under section 42 with respect to such building for any taxable year.

(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) OTHER DEFINITIONS.—Terms used in this section which are also used in section 42 shall have the same meaning for purposes of this section as when used in such section.

(2) APPLICATION OF RECAPTURE RULES, ETC.—Except as otherwise provided by the Secretary, rules similar to the rules of section 42 shall apply, including the recapture rules of section 42(j).

(3) PROVISION OF INFORMATION.—A person shall not be treated as having elected the application of this section unless the taxpayer provides such information as the Secretary may require for purposes of verifying the proper amount to be treated as a payment under subsection (a) and evaluating the effectiveness of this section.

(4) EXCLUSION FROM GROSS INCOME.—Any credit or refund allowed or made by reason of this section shall not be includible in gross income or alternative minimum taxable income.

(g) TERMINATION.—Subsection (a) shall not apply with respect to any building placed in service during a taxable year beginning after December 31, 2010.

* * * * * * *

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

* * * * * * *

Subchapter A—Additions to the Tax and Additional Amounts

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) * * *

* * * * * * *

(f) TAX COMPUTED AFTER APPLICATION OF CREDITS AGAINST TAX.—For purposes of this section, the term “tax” means—

(1) * * *

* * * * * * *

(3) ⟦the credits⟧ *the sum of—*

(A) the credits against tax provided by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages)⟦.⟧*, and*

(B) the credits allowed (and payments treated as made) under subchapter C of chapter 65.

* * * * * * *

SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

(a) * * *

* * * * * * *

(g) DEFINITIONS AND SPECIAL RULES.—

(1) TAX.—For purposes of this section, the term “tax” means the excess of—

(A) * * *

(B) ⟦the credits⟧ *the sum of—*

(i) the credits against tax provided by part IV of subchapter A of chapter 1⟦.⟧*, plus*

(ii) the credits allowed (and payments treated as made) under subchapter C of chapter 65.

* * * * * * *

Subchapter B—Assessable Penalties

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN.

(a) * * *

[(b) AMOUNT OF PENALTY.—

[(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) shall be—

[(A) $10,000 in the case of a natural person, and

[(B) $50,000 in any other case.

[(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be—

[(A) $100,000 in the case of a natural person, and

[(B) $200,000 in any other case.]

(b) AMOUNT OF PENALTY.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount of the penalty under subsection (a) with respect to any reportable transaction shall be 75 percent of the decrease in tax shown on the return as a result of such transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes).

(2) MAXIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any reportable transaction for any taxable year shall not exceed—

(A) in the case of a listed transaction, $200,000 ($100,000 in the case of a natural person), or

(B) in the case of any other reportable transaction, $50,000 ($10,000 in the case of a natural person).

(3) MINIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any transaction for any taxable year shall not be less than $10,000 ($5,000 in the case of a natural person).

* * * * * * *

PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

* * * * * * *

SEC. 6721. FAILURE TO FILE CORRECT INFORMATION RETURNS.

(a) IMPOSITION OF PENALTY.—

(1) IN GENERAL.—In the case of a failure described in paragraph (2) by any person with respect to an information return, such person shall pay a penalty of [$50] *$100* for each return with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed [$250,000] *$1,500,000*.

* * * * * * *

(b) REDUCTION WHERE CORRECTION IN SPECIFIED PERIOD.—

(1) CORRECTION WITHIN 30 DAYS.—If any failure described in subsection (a)(2) is corrected on or before the day 30 days after the required filing date—

(A) the penalty imposed by subsection (a) shall be [$15] *$30* in lieu of [$50] *$100*, and

(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed [$75,000] *$250,000*.

(2) FAILURES CORRECTED ON OR BEFORE AUGUST 1.—If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs—

(A) the penalty imposed by subsection (a) shall be [$30] *$60* in lieu of [$50] *$100*, and

(B) the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed [$150,000] *$500,000*.

* * * * * * *

(d) LOWER LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—

(1) IN GENERAL.—If any person meets the gross receipts test of paragraph (2) with respect to any calendar year, with respect to failures during such taxable year—

(A) subsection (a)(1) shall be applied by substituting "[$100,000] *$500,000*" for "[$250,000] *$1,500,000*",

(B) subsection (b)(1)(B) shall be applied by substituting "[$25,000] *$75,000*" for "[$75,000] *$250,000*", and

(C) subsection (b)(2)(B) shall be applied by substituting "[$50,000] *$200,000*" for "[$150,000] *$500,000*".

* * * * * * *

(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures described in subsection (a)(2) are due to intentional disregard of the filing requirement (or the correct information reporting requirement), then, with respect to each such failure—

(1) * * *

(2) the penalty imposed under subsection (a) shall be [$100] *$250*, or, if greater—

(A) * * *

* * * * * * *

(3) in the case of any penalty determined under paragraph (2)—

(A) the [$250,000] *$1,500,000* limitation under subsection (a) shall not apply, and

* * * * * * *

(f) ADJUSTMENT FOR INFLATION.—

(1) IN GENERAL.—For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d) (other than paragraph (2)(A) thereof), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting "calendar year 2011" for "calendar year 1992" in subparagraph (B) thereof.

(2) ROUNDING.—If any amount adjusted under paragraph (1)—

(A) is not less than $75,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

(B) is not described in subparagraph (A) and is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.

* * * * * * *

CHAPTER 80—GENERAL RULES

* * * * * * *

Subchapter C—Provisions Affecting More Than One Subtitle

* * * * * * *

SEC. 7871. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

(a) * * *

* * * * * * *

(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

(1) * * *

(2) NO EXEMPTION FOR PRIVATE ACTIVITY BONDS.—Except as provided in [paragraph (3)] *paragraphs (3) and (4)*, subsection (a) of section 103 shall not apply to any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof).

* * * * * * *

(4) EXCEPTION FOR BONDS FOR WATER AND SEWAGE FACILITIES.—Paragraph (2) shall not apply to an exempt facility bond 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide facilities described in paragraph (4) or (5) of section 142(a).

* * * * * * *

TITLE 31, UNITED STATES CODE

* * * * * * *

Subtitle II—the BUDGET PROCESS

* * * * * * *

CHAPTER 13—APPROPRIATIONS

* * * * * * *

SUBCHAPTER II—TRUST FUNDS AND REFUNDS

* * * * * * *

§ 1324. Refund of internal revenue collections

(a) * * *

(b) Disbursements may be made from the appropriation made by this section only for—

(1) * * *

(2) refunds due from credit provisions of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) enacted before January 1, 1978, or enacted by the Taxpayer Relief Act of 1997, or from section 25A, 35, 36, 36A, 168(k)(4)(F), 53(e), 54B(h), 6428, or 6431, of such Code, or due under section 3081(b)(2) of the Housing Assistance Tax Act of 2008*, or from the provisions of subchapter C of chapter 65 of such Code*.

* * * * * * *

VII. DISSENTING VIEWS

H.R. 4849 is touted by the Majority as the "small business and infrastructure" component of its so-called "jobs agenda." But it is hard to see how this grab bag of narrow provisions—which actually amounts to a net tax *increase* overall—can be taken seriously as either a "small business" bill or a "jobs" bill. Having seen every one of our common-sense, jobs-focused amendments defeated during our markup—despite our good-faith efforts to improve the bill—we voted unanimously against this legislation in Committee. We did so for four main reasons.

I. TAX INCREASES WILL HURT AN ALREADY WEAKENED ECONOMY

According to the Joint Committee on Taxation, the bill provides $16.75 billion in narrow, limited tax relief, but raises $16.83 billion in new revenue.[1] A net tax increase on our economy, especially while unemployment remains near 10%, will not put Americans back to work.

The biggest tax increase in the bill is a highly controversial $7.7 billion proposal by Rep. Lloyd Doggett (D–TX) to raise taxes on companies located in the U.S. and employing American workers. These are referred to as "insourcing" companies—U.S. subsidiaries of companies headquartered abroad that create and sustain good jobs right here in the United States. As we pointed out during Committee debate, taxing these employers and these jobs would be dangerous for our already struggling economy, could encourage these companies to move U.S. jobs overseas or to curtail future job-creating investments in America, and could invite retaliation by other countries. In addition, as even the Obama Administration's own witness admitted at the markup, the Treasury Department has "concerns about the specifics of this provision . . . and whether it will override . . . many of our income tax treaties." Tax increases are never a good idea, but this one is a particularly bad idea at a particularly bad time.

II. THE BILL'S NARROW TAX RELIEF WILL BE INEFFECTIVE AT CREATING JOBS

Moreover, the particular hodge-podge of narrow, targeted tax relief provisions contained in H.R. 4849 is too minuscule and ineffective to have a meaningful, positive effect on employment. While some of the bill's individual tax provisions may be unobjectionable policy, they do not represent a clear, coherent plan for creating jobs. Slapping together a dozen unrelated tax provisions and call-

[1] In calculating these totals, however, the Joint Committee on Taxation has counted spending increases as revenue reductions. If the spending increases are counted as outlays, as they should be under CBO conventions, then the net effect of the bill is actually an increase in outlays of $42.6 billion and an increase in revenues of $42.7 billion.

ing it a "jobs" bill is not an effective strategy to get America back to work.

In particular, it is important to note that, despite the Majority's rhetoric, the vast majority of the tax relief provided in this bill is not targeted toward small businesses at all. Indeed, roughly 80% of the bill's tax relief would go instead to state and local governments through various "infrastructure" provisions. These infrastructure provisions include a major expansion of "Build America Bonds," which are heavily subsidized for the benefit of state and local governments. State and local governments are important; but those small governments are not small businesses, and they do not create the kind of private-sector jobs we need.

Equally unfortunate is the fact that, prior to markup, the Majority stripped out of the bill the one major provision that was potentially ripe for bipartisan compromise—pension funding relief. It is regrettable that the Majority's own internal disagreements continue to prevent the Committee from making any bipartisan progress on an issue of such significance to American employers, their workers, and their retirees. We continue to believe that, as has historically been the case on pensions, this is an area where bipartisan agreement can be found and that we should come together to find appropriate solutions.

III. MORE "JOBS" BILLS WOULD BE UNNECESSARY HAD THE STIMULUS WORKED

Needless to say, this latest installment of the Majority's supposed "jobs agenda" would not be necessary if the Democrats' failed $862 billion stimulus had actually worked in the first place. While the Majority promised that their 2009 stimulus law would keep the unemployment rate below 8%, unemployment continues to hover near 10%. And instead of creating 3.7 million jobs as promised, the stimulus has been followed by more than 3 million additional job losses. With a record 16 million Americans now unemployed, the country continues to ask: Where are the jobs? Unfortunately, this latest offering by the Majority provides no real answer.

IV. TO REALLY HELP ON JOBS, ABANDON THE HEALTH CARE TAKEOVER

The best thing the Majority could do to encourage job creation is to abandon its plans for a massive government takeover of the nation's health care system. Unfortunately, Democratic leaders remain intent on ramming through their wildly unpopular health bill, which features roughly half-a-trillion dollars in job-killing tax increases. The severe uncertainty that employers face due to the Democrats' health care takeover is discouraging businesses all across the country from hiring new workers.

CONCLUSION

H.R. 4849 is hardly a small business bill, and it is certainly not a "jobs" bill. It raises taxes on employers during an economic downturn, it provides only a pittance of tax relief for small businesses, and it will do nothing to gloss over the Majority's failed stimulus policy that has left unemployment stranded near 10%. For the sake of American jobs, this bill—along with the Majority's trillion dollar health care takeover—should be defeated.

DAVE CAMP, *Ranking Member*.
WALLY HERGER.
SAM JOHNSON.
KEVIN BRADY.
PAUL RYAN.
ERIC CANTOR.
JOHN LINDER.
DEVIN NUNES.
PATRICK J. TIBERI.
GINNY BROWN-WAITE.
GEOFF DAVIS.
DAVID G. REICHERT.
CHARLES W. BOUSTANY, Jr.
DEAN HELLER.
PETER J. ROSKAM.