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111TH CONGRESS
2^D SESSION

H. R. 4849

[Report No. 111-447]

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2010

Mr. LEVIN (for himself, Mr. RANGEL, Mr. LEWIS of Georgia, Mr. NEAL of Massachusetts, Mr. POMEROY, Mr. THOMPSON of California, Mr. LARSON of Connecticut, Mr. KIND, Mr. PASCRELL, Ms. BERKLEY, Mr. CROWLEY, Mr. VAN HOLLEN, Ms. SCHWARTZ, Mr. DAVIS of Alabama, Mr. DAVIS of Illinois, Mr. ETHERIDGE, Ms. LINDA T. SÁNCHEZ of California, and Mr. YARMUTH) introduced the following bill; which was referred to the Committee on Ways and Means

MARCH 19, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 16, 2010]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Small Business and Infrastructure Jobs Tax Act of 2010”.*

6 (b) *AMENDMENT OF 1986 CODE.*—*Except as otherwise*
 7 *expressly provided, whenever in this Act an amendment or*
 8 *repeal is expressed in terms of an amendment to, or repeal*
 9 *of, a section or other provision, the reference shall be consid-*
 10 *ered to be made to a section or other provision of the Inter-*
 11 *nal Revenue Code of 1986.*

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

Sec. 1. Short title; etc.

TITLE I—SMALL BUSINESS TAX INCENTIVES

Subtitle A—General Provisions

Sec. 101. Temporary exclusion of 100 percent of gain on certain small business stock.

Subtitle B—Limitations and Reporting on Certain Penalties

Sec. 111. Limitation on penalty for failure to disclose certain information.

Sec. 112. Annual reports on penalties and certain other enforcement actions.

Subtitle C—Other Provisions

Sec. 121. Nonrecourse small business investment company loans from the Small Business Administration treated as amounts at risk.

Sec. 122. Increase in amount allowed as deduction for start-up expenditures.

TITLE II—INFRASTRUCTURE INCENTIVES

Sec. 201. Extension of Build America Bonds.

Sec. 202. Exempt-facility bonds for sewage and water supply facilities.

Sec. 203. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.

Sec. 204. Elective payments in lieu of low income housing credits.

Sec. 205. Extension and additional allocations of recovery zone bond authority.

Sec. 206. Allowance of new markets tax credit against alternative minimum tax.

TITLE III—REVENUE PROVISIONS

Sec. 301. Limitation on treaty benefits for certain deductible payments.

Sec. 302. Treatment of securities of a controlled corporation exchanged for assets in certain reorganizations.

Sec. 303. Repeal of special rules for interest and dividends received from persons meeting the 80-percent foreign business requirements.

Sec. 304. Information reporting for rental property expense payments.

Sec. 305. Application of levy to payments to Federal vendors relating to property.

Sec. 306. Application of continuous levy to employment tax liability of certain Federal contractors.

Sec. 307. Required minimum 10-year term, etc., for grantor retained annuity trusts.

Sec. 308. Increase in information return penalties.

1 *TITLE I—SMALL BUSINESS TAX*
2 *INCENTIVES*

3 *Subtitle A—General Provisions*

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

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

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

11 *“(A) paragraph (1) shall be applied by sub-*
12 *stituting ‘100 percent’ for ‘50 percent’,*

13 *“(B) paragraph (2) shall not apply, and*

14 *“(C) paragraph (7) of section 57(a) shall*
15 *not apply.”.*

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

18 *(1) by striking “after the date of the enactment*
19 *of this paragraph and before January 1, 2011” and*

1 inserting “after February 17, 2009, and before March
2 16, 2010”, and

3 (2) by striking “SPECIAL RULES FOR 2009 AND
4 2010” in the heading and inserting “SPECIAL 75 PER-
5 CENT EXCLUSION”.

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

8 ***Subtitle B—Limitations and***
9 ***Reporting on Certain Penalties***

10 ***SEC. 111. LIMITATION ON PENALTY FOR FAILURE TO DIS-***
11 ***CLOSE CERTAIN INFORMATION.***

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

14 “(b) *AMOUNT OF PENALTY.*—

15 “(1) *IN GENERAL.*—Except as otherwise provided
16 in this subsection, the amount of the penalty under
17 subsection (a) with respect to any reportable trans-
18 action shall be 75 percent of the decrease in tax shown
19 on the return as a result of such transaction (or
20 which would have resulted from such transaction if
21 such transaction were respected for Federal tax pur-
22 poses).

23 “(2) *MAXIMUM PENALTY.*—The amount of the
24 penalty under subsection (a) with respect to any re-

1 portable transaction for any taxable year shall not ex-
 2 ceed—

3 “(A) in the case of a listed transaction,
 4 \$200,000 (\$100,000 in the case of a natural per-
 5 son), or

6 “(B) in the case of any other reportable
 7 transaction, \$50,000 (\$10,000 in the case of a
 8 natural person).

9 “(3) *MINIMUM PENALTY.*—The amount of the
 10 penalty under subsection (a) with respect to any
 11 transaction for any taxable year shall not be less than
 12 \$10,000 (\$5,000 in the case of a natural person).”.

13 (b) *EFFECTIVE DATE.*—The amendment made by this
 14 section shall apply to penalties assessed after December 31,
 15 2006.

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

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

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

4 (2) *Section 6700(a) (relating to promoting abu-*
5 *sive tax shelters).*

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

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

10 (5) *Section 6708 (relating to failure to maintain*
11 *lists of advisees with respect to reportable trans-*
12 *actions).*

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

16 (1) *Any action taken under section 330(b) of*
17 *title 31, United States Code, with respect to any re-*
18 *portable transaction (as defined in section 6707A(c)*
19 *of the Internal Revenue Code of 1986).*

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

1 (c) *DATE OF REPORT.*—*The first report required*
 2 *under subsection (a) shall be submitted not later than De-*
 3 *cember 31, 2010.*

4 ***Subtitle C—Other Provisions***

5 ***SEC. 121. NONRECOURSE SMALL BUSINESS INVESTMENT*** 6 ***COMPANY LOANS FROM THE SMALL BUSI-*** 7 ***NESS ADMINISTRATION TREATED AS*** 8 ***AMOUNTS AT RISK.***

9 (a) *IN GENERAL.*—*Subparagraph (B) of section*
 10 *465(b)(6) is amended to read as follows:*

11 “(B) *QUALIFIED NONRECOURSE FINANC-*
 12 *ING.*—*For purposes of this paragraph—*

13 “(i) *IN GENERAL.*—*The term ‘qualified*
 14 *nonrecourse financing’ means any financ-*
 15 *ing—*

16 “(I) *which is qualified real prop-*
 17 *erty financing or qualified SBIC fi-*
 18 *nancing,*

19 “(II) *except to the extent provided*
 20 *in regulations, with respect to which*
 21 *no person is personally liable for re-*
 22 *payment, and*

23 “(III) *which is not convertible*
 24 *debt.*

1 “(ii) *QUALIFIED REAL PROPERTY FI-*
2 *NANCING.—The term ‘qualified real prop-*
3 *erty financing’ means any financing*
4 *which—*

5 “(I) *is borrowed by the taxpayer*
6 *with respect to the activity of holding*
7 *real property,*

8 “(II) *is secured by real property*
9 *used in such activity, and*

10 “(III) *is borrowed by the taxpayer*
11 *from a qualified person or represents a*
12 *loan from any Federal, State, or local*
13 *government or instrumentality thereof,*
14 *or is guaranteed by any Federal, State,*
15 *or local government.*

16 “(iii) *QUALIFIED SBIC FINANCING.—*
17 *The term ‘qualified SBIC financing’ means*
18 *any financing which—*

19 “(I) *is borrowed by a small busi-*
20 *ness investment company (within the*
21 *meaning of section 301 of the Small*
22 *Business Investment Act of 1958), and*

23 “(II) *is borrowed from, or guar-*
24 *anteed by, the Small Business Admin-*

1 *istration under the authority of section*
 2 *303(b) of such Act.”.*

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

5 (1) *by striking “in the case of an activity of*
 6 *holding real property,” and*

7 (2) *by striking “which is secured by real prop-*
 8 *erty used in such activity”.*

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

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

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

16 “(3) *INCREASED LIMITATION FOR TAXABLE*
 17 *YEARS BEGINNING IN 2010 OR 2011.—In the case of*
 18 *any taxable year beginning in 2010 or 2011, para-*
 19 *graph (1)(A)(ii) shall be applied—*

20 “(A) *by substituting ‘\$20,000’ for ‘\$5,000’,*
 21 *and*

22 “(B) *by substituting ‘\$75,000’ for*
 23 *‘\$50,000’.*”.

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to taxable years beginning after Decem-*
 3 *ber 31, 2009.*

4 ***TITLE II—INFRASTRUCTURE***
 5 ***INCENTIVES***

6 ***SEC. 201. EXTENSION OF BUILD AMERICA BONDS.***

7 (a) *IN GENERAL.*—*Subparagraph (B) of section*
 8 *54AA(d)(1) is amended by striking “January 1, 2011” and*
 9 *inserting “April 1, 2013”.*

10 (b) *EXTENSION OF PAYMENTS TO ISSUERS.*—

11 (1) *IN GENERAL.*—*Subsection (a) of section 6431*
 12 *is amended by striking “January 1, 2011” and in-*
 13 *serting “April 1, 2013”.*

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

16 (A) *by striking “January 1, 2011” and in-*
 17 *serting “April 1, 2013”, and*

18 (B) *by striking “QUALIFIED BONDS ISSUED*
 19 *BEFORE 2011” in the heading and inserting*
 20 *“CERTAIN QUALIFIED BONDS”.*

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

23 (1) *by striking “The Secretary” and inserting*
 24 *the following:*

25 “(1) *IN GENERAL.*—*The Secretary”,*

1 (2) *by striking “35 percent” and inserting “the*
 2 *applicable percentage”, and*

3 (3) *by adding at the end the following new para-*
 4 *graph:*

5 “(2) *APPLICABLE PERCENTAGE.—For purposes*
 6 *of this subsection, the term ‘applicable percentage’*
 7 *means the percentage determined in accordance with*
 8 *the following table:*

<i>“In the case of a qualified bond issued during cal- endar year:</i>	<i>The applicable percentage is:</i>
<i>2009 or 2010</i>	<i>35 percent</i>
<i>2011</i>	<i>33 percent</i>
<i>2012</i>	<i>31 percent</i>
<i>2013</i>	<i>30 percent”.</i>

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

12 “(3) *TREATMENT OF CURRENT REFUNDING*
 13 *BONDS.—*

14 “(A) *IN GENERAL.—For purposes of this*
 15 *subsection, the term ‘qualified build America*
 16 *bond’ includes any bond (or series of bonds)*
 17 *issued to refund a qualified build America bond*
 18 *if—*

19 “(i) *the average maturity date of the*
 20 *issue of which the refunding bond is a part*

1 is not later than the average maturity date
2 of the bonds to be refunded by such issue,

3 “(ii) the amount of the refunding bond
4 does not exceed the outstanding amount of
5 the refunded bond, and

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

9 “(B) *APPLICABLE PERCENTAGE.*—In the
10 case of a refunding bond referred to in subpara-
11 graph (A), the applicable percentage with respect
12 to such bond under section 6431(b) shall be the
13 lowest percentage specified in paragraph (2) of
14 such section.

15 “(C) *DETERMINATION OF AVERAGE MATU-*
16 *RITY.*—For purposes of subparagraph (A)(i), av-
17 erage maturity shall be determined in accord-
18 ance with section 147(b)(2)(A).”.

19 (e) *CLARIFICATION RELATED TO LEVEES AND FLOOD*
20 *CONTROL PROJECTS.*—Subparagraph (A) of section
21 54AA(g)(2) is amended by inserting “(including capital ex-
22 penditures for levees and other flood control projects)” after
23 “capital expenditures”.

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

3 (a) *BONDS FOR WATER AND SEWAGE FACILITIES EX-*
 4 *EMPT FROM VOLUME CAP ON PRIVATE ACTIVITY BONDS.—*

5 (1) *IN GENERAL.—Paragraph (3) of section*
 6 *146(g) is amended by inserting “(4), (5),” after*
 7 *“(2),”.*

8 (2) *CONFORMING AMENDMENT.—Paragraphs (2)*
 9 *and (3)(B) of section 146(k) are both amended by*
 10 *striking “(4), (5), (6),” and inserting “(6)”.*

11 (b) *TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOV-*
 12 *ERNMENTS.—*

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

16 “(4) *EXCEPTION FOR BONDS FOR WATER AND*
 17 *SEWAGE FACILITIES.—Paragraph (2) shall not apply*
 18 *to an exempt facility bond 95 percent or more of the*
 19 *net proceeds (as defined in section 150(a)(3)) of which*
 20 *are to be used to provide facilities described in para-*
 21 *graph (4) or (5) of section 142(a).”.*

22 (2) *CONFORMING AMENDMENT.—Paragraph (2)*
 23 *of section 7871(c) is amended by striking “paragraph*
 24 *(3)” and inserting “paragraphs (3) and (4)”.*

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

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

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

9 (1) *by striking “January 1, 2011” in subclause*
 10 *(I) and inserting “January 1, 2012”, and*

11 (2) *by striking “AND 2010” in the heading and*
 12 *inserting “, 2010, AND 2011”.*

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

15 (1) *by striking “January 1, 2011” in subclause*
 16 *(I) and inserting “January 1, 2012”, and*

17 (2) *by striking “AND 2010” in the heading and*
 18 *inserting “, 2010, AND 2011”.*

19 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 20 *section shall apply to obligations issued after December 31,*
 21 *2010.*

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

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

6 **“Subchapter C—Direct Payment Provisions**

*“Sec. 6451. Elective payments in lieu of low income housing credit for bond-fi-
 nanced buildings.*

7 **“SEC. 6451. ELECTIVE PAYMENTS IN LIEU OF LOW INCOME**
 8 **HOUSING CREDIT FOR BOND-FINANCED**
 9 **BUILDINGS.**

10 “(a) *IN GENERAL.*—Any person making an election
 11 under this section with respect to any qualified bond-fi-
 12 nanced low-income building originally placed in service by
 13 such person during the taxable year shall be treated as mak-
 14 ing a payment, against the tax imposed by subtitle A for
 15 the taxable year, equal to the direct payment amount with
 16 respect to such building. Such payment shall be treated as
 17 made on the later of the due date of the return of such tax
 18 or the date on which such return is filed.

19 “(b) *QUALIFIED BOND-FINANCED LOW-INCOME BUILD-*
 20 *ING.*—For purposes of this section, the term ‘qualified bond-
 21 financed low-income building’ means any qualified low-in-
 22 come building to which paragraph (1) of section 42(h) does
 23 not apply by reason of paragraph (4)(B) of such section.

1 “(c) *DIRECT PAYMENT AMOUNT.*—*For purposes of this*
 2 *section, the term ‘direct payment amount’ means, with re-*
 3 *spect to any building, 25.5 percent of the qualified basis*
 4 *of such building.*

5 “(d) *SPECIAL RULES FOR CERTAIN NON-TAX-*
 6 *PAYERS.*—

7 “(1) *DENIAL OF PAYMENT.*—*Subsection (a) shall*
 8 *not apply with respect to any building placed in serv-*
 9 *ice by—*

10 “(A) *any governmental entity, or*

11 “(B) *any organization described in section*
 12 *501(c) or 401(a) and exempt from tax under sec-*
 13 *tion 501(a).*

14 “(2) *SPECIAL RULES FOR PARTNERSHIPS AND S*
 15 *CORPORATIONS.*—*In the case of property originally*
 16 *placed in service by a partnership or an S corpora-*
 17 *tion—*

18 “(A) *the election under subsection (a) may*
 19 *be made only by such partnership or S corpora-*
 20 *tion,*

21 “(B) *such partnership or S corporation*
 22 *shall be treated as making the payment referred*
 23 *to in subsection (a) only to the extent of the pro-*
 24 *portionate share of such partnership or S cor-*
 25 *poration as is owned by persons who would be*

1 *treated as making such payment if the building*
 2 *were placed in service by such persons, and*

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

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

10 “

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

16 “(f) *OTHER DEFINITIONS AND SPECIAL RULES.—For*
 17 *purposes of this section—*

18 “(1) *OTHER DEFINITIONS.—Terms used in this*
 19 *section which are also used in section 42 shall have*
 20 *the same meaning for purposes of this section as when*
 21 *used in such section.*

22 “(2) *APPLICATION OF RECAPTURE RULES,*
 23 *ETC.—Except as otherwise provided by the Secretary,*
 24 *rules similar to the rules of section 42 shall apply, in-*
 25 *cluding the recapture rules of section 42(j).*

1 “(3) *PROVISION OF INFORMATION.*—A person
 2 shall not be treated as having elected the application
 3 of this section unless the taxpayer provides such infor-
 4 mation as the Secretary may require for purposes of
 5 verifying the proper amount to be treated as a pay-
 6 ment under subsection (a) and evaluating the effec-
 7 tiveness of this section.

8 “(4) *EXCLUSION FROM GROSS INCOME.*—Any
 9 credit or refund allowed or made by reason of this
 10 section shall not be includible in gross income or al-
 11 ternative minimum taxable income.

12 “(g) *TERMINATION.*—Subsection (a) shall not apply
 13 with respect to any building placed in service during a tax-
 14 able year beginning after December 31, 2010.”.

15 (b) *CONFORMING AMENDMENTS.*—

16 (1) Subparagraph (A) of section 6211(b)(4) is
 17 amended by inserting “and subchapter C of chapter
 18 65 (including any payment treated as made under
 19 such subchapter)” after “6431”.

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

22 (A) by striking “the credits” and inserting
 23 “the sum of—
 24 “(i) the credits”,

1 (B) by striking the period at the end of
 2 clause (i) thereof (as amended by this para-
 3 graph) and inserting “, plus”, and

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

6 “(ii) the credits allowed (and payments
 7 treated as made) under subchapter C.”.

8 (3) Paragraph (3) of section 6654(f) is amend-
 9 ed—

10 (A) by striking “the credits” and inserting
 11 “the sum of—

12 “(A) the credits”,

13 (B) by striking the period at the end of sub-
 14 paragraph (A) thereof (as amended by this para-
 15 graph) and inserting “, and”, and

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

18 “(B) the credits allowed (and payments
 19 treated as made) under subchapter C of chapter
 20 65.”.

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

23 (A) by striking “the credits” and inserting
 24 “the sum of—

25 “(i) the credits”,

1 (B) by striking the period at the end of
 2 clause (i) thereof (as amended by this para-
 3 graph) and inserting “, plus”, and

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

6 “(ii) the credits allowed (and payments
 7 treated as made) under subchapter C of
 8 chapter 65.”.

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

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

SUBCHAPTER C. DIRECT PAYMENT PROVISIONS

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

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

20 (a) *EXTENSION OF RECOVERY ZONE BOND AUTHOR-*
 21 *ITY.*—Section 1400U–2(b)(1) and section 1400U–
 22 3(b)(1)(B) are each amended by striking “January 1,
 23 2011” and inserting “January 1, 2012”.

24 (b) *ADDITIONAL ALLOCATIONS OF RECOVERY ZONE*
 25 *BOND AUTHORITY BASED ON UNEMPLOYMENT.*—Section

1 1400U–1 is amended by adding at the end the following
 2 new subsection:

3 “(c) *ALLOCATION OF 2010 RECOVERY ZONE BOND*
 4 *LIMITATIONS BASED ON UNEMPLOYMENT.*—

5 “(1) *IN GENERAL.*—*The Secretary shall allocate*
 6 *the 2010 national recovery zone economic development*
 7 *bond limitation and the 2010 national recovery zone*
 8 *facility bond limitation among the States in the pro-*
 9 *portion that each such State’s 2009 unemployment*
 10 *number bears to the aggregate of the 2009 unemploy-*
 11 *ment numbers for all of the States.*

12 “(2) *MINIMUM ALLOCATION.*—*The Secretary*
 13 *shall adjust the allocations under paragraph (1) for*
 14 *each State to the extent necessary to ensure that no*
 15 *State (prior to any reduction under paragraph (3))*
 16 *receives less than 0.9 percent of the 2010 national re-*
 17 *covery zone economic development bond limitation*
 18 *and 0.9 percent of the 2010 national recovery zone fa-*
 19 *cility bond limitation.*

20 “(3) *ALLOCATIONS BY STATES.*—

21 “(A) *IN GENERAL.*—*Each State with respect*
 22 *to which an allocation is made under paragraph*
 23 *(1) shall reallocate such allocation among the*
 24 *counties and large municipalities (as defined in*
 25 *subsection (a)(3)(B)) in such State in the pro-*

1 *portion that each such county’s or municipality’s*
 2 *2009 unemployment number bears to the aggre-*
 3 *gate of the 2009 unemployment numbers for all*
 4 *the counties and large municipalities (as so de-*
 5 *fined) in such State.*

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

9 *“(i) the amount of the 2010 national*
 10 *recovery zone economic development bond*
 11 *limitation allocated to each county or large*
 12 *municipality (as so defined) in such State*
 13 *by the amount of the national recovery zone*
 14 *economic development bond limitation allo-*
 15 *cated to such county or large municipality*
 16 *under subsection (a)(3)(A) (determined*
 17 *without regard to any waiver thereof), and*

18 *“(ii) the amount of the 2010 national*
 19 *recovery zone facility bond limitation allo-*
 20 *cated to each county or large municipality*
 21 *(as so defined) in such State by the amount*
 22 *of the national recovery zone facility bond*
 23 *limitation allocated to such county or large*
 24 *municipality under subsection (a)(3)(A)*

1 *(determined without regard to any waiver*
 2 *thereof).*

3 “(C) *WAIVER OF SUBALLOCATIONS.—A*
 4 *county or municipality may waive any portion*
 5 *of an allocation made under this paragraph. A*
 6 *State may by law treat a county or munici-*
 7 *pality as waiving any portion of an allocation*
 8 *made under this paragraph if there is a reason-*
 9 *able expectation that such allocation would not*
 10 *otherwise be used.*

11 “(D) *SPECIAL RULE FOR A MUNICIPALITY*
 12 *IN A COUNTY.—In the case of any large munici-*
 13 *pality any portion of which is in a county, such*
 14 *portion shall be treated as part of such munici-*
 15 *pality and not part of such county.*

16 “(4) *2009 UNEMPLOYMENT NUMBER.—For pur-*
 17 *poses of this subsection, the term ‘2009 unemployment*
 18 *number’ means, with respect to any State, county or*
 19 *municipality, the number of individuals in such*
 20 *State, county, or municipality who were determined*
 21 *to be unemployed by the Bureau of Labor Statistics*
 22 *for December 2009.*

23 “(5) *2010 NATIONAL LIMITATIONS.—*

24 “(A) *RECOVERY ZONE ECONOMIC DEVELOP-*
 25 *MENT BONDS.—The 2010 national recovery zone*

1 *economic development bond limitation is*
 2 *\$10,000,000,000. Any allocation of such limita-*
 3 *tion under this subsection shall be treated for*
 4 *purposes of section 1400U–2 in the same manner*
 5 *as an allocation of national recovery zone eco-*
 6 *nomic development bond limitation.*

7 *“(B) RECOVERY ZONE FACILITY BONDS.—*
 8 *The 2010 national recovery zone facility bond*
 9 *limitation is \$15,000,000,000. Any allocation of*
 10 *such limitation under this subsection shall be*
 11 *treated for purposes of section 1400U–3 in the*
 12 *same manner as an allocation of national recov-*
 13 *ery zone facility bond limitation.”.*

14 *(c) AUTHORITY OF STATE TO WAIVE CERTAIN 2009*
 15 *ALLOCATIONS.—Subparagraph (A) of section 1400U–*
 16 *1(a)(3) is amended by adding at the end the following: “A*
 17 *State may by law treat a county or municipality as*
 18 *waiving any portion of an allocation made under this sub-*
 19 *paragraph if there is a reasonable expectation that such al-*
 20 *location would not otherwise be used.”.*

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

23 *(a) IN GENERAL.—Subparagraph (B) of section*
 24 *38(c)(4) is amended by redesignating clauses (v) through*

1 *(viii) as clauses (vi) through (ix), respectively, and by in-*
 2 *serting after clause (iv) the following new clause:*

3 *“(v) the credit determined under sec-*
 4 *tion 45D, but only with respect to credits*
 5 *determined with respect to qualified equity*
 6 *investments (as defined in section 45D(b))*
 7 *initially made before January 1, 2012,”.*

8 *(b) EFFECTIVE DATE.—The amendments made by this*
 9 *section shall apply to qualified equity investments (as de-*
 10 *fined in section 45D(b) of the Internal Revenue Code of*
 11 *1986) initially made after March 15, 2010.*

12 ***TITLE III—REVENUE***

13 ***PROVISIONS***

14 ***SEC. 301. LIMITATION ON TREATY BENEFITS FOR CERTAIN***

15 ***DEDUCTIBLE PAYMENTS.***

16 *(a) IN GENERAL.—Section 894 (relating to income af-*
 17 *fecting by treaty) is amended by adding at the end the fol-*
 18 *lowing new subsection:*

19 *“(d) LIMITATION ON TREATY BENEFITS FOR CERTAIN*
 20 *DEDUCTIBLE PAYMENTS.—*

21 *“(1) IN GENERAL.—In the case of any deductible*
 22 *related-party payment, any withholding tax imposed*
 23 *under chapter 3 (and any tax imposed under subpart*
 24 *A or B of this part) with respect to such payment*
 25 *may not be reduced under any treaty of the United*

1 *States unless any such withholding tax would be re-*
 2 *duced under a treaty of the United States if such*
 3 *payment were made directly to the foreign parent cor-*
 4 *poration.*

5 “(2) *DEDUCTIBLE RELATED-PARTY PAYMENT.*—
 6 *For purposes of this subsection, the term ‘deductible*
 7 *related-party payment’ means any payment made,*
 8 *directly or indirectly, by any person to any other per-*
 9 *son if the payment is allowable as a deduction under*
 10 *this chapter and both persons are members of the*
 11 *same foreign controlled group of entities.*

12 “(3) *FOREIGN CONTROLLED GROUP OF ENTI-*
 13 *TIES.*—*For purposes of this subsection—*

14 “(A) *IN GENERAL.*—*The term ‘foreign con-*
 15 *trolled group of entities’ means a controlled*
 16 *group of entities the common parent of which is*
 17 *a foreign corporation.*

18 “(B) *CONTROLLED GROUP OF ENTITIES.*—
 19 *The term ‘controlled group of entities’ means a*
 20 *controlled group of corporations as defined in*
 21 *section 1563(a)(1), except that—*

22 “(i) *‘more than 50 percent’ shall be*
 23 *substituted for ‘at least 80 percent’ each*
 24 *place it appears therein, and*

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

4 A partnership or any other entity (other than a
5 corporation) shall be treated as a member of a
6 controlled group of entities if such entity is con-
7 trolled (within the meaning of section 954(d)(3))
8 by members of such group (including any entity
9 treated as a member of such group by reason of
10 this sentence).

11 “(4) FOREIGN PARENT CORPORATION.—For pur-
12 poses of this subsection, the term ‘foreign parent cor-
13 poration’ means, with respect to any deductible re-
14 lated-party payment, the common parent of the for-
15 eign controlled group of entities referred to in para-
16 graph (3)(A).

17 “(5) REGULATIONS.—The Secretary may pre-
18 scribe such regulations or other guidance as are nec-
19 essary or appropriate to carry out the purposes of
20 this subsection, including regulations or other guid-
21 ance which provide for—

22 “(A) the treatment of two or more persons
23 as members of a foreign controlled group of enti-
24 ties if such persons would be the common parent
25 of such group if treated as one corporation, and

1 “(B) the treatment of any member of a for-
 2 eign controlled group of entities as the common
 3 parent of such group if such treatment is appro-
 4 priate taking into account the economic relation-
 5 ships among such entities.”.

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

9 **SEC. 302. TREATMENT OF SECURITIES OF A CONTROLLED**
 10 **CORPORATION EXCHANGED FOR ASSETS IN**
 11 **CERTAIN REORGANIZATIONS.**

12 (a) *IN GENERAL.*—Section 361 (relating to non-
 13 recognition of gain or loss to corporations; treatment of dis-
 14 tributions) is amended by adding at the end the following
 15 new subsection:

16 “(d) *SPECIAL RULES FOR TRANSACTIONS INVOLVING*
 17 *SECTION 355 DISTRIBUTIONS.*—In the case of a reorganiza-
 18 tion described in section 368(a)(1)(D) with respect to which
 19 stock or securities of the corporation to which the assets are
 20 transferred are distributed in a transaction which qualifies
 21 under section 355—

22 “(1) this section shall be applied by substituting
 23 ‘stock other than nonqualified preferred stock (as de-
 24 fined in section 351(g)(2))’ for ‘stock or securities’ in
 25 subsections (a) and (b)(1), and

1 “(2) the first sentence of subsection (b)(3) shall
 2 apply only to the extent that the sum of the money
 3 and the fair market value of the other property trans-
 4 ferred to such creditors does not exceed the adjusted
 5 bases of such assets transferred (reduced by the
 6 amount of the liabilities assumed (within the mean-
 7 ing of section 357(c))).”.

8 (b) *CONFORMING AMENDMENT.*—Paragraph (3) of sec-
 9 tion 361(b) is amended by striking the last sentence.

10 (c) *EFFECTIVE DATE.*—

11 (1) *IN GENERAL.*—Except as provided in para-
 12 graph (2), the amendments made by this section shall
 13 apply to exchanges after the date of the enactment of
 14 this Act.

15 (2) *TRANSITION RULE.*—The amendments made
 16 by this section shall not apply to any exchange pursu-
 17 ant to a transaction which is—

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

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

1 (C) described on or before such date in a
 2 public announcement or in a filing with the Se-
 3 curities and Exchange Commission.

4 **SEC. 303. REPEAL OF SPECIAL RULES FOR INTEREST AND**
 5 **DIVIDENDS RECEIVED FROM PERSONS MEET-**
 6 **ING THE 80-PERCENT FOREIGN BUSINESS RE-**
 7 **QUIREMENTS.**

8 (a) *REPEAL OF SPECIAL RULE TREATING INTEREST*
 9 *AS UNITED STATES SOURCE.*—Paragraph (1) of section
 10 861(a) is amended by striking subparagraph (A) and by
 11 redesignating subparagraphs (B) and (C) as subparagraphs
 12 (A) and (B), respectively.

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

18 (c) *CONFORMING AMENDMENTS.*—

19 (1) Section 861 is amended by striking sub-
 20 section (c) and by redesignating subsections (d), (e),
 21 and (f) as subsections (c), (d), and (e), respectively.

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

24 “(9) *TREATMENT OF CERTAIN DOMESTIC COR-*
 25 *PORATIONS.*—In the case of any dividend treated as

1 *not from sources with the United States under section*
 2 *861(a)(2)(A), the corporation paying such dividend*
 3 *shall be treated for purposes of this subsection as a*
 4 *United States-owned foreign corporation.”.*

5 *(3) Subsection (c) of section 2104 is amended in*
 6 *the last sentence by striking “or to a debt obligation*
 7 *of a domestic corporation” and all that follows and*
 8 *inserting a period.*

9 *(d) EFFECTIVE DATE.—*

10 *(1) IN GENERAL.—Except as provided in para-*
 11 *graph (2), the amendments made by this section shall*
 12 *apply to taxable years beginning after December 31,*
 13 *2010.*

14 *(2) GRANDFATHER RULE FOR OUTSTANDING*
 15 *DEBT OBLIGATIONS.—*

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

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

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

7 **SEC. 304. INFORMATION REPORTING FOR RENTAL PROP-**
 8 **ERTY EXPENSE PAYMENTS.**

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

11 “(h) *TREATMENT OF RENTAL PROPERTY EXPENSE*
 12 *PAYMENTS.*—

13 “(1) *IN GENERAL.*—*For purposes of subsection*
 14 *(a), a person receiving rental income from real estate*
 15 *(other than a qualified residence) shall be considered*
 16 *to be engaged in a trade or business of renting prop-*
 17 *erty.*

18 “(2) *QUALIFIED RESIDENCE.*—*For purposes of*
 19 *paragraph (1), the term ‘qualified residence’*
 20 *means—*

21 “(A) *the principal residence (within the*
 22 *meaning of section 121) of the taxpayer, and*

23 “(B) *1 other residence of the taxpayer which*
 24 *is selected by the taxpayer for purposes of this*
 25 *subsection for the taxable year and which is used*

1 *by the taxpayer as a residence (within the mean-*
 2 *ing of section 280A(d)(1)).”.*

3 ***(b) EFFECTIVE DATE.***—*The amendment made by this*
 4 *section shall apply to payments made after December 31,*
 5 *2010.*

6 **SEC. 305. APPLICATION OF LEVY TO PAYMENTS TO FED-**
 7 **ERAL VENDORS RELATING TO PROPERTY.**

8 ***(a) IN GENERAL.***—*Section 6331(h)(3) is amended by*
 9 *striking “goods or services” and inserting “property, goods,*
 10 *or services”.*

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

14 **SEC. 306. APPLICATION OF CONTINUOUS LEVY TO EMPLOY-**
 15 **MENT TAX LIABILITY OF CERTAIN FEDERAL**
 16 **CONTRACTORS.**

17 ***(a) IN GENERAL.***—*Section 6330(h) is amended by in-*
 18 *serting “or if the person subject to the levy (or any prede-*
 19 *cessor thereof) is a Federal contractor that was identified*
 20 *as owing such employment taxes through the Federal Pay-*
 21 *ment Levy Program” before the period at the end of the*
 22 *first sentence.*

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

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

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

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

9 (2) *by striking “For purposes of” and inserting*
 10 *the following:*

11 “(1) *IN GENERAL.*—For purposes of”, and

12 (3) *by striking “paragraph (1) or (2)” in para-*
 13 *graph (1)(C) (as so redesignated) and inserting “sub-*
 14 *paragraph (A) or (B)”*, and

15 (4) *by adding at the end the following new para-*
 16 *graph:*

17 “(2) *ADDITIONAL REQUIREMENTS WITH RESPECT*
 18 *TO GRANTOR RETAINED ANNUITIES.*—For purposes of
 19 subsection (a), in the case of an interest described in
 20 paragraph (1)(A) (determined without regard to this
 21 paragraph) which is retained by the transferor, such
 22 interest shall be treated as described in such para-
 23 graph only if—

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

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

5 “(C) the remainder interest has a value
 6 greater than zero determined as of the time of the
 7 transfer.”.

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

11 **SEC. 308. INCREASE IN INFORMATION RETURN PENALTIES.**

12 (a) *FAILURE TO FILE CORRECT INFORMATION RE-*
 13 *URNS.*—

14 (1) *IN GENERAL.*—Subsections (a)(1), (b)(1)(A),
 15 and (b)(2)(A) of section 6721 are each amended by
 16 striking “\$50” and inserting “\$100”.

17 (2) *AGGREGATE ANNUAL LIMITATION.*—Sub-
 18 sections (a)(1), (d)(1)(A), and (e)(3)(A) of section
 19 6721 are each amended by striking “\$250,000” and
 20 inserting “\$1,500,000”.

21 (b) *REDUCTION WHERE CORRECTION WITHIN 30*
 22 *DAYS.*—

23 (1) *IN GENERAL.*—Subparagraph (A) of section
 24 6721(b)(1) is amended by striking “\$15” and insert-
 25 ing “\$30”.

1 (2) *AGGREGATE ANNUAL LIMITATION.*—Sub-
 2 sections (b)(1)(B) and (d)(1)(B) of section 6721 are
 3 each amended by striking “\$75,000” and inserting
 4 “\$250,000”.

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

7 (1) *IN GENERAL.*—Subparagraph (A) of section
 8 6721(b)(2) is amended by striking “\$30” and insert-
 9 ing “\$60”.

10 (2) *AGGREGATE ANNUAL LIMITATION.*—Sub-
 11 sections (b)(2)(B) and (d)(1)(C) of section 6721 are
 12 each amended by striking “\$150,000” and inserting
 13 “\$500,000”.

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

17 (1) *by striking “\$100,000” in subparagraph (A)*
 18 *and inserting “\$500,000”,*

19 (2) *by striking “\$25,000” in subparagraph (B)*
 20 *and inserting “\$75,000”, and*

21 (3) *by striking “\$50,000” in subparagraph (C)*
 22 *and inserting “\$200,000”.*

23 (e) *PENALTY IN CASE OF INTENTIONAL DISREGARD.*—
 24 *Paragraph (2) of section 6721(e) is amended by striking*
 25 *“\$100” and inserting “\$250”.*

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

3 “(f) *ADJUSTMENT FOR INFLATION.*—

4 “(1) *IN GENERAL.*—For each fifth calendar year
 5 beginning after 2012, each of the dollar amounts
 6 under subsections (a), (b), (d) (other than paragraph
 7 (2)(A) thereof), and (e) shall be increased by such dol-
 8 lar amount multiplied by the cost-of-living adjust-
 9 ment determined under section 1(f)(3) determined by
 10 substituting ‘calendar year 2011’ for ‘calendar year
 11 1992’ in subparagraph (B) thereof.

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

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

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

20 (g) *EFFECTIVE DATE.*—The amendments made by this
 21 section shall apply with respect to information returns re-
 22 quired to be filed on or after January 1, 2011.

Union Calendar No. 257

11TH CONGRESS
2^D Session

H. R. 4849

[Report No. 111-447]

A BILL

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.

MARCH 19, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed